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Annex: Detailed information on the countries

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1. AUSTRIA

**Main findings**

- Occupational pensions can be financed externally via an IORP or via book reserves
- All IORP fall under art. 17 of the directive
- IORP’s are subject to control and assets covering technical provisions calculated in a prudent way need to be available, recovery plans require immediate recovery or very limited periods
- Employers using book reserves are required to cover at least 50% of the tax provisions by appropriate financial assets or by qualifying insurance contracts.
- No guarantee scheme exists
- Benefits vest after 5 years of service
- No benefit information needs to be provided to employees in case of book reserve schemes. Yearly global financial information on the IORP must be provided together with an annual benefit statement in case of a defined benefit plan financed via an IORP.

1.1. Description of the legal framework

(1) Which kind of IORPs can be used to finance pension schemes (insurance companies, national funds, company pension fund, multi-employer fund, sector pension fund, other kinds of entities created to finance pensions)?

In Austria Corporate Pensions are mainly financed by privately owned multi-employer Pension Funds (in the following “Pensionskassen” for short) but also Insurance Companies offer plans with a legally prescribed collective characteristic (in the following “Kollektivversicherungen” in short). Some companies in Austria founded single-employer Pensionskassen to offer and finance pension for employees of the (group of) employer(s) but which rely basically on the same legal principles as multi-employer Pensionskassen.

(2) What are the minimum funding requirements for each of these kind of IORP’s and are there minima for book reserves?

Minimum funding requirements for Pensionskassen are given by the rules of the technical (actuarial) business plan which has to be approved by the Financial Market Supervising Authorities (in the following FMA in short). For Kollektivversicherungen a related business plan is not required but the calculation of reserves has to follow the principles of prudence as for other (individual) life insurance policies according to Law. For book reserve plans provisions have to be calculated annually as prescribed by Austrian Commercial Law and the corresponding liabilities have to be shown explicitly in the balance sheet statement of the company. Commercial Law contains no explicitly prescribed rules but in general a discount rate between 3.% and 4% is applied in order to account for indexed benefits and the entry age method is normally used. Book reserves may also be calculated using the methods and assumptions prescribed by IAS 19 and for international operating firms this is common practice in Austria.
(3) Is there a legal obligation to subscribe to external (solvency) guarantees? And what are these guarantees for each kind of IORP and for book reserve schemes?

There is no legal obligation to subscribe to external solvency guarantees for IORP. However, for book reserve schemes at least 50% of the tax-efficient provisions have to be covered by appropriate financial assets or by qualifying insurance contracts.

(4) Does separate legislation on solvency exist for IORP’s falling under article 17 of the directive (plus a description)? Article 17 concerns IORP’s that take themselves the biometric risks and/or guarantee benefits, in case of insufficiency these IORP’s cannot claim supplementary contributions or reduce the benefits. How much of the IORP’s (as a percentage) are falling under article 17?

All multi-employer Pensionskassen have to hold permanently solvency capital at the level of 1% of technical reserves. If moreover Pensionskassen give the guarantee of a minimum average return as defined by law than solvency capital must be at least 4% of the technical reserves and this amount has to be reached in a transitional period ending in the year 2010. Biometric risk can be covered by insurance contracts but this does not reduce the amount of the solvency margin. For single-employer Pensionskassen, solvency margins are less restrictive.

Kollektivversicherungen fall under the requirements of the solvency capital as other insurance companies and have to hold therefore at least 4% of the technical reserves as safety capital.

As a result of this, all IORP’s (book reserves therefore excluded) fall under article 17 of the directive.

(5) Is the provision of company sponsored employee benefits compulsory for the employers and to which extent?

There is generally no legal (minimum) compulsory provision for employers. However, for some sectors there are agreements between the Employer- and Labour-Unions on the level and the form of the provisions.

(6) Does the legislation provide for minimum vested rights if an employee leaves before retirement? Is this legislation different for the different funding systems or book reserves?

Austrian Legislation prescribes vested rights on early leave after 5 years of service. The level of rights is related to the accrued technical reserves calculated in line with the actuarial business of the Pensionskassen, or the methods used for insurance reserves of the Kollektivversicherungen. They are calculated basically in the same way for DC or DB plans. In the case of book reserve schemes, the vested rights are derived from the value of the liabilities recorded at the balance sheet but assuming a discount rate of 7% and by disregarding prospective indexations of salaries (as assessment basis) and pensions in payment.
(7) Is there legislation that requires that ex-employees and pensioners are treated the same as active employees (plus a description)?

There is no explicit legislation on the equal treatment of these groups. However, a different method in the calculation of vested rights could – as a result of this - violate directly or indirectly the general anti-discrimination principles between these groups.

(8) Is there legislation on the increase in benefits during payment or the deferred period (plus a description)?

There is no explicit legislation that prescribes indexation of (deferred) benefits. But the increase of benefits may be either given directly by the terms of the plan in the case of a book reserve schemes or indirectly by the funding method and profit participation rules within the Pensionskassen or Kollektivversicherungen contract.

(9) Is there legislation that allows to reduce accrued pension rights in case of under funding?

In the case of DC plans of Pensionskassen this is in fact the general rule and was finally also approved by the Supreme Courts in Austria in related law cases. Furthermore and due to changes in mortality rates the FMA prescribed recently again the use of adjusted life tables which resulted in the case of DC plans in a reduction in accrued pension rights.

Differently to that Kollektivversicherungen guarantee the level of reserves although a guaranteed level of pension rights is in general only insured once the reserves are converted in annuity contacts.

(10) Can benefits be paid in the form of a lump sum and to what extend?

Pensionskassen and Kollektivversicherungen may settle the pension obligations only in the case when the cash value of the pension rights does not exceed EUR 10.500. For book reserve schemes such a limit does not exist and the amount in the case of settlement has to be agreed between the employer and the beneficiaries. However, a pure lump sum payment agreed beforehand would have negative impact on the tax efficiency of the book reserves.

(11) Which kind of beneficiaries have priority rights on the assets of the IORP (pensioners, ex-employees, other beneficiaries, employees) and to what extend? Please describe the priority rules?

No such legislation or rules do exist in Austria. If the specific plan does not state this differently then a “proportional” right on the assets would follow in this case and where the “technical reserves” would serve as an appropriate measure for proportionality.
(12) In case of book reserves, which kind of beneficiaries have priority rights on the assets of the employer (pensioners, ex-employees, other beneficiaries, employees) and to what extent? Please describe the priority rules?

Principally for book reserve plans the same applies as for Pensionskassen and Kollektivversicherungen. However, in the case of bankruptcy of the employer and if the legally prescribed assets to cover vested rights is not executable then national funds will pay by legal requirements as a minimum two annual pensions (in the case of a pension in payment) or two annual amount of vested pension rights (in the case of a deferred pension right) in cash.

(13) Has the country applied art. 4 of the Directive? If yes, comment on differences between pension insurer’s and IORP’s throughout all questions.

Austria has not applied art. 4 of the Directive. Although the product “Betriebliche Kollektivversicherung” was stimulated by the directive and launched in Austria in the year 2005 to enable insurance-like contracts for corporate pensions schemes on legally equal grounds like Pensionskassen (in the sense of a "level playing field" for these types of products), Austria did not opt for article 4 of the directive. Assets and liabilities of Betriebliche Kollektivversicherungen have to be reported and treated differently from other lines of insurance business but they rely on special rules within the Versicherungsaufsichtsgesetz (Insurance Supervisory Law) and relate to the corresponding insurance directive(s).

(14) Has the country applied article 5 on small pension institutions of the Directive? If yes, how much (in percentage) beneficiaries are affiliated to these small pension institutions?

Austria does not apply art. 5 of the Directive. On the other hand small pension institutions may voluntarily follow the rules of the Directive. However, to our knowledge no such small pension institution exists in Austria that voluntarily follows the rules of the Directive.

1.2. OVERVIEW OF DB AND BR SCHEMES

(15) What kind of company sponsored benefit schemes are provided? Defined benefit schemes, Defined contribution schemes, Cash balance schemes and other schemes (plus description)?

Cash balance schemes are not common in Austria as they are not covered by the general rules within the context of labour law and do not offer tax advantages for both employer and employee. DC schemes became the preferred type within the last 20 years, but DB are still the rule for book reserve plans.

(16) What % of covered employees benefit from the different type of schemes described in the previous question? Is this different for male and female employees?
Publically available statistics does not exist. Recent studies which rely on drawn samples of around 800 sponsoring companies estimate a proportion of 70% defined contribution and 30% defined benefit type.

(17) Are pensions in payment or deferred increased? Is this increase conditional? What are the conditions?

The rules for the increase of deferred pensions or pensions in payment have to be defined in the bilateral contract between employer and employee. The no-increase-rule for pensions in payment is legally possible for book reserve plans and the general rule in the case of deferred pensions.

For Pensionskassen and Kollektivversicherungen the increase is in most cases conditional to the profit participation within the funding policy. If a contractual increase is guaranteed then the sponsoring company has to cover any shortfall since the IORP give in general no guarantee on investment returns (this is literally true for Pensionskassen and for Kollektivversicherungen with respect to additional returns not already covered by the tariff of the underlying insurance policy).

(18) What % of labour force is covered by a company sponsored benefit scheme (including sector schemes or compulsory supplementary pension schemes)? Is this different for male and female employees?

Publically available statistics does not exist. Recent studies estimate a proportion of 25% of companies in Austria that offer benefit schemes. Moreover, 32% of the working force is covered and 13% of old-age pensioners in Austria receive additional benefits from a company sponsored plan.

Differences in number between male and female employees were not determined and seem to be conditional to the corresponding quotes for the labour force in general.

(19) How high is the average retirement pension provided by the company sponsored benefit scheme, preferably as a percentage of last yearly salary? And how is this compared to the social security retirement pension? Are there significant differences between the averages for male and female employees?

Publically available statistics do not exist. Recent studies estimate the average annual company sponsored pension paid in 2007 to be €12,500. This relatively high pension which is comparable to the average social security pension in 2007 is due to the fact that former pension plans were rather generous in Austria.

Since the benefit level for new employer sponsored plans has been reduced dramatically the above shown average pension is by no means representative for the corporate pensions and the relation to the social security benefits in the next decades.

Differences in the amount of pension between males and females were not investigated and seem to be conditional to the corresponding relations for the active income and the corresponding terms of the pension plans.

(20) What types of financing vehicles actually exist in your country and how many? Book reserves, pension funds, pension funds that fall under article 17 of the directive on IORPS, sector funds, insurance or other financing vehicles?
(21) What % of covered employees receive their benefit via these above described financing vehicles?

Publically available statistics do not exist. A Study in the year 2007 which relies on a drawn sample of around 200 sponsoring companies estimate a proportion of: Book reserve: 7%, mixed type of book reserve and Pensionskassen: 30%, Pensionskassen 49%, Life Insurance 14%. The distinction in quotes for Kollektivversicherungen, group life insurance and direct insurance was not investigated. Especially Kollektivversicherungen were relatively new at the time when the study was worked out.

(22) Please provide a short summary of the accounting rules applicable to employers that provide defined benefit schemes (e.g. equal to IAS19, similar to IAS19 but ..., no provisions contributions and/or benefits paid are equal to expenses, description of other rules)

According to Austrian Commercial Law (UGB) the accounting for a defined benefit scheme is not different from a defined contribution scheme, i.e. expenses are shown at the level of actual contributions. However, many of the companies with defined benefit schemes are listed (or at least their parent companies are listed) at the stock exchange. So the application of the IAS 19 accounting principles became the standard approach in the last few years.

(23) What is the % of the employers that report under IFRS (IAS19) or very similar accounting rules?

Publically available statistics does not exist, but we estimate a very high proportion of companies that apply IAS 19 or very similar accounting rules.

(24) Can you provide statistics on the provisions accounted for under these rules (per employee and/or in relation to the funds in the pension fund)?

We could not find reliable statistical data to derive appropriate numbers.

1.3. Requirement of additional assets

(25) Which type of additional assets (above the assets covering the technical provisions) are required (plus description)?

All multi-employer Pensionskassen have to hold permanently solvency capital at the level of 1% of technical reserves. If the Pensionskassen gives the guarantee on the minimum average return in line with the rules given by law than solvency capital must be at least 4% of the technical reserves in total. The minimum
amounts are equal to Euro 70 000 for single employer pension funds and Euro 5 000 000 for multi employer pension funds.

(26) Are these additional assets requirements different for IORPs that fall under article 17 of the directive (plus description)?

Minimum Solvency Capital: 4% of technical reserves
Additional Capital: 0.3% of risk capital (insured sums)

(27) When can these additional assets actually be used? e.g. when more than the expected number of employees dies in a particular period, when the employer becomes insolvent, other?

The additional assets can only be used in the case where the returns on assets are not sufficient to meet the minimum return on investment for beneficiaries which is prescribed by law.

(28) For multi-employer funds, can these additional assets be used in case of insolvency of any of the employers? In case of ring-fencing per employer or in case of no ring-fencing and therefore solidarity between employers?

No.

(29) Can these assets return to the employer and under which conditions?

No.

1.4. INDEPENDENCE OF THE IORP FROM THE SPONSOR

(30) To what extend can the assets be invested in the sponsor’s securities – debt or shares and to what extend is this possibility actually used?

Assets from the Pensionskasse can only be invested in form of debt at the sponsoring company securities and are limited with 5% of total assets of the fund. Moreover, the total amount that can be invested in a single group of corporations is limited with 10% of total assets.

(31) To what extend subordinated loans can be used to cover pension obligations?

Subordinate loans are excluded from the categories of possible investments of a Pensionskasse.

(32) To what extend can the assets be invested in items, such as property, machines, etc. used by the sponsor for its business and to what extend is this possibility actually used?
There are in general detailed quantitative rules and limitations for asset categories. However, the FMA may relax certain quantitative rules if the Pensionskasse complies and regularly reports on the results of their (investment) risk management process according to the corresponding directive of the FMA.

(33) To what extend can the management of the IORP be the same as the management of the sponsor? Describe the corporate governance requirements for IORPS in this respect?

By the legal framework of multi-employer Pensionskassen and Kollektivversicherungen this is in practice not possible.
For single-employer Pensionskassen the management of the IORP often have a second employment within the sponsoring company.

(34) To what extend can other important functions, such as the actuary, auditor and compliance officer be nominated (and possibly directly or indirectly paid) by the employer?

For single-employer Pensionskassen the actuary and the compliance officer may be nominated by the employer.
However, the auditor and the auditing actuary have to act self responsible and independently of the IORP and the sponsoring company by legal requirements.

1.5. Employee representatives’ involvement in the governance of the pension scheme

(35) For IORP’s: in which case and how many employee representatives need to be part of the board or other legal body of the IORP?

In the board of the Pensionskasse no representatives of the employees of sponsoring companies need to be part.
However, the supervisory board of a Pensionskasse consists of at least 6 and at most 12 representatives of the capital owners and by a number of representatives of the employees from the sponsoring companies which is by 2 (multi-employer Pensionskasse) resp. 1 (single-employer Pensionskasse) smaller than the number of representatives of the capital owners.
For Kollektivversicherungen no equivalent legal requirements exist.

(36) Are employee representatives involved in the financing plan of the IORP and/or to what extend is their advice or decision binding?

A Pensionskasse may constitute an advisory board consisting of 50% of representatives to be named by members if the board of the Pensionskasse and 50% of representatives from the employees of sponsoring companies. The advisory board has, amongst others, the right to receive investment reports and related information and give recommendations but their advice and their decisions are not binding to the board of the Pensionskasse.
By contrary, Kollektivversicherungen have to constitute an advisory board consisting of 4 members where two members are named by the managing directors of the Insurance Company and the other two members have to be nominated by the trade unions and the legal representatives of the working councils of the employees. The advice given and the decisions taken by this board is not binding for the managing directors with respect to the financing of the plan.

(37) For book reserve schemes, are employee representatives involved in any way in the determination of the level of the book reserves and/or the way these book reserves are set up?

Representatives of the employees are not involved in any of these decisions.

(38) Do employees need to be informed about the level of the financing of their benefits in the IORP and to what extend?

Employees have to be informed in detail by the IORP at least annually about the amount of contributions, the change of accrued pension rights and the reasonable expectation of future pensions at retirement. Moreover, the employees and also the pensioners have to be informed annually about the investment strategy and the corresponding results of the IORP and about any actual and possibly expected change in the level of benefits.

(39) Can employees or their representatives require changes in the pension scheme based on the financing level of the scheme, e.g. increases in pensions, reduction of employee contributions?

Employees can not require such changes directly from the IORP but have the right to negotiate these points with the employers at the level of the pension contract itself either directly or by their representatives from the working council or the trade unions.

(40) What are the communication requirements to employees on supplementary pensions? Are they different in case of book reserves or in case of an IORP?

The content of the annual information from the IORP to the employees of the sponsoring companies described above are legally binding. No such requirements exist for book reserve plans unless there is evidence that the company possibly has to reduce the accrual of pension rights or the actual benefits paid to the former employees.

1.6. UNDERFUNDING OF DB SCHEMES

(41) In case of compulsory systems to which extent future generations can be asked to pay possible underfunding for the current generation? In how far the systems can operate as pay as you go?
It is legally not possible to commit future generations with the compensation in the case of underfunding. The full or even partly application of a PAYG system is not possible.

(42) In case of underfunding of company sponsored benefit plan, should the sponsor pay the whole underfunding or can increased employee contributions be required?

The way of financing the underfunding has to be defined in the contract between the sponsoring company and the IORP. If there is no special item in the contract the corresponding rules of the technical business plan apply. In general an underfunding is financed by the increase of contributions pro rated on future service.

(43) Does the sponsor have to cover underfunding before increasing contributions from employees or benefit cuts?

There are no legal rules since this has to be part of the contract between sponsor and IORP and the underlying technical business plan.

(44) In what time delay the employer needs to pay the extra-contributions?

Extra contributions have to be paid beginning at the year after the underfunding was reported at the balance sheet date of the IORP at the latest.

(45) Is a recovery plan permitted and on how long can this recovery plan continue?

If the underfunding was reported and no regularly extra contributions are applicable - either because it is not foreseen within the contract or as it is the case with the underfunding of a pensions in payment – the recovery plan has a maximal period of 10 years.

(46) Is there any legal requirement for the actuary or any other person involved to report on the expected underfunding due to a too strict financing plan and what action can be taken by the IORP in order to change this financing plan?

A change in the financing plan can be agreed between sponsoring company and the IORP within the bilateral contract but has to comply with the rules of the technical business plan and the legal framework.

(47) How can the IORP enforce the sponsor to fulfil his legal duty to pay the necessary contributions?

The sponsor has a contractual obligation to pay the contribution. Only the employees and their representatives can take appropriate measures on the basis of their underlying working contracts to ensure contribution payment in the case of underfunding. The IORP cannot enforce the payment on the same or equivalent legal grounds.
(48) Should members (employees and beneficiaries) and/or employee's representatives be informed in a situation of underfunding?

Members should be informed by their representatives if this prescribed in the terms and conditions of the advisory board.

(49) How is this information requirement structured (individually, together with the yearly overview of the benefits, only when requested by employees, ...) and what is the maximum period allowed between the date of determination of the underfunding and the information to the employees?

There is no legally defined obligation for the advisory board on how this information should be structured.

(50) Can members and/or beneficiaries or their representatives have a voice in the decision of a recovery plan?

The representatives have the right to get appropriate information as members of an advisory board but they have no voice in the decision about the recovery plan.

(51) Are members and/or beneficiaries informed on the details of a recovery plan?

There is no legal requirement but it may be part of the terms and conditions of the advisory board.

1.7. Priority Creditors Rights

(52) Which creditors have a higher priority on the remaining assets of the sponsor than the IORP in case of insolvency of the plan sponsor?

Only the employees may have higher priorities with respect to their salaries. In general this will be ruled out also with respect to the principle of proportionality.

(53) In case of insolvency of their employer what is the priority the employees have on the remaining assets of their employer (sponsor) for their supplementary pension rights in case of a book reserve scheme and possibly in case of underfunding of the IORP?

In the case of a book reserve plan the pensioners and the former employees will have priority to the remaining assets, then the employees with respect to their accrued rights.

(54) What is the priority ex-employees, pensioners or other beneficiaries of the pension scheme have on the remaining assets of the sponsor?
In the case of a book reserve plan the pensioners and the former employees will have priority to the remaining assets, then the employees with respect to their accrued rights.

(55) If the employer becomes insolvent, but is an affiliate of a group of companies where the mother company is not insolvent, can the employees claim their supplementary pension rights from the mother company in case of a book reserve or in case of underfunding of the IORP?

Unless there is a special agreement between the mother company and the affiliated companies for these cases, the employees have no direct enforceable right against the mother company.

1. 8. GUARANTEE SCHEMES

In Austria no guarantee schemes exist.

(56) Do guarantee schemes exist? If so, provide a detailed description of the schemes.

(57) Are premiums paid by the sponsoring undertaking to the guarantee scheme risk-based?

(58) What is the procedure to be followed for the intervention of the guarantee scheme?

(59) Are all defined benefit and book reserve schemes covered by the guarantee schemes?

(60) Are the schemes different for book reserve schemes and funded schemes? Please describe?

(61) Are all benefits covered including unvested benefits and recent benefit improvements?

(62) Are there ceilings on the benefit coverage?

(63) Will the guarantee scheme take over obligations or inject a one time payment in the IORP in case of a defined benefit scheme?

(64) Do the guarantee schemes have sufficient resources in e.g. time of crisis where a lot of sponsors could have solvency problems?

1. 9. ANY OTHER MEASURES

(65) Are there any other measures (not covered above) that contribute to the protection of the interests of the employees or ex-employees and their beneficiaries in case of insolvency and/or disappearance of the sponsoring employer?

No.

(66) Are there proposals for changing the measures already taken and what are they? When are they expected to be implemented?

No.
(67) Please describe the views of the social partners on the effectiveness of the measures taken to protect the rights of the beneficiaries of company sponsored benefit plans in case of insolvency of the employer and/or the IORP (if publicly available or made available in an interview)

There is currently no active discussion or dissent on this topic between the social partners in Austria.

(68) Is there evidence that the overall outcome of one of the specific systems operated in your country, provides inadequate protection for the rights of the beneficiaries of company sponsored benefit plans?

No.

(69) Is there evidence of how specific systems operated in your country proactively deal with different risks and improve risk management?

No.

1. 10. YOUR ASSESSMENT

Per type of funding method or IORP (including book reserves)

(70) Please describe the shortcomings of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the sponsor and/or the IORP. If there are in your opinion no shortcomings, please explain

In Austria the measures taken with respect of insolvency of the IORP are generally seen as appropriate. On the other hand measures taken for the insolvency of the sponsoring company are not monitored appropriately for book reserve plans and do not exist in the case of Pensionskassen und Kollektivversicherungen.

(71) Please describe your suggestions for improvement of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the employer and/or the IORP and describe the possible additional costs for these improvements and the possible risks that employers may decide to downside or close defined benefit arrangements?

A first possible improvement of the measures taken for the insolvency of the sponsoring company could be achieved, when the level of underfunding is valued on general accepted principles and would be disclosed regularly. This information should also be addressed to the employees and their representatives in order to enable them a re-negotiation of the funding policy on the terms of the bilateral contract with the employer. If additional measures would result in to high costs (a kind of “punishment” for employers with underfunded plans) then, also due to the current market conditions of the sponsoring companies, the risk is very high that the still existing DB schemes in Austria will be closed or will reduce the level of benefits with respect to future service (again) materially.
2. Belgium

Main findings

- Occupational pensions have to be financed externally via an IORP
- IORPs are subject to control and assets covering technical provisions calculated in a prudent way need to be available, recovery plans require immediate recovery for vested rights or limited periods for technical provisions
- No guarantee scheme exists
- Benefits vest after 5 years of service
- Yearly global financial information on the IORP must be provided together with an annual benefit statement that indicates the financing level of the vested rights.

2.1. Description of the legal framework

(1) Which kind of IORPs can be used to finance pension schemes (insurance companies, national funds, company pension fund, multi-employer fund, sector pension fund, other kinds of entities created to finance pensions)?

In Belgium a pension scheme can use an insurance company, a company pension fund which needs to be separate legal entity, a multi-employer fund and a sector fund to finance a pension scheme. The insurance companies do not fall in the scope as Belgium has not adopted article 4 of the Directive. Most of the sector funds have a defined contribution plan. Multi-employer funds in Belgium, that are not sector funds, almost only exist for employers belonging to the same group.

Death benefits are mostly covered by an insurance company or reinsured by an insurance company.

The legislation concerning the pension funds under the scope of this project can be found on the website of the Belgian Control Authorities (CBFA): www.cbfa.be

(2) What are the minimum funding requirements for each of these kind of IORP’s and are there minima for book reserves?

An IORP has to calculate the liabilities of pension benefits, each year. The short term liabilities are calculated without projection of the salaries and with a prudent actuarial method and prudent assumptions advised by the actuary. If these liabilities are not covered the sponsoring company has 6 months to pay the short come.

The long term liabilities are calculated with projections of salaries and with a prudent actuarial method and prudent assumptions advised by the actuary. The assumptions need to take account of the results of an ALM study. The assumptions and method applied are more prudent then for the short term liabilities. The long term liabilities are for most schemes between 100% and 150% of the short term liabilities. If these liabilities are not covered the sponsoring company will install a recovery plan after the approval of the control authority.
Some pension funds have an exemption to finance benefits accrued before 1989 / 2006. The total exemption for all pension funds in Belgium is equal to almost 5% of the total technical provisions. Most of the pension funds do not have an exemption and therefore for some pension funds the exemption can be very important.

(3) **Is there a legal obligation to subscribe to external (solvency) guarantees? And what are these guarantees for each kind of IORP and for book reserves schemes?**

There is no legal obligation and it is not common practice to have external guarantees.

(4) **Does separate legislation on solvency exist for IORP’s falling under article 17 of the directive (plus a description)?** Article 17 concerns IORP’s that take themselves the biometric risks and/or guarantee benefits, in case of insufficiency these IORP’s cannot claim supplementary contributions or reduce the benefits. How much of the IORP’s (as a percentage) are falling under article 17?

IORP’s falling under article 17 should constitute a significantly more important solvency margin (art. 87 of LIRP¹). Currently there are no pension funds falling under article 17.

(5) **Is the provision of company sponsored employee benefits compulsory for the employers and to which extent?**

The provision of company sponsored employee benefits is not compulsory. Only for some sectors the affiliation to the pension fund of the sector may be compulsory if the employer does not provide at least the same benefits as the sector plan.

(6) **Does the legislation provide for minimum vested rights if an employee leaves before retirement? Is this legislation different for the different funding systems or book reserves?**

Yes. The minimum vested rights at normal retirement age in a DB scheme are equal to the retirement benefits calculated with salary and service at the leaving date. The vested rights at the leaving date are equal to the present value of the vested rights at normal retirement age. The minimum present value is calculated with 6% and mortality tables MR/FR.

(7) **Is there legislation that requires that ex-employees and pensioners are treated the same as active employees (plus a description)?**

There are anti-discrimination rules that can be interpreted that the same treatment applies for ex-employees/pensioners and active employees. However it is not clearly stated in the law and (advice 13 and 30 from “commissie voor aanvullende pensioenen”) other positions can be defensible.

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¹ Law “Loi relative au contrôle des institutions de retraite professionnelle” of 27 Octobre 2006.
(8) Is there legislation on the increase in benefits during payment or the deferred period (plus a description)?

There is no obligation to increase benefits during payment or during deferred period. Most of the benefits are paid as a lump sum. It is rather unusual in Belgium to increase benefits in the deferred period or during payment.

(9) Is there legislation that allows to reduce accrued pension rights in case of under funding?

No, in principle accrued pension rights cannot be reduced, if the pension fund has no sufficient assets, the employer will be required to pay additional contributions. Only in case there is no employer, the accrued benefits will be reduced proportionally.

(10) Can benefits be paid in the form of a lump sum and to what extend?

In the majority of the plans, the benefits are equal to a lump sum. However the plan has to allow the beneficiaries to choose for a periodic pension.

(11) Which kind of beneficiaries have priority rights on the assets of the IORP (pensioners, ex-employees, other beneficiaries, employees) and to what extend? Please describe the priority rules?

All beneficiaries have priority rights on other creditors except for the liquidation costs and except for creditors who received their rights in good faith before the allocation of the covering assets. The pension plan could stipulate rules for a split between different groups of beneficiaries but in most cases all beneficiaries would be treated the same. If the assets would not be sufficient, the rights of all the beneficiaries would often be reduced proportionally.

(12) In case of book reserves, which kind of beneficiaries have priority rights on the assets of the employer (pensioners, ex-employees, other beneficiaries, employees) and to what extend? Please describe the priority rules?

Book reserves are only allowed in exceptional cases and for a very limited number of persons, who have the self-employed status allowed in Belgium. These persons have no priority rights on the assets of the company promising the benefits.

(13) Has the country applied article 4 of the Directive? If yes, comment on differences between pension insurser’s and IORP’s throughout all questions.

In the law on IORP’s this possibility has been created but this possibility is not established by a Royal Decree. Therefore Belgium has not applied article 4 of the Directive.
(14) Has the country applied article 5 on small pension institutions of the Directive? If yes, how much (in percentage) beneficiaries are affiliated to these small pension institution?

Belgium has not applied art. 5 of the Directive as such but applies very strongly the principle of proportionality.

2. OVERVIEW OF DB AND BR SCHEMES

(15) What kind of company sponsored benefit schemes are provided? Defined benefit schemes, Defined contribution schemes, Cash balance schemes and other schemes (plus description)?

Only a few cash Balance schemes exist in Belgium. While correct statistics are not available, we find via surveys performed on the market that around 65% of the pension plans are defined contribution plans and more then 30% are defined benefit plans. Many of the defined contribution schemes are financed via group insurances and therefore for the plans financed in IORP’s the percentage of defined benefit plans will be more important.

(16) What % of covered employees benefit from the different type of schemes described in the previous question? Is this different for male and female employees?

The following statistics were provided by the CBFA

<table>
<thead>
<tr>
<th>Employees in IORP</th>
<th>Men</th>
<th>Women</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>With DB-plan</td>
<td>25,7%</td>
<td>49,3%</td>
<td>30,7%</td>
</tr>
<tr>
<td>With DC-plan</td>
<td>40,8%</td>
<td>47,4%</td>
<td>42,1%</td>
</tr>
<tr>
<td>With Cash Balance-plan</td>
<td>33,5%</td>
<td>3,3%</td>
<td>27,2%</td>
</tr>
<tr>
<td>Total</td>
<td>100,0%</td>
<td>100,0%</td>
<td>100,0%</td>
</tr>
</tbody>
</table>

(17) Are pensions in payment or deferred increased? Is this increase conditional? What are the conditions?

As in Belgium most plans provide lump sum benefits and the great majority of employees does not use the option of a periodic pension, pensions in payment hardly exist. If the employee opts for a pension, the pension is usually not increased. If the plan does not provide for a lump sum, pensions in payment are often increased. The modalities for the increase are described in the rules of the plan and often depend on whether or not the pension fund can afford to increase the pensions. So, if increases are provided they are usually conditional and depend on the funding situation. Increases are usually also limited to inflation.

(18) What % of labour force is covered by a company sponsored benefit scheme (including sector schemes or compulsory supplementary pension schemes)? Is this different for male and female employees?

The CBFA has the following statistics available:
(19) How high is the average retirement pension provided by the company sponsored benefit scheme, preferably as a percentage of last yearly salary? And how is this compared to the social security retirement pension? Are there significant differences between the averages for male and female employees?

The Belgian Social Security retirement pension for employees is quite significant and is on average about equal to 50% of the last salary. Only for high paid employees this percentage is significantly lower. This pension is indexed pension. The level of the benefits provided by company sponsored benefits scheme varies enormously. Defined benefit schemes often provide a lump sum of between 100% and 600% of the last salary. If we convert these lump sums, in Belgium pensionable income of salaried employees that benefit from a defined benefit plan is equal to between 55% and 70% of the last salary. The part of the pension provided by the company sponsored scheme is usually not increased. There are no differences between the averages for male and female employees.

(20) What types of financing vehicles actually exist in your country and how many? Book reserves, pension funds, pension funds that fall under article 17 of the directive on IORPS, sector funds, insurance or other financing vehicles?

Book reserves are prohibited in Belgium. Company benefit schemes may be financed via group insurance or a pension fund. Most of the pension funds do not fall under article 17 and a pension fund needs to be set up as a legally separate entity in the form of an OFP.

There are 32 sector plans and 9 plans are financed by a pension fund, the balance is financed via insurance company². Only 5 plans are defined benefit plans and 2 are cash balance plans.

(21) What % of covered employees receive their benefit via these above described financing vehicles?

80% of the covered employees receive their benefit via an insurance, 20% via a pension fund.

(22) Please provide a short summary of the accounting rules applicable to employers that provide defined benefit schemes (e.g. equal to IAS19, similar to IAS 19 but ..., no provisions contributions and/or benefits paid are equal to expenses, description of other rules)

² Study control authority CBFA
If an entity is listed on the stock exchange it is obliged to follow IAS 19 rules. Other companies are not obliged to have provisions and the pension expense is normally equal to the contributions paid.

(23) **What is the % of the employers that report under IFRS (IAS19) or very similar accounting rules?**

An important part of the employers report under IFRS or USGAAP. If we focus on the employers that provide defined benefit plans financed by pension fund a great majority of employers are obliged to report under IFRS or USGAAP.

(24) **Can you provide statistics on the provisions accounted for under these rules (per employee and/or in relation to the funds in the pension fund)?**

As far as we know no statistics are available. In case of a group insurance the funded status is typically between 40% and 60% of the assets depending on the discount rate to be used. In a pension fund the financing methods and funding levels vary enormously. Some pension funds are overfunded following IFRS rules other have a funded status that is equal to up to 50% of the obligations.

### 2.3. REQUIREMENT OF ADDITIONAL ASSETS

(25) **Which type of additional assets (above the assets covering the technical provisions) are required (plus description)?**

IORP’s falling under article 17 should constitute an important solvency margin (art. 87 of LIRP). The IORP has to constitute a solvency margin equal to 4% of the technical provisions increased with 0.3% of the risk capitals (death) with a minimum solvency margin of 3 200 000 Euro. A solvency margin for disability benefits should also be calculated.

Other IORP’s should constitute a solvency margin if risk benefits are covered and not fully (re)insured. This solvency margin is equal to:

\[ 10 \times \min(30 \, 000, \text{sum of risk capitals}) + \text{highest 5 risk capitals} + 0.1\% \text{sum of risk capitals} \]

This solvency margin should not be higher then the sum of all risk capitals and can be reduced in case of (re)insurance coverage.

The solvency margin can be covered by an advance on the sponsoring company if this is covered by an external guarantee by an insurance company or credit company.

(26) **Are these additional assets requirements different for IORP’s that fall under article 17 of the directive (plus description)?**

Yes see above.

(27) **When can these additional assets actually be used? e.g. when more than the expected number of employees dies in a particular period, when the employer becomes insolvent, other?**
These additional assets can in practice only be used at the moment the pension fund decides to fully insure the risk benefits or to liquidate the pension fund. The actual assets can be used, but the sponsor is required to constitute the solvency margin again within maximum a year.

(28) For multi-employer funds, can these additional assets be used in case of insolvency of any of the employers? In case of ring-fencing per employer or in case of no ring-fencing and therefore solidarity between employers?

The employers in a multi-employer fund have to agree to what extend solidarity will apply. The same rules as for other funds apply, so the additional assets can normally only be used when the pension fund decides to fully insure the risk benefits or to liquidate the pension fund.

(29) Can these assets return to the employer and under which conditions?

These assets can never return to the employer. If the additional assets are too high future contributions can be limited. If no future contributions are needed, the benefits can be increased. This measure causes sponsors of closed plans to fund rather minimal in order to avoid any unnecessary costs.

2.4. INDEPENDENCE OF THE IORP FROM THE SPONSOR

(30) To what extend can the assets be invested in the sponsor’s securities – debt or shares and to what extend is this possibility actually used?

The assets can be invested for max 5% in the sponsor’s securities and for max 10% in the securities of companies in the same group (art. 146 of the LIRP).

(31) To what extend subordinated loans can be used to cover pension obligations?

In principle, subordinated loans cannot be used to cover pension obligations. However in case or a recovery plan, subordinated loans maybe accepted to cover pension liabilities for a limited period (in practice maximum one year).

(32) To what extend can the assets be invested in items, such as property, machines, etc. used by the sponsor for its business and to what extend is this possibility actually used?

Assets can be invested in this kind of items, if the prudent men principle is respected. No quantitative limits exist. This possibility is however seldom used.

(33) To what extend can the management of the IORP be the same as the management of the sponsor? Describe the corporate governance requirements for IORPS in this respect?
In the board of the IORP there are always representatives of the employer and in most cases also representatives of the employees. The representatives of the employer are commonly part of the management of the sponsor.

There are rules on the minimum number of persons in the board, board members are required to show they have knowledge about pensions. A number of corporate governance measures have been established such as the requirement of having a compliance officer, an internal auditor, a designated actuary and an external auditor.

(34) To what extent can other important functions, such as the actuary, auditor and compliance officer be nominated (and possibly directly or indirectly paid) by the employer?

The actuary (art. 109 LIRP) and the auditor (art. 103 LIRP) are nominated by the general assembly of the pension fund and their fees are paid by the pension fund. The compliance officer and the internal auditor may be nominated by the board of the pension fund.

2. 5. EMPLOYEE REPRESENTATIVES’ INVOLVEMENT IN THE GOVERNANCE OF THE PENSION SCHEME

(35) For IORP’s: in which case and how many employee representatives need to be part of the board or other legal body of the IORP?

The board exist of 50% employee and 50% employer representatives if it concerns a sector plan, a social plan or if there are employee contributions. A social plan is exempted of tax on the premiums and has to satisfy the following conditions: pension plan for all employees of the company, the pension plan is establish by a collective bargaining agreement and some of the benefits have to be “social”.

Most pension fund boards have at least one employee representative.

The president has the decisive vote and is often a representative of the employer.

(36) Are employee representatives involved in the financing plan of the IORP and/or to what extent is their advice or decision binding?

The decisions on the financing plan are taken by the board that usually contains employee representatives. At least the employee representatives should be informed and provide their advice (not binding).

(37) For book reserve schemes, are employee representatives involved in any way in the determination of the level of the book reserves and/or the way these book reserves are set up?

No book reserve schemes in Belgium

(38) Do employees need to be informed about the level of the financing of their benefits in the IORP and to what extent?
Every year all employees receive a benefit statement with their individual situation. On this statement the level of financing of the benefits is a required item.

(39) Can employees or their representatives require changes in the pension scheme based on the financing level of the scheme, e.g. increases in pensions, reduction of employee contributions?

For all changes in the benefits, the employer needs to agree. Employee representatives need to be consulted, but their advice is not binding. In a number of cases collective agreements are needed, where employees and employers need to come to an agreement. If no sponsor exists, the general assembly of the pension fund and the board can take the necessary decisions.

(40) What are the communication requirements to employees on supplementary pensions? Are they different in case of book reserves or in case of an IORP?

An individual benefit statement and a report on the activities of the pension fund each year.

2.6. UNDERFUNDING OF DB SCHEMES

(41) In case of compulsory systems to which extent future generations can be asked to pay possible underfunding for the current generation? In how far the systems can operate as pay as you go?

Compulsory systems do not exist in Belgium and pay as go systems are not allowed.

(42) In case of underfunding of company sponsored benefit plan, should the sponsor pay the whole underfunding or can increased employee contributions be required?

Normally, the sponsor should pay the whole underfunding unless he can come to an agreement with the employees concerned on an increase in employee contributions (in practice this is never the case).

(43) Does the sponsor have to cover underfunding before increasing contributions from employees or benefit cuts?

Yes, unless he can come to an agreement with the employees.

(44) In what time delay the employer needs to pay the extra-contributions?

As explained under “legal requirements”, if the assets do not cover the short term liabilities the short come is due in 6 months. If the assets do not cover the long term liabilities a recovery plan has to be approved by the control authority. Often the time frame for a recovery plan is around 5 years.
(45) Is a recovery plan permitted and on how long can this recovery plan continue?

Yes, usually maximum 5 years.

(46) Is there any legal requirement for the actuary or any other person involved to report on the expected underfunding due to a too strict financing plan and what action can be taken by the IORP in order to change this financing plan?

The actuary will need to advice and inform the pension fund on the expected underfunding and will need to also inform the CBFA in case of real problems. It is the responsibility of the IORP who should, on the advice of the actuary set up the financing plan. The control authority will be informed of this plan and each change (art. 86 LIRP).

(47) How can the IORP enforce the sponsor to fulfil his legal duty to pay the necessary contributions?

The payment of contributions is a contractual obligation from the sponsors to the IORP. Therefore the IORP can take the same steps as for any other contractor. Furthermore IORP is obliged to inform the employees and the control authority.

(48) Should members (employees and beneficiaries) and/or employee’s representatives be informed in a situation of underfunding?

Yes, they need to be informed if the employer does not pay the contributions mentioned in the financing plan. Furthermore, the yearly benefit statement needs to mention clearly the financing level of the benefits.

(49) How is this information requirement structured (individually, together with the yearly overview of the benefits, only when requested by employees, …) and what is the maximum period allowed between the date of determination of the underfunding and the information to the employees?

Following the law, this information only needs to be provided yearly at the moment the benefit statements are sent.

(50) Can members and/or beneficiaries or their representatives have a voice in the decision of a recovery plan?

Via the board members the beneficiaries usually have a voice. Furthermore there is always an information and consulting requirement, but the advice provided is not binding.

(51) Are members and/or beneficiaries informed on the details of a recovery plan?

Only the board members are informed.
2. 7. PRIORITY CREDITORS RIGHTS

(52) Which creditors have a higher priority on the remaining assets of the sponsor than the IORP in case of insolvency of the plan sponsor?

The employees have higher priority for their salaries. The IORP has a priority right for non received contributions on the movable property.

(53) In case of insolvency of their employer what is the priority the employees have on the remaining assets for their supplementary pension rights in case of a book reserve scheme and possibly in case of underfunding of the IORP?

The employees have higher priority on other creditors for their salaries. The contributions paid to the fund are considered as salary in recent jurisdiction. This priority right applies only on movable property. Moreover the “Fonds d’indemnisation des travailleurs licenciés” will pay all salaries for employees in case of insolvency of the employer. The contributions to an IORP have been classified as salary in recent jurisdiction.

(54) What is the priority ex-employees, pensioners or other beneficiaries of the pension scheme have on the remaining assets of the sponsor?

If the contributions to the fund for ex-employees can be classified as salary they will have the same rights as active employees.

(55) If the employer becomes insolvent, but is an affiliate of a group of companies where the mother company is not insolvent, can the employees claim their supplementary pension rights from the mother company in case of a book reserve or in case of underfunding of the IORP?

For most IORP’s this would no be the case.

2. 8. GUARANTEE SCHEMES

In Belgium no guarantee schemes exist.

(56) Do guarantee schemes exist? If so, provide a detailed description of the schemes.

(57) Are premiums paid by the sponsoring undertaking to the guarantee scheme risk-based?

(58) What is the procedure to be followed for the intervention of the guarantee scheme?

(59) Are all defined benefit and book reserve schemes covered by the guarantee schemes?

(60) Are the schemes different for book reserve schemes and funded schemes? Please describe?

(61) Are all benefits covered including unvested benefits and recent benefit improvements?

(62) Are there ceilings on the benefit coverage?

(63) Will the guarantee scheme take over obligations or inject a one time payment in the IORP in case of a defined benefit scheme?
(64) Do the guarantee schemes have sufficient resources in e.g. time of crisis where a lot of sponsors could have solvency problems?

2. 9. ANY OTHER MEASURES

(65) Are there any other measures (not covered above) that contribute to the protection of the interests of the employees or ex-employees and their beneficiaries in case of insolvency and/or disappearance of the sponsoring employer?

No.

(66) Are their proposals for changing the measures already taken and what are they? When are they expected to be implemented?

No.

(67) Please describe the views of the social partners on the effectiveness of the measures taken to protect the rights of the beneficiaries of company sponsored benefit plans in case of insolvency of the employer and/or the IORP (if publicly available or made available in an interview)

The social partners seem to find that the protection of the rights of the beneficiaries is sufficient in Belgium.

(68) Is there evidence that the overall outcome of one of the specific systems operated in your country, provides inadequate protection for the rights of the beneficiaries of company sponsored benefit plans?

No.

(69) Is there evidence of how specific systems operated in your country proactively deal with different risks and improve risk management?

No.

2. 10. YOUR ASSESSMENT TO CHECK

(70) Please describe the shortcomings of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the sponsor and/or the IORP. If there are in your opinion no shortcomings, please explain

In case of serious problems with the sponsor, the only guarantee the beneficiaries have are the assets held by the IORP. The level of the assets compared to the benefit obligations of the pension fund vary enormously.
Please describe your suggestions for improvement of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the employer and/or the IORP and describe the possible additional costs for these improvements and the possible risks that employers may decide to downside or close defined benefit arrangements?

It would probably be wise to set up a kind of guarantee fund that would only cover pension funds that have assets under a certain level of obligations, where unbiased rules to determine these obligations are established. The least good financed funds should pay the highest premiums (as they have the highest risks). On the other hand, it should be possible for the pension fund to reimburse money to the sponsors in case of serious overfunding, so the sponsors of closed plans can finance the benefits without having to fear that they have paid too much to the pension fund. This measure should limit the additional costs to the employers as much as possible. If these costs would be limited this measure should not have any downside or closing effect on defined benefit arrangements.
3. CYPRUS

MAIN FINDINGS

- In Cyprus there is very limited number of defined benefit plans and a very limited number of plans financed via book reserves.
- No guarantee scheme exists.
- Vesting of benefits is not required but can be regulated in the pension plan rules.
- Pension funds are subject to control and assets covering technical provisions calculated in a prudent way need to be available, recovery plans have to be agreed with the control authorities.
- For book reserves schemes, that are allowed, no legislation exists and therefore no legal protection of the accrued supplementary pensions financed via these schemes exists.
- Yearly global financial information on the IORP may be required by the employees. An annual benefit statement with information on accrued rights has to be provided.

3.1. DESCRIPTION OF THE LEGAL FRAMEWORK

(1) Which kind of IORPs can be used to finance pension schemes (insurance companies, national funds, company pension fund, multi-employer fund, sector pension fund, other kinds of entities created to finance pensions)?

Company sponsored employee benefits are not obligatory in Cyprus. They are voluntarily established within the framework of collective bargaining. The most common type of scheme is the Provident Fund (defined contribution). These are company funds, multi-employer funds and sector funds. Banks have since 1994 replaced provident funds with book-reserve gratuity schemes. These cover about 10,000 employees. There are only 8 other defined benefit pension schemes for privately owned company employees, that are financed via an IORP. These cover approximately 400 people.

(2) What are the minimum funding requirements for each of these kind of IORP’s and are there minima for book reserves?

Schemes under the Law for IORP’s regulation (No. 146(I)/2006), which has transformed directive 2003/41/EC to national law, have to be fully funded. There is no legislation for book-reserve schemes. There are no explicit minimum funding requirements.
(3) Is there a legal obligation to subscribe to external (solvency) guarantees? And what are these guarantees for each kind of IORP and for book reserves schemes?

There are no solvency guarantees.

(4) Does separate legislation on solvency exist for IORPs falling under article 17 of the directive (plus a description)? Article 17 concerns IORPs that take themselves the biometric risks and/or guarantee benefits, in case of insufficiency these IORPs cannot claim supplementary contributions or reduce the benefits. How much of the IORPs (as a percentage) are falling under article 17?

No separate legislation.

(5) Is the provision of company sponsored employee benefits compulsory for the employers and to which extent?

No.

(6) Does the legislation provide for minimum vested rights if an employee leaves before retirement? Is this legislation different for the different funding systems or book reserves?

No such legislation exists. It depends on the rules of each plan.

(7) Is there legislation that requires that ex-employees and pensioners are treated the same as active employees (plus a description)?

No such legislation.

(8) Is there legislation on the increase in benefits during payment or the deferred period (plus a description)?

No such legislation.

(9) Is there legislation that allows to reduce accrued pension rights in case of under funding?

No such legislation.

(10) Can benefits be paid in the form of a lump sum and to what extend?

Yes. It is up to the rules of each scheme.
(11) Which kind of beneficiaries have priority rights on the assets of the IORP (pensioners, ex-employees, other beneficiaries, employees) and to what extent? Please describe the priority rules?

Not applicable. There are no rules.

(12) In case of book reserves, which kind of beneficiaries have priority rights on the assets of the employer (pensioners, ex-employees, other beneficiaries, employees) and to what extent? Please describe the priority rules?

There is no rule.

(13) Has the country applied art. 4 of the Directive? If yes, comment on differences between pension insurer’s and IORP’s throughout all questions.

Yes, but so far no insurance company has set up any pension scheme.

(14) Has the country applied article 5 on small pension institutions of the Directive? If yes, how much (in percentage) beneficiaries are affiliated to these small pension institutions?

Not for pension funds, only for defined contribution provident funds. All pension funds (irrespective of size) come under the Directive.

3. 2. OVERVIEW OF DB AND BR SCHEMES

(15) What kind of company sponsored benefit schemes are provided? Defined benefit schemes, Defined contribution schemes, Cash balance schemes and other schemes (plus description)?

Defined benefit schemes, defined contribution schemes and hybrid schemes (see the attached report for more information “The Cyprus Pension System”).
(16) What % of covered employees benefit from the different type of schemes described in the previous question? Is this different for male and female employees?

<table>
<thead>
<tr>
<th>Scheme Type</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Defined Benefit Schemes</strong></td>
<td>- Government Employees: 30,000</td>
</tr>
<tr>
<td></td>
<td>- Semi-Government Employees: 10,000</td>
</tr>
<tr>
<td></td>
<td>- Private Sector Company Employees: 400</td>
</tr>
<tr>
<td></td>
<td>- Self Employed (Lawyers and Doctors): 3,200</td>
</tr>
<tr>
<td></td>
<td><strong>Total = 43,600</strong></td>
</tr>
<tr>
<td><strong>Defined Contribution Schemes</strong></td>
<td>- Private Sector Company Employees: 76,500</td>
</tr>
<tr>
<td></td>
<td>- Collective Schemes: 14,000</td>
</tr>
<tr>
<td></td>
<td><strong>Total = 90,500</strong></td>
</tr>
<tr>
<td><strong>Hybrid Schemes</strong></td>
<td>- Banking Sector: 10,000</td>
</tr>
<tr>
<td></td>
<td>- Cooperative Banks: 2,500</td>
</tr>
<tr>
<td></td>
<td>- Municipalities, Water/Sewerage Boards, Government Workers: 10,000</td>
</tr>
<tr>
<td></td>
<td><strong>Total = 22,500</strong></td>
</tr>
</tbody>
</table>

The total working population in Cyprus which is covered by the Social Insurance Fund is 330,000. Therefore, 13% is also covered by an occupational pension scheme and 34% by a provident fund. The remaining 53% has no access to any other retirement scheme beyond the social insurance fund.

(17) Are pensions in payment or deferred increased? Is this increase conditional? What are the conditions?

Pension in payment increases depend on each scheme. For the government and semi-government pension schemes, pensions are increased in line with the cost of living allowance plus any general salary increases. For the 5 private companies’ pension schemes, pensions are increased on an ad hoc basis. The increases are given by the employer and are not part of the pension scheme rules.

(18) What % of labour force is covered by a company sponsored benefit scheme (including sector schemes or compulsory supplementary pension schemes)? Is this different for male and female employees?

Please refer to the table under question (16).

(19) How high is the average retirement pension provided by the company sponsored benefit scheme, preferably as a percentage of last yearly salary? And how is this compared to the social security retirement pension? Are there significant differences between the averages for male and female employees?

<table>
<thead>
<tr>
<th>Scheme Type</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Government/Semi government pensions</strong></td>
<td>- 50% of the last salary for 400 months of service</td>
</tr>
<tr>
<td></td>
<td>- Average old age Pension (estimation) = €20,000 p.a. for current pensioners</td>
</tr>
<tr>
<td><strong>Private Sector Company pensions</strong></td>
<td>- 40/60th of the last salary for 400 months of service</td>
</tr>
<tr>
<td></td>
<td>- Average old age Pension (estimation) = €14,000 p.a. for current pensioners</td>
</tr>
</tbody>
</table>

No significant differences between males and females.
(20) What types of financing vehicles actually exist in your country and how many? Book reserves, pension funds, pension funds that fall under article 17 of the directive on IORPS, sector funds, insurance or other financing vehicles?

Semi-Government/Private Companies’ Pension Funds and Banks Provident Funds fall under article 17 of directive 2003/41/EC.

(21) What % of covered employees receive their benefit via these above described financing vehicles?

Please refer to the table under question (16).

(22) Please provide a short summary of the accounting rules applicable to employers that provide defined benefit schemes (e.g. equal to IAS19, similar to IAS 19 but ..., no provisions contributions and/or benefits paid are equal to expenses, description of other rules).

Equal to IAS 19

(23) What is the % of the employers that report under IFRS (IAS19) or very similar accounting rules?

All private sector defined benefit or hybrid schemes (IAS 19)

(24) Can you provide statistics on the provisions accounted for under these rules (per employee and/or in relation to the funds in the pension fund)?

Not available

3.3. Requirement of Additional Assets

(25) Which type of additional assets (above the assets covering the technical provisions) are required (plus description)?

Regulatory own funds.

(26) Are these additional assets requirements different for IORP’s that fall under article 17 of the directive (plus description)?

No.

(27) When can these additional assets actually be used? e.g. when more than the expected number of employees dies in a particular period, when the employer becomes insolvent, other?

Used only to cover discrepancies between anticipated and actual expenses and profits.
(28) For multi-employer funds, can these additional assets be used in case of insolvency of any of the employers? In case of ring-fencing per employer or in case of no ring-fencing and therefore solidarity between employers?

There are no multi-employer schemes of the defined benefit type.

(29) Can these assets return to the employer and under which conditions?

No.

3.4. Independence of the IORP from the Sponsor

(30) To what extent can the assets be invested in the sponsor’s securities – debt or shares and to what extent is this possibility actually used?

As provided by directive 2003/41/EC i.e 5% for one sponsor, 10% if group of companies.

(31) To what extent subordinated loans can be used to cover pension obligations?

Loans are allowed only temporarily. No provision for extent of pension obligations.

(32) To what extent can the assets be invested in items, such as property, machines, etc. used by the sponsor for its business and to what extent is this possibility actually used?

No provision.

(33) To what extent can the management of the IORP be the same as the management of the sponsor? Describe the corporate governance requirements for IORPS in this respect?

The management of IORP’s is separate from the management of the sponsor. IORP’s are managed by committees consisting of at least three members. The practice is that both the sponsor and the employees are represented on the management committee.

(34) To what extent can other important functions, such as the actuary, auditor and compliance officer be nominated (and possibly directly or indirectly paid) by the employer?

In the case of IORP’s coming under the respective regulatory legislation (funded schemes) experts and advisers are nominated by the management committee, in certain cases in consultation with the employer.
3. 5. EMPLOYEE REPRESENTATIVES’ INVOLVEMENT IN THE GOVERNANCE OF THE PENSION SCHEME

(35) For IORP’s: in which case and how many employee representatives need to be part of the board or other legal body of the IORP?

No legal provision exists for compulsory participation of employee’s representatives in IORP’s management committees.

(36) Are employee representatives involved in the financing plan of the IORP and/or to what extend is their advice or decision binding?

As members of the management committee. Decisions are usually taken by the majority.

(37) For book reserve schemes, are employee representatives involved in any way in the determination of the level of the book reserves and/or the way these book reserves are set up?

No legal provision.

(38) Do employees need to be informed about the level of the financing of their benefits in the IORP and to what extend?

Yes, if information is requested by the employee. Information includes the envisaged level of benefit, the level of benefit in case of the termination of employment, the range of investment choices (where such exist) and the investment costs. At least once a year members have to be given information about the financial situation of the IORP and the current level of the financing of individual accrued rights.

(39) Can employees or their representatives require changes in the pension scheme based on the financing level of the scheme, e.g. increases in pensions, reduction of employee contributions?

This is a matter of consultation between representatives of employees and the employer.

(40) What are the communication requirements to employees on supplementary pensions? Are they different in case of book reserves or in case of an IORP?

There are no communication requirements to employees covered by book-reserve schemes. Law No. 146(I)/2006 requires that employees are informed (in addition to the information described above) about the accounts, any changes in the rules of the IORP, and the investment policy statement.
3.6. UNDERFUNDING OF DB SCHEMES

We need to describe the legal requirements of the sponsor in case of underfunding.

(41) In case of compulsory systems to which extent future generations can be asked to pay possible underfunding for the current generation? In how far the systems can operate as pay as you go?

There are no compulsory company systems.

(42) In case of underfunding of company sponsored benefit plan, should the sponsor pay the whole underfunding or can increased employee contributions be required?

No provision. This is a matter of consultation between employer and employees.

(43) Does the sponsor have to cover underfunding before increasing contributions from employees or benefit cuts?

See previous answer.

(44) In what time delay the employer needs to pay the extra-contributions?

The time delay is not fixed by the Law.

(45) Is a recovery plan permitted and on how long can this recovery plan continue?

The recovery plan, including the period, has to be approved by the Supervising Authority (Regulator).

(46) Is there any legal requirement for the actuary or any other person involved to report on the expected underfunding due to a too strict financing plan and what action can be taken by the IORP in order to change this financing plan?

Law No. 146(I)/2006 requires the calculation of technical reserves by an actuary. The actuary reports to the management committee. In case of underfunding the committee has to prepare a recovery plan, as explained above.

(47) How can the IORP enforce the sponsor to fulfil his legal duty to pay the necessary contributions?

The management committee can take legal action under civil law against the sponsor. In addition, under Law 146(I)/2006 failure to pay contributions by an employer is an offence.
(48) Should members (employees and beneficiaries) and/or employee’s representatives be informed in a situation of underfunding?

Yes.

(49) How is this information requirement structured (individually, together with the yearly overview of the benefits, only when requested by employees, …) and what is the maximum period allowed between the date of determination of the underfunding and the information to the employees?

When required by employee. No maximum period is provided.

(50) Can members and/or beneficiaries or their representatives have a voice in the decision of a recovery plan?

Yes, as members of the management committee.

(51) Are members and/or beneficiaries informed on the details of a recovery plan?

Yes, if requested.

3. 7. PRIORITY CREDITORS RIGHTS

(52) Which creditors have a higher priority on the remaining assets of the sponsor than the IORP in case of insolvency of the plan sponsor?

Law No. 146(I)/2006 regulates that in case of insolvency of the plan sponsor any contribution due by the sponsor is amongst the priority under the Companies Law. Furthermore the latter Law provides that any benefits under the contract of service or employment relationship are amongst the priority debts in case of insolvency of the Company.

(53) In case of insolvency of their employer what is the priority the employees have on the remaining assets of their employer (sponsor) for their supplementary pension rights in case of a book reserve scheme and possibly in case of underfunding of the IORP?

See above

(54) What is the priority ex-employees, pensioners or other beneficiaries of the pension scheme have on the remaining assets of the sponsor?

See above
(55) If the employer becomes insolvent, but is an affiliate of a group of companies where the mother company is not insolvent, can the employees claim their supplementary pension rights from the mother company in case of a book reserve or in case of underfunding of the IORP?

No

3. 8. GUARANTEE SCHEMES

In Cyprus no guarantee schemes exist.

(56) Do guarantee schemes exist? If so, provide a detailed description of the schemes.

(57) Are premiums paid by the sponsoring undertaking to the guarantee scheme risk-based?

(58) What is the procedure to be followed for the intervention of the guarantee scheme?

(59) Are all defined benefit and book reserve schemes covered by the guarantee schemes?

(60) Are the schemes different for book reserve schemes and funded schemes? Please describe?

(61) Are all benefits covered including unvested benefits and recent benefit improvements?

(62) Are there ceilings on the benefit coverage?

(63) Will the guarantee scheme take over obligations or inject a one time payment in the IORP in case of a defined benefit scheme?

(64) Do the guarantee schemes have sufficient resources in e.g. time of crisis where a lot of sponsors could have solvency problems?

3. 9. ANY OTHER MEASURES

(65) Are there any other measures (not covered above) that contribute to the protection of the interests of the employees or ex-employees and their beneficiaries in case of insolvency and/or disappearance of the sponsoring employer?

No other measures.

(66) Are their proposals for changing the measures already taken and what are they? When are they expected to be implemented?

Not applicable.

(67) Please describe the views of the social partners on the effectiveness of the measures taken to protect the rights of the beneficiaries of company sponsored benefit plans in case of insolvency of the employer and/or the IORP (if publicly available or made available in an interview).

Not available.

(68) Is there evidence that the overall outcome of one of the specific systems operated in your country, provides inadequate protection for the rights of the beneficiaries of company sponsored benefit plans?
No evidence so far.

(69) Is there evidence of how specific systems operated in your country proactively deal with different risks and improve risk management?

No evidence so far.

3. 10. YOUR ASSESSMENT

Per type of funding method or IORP (including book reserves)

(70) Please describe the shortcomings of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the sponsor and/or the IORP. If there are in your opinion no shortcomings, please explain.

(71) Please describe your suggestions for improvement of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the employer and/or the IORP and describe the possible additional costs for these improvements and the possible risks that employers may decide to downside or close defined benefit arrangements?
4. Denmark

Main Findings

- Almost all employees in the private sector are covered by pensions plans established by collective bargaining in the labour market. Traditionally all these schemes are defined contribution schemes. Only a few run-off defined benefit schemes exist.
- Occupational pensions need be financed externally via an IORP or an insurance vehicle. Book reserves are only allowed for benefits of directors.
- IORP’s are subject to control and solvency I rules are applicable, recovery plans require immediate recovery.
- No legislation on vested benefits exists, but the pension plan rules have to describe these rights.
- Yearly the annual report and the auditor’s report need to be made available to the employees. There is no requirement for benefit statements.

4.1. Description of the Legal Framework

(1) Which kind of IORPs can be used to finance pension schemes (insurance companies, national funds, company pension fund, multi-employer fund, sector pension fund, other kinds of entities created to finance pensions)?

- Life insurance company
- Industry pension fund (tvärgående pensionskasse)
- Company pension fund (firmapensionskasse)
- Book reserves not allowed, except for directors (executive and non-executive)

(2) What are the minimum funding requirements for each of these kind of IORP’s and are there minima for book reserves?

All pension liabilities shall be fully funded and according to Danish market value principles.

(3) Is there a legal obligation to subscribe to external (solvency) guarantees? And what are these guarantees for each kind of IORP and for book reserves schemes?

No, but all IORP’s follow the Solvency I rules.
(4) Does separate legislation on solvency exist for IORP’s falling under article 17 of the directive (plus a description)? Article 17 concerns IORP’s that take themselves the biometric risks and/or guarantee benefits, in case of insufficiency these IORP’s cannot claim supplementary contributions or reduce the benefits. How much of the IORP’s (as a percentage) are falling under article 17?

No

(5) Is the provision of company sponsored employee benefits compulsory for the employers and to which extent?

No

(6) Does the legislation provide for minimum vested rights if an employee leaves before retirement? Is this legislation different for the different funding systems or book reserves?

No, but the regulations of a pension fund shall describe the members right upon withdrawal from the fund (2005:1017, article 12)

(7) Is there legislation that requires that ex-employees and pensioners are treated the same as active employees (plus a description)?

Yes, ex-employees and pensioners stay as members of the pension fund. However the by-laws may limit the member rights for ex-employees (2007:1561 article 3).

(8) Is there legislation on the increase in benefits during payment or the deferred period (plus a description)?

No, but the distribution of profits shall only take the form of increased pension commitments (2007:1561, article 32). See also point 3.3.5

(9) Is there legislation that allows to reduce accrued pension rights in case of under funding?

Decision to change the pension regulations shall only be adopted when such change is accepted by two-thirds or more of the members at the general meeting. Changes which impose significant limitations of the pension rights of members shall be presented to members for decision-making and shall not apply to members who have, within a time limit, stated that they will not accept such changes (2007:1561, article 35). In case of liquidation the distribution of the assets of the pension fund may not be carried out before the FSA has approved a plan for said distribution (2007:1561, article 57 a)

(10) Can benefits be paid in the form of a lump sum and to what extend?

Yes, as stated in the pension regulations and according to tax legislation
(11) Which kind of beneficiaries have priority rights on the assets of the IORP (pensioners, ex-employees, other beneficiaries, employees) and to what extent? Please describe the priority rules?

See question (8) and (9)

(12) In case of book reserves, which kind of beneficiaries have priority rights on the assets of the employer (pensioners, ex-employees, other beneficiaries, employees) and to what extent? Please describe the priority rules?

Not applicable.

(13) Has the country applied article 4 of the Directive? If yes, comment on differences between pension insurser’s and IORP’s throughout all questions.

Yes

(14) Has the country applied article 5 on small pension institutions of the Directive? If yes, how much (in percentage) beneficiaries are affiliated to these small pension institution?

Yes (2007:1561, article 9 c)

4. 2. OVERVIEW OF DB AND BR SCHEMES

(15) What kind of company sponsored benefit schemes are provided? Defined benefit schemes, Defined contribution schemes, Cash balance schemes and other schemes (plus description)?

- Defined benefit schemes
- Defined contribution schemes

(16) What % of covered employees benefit from the different type of schemes described in the previous question? Is this different for male and female employees?

- Only very few employees are covered by defined benefit schemes
- At the end of 2008 the total number of members of company pension funds were 6,794 employees, 7,638 pensioners, 267 disabled, 2,406 spouses and 840 children. Total assets in company pension funds amounted to DKK 43 billions
- There are no statistics for persons insured under defined benefit schemes with life insurance companies and industry pension funds or total assets in these schemes
(17) Are pensions in payment or deferred increased? Is this increase conditional? What are the conditions?

See question (8)

(18) What % of labour force is covered by a company sponsored benefit scheme (including sector schemes or compulsory supplementary pension schemes)? Is this different for male and female employees?

Almost total labour force

(19) How high is the average retirement pension provided by the company sponsored benefit scheme, preferably as a percentage of last yearly salary? And how is this compared to the social security retirement pension? Are there significant differences between the averages for male and female employees?

In a defined benefit scheme the retirement pension will normally be 60 – 70 % of salary including social security retirement pension

(20) What types of financing vehicles actually exist in your country and how many? Book reserves, pension funds, pension funds that fall under article 17 of the directive on IORPS, sector funds, insurance or other financing vehicles?

- Life insurance companies
- Industry pension funds
- Company pension funds

(21) What % of covered employees receive their benefit via these above described financing vehicles?

- At the end of 2008 the total number of members of company pension funds were 6,794 employees, 7,638 pensioners, 267 disabled, 2,406 spouses and 840 children. Total assets in company pension funds amounted to DKK 43 billions. These schemes will mainly be defined benefit schemes
- At the end of 2008 the total number of members of industry pension funds were 590,181 employees, 71,377 pensioners, 15,094 disabled, 12,920 spouses and 8,433 children. Total assets in industry pension funds amounted to DKK 396 billions. These schemes will almost all be defined contribution schemes
- At the end of 2008 total assets in life insurance companies amounted to DKK 1,119 billions. There are no statistics for the split between corporate and private schemes. However most corporate schemes will be defined contribution schemes
(22) Please provide a short summary of the accounting rules applicable to employers that provide defined benefit schemes (e.g. equal to IAS19, similar to IAS 19 but …, no provisions contributions and/or benefits paid are equal to expenses, description of other rules)

Large Danish companies are generally expected to follow IFRS standards

(23) What is the % of the employers that report under IFRS (IAS19) or very similar accounting rules?

All most all large employers

(24) Can you provide statistics on the provisions accounted for under these rules (per employee and/or in relation to the funds in the pension fund)?

No

4.3. Requirement of additional assets

(25) Which type of additional assets (above the assets covering the technical provisions) are required (plus description)?

All IORP’s shall have a base capital that shall meet the Solvency I rules

(26) Are these additional assets requirements different for IORP’s that fall under article 17 of the directive (plus description)?

No

(27) When can these additional assets actually be used? e.g. when more than the expected number of employees dies in a particular period, when the employer becomes insolvent, other?

For increases in pension rights and strengthening of technical provisions according to Danish market value principles

(28) For multi-employer funds, can these additional assets be used in case of insolvency of any of the employers? In case of ring-fencing per employer or in case of no ring-fencing and therefore solidarity between employers?

No, underfunding is not allowed
(29) Can these assets return to the employer and under which conditions?

Yes, two-thirds or more of the members at the general meeting may decide for repayment of funds to the employer or temporary reduction in the employer’s contribution to the pension fund. The FSA may decide on the minimum base capital of the pension funds after such a decision (2007:1561, article 11 a).

4.4. INDEPENDENCE OF THE IORP FROM THE SPONSOR

(30) To what extend can the assets be invested in the sponsor’s securities – debt or shares and to what extend is this possibility actually used?

A maximum of 2% of technical provisions may be invested in securities issued by one company (may also be a sponsor). The limit is 3% if the company’s equity is more than DKK 250 million (2007:1561, article 46 f).

(31) To what extend subordinated loans can be used to cover pension obligations?

A maximum of 1% of technical provisions may be given as loan to one company (may also be a sponsor) (2007:1561, article 46 f).

(32) To what extend can the assets be invested in items, such as property, machines, etc. used by the sponsor for its business and to what extend is this possibility actually used?

A maximum of 5% of technical provisions may be invested securities issued by, loans given to or property used by one company (may also be a sponsor) (2007:1561, article 46 f).

(33) To what extend can the management of the IORP be the same as the management of the sponsor? Describe the corporate governance requirements for IORPS in this respect?

The by-laws may allow for the board to employ an executive manager. If not the board shall perform the duties of the executive manager. The executive manager employed by the board may also be employed by the sponsor (2007:1561, article 23)

(34) To what extend can other important functions, such as the actuary, auditor and compliance officer be nominated (and possibly directly or indirectly paid) by the employer?

The appointed actuary is employed by the board (2007:1561, article 26)
The auditor shall be elected at the general meeting (2007:1561, article 11)
4.5. **Employee representatives' involvement in the governance of the pension scheme**

(35) For IORP's: in which case and how many employee representatives need to be part of the board or other legal body of the IORP?

As a minimum half of the board members shall be members of the pension fund (2007:1561, article 22)

(36) Are employee representatives involved in the financing plan of the IORP and/or to what extend is their advice or decision binding?

In their capacity as board members

(37) For book reserve schemes, are employee representatives involved in any way in the determination of the level of the book reserves and/or the way these book reserves are set up?

Not applicable

(38) Do employees need to be informed about the level of the financing of their benefits in the IORP and to what extend?

All members shall receive a copy of the annual report and the auditor’s report a minimum of 8 days before the general meeting (2007:1561, article 31)

(39) Can employees or their representatives require changes in the pension scheme based on the financing level of the scheme, e.g. increases in pensions, reduction of employee contributions?

These decisions are made at the general meeting (2007:1561, article 32 and 35). See also question (9)

(40) What are the communication requirements to employees on supplementary pensions? Are they different in case of book reserves or in case of an IORP?

The FSA may issue guidelines on the information given to the members (2007:1561, article 12 a)

4.6. **Underfunding of DB schemes**

(41) In case of compulsory systems to which extent future generations can be asked to pay possible underfunding for the current generation? In how far the systems can operate as pay as you go?

Underfunding is not allowed
(42) In case of underfunding of company sponsored benefit plan, should the sponsor pay the whole underfunding or can increased employee contributions be required?

Underfunding is not allowed

(43) Does the sponsor have to cover underfunding before increasing contributions from employees or benefit cuts?

Yes, if the funds are not sufficient due to adverse changes in actuarial assumptions (e.g. interest, indexation, mortality)

(44) In what time delay the employer needs to pay the extra-contributions?

Immediately

(45) Is a recovery plan permitted and on how long can this recovery plan continue?

Yes, the FSA may request a pension fund to establish a recovery plan. The board, appointed actuary and auditor shall confirm the request by their signature (2007:1561, article 59)
The FSA shall request a recovery plan if the base capital is insufficient (2007:1561, article 60)

(46) Is there any legal requirement for the actuary or any other person involved to report on the expected underfunding due to a too strict financing plan and what action can be taken by the IORP in order to change this financing plan?

The appointed actuary shall annually submit a report to the FSA (2007:1561, article 26)

(47) How can the IORP enforce the sponsor to fulfil his legal duty to pay the necessary contributions?

Only as a normal creditor. Claims that arose within the last 6 months before a bankruptcy may be handled as salary items with special creditor rights.

(48) Should members (employees and beneficiaries) and/or employee’s representatives be informed in a situation of underfunding?

Yes

(49) How is this information requirement structured (individually, together with the yearly overview of the benefits, only when requested by employees, …) and what is the maximum period allowed between the date of determination of the underfunding and the information to the employees?
The recovery plan shall be presented for the FSA. Furthermore the FSA may determine the content of the recovery plan (2007:1561, article 60)

Any material reductions in the benefit levels shall be presented in writing to the members and are not valid for members that within a given time limit have indicated that they will not accept the changes. However the FSA may effectively command the pension fund to execute the changes (2007:1561, article 36)

Before the FSA may approve the transfer of a pension fund to an insurer or another pension fund the pension fund shall forward a statement approved by the FSA to the members. The members may inform the FSA of their objections within a given time limit (2007:1561, article 54)

(50) Can members and/or beneficiaries or their representatives have a voice in the decision of a recovery plan?

Yes, in their capacity as board members

(51) Are members and/or beneficiaries informed on the details of a recovery plan?

See questions (38) and (40)

4.7. Priority creditors rights

(52) Which creditors have a higher priority on the remaining assets of the sponsor than the IORP in case of insolvency of the plan sponsor?

See question (47)

(53) In case of insolvency of their employer what is the priority the employees have on the remaining assets for their supplementary pension rights in case of a book reserve scheme and possibly in case of underfunding of the IORP?

After the other creditors of the IORP (2007:1561, Article 57 a). However assets corresponding to the technical provisions are secured by pledged assets (2007:1561, article 499)

(54) What is the priority ex-employees, pensioners or other beneficiaries of the pension scheme have on the remaining assets of the sponsor?

See question (9)
(55) If the employer becomes insolvent, but is an affiliate of a group of companies where the mother company is not insolvent, can the employees claim their supplementary pension rights from the mother company in case of a book reserve or in case of underfunding of the IORP?

No

4.8. GUARANTEE SCHEMES

In Denmark no guarantee schemes exist.

(56) Do guarantee schemes exist? If so, provide a detailed description of the schemes.

(57) Are premiums paid by the sponsoring undertaking to the guarantee scheme risk-based?

(58) What is the procedure to be followed for the intervention of the guarantee scheme?

(59) Are all defined benefit and book reserve schemes covered by the guarantee schemes?

(60) Are the schemes different for book reserve schemes and funded schemes? Please describe?

(61) Are all benefits covered including unvested benefits and recent benefit improvements?

(62) Are there ceilings on the benefit coverage?

(63) Will the guarantee scheme take over obligations or inject a one time payment in the IORP in case of a defined benefit scheme?

(64) Do the guarantee schemes have sufficient resources in e.g. time of crisis where a lot of sponsors could have solvency problems?

4.9. ANY OTHER MEASURES

(65) Are there any other measures (not covered above) that contribute to the protection of the interests of the employees or ex-employees and their beneficiaries in case of insolvency and/or disappearance of the sponsoring employer?

No

(66) Are their proposals for changing the measures already taken and what are they? When are they expected to be implemented?

No

(67) Please describe the views of the social partners on the effectiveness of the measures taken to protect the rights of the beneficiaries of company sponsored benefit plans in case of insolvency of the employer and/or the IORP (if publicly available or made available in an interview)

Not available
(68) Is there evidence that the overall outcome of one of the specific systems operated in your country, provides inadequate protection for the rights of the beneficiaries of company sponsored benefit plans?

No

(69) Is there evidence of how specific systems operated in your country proactively deal with different risks and improve risk management?

- Yes, the legislation is quite clear on the structure of governance in pension funds (2007:1561, article 21 a)
  - Efficient management
  - Good administrative and accounting practice
  - Written guidelines
  - Effect risk management procedures
  - Resources
  - Separation of functions and avoidance of conflict of interest
  - Internal control
  - IT - security

4. 10. YOUR ASSESSMENT

(70) Please describe the shortcomings of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the sponsor and/or the IORP. If there are in your opinion no shortcomings, please explain.

No shortcomings as the pensions rights are fully funded and the IORP's shall follow the Solvency I rules. However, if the sponsor becomes insolvent the pension fund has only rights as a normal creditor. However, claims arose within the last 6 months before a bankruptcy may be handled as salary items with special creditor rights (see reply to question 47).

A pension fund has always the risk to become underfunded. However, if this may occur and the employer is not solvent the FSA shall order the pension fund to establish a recovery plan. The pension fund shall become fully funded over a shorter time period determined by the FSA.

(71) Please describe your suggestions for improvement of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the employer and/or the IORP and describe the possible additional costs for these improvements and the possible risks that employers may decide to downside or close defined benefit arrangements?

No suggestions
5. FINLAND

MAIN FINDINGS

- Occupational pensions can be financed externally via an IORP or via book reserves
- IORP’s are subject to control and assets covering technical provisions calculated in a prudent way need to be available, recovery plans are, subject to approval allowed, the maximum recovery period is 10 years.
- Only a limited number of employees are covered by book reserves, and no protection exists for the occupational pensions for these employees.
- Vesting of benefits is not required but needs to be regulated in the pension plan rules
- Yearly global financial information on the IORP must be provided together with an annual benefit statement.

5.1. DESCRIPTION OF THE LEGAL FRAMEWORK

(1) Which kind of IORPs can be used to finance pension schemes (insurance companies, national funds, company pension fund, multi-employer fund, sector pension fund, other kinds of entities created to finance pensions) ?

- Life insurance companies
- Insurance funds (industry-wide)
- Pension funds (company-specific)
- Book reserves

(2) What are the minimum funding requirements for each of these kind of IORP’s and are there minima for book reserves ?

- Pensions liabilities with life insurance companies, insurance funds and pension funds shall be fully funded by 31.12.2010. The maximum discount rate is currently 3.65 % p.a. It will be reduced by 0.05% per year and reach 3.5% from 2013. Future indexation of benefits shall be taken into account (1774/1995, article 43)
- No minima for book reserves

(3) Is there a legal obligation to subscribe to external (solvency) guarantees ? And what are these guarantees for each kind of IORP and for book reserves schemes ?

- Industry funds and pension funds have no solvency requirements if the employer is ultimately responsible for the pension liability
• If the employer is not ultimately responsible the industry fund or pension funds shall meet the Solvency I requirements

(4) Does separate legislation on solvency exist for IORP’s falling under article 17 of the directive (plus a description)? Article 17 concerns IORP’s that take themselves the biometric risks and/or guarantee benefits, in case of insufficiency these IORP’s cannot claim supplementary contributions or reduce the benefits. How much of the IORP’s (as a percentage) are falling under article 17?

• If a pension fund guarantees biometric risks or a certain investment return or a certain level of benefits a solvency margin shall be established (1774/1995, article 48 e)
• There exists currently only one pension fund under article 17 as pension liabilities are generally guaranteed by the employer

(5) Is the provision of company sponsored employee benefits compulsory for the employers and to which extent?

No

(6) Does the legislation provide for minimum vested rights if an employee leaves before retirement? Is this legislation different for the different funding systems or book reserves?

No (depends on the by-laws of the fund)

(7) Is there legislation that requires that ex-employees and pensioners are treated the same as active employees (plus a description)?

Former employees with paid-up pensions have equal right to pensions as active employees. However pensioners have priority rights, see point 11 (1774/1995, article 88)

(8) Is there legislation on the increase in benefits during payment or the deferred period (plus a description)?

No (depends on by-laws of the fund)

(9) Is there legislation that allows to reduce accrued pension rights in case of under funding?

Yes but decisions on this have to be made in the board with a 4/5 majority (1774/1995, article 11)
(10) Can benefits be paid in the form of a lump sum and to what extent?

Payments less that EUR 20 per month is paid out as a lump sum. Following the insured acceptance payments less that EUR 40 per months may also be paid out as a lump sum (1774/1995, article 54)

(11) Which kind of beneficiaries have priority rights on the assets of the IORP (pensioners, ex-employees, other beneficiaries, employees) and to what extend ? Please describe the priority rules ?

Current and future benefits to pensioners and their relatives have priority rights (1774/1995, article 88)

(12) In case of book reserves, which kind of beneficiaries have priority rights on the assets of the employer (pensioners, ex-employees, other beneficiaries, employees) and to what extend ? Please describe the priority rules ?

No (rights may depend on agreement between employer and employees)

(13) Has the country applied article 4 of the Directive? If yes, comment on differences between pension insurer’s and IORP’s throughout all questions.

Yes

(14) Has the country applied article 5 on small pension institutions of the Directive? If yes, how much (in percentage) beneficiaries are affiliated to these small pension institution?

No

5.2. Overview of DB and BR Schemes

(15) What kind of company sponsored benefit schemes are provided ? Defined benefit schemes, Defined contribution schemes, Cash balance schemes and other schemes (plus description) ?

- Defined benefit schemes (almost all in run-off)
- Defined contribution schemes (from April 2009, both traditional and unit-linked)

(16) What % of covered employees benefit from the different type of schemes described in the previous question ? Is this different for male and female employees ?

- 190,000 employees are covered by life insurance companies corresponding to EUR 5.2 billion (including paid-up pensions)
• 40,000 employees are covered by insurance and pension funds and insurance funds corresponding to 
EUR 5.5 billion (excluding paid-up pensions). If paid-up pensions are included total number of em-
ployees would be closer to 65,000.
• Only a limited number of employees are covered by book reserves

(17) Are pensions in payment or deferred increased ? Is this increase conditional ? What are the conditions ?

Payments are normally increased with the same index as in the statutory earnings related system

(18) What % of labour force is covered by a company sponsored benefit scheme (including sector schemes
or compulsory supplementary pension schemes) ? Is this different for male and female employees ?

See question (16)

(19) How high is the average retirement pension provided by the company sponsored benefit scheme, pref-
erably as a percentage of last yearly salary ? And how is this compared to the social security retirement 
pension ? Are there significant differences between the averages for male and female employees ?

Supplementary pensions from an insurance fund or pension fund are considered to be part of total pension 
cover. It is usually stipulated in the by-laws of the institution that an employee’s right to supplementary pen-
sion is accrued yearly 2 % to reach the total 60 % of pensionable wage. It is possible that an employee gets 
more pensions from the statutory scheme than this 60 % of pensionable wage. In this case an employee gets 
no supplementary pension from the institution. Currently most people get 50-65 % pension compared to their 
last salary

(20) What types of financing vehicles actually exist in your country and how many? Book reserves, pension 
funds, pension funds that fall under article 17 of the directive on IORPS, sector funds, insurance or other 
financing vehicles ?

• Life insurance companies
• Insurance funds (industry-wide)
• Pension funds (company-specific)
• Book reserves

(21) What % of covered employees receive their benefit via these above described financing vehicles ?

Approximately 10 % of the employees are members of supplementary pensions schemes
(22) Please provide a short summary of the accounting rules applicable to employers that provide defined benefit schemes (e.g. equal to IAS19, similar to IAS 19 but ..., no provisions contributions and/or benefits paid are equal to expenses, description of other rules)

According to Finnish GAAP employers normally only recognises contributions paid. Contributions needed depend mainly on investment income. If an uncovered liability exists the employers shall make a reservation in the balance sheet.

(23) What is the % of the employers that report under IFRS (IAS19) or very similar accounting rules?

Information not available

(24) Can you provide statistics on the provisions accounted for under these rules (per employee and/or in relation to the funds in the pension fund)?

Information not available

5.3. Requirement of additional assets

(25) Which type of additional assets (above the assets covering the technical provisions) are required (plus description)?

- There is an administration reserve corresponding to 5% (or lower) of technical provisions
- An industry fund or pension fund may build up a solvency up till 8% of the technical provisions (mainly for future indexations). However it is unclear whether employers contribution to this solvency margin is tax-deductable
- Industry funds and pension funds value their assets at book value so valuation difference between book values and market values may exist

(26) Are these additional assets requirements different for IORP’s that fall under article 17 of the directive (plus description)?

No

(27) When can these additional assets actually be used? e.g. when more than the expected number of employees dies in a particular period, when the employer becomes insolvent, other?

- Any surplus in the administration reserve may be used to cover technical provisions in case of liquidation
- Liability for future indexation may be used for augmentation of liability when this stems from changes in the basis of calculation
Valuation differences may be used by value assets at market values

(28) For multi-employer funds, can these additional assets be used in case of insolvency of any of the employers? In case of ring-fencing per employer or in case of no ring-fencing and therefore solidarity between employers?

The fund may use either a system where funds are allocated to individual employers or a system with a smoothing mechanism between employers (1774/1995, article 119)

(29) Can these assets return to the employer and under which conditions?

- Any surplus in the administration reserve may be paid back to the employer in case of liquidation
- If assets exceed liabilities calculated with a safe margin surplus may be paid to the employer (1774/1995, article 6 and 45)

5. 4. INDEPENDENCE OF THE IORP FROM THE SPONSOR

(30) To what extend can the assets be invested in the sponsor’s securities – debt or shares and to what extent is this possibility actually used?

A maximum of 25% of technical provisions may be invested in assets related to the employers business activities (1774/1995, article 47 i)
A maximum of 5% of assets may be invested in the employer’s business. This does not apply for loans to the employer and guaranteed independently of the employer (1774/1995, article 5).

(31) To what extend subordinated loans can be used to cover pension obligations?

See question (30)

(32) To what extend can the assets be invested in items, such as property, machines, etc. used by the sponsor for its business and to what extent is this possibility actually used?

See question (30), however a maximum of 15% of technical provisions may be invested in assets related to one functional unit.

(33) To what extend can the management of the IORP be the same as the management of the sponsor? Describe the corporate governance requirements for IORPS in this respect?

An insurance fund or pension fund shall have an administrator (ombudsman) nominated by the board (1774/1995, article 18)
(34) To what extent can other important functions, such as the actuary, auditor and compliance officer be nominated (and possibly directly or indirectly paid) by the employer?

An insurance fund or pension fund shall as a minimum have two auditors. The insured are entitled to elect one auditor. Other auditors are elected by the employer (1774/1995, article 31).
No auditor may be employed by the employer (1774/1995, article 34).
Requirements for actuaries are the same as in pension insurance companies.

5.5. Employee representatives’ involvement in the governance of the pension scheme

(35) For IORP’s: in which case and how many employee representatives need to be part of the board or other legal body of the IORP?

The board shall have a minimum of 5 members. Two of these members shall be elected by the insured. The other members are elected by the employer. If the board has more than 5 members the proportion of members elected by the insured shall remain unchanged (1774/1995, article 17).

(36) Are employee representatives involved in the financing plan of the IORP and/or to what extent is their advice or decision binding?

Yes, in their capacity as board members.

(37) For book reserve schemes, are employee representatives involved in any way in the determination of the level of the book reserves and/or the way these book reserves are set up?

No.

(38) Do employees need to be informed about the level of the financing of their benefits in the IORP and to what extent?

The insurance fund or pension fund shall every year inform the insured on the financial position of the fund (1774/1995, article 49 a).

(39) Can employees or their representatives require changes in the pension scheme based on the financing level of the scheme, e.g. increases in pensions, reduction of employee contributions?

Yes, in their capacity as board members.
(40) What are the communication requirements to employees on supplementary pensions? Are they different in case of book reserves or in case of an IORP?

An insurance fund or pension fund shall inform the insured on their pension rights, assumptions and options with respect to these rights and any essential changes to the pension scheme (1774/1995, article 49 a and b)

5.6. UNDERFUNDING OF DB SCHEMES

(41) In case of compulsory systems to which extent future generations can be asked to pay possible underfunding for the current generation? In how far the systems can operate as pay as you go?

All pensions schemes shall be fully funded by the end of 2010
The system cannot operate on a pay as you go basis

(42) In case of underfunding of company sponsored benefit plan, should the sponsor pay the whole underfunding or can increased employee contributions be required?

No increased employee contributions may be required

(43) Does the sponsor have to cover underfunding before increasing contributions from employees or benefit cuts?

Yes

(44) In what time delay the employer needs to pay the extra-contributions?

The supervisor may permit an insurance fund or pension fund to have a funding deficit during a period up till 10 years (1774/1995, article 44)
The fund shall present the supervisor a recovery plan before any permission is given (1774/1995, article 44)

(45) Is a recovery plan permitted and on how long can this recovery plan continue?

See question (44)

(46) Is there any legal requirement for the actuary or any other person involved to report on the expected underfunding due to a too strict financing plan and what action can be taken by the IORP in order to change this financing plan?

The auditors are obliged to inform the FSA (878/2008, article 31)
(47) **How can the IORP enforce the sponsor to fulfil his legal duty to pay the necessary contributions?**

Normal debt collection procedures.

(48) **Should members (employees and beneficiaries) and/or employee’s representatives be informed in a situation of underfunding?**

Yes, see question (38)

(49) **How is this information requirement structured (individually, together with the yearly overview of the benefits, only when requested by employees, …) and what is the maximum period allowed between the date of determination of the underfunding and the information to the employees?**

Information shall be given within reasonable (skälig) time (1774/1995, article 49 a)

(50) **Can members and/or beneficiaries or their representatives have a voice in the decision of a recovery plan?**

Yes, in their capacity as board members

(51) **Are members and/or beneficiaries informed on the details of a recovery plan?**

Yes

### 5.7. **Priority creditors rights**

(52) **Which creditors have a higher priority on the remaining assets of the sponsor than the IORP in case of insolvency of the plan sponsor?**

If the employer became insolvent before 01.01.2010 the claim of the pension fund or industry fund has a higher priority. Please note that assets of a pension fund or insurance fund are separated from the employer’s assets and fully funded by 31.12.2010.

(53) **In case of insolvency of their employer what is the priority the employees have on the remaining assets for their supplementary pension rights in case of a book reserve scheme and possibly in case of underfunding of the IORP?**

No special priority for book reserves
(54) What is the priority ex-employees, pensioners or other beneficiaries of the pension scheme have on the remaining assets of the sponsor?

No special priority for book reserves

(55) If the employer becomes insolvent, but is an affiliate of a group of companies where the mother company is not insolvent, can the employees claim their supplementary pension rights from the mother company in case of a book reserve or in case of underfunding of the IORP?

No special priority for pension rights

5.8. GUARANTEE SCHEMES

In Finland no guarantee schemes exist.

(56) Do guarantee schemes exist? If so, provide a detailed description of the schemes.

(57) Are premiums paid by the sponsoring undertaking to the guarantee scheme risk-based?

(58) What is the procedure to be followed for the intervention of the guarantee scheme?

(59) Are all defined benefit and book reserve schemes covered by the guarantee schemes?

(60) Are the schemes different for book reserve schemes and funded schemes? Please describe?

(61) Are all benefits covered including unvested benefits and recent benefit improvements?

(62) Are there ceilings on the benefit coverage?

(63) Will the guarantee scheme take over obligations or inject a one time payment in the IORP in case of a defined benefit scheme?

(64) Do the guarantee schemes have sufficient resources in e.g. time of crisis where a lot of sponsors could have solvency problems?

5.9. ANY OTHER MEASURES

(65) Are there any other measures (not covered above) that contribute to the protection of the interests of the employees or ex-employees and their beneficiaries in case of insolvency and/or disappearance of the sponsoring employer?

The DB schemes are all in run-off since the 1990’s and free reserves are generally growing as part of total liabilities. Furthermore additional reserves may exist as valuation differences between markets value and book value.

(66) Are their proposals for changing the measures already taken and what are they? When are they expected to be implemented?

No
(67) Please describe the views of the social partners on the effectiveness of the measures taken to protect the rights of the beneficiaries of company sponsored benefit plans in case of insolvency of the employer and/or the IORP (if publicly available or made available in an interview).

The Association of Pensions Foundations considers the buffers as adequate.

(68) Is there evidence that the overall outcome of one of the specific systems operated in your country, provides inadequate protection for the rights of the beneficiaries of company sponsored benefit plans?

No, but due to the lack of formal solvency capital requirements pension funds and insurance funds may be dependent on employers' guarantees for extra contributions.

(69) Is there evidence of how specific systems operated in your country proactively deal with different risks and improve risk management?

No.

5.10 YOUR ASSESSMENT

(70) Please describe the shortcomings of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the sponsor and/or the IORP. If there are in your opinion no shortcomings, please explain.

See question (68).

(71) Please describe your suggestions for improvement of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the employer and/or the IORP and describe the possible additional costs for these improvements and the possible risks that employers may decide to downside or close defined benefit arrangements?

Introduction for formal solvency requirement or guarantee scheme. However the need may be limited as all DB schemes are in run-off.
6. **FRANCE**

**MAIN FINDINGS**

- Retirement indemnities are compulsory, relatively small and usually financed via book reserves or paid directly as an expense of the sponsor, in which case, the obligations for these indemnities are disclosed in annex to the balance sheet.
- Occupational pensions are very small, are generally insured and financed via book reserves in only a few cases.
- Part of the retirement indemnities are sometimes insured, but the insurance contracts often exclude part of the mortality risk and the increase in pensions. The balance of the benefits is sometimes financed via book reserves and sometimes paid directly as expenses of the sponsor.
- Benefits are usually not vested and apart from the possible part of the benefits insured, no guarantee exists in case of insolvency of the employer.

6.1. **DESCRIPTION OF THE LEGAL FRAMEWORK**

1. **Which kind of IORPs can be used to finance pension schemes (insurance companies, national funds, company pension fund, multi-employer fund, sector pension fund, other kinds of entities created to finance pensions)?**

In France pension schemes can use insurance companies, Institutions de Prévoyance\(^3\) and mutual organisations (Mutuelles) to fund them. These institutions are bound by the French Insurance Code or the Code de la Sécurité Sociale or the Code de la Mutualité. Some pension plans are still financed on book reserves only. Death benefits are mainly covered by mutual organisations (Mutuelle), these organisations are bound by the French Code de la Mutualité. The IFC “Indemnité de Fin de Carrière” (End of activity indemnities) are mainly financed on book reserves, sometimes they are partly funded within an insurance company. In France only defined contributions plans are fully funded.

2. **What are the minimum funding requirements for each of these kind of IORP’s and are there minima for book reserves ?**

As in France defined benefit pension plans and IFC plans provide “unvested rights” (droits aléatoires), there is no minimum funding requirement during the accumulation period. Once beneficiaries are retired, most plans are operated by an insurance company, a mutual organisation or an “Institution de Prévoyance”.

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\(^3\) Institutions de Prévoyance : Provident Societies under the Social Security Code. These institutions have the licence to provide long-term care insurances such as healthcare, disability, death, prolonged or serious illnesses and pension.
Nevertheless, all companies accounting under IFRS or applying the French GAAP preferential method have to assess each year their liabilities according to the Projected Unit Credit Method (IAS19 and preferential French GAAP method).

However, there is no legal obligation to recognise a liability on the balance sheet under the French Accounting Standards.

(3) **Is there a legal obligation to subscribe to external (solvency) guarantees? And what are these guarantees for each kind of IORP and for book reserves schemes?**

There is no legal obligation, except for defined contributions plans through insurance companies (they are fully funded) and former Supplementary Pension Institutions “IRS”.

(4) **Does separate legislation on solvency exist for IORP’s falling under article 17 of the directive (plus a description)?** Article 17 concerns IORP’s that take themselves the biometric risks and/or guarantee benefits, in case of insufficiency these IORP’s cannot claim supplementary contributions or reduce the benefits. How much of the IORP’s (as a percentage) are falling under article 17?

There is no separate obligation on solvency for IORP’s under art.17 in France. They abide by the prescriptions of the Insurance Code as the whole and face the same insolvency obligations as the French Insurance Companies (see infra question on article 4).

(5) **Is the provision of company sponsored employee benefits compulsory for the employers and to which extent?**

“Indemnité de Fin de Carrière” are compulsory in France, other company sponsored employee benefits are not compulsory.

(6) **Does the legislation provide for minimum vested rights if an employee leaves before retirement? Is this legislation different for the different funding systems or book reserves?**

The legislation does not provide for any minimum vested rights for defined benefit plans. In fact, if the employee leaves before retirement he loses all his defined benefit rights. Defined contribution plans are fully funded. There is no rule for defined benefit plans.

(7) **Is there legislation that requires that ex-employees and pensioners are treated the same as active employees (plus a description)?**

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4 Institutions de Retraite Supplémentaire (IRS): these institutions created by employers in order to provide a supplementary pension over the mandatory pay as you go schemes. Their mechanism were very diversified but mostly operated as pay-as-you-go systems. The Fillon Law (2003) urged these institutions to turn into a so called “Institution de Prévoyance” (see above) and fund the related liabilities. They disappeared by the end of 2008.
No.

(8)  Is there legislation on the increase in benefits during payment or the deferred period (plus a description)?
No.

(9)  Is there legislation that allows to reduce accrued pension rights in case of under funding?

Before the eventual retirement the accrued pension rights can be reduced as in France pension rights are unvested. Once retired, nominal pension rights cannot be reduced. However, in case of underfunding pensions can be frozen and do not have to be increased (not even with the inflation rate).

(10) Can benefits be paid in the form of a lump sum and to what extent?

IFC (Indemnité de Fin de Carrière) is a lump sum benefit, which is paid at the date of the retirement. Pension plan benefits cannot be paid in form of a lump sum except for very small amounts (less than 500 € per year) or within a PERCO\textsuperscript{5} plan.

(11) Which kind of beneficiaries have priority rights on the assets of the IORP (pensioners, ex-employees, other beneficiaries, employees) and to what extend? Please describe the priority rules?

There is no specific priority rule.

(12) In case of book reserves, which kind of beneficiaries have priority rights on the assets of the employer (pensioners, ex-employees, other beneficiaries, employees) and to what extend? Please describe the priority rules?

There is no special regulation for book reserves plan. In practice, actual pensioners handled in priority, but there is no rule.

(13) Has the country applied art. 4 of the Directive? If yes, comment on differences between pension insurer’s and IORP’s throughout all questions.

France applies art.4 of the Directive. In fact, companies are recommended to outsource their liabilities to Insurance Companies within segregated funds within insurances companies, the Institutions de Retraite Pro-

\textsuperscript{5} PERCO: Funded occupational pension plans, which consists in an individual pension savings based plan. They are defined by collective agreements, nevertheless they are non compulsory for the employer.
(14) Has the country applied article 5 on small pension institutions of the Directive? If yes, how much (in percentage) beneficiaries are affiliated to these small pension institutions?

Only a very small part of the beneficiaries receive their benefits from small pension institutions.

6. 2. OVERVIEW OF DB AND BR SCHEMES

(15) What kind of company sponsored benefit schemes are provided? Defined benefit schemes, Defined contribution schemes, Cash balance schemes and other schemes (plus description)?

“Indemnité de Fin de Carrière” plans are compulsory in France, these are defined benefit plans paying a lump sum at the retirement.

Some companies also provide defined contribution plans, financed via insurance premiums to insurance companies. For these plans, the companies single pledge is to pay the annual contribution to the insurance company, sponsor companies do not conserve any other risk or obligation.

Many companies have already set up a PERCO by the collective agreement or have already started negotiations in order to set up one. This fully funded voluntary individual pension savings based scheme is subject to mutual fund based prudential standards during the saving phase and insurance prudential standards during the annuity payment period. Yet most benefits are lump sums.

In the past, companies provided mostly defined benefit plans:

• top up pension plan, the company’s liability is to ensure a given global pension replacement ratio if the mandatory pay-as-you-go pensions do not reach this level;

• additional pension plans provide a given pension regardless of the other pension benefits.

(16) What % of covered employees benefit from the different type of schemes described in the previous question? Is this different for male and female employees?

“Indemnités de Fin de Carrière” are mandatory plans so 100 % of the employees are covered. 5% to 10% of the employees benefit from defined contribution plans while 2% to 5% benefit from defined benefit plans. There is no difference between males and females.

(17) Are pensions in payment or deferred increased? Is this increase conditional? What are the conditions?

6 Main differences are the following: an actuary’s control is sufficient, an auditor company is not necessary; prudential rules for biometric risks are less severe. Special governance rules are also applied.

7 The total outstanding PERCO liabilities is about 1 G€ while the total outstanding liabilities of pension plans operated by an insurance organisation is about 70 G€.
Pension in payment or deferred period can be increased, but it depends on the agreement. Most often, pension increases during the payment period are based on the inflation rate, the value of the ARRCO and AGIRC mandatory schemes' pension point or the financial return of the assets of the insurance company.

(18) What % of labour force is covered by a company sponsored benefit scheme (including sector schemes or compulsory supplementary pension schemes)? Is this different for male and female employees?

100 % of private sector employees are covered by the mandatory occupational pay as you go plans (ARRCO-AGIRC), without any difference for males and females. About 10 % of the employees are also covered by other forms of occupational plan.

(19) How high is the average retirement pension provided by the company sponsored benefit scheme, preferably as a percentage of last yearly salary? And how is this compared to the social security retirement pension? Are there significant differences between the averages for male and female employees?

The average replacement rate is about 54 % in France (including social security and pension from the ARRCO/AGIRC mandatory occupational schemes). Company sponsored benefit plans’ replacement rate is about 2 %.

(20) What types of financing vehicles actually exist in your country and how many? Book reserves, pension funds, pension funds that fall under article 17 of the directive on IORPS, sector funds, insurance or other financing vehicles?

“Indemnités de Fin de Carrière” are generally financed on book reserve, or partly funded within an insurance contract.

Pension plans can be financed by insurance contracts IRP (within insurance companies) contracts, or by book reserves.

(21) What % of covered employees receive their benefit via these above described financing vehicles?

Book reserve: 100% of the “IFC” plans and under 20 % of pension plans
Insurance Contract: over 80 %
Pension fund: Not applicable

(22) Please provide a short summary of the accounting rules applicable to employers that provide defined benefit schemes (e.g. equal to IAS19, similar to IAS 19 but ..., no provisions contributions and/or benefits paid are equal to expenses, description of other rules)

Provisions for defined contribution plans are equal to the contributions paid.
Defined benefit plans’ accounting rules are equal to IAS 19 rules. In fact, the French National Accounting Board recommends the use of IAS 19 methods (n°2003-R.01).
(23) What is the % of the employers that report under IFRS (IAS19) or very similar accounting rules?
Most employers report under IFRS, or use the French GAAP’s preferential method.

(24) Can you provide statistics on the provisions accounted for under these rules (per employee and/or in relation to the funds in the pension fund)?

The total amount of outsourced defined benefit pension plans is 24 G€, while it amounts to around 10 G€ for “Indemnités de Fin de Carrière” plans. Nevertheless, there is no information about the total liabilities of defined benefit plans. A major part of the “Indemnités de Fin de Carrière” are only partly funded.

6.3. REQUIREMENT OF ADDITIONAL ASSETS

(25) Which type of additional assets (above the assets covering the technical provisions) are required (plus description)?

In France only insurance organisations (and IRP as a matter of fact) have additional assets requirement. Hence only outsourced plans have to apply solvency margins. For outsourced liabilities, the solvency amounts to 4 % of technical reserves, the same as insurances companies’ requirements. It should be emphasised that these are the insurance organisations liabilities or assets and not the ones of the sponsor.

(26) Are these additional assets requirements different for IROP’s that fall under article 17 of the directive (plus description)?

French regulation requires insurance companies and IRP to set up a solvency margin amounting to 4 % of technical reserves. Additionally, in case of a defined contribution plans in points, regulated by the Insurance Directive 79/267/CE\(^8\) (paragraph 1.2°e), additional assets are required\(^9\).

(27) When can these additional assets actually be used? e.g. when more than the expected number of employees dies in a particular period, when the employer becomes insolvent, other?

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\(^8\) In the plans, contributions are converted into pension points (amount of contribution divided by the cost of a pension point). At the retirement the accumulated pension points are converted into a pension (sum of the points multiplied by the value of points at the retirement). The cost of the pension points and the value of them are defined annually by the operating insurance institution. Nevertheless the value of a pension point cannot decrease, so the value of the pension point at the time of its purchase is the guaranteed amount.

\(^9\) In fact, the Insurance code requires a special technical reserve that has to be greater than the (mathematical) technical reserve at any time. Benefits are paid from, net contributions and interests are directly added to the “special technical reserve”. A “complementary special technical reserve” is also required, equal to the difference between the vested liabilities and the special technical reserve. Operating expenses reserves and provision for liquidity risk are also required.
For outsourced liabilities, additional assets can be used under the same conditions as insurance companies’ additional assets, in fact it concerns only the insurance companies’ assets. There are no additional assets for the sponsor.

(28) For multi-employer funds, can these additional assets be used in case of insolvency of any of the employers? In case of ring-fencing per employer or in case of no ring-fencing and therefore solidarity between employers?

Generally, the assets are not segregated, but under some conditions (it depends on the contract) ring-fencing funds can exist. There is a global ring-fencing for assets of IRP (Institution de Retraite professionnelle) under the provisions of article L 143-1 of the French Insurance Code.

(29) Can these assets return to the employer and under which conditions?

In France, if the sponsoring company keeps the ownership over the outsourced amounts, these amounts are subject to corporate taxes. In order to avoid corporate taxes, outsourced amounts are most often owned by the insurance company, so it cannot return to the sponsoring company. In some special cases the overfunding can be used to cover another liability (but the same kind of liability).

6.4. INDEPENDENCE OF THE IORP FROM THE SPONSOR

(30) To what extend can the assets be invested in the sponsor’s securities – debt or shares and to what extend is this possibility actually used?

Defined contribution and outsourced defined benefit plans are operated by independent insurance companies. Insurance companies are subject to prudential investment standards, therefore to asset diversification according to EC Insurance Directives.

There is no rule on the investment policy for the other defined benefit plans, especially book reserve plans.

(31) To what extend subordinated loans can be used to cover pension obligations?

The insurance companies may use subordinated loans so it can be used to cover pension obligations.

(32) To what extend can the assets be invested in items, such as property, machines, etc. used by the sponsor for its business and to what extend is this possibility actually used?

For plans which are operated by independent insurance organisation it is not possible. There is no rule on the investment policy for the other (defined benefit) plans.

(33) To what extend can the management of the IORP be the same as the management of the sponsor?

Describe the corporate governance requirements for IORPS in this respect?
In case of outsourced plan, operated by an insurance organisation, the management is not related to the sponsor company. For other plans, like book reserve plan or partly funded plans, the sponsoring company is also the managing company.

(34) To what extend can other important functions, such as the actuary, auditor and compliance officer be nominated (and possibly directly or indirectly paid) by the employer?

Even if the pension plan is funded in an insurance company, the employer should assess his liabilities. Defined benefits plans are usually assessed by an actuary.

6.5. Employee representatives’ involvement in the governance of the pension scheme

(35) For IORP’s: in which case and how many employee representatives need to be part of the board or other legal body of the IORP?

There is no obligation, except for the “Institutions de Prévoyance” or for Institutions de Retraite Professionnelle (cf supra). “Institutions de Prévoyance” are insurance organisations created by the Code de la Sécurité Sociale and operated by labor unions and management of a company or a sector, with equal representation in the Board. IRP are a segregated fund of insurance companies as described supra.

Pension plans can be designed by the employer; in that case, employee representatives are not necessary. Pension plans can also be introduced via a Company labour agreement or voted via a referendum, in which case all decisions should be subject to the consultation of employees’ representatives.

(36) Are employee representatives involved in the financing plan of the IORP and/or to what extend is their advice or decision binding?

No, only in case of the “Institutions de Prévoyance” or IRP, employees’ representatives are part of the Board. They have to be informed, their opinion is not binding.

(37) For book reserve schemes, are employee representatives involved in any way in the determination of the level of the book reserves and/or the way these book reserves are set up?

No. The only compulsory information is the balance sheet for companies accounting under IFRS.

(38) Do employees need to be informed about the level of the financing of their benefits in the IORP and to what extend?

No. But main decisions for DC plans are decided in the annual Pension Commission which usually exists in large companies and is compulsory for IRP (article L 143-2 of the Insurance Code). This commission can be
tripartite: employers, employees’ and pensioners’ representatives and insurance company’s representatives may be present at the commission. This is not legally compulsory except for IRP.

(39) Can employees or their representatives require changes in the pension scheme based on the financing level of the scheme, e.g. increases in pensions, reduction of employee contributions?

No, they have only an advisory role at the Pension Committee, when it exists.

(40) What are the communication requirements to employees on supplementary pensions? Are they different in case of book reserves or in case of an IORP?

Companies should present their annual reporting at the Pension Committee for DC plans. It is the same in case of book reserve plan.
In case of a defined contribution plan, the insurance company has the obligation to inform the sponsoring company. The sponsoring company has the duty to inform employees of all modifications in the plan (L141-4 Insurance Code) as well as an annual information on vested rights (article L 132-22 of the Insurance Code).
The only compulsory information that employees should get for DB plans is at the time of the retirement since there is no vesting.

6.6. UNDERFUNDING OF DB SCHEMES

(41) In case of compulsory systems to which extent future generations can be asked to pay possible underfunding for the current generation? In how far the systems can operate as pay as you go?

There is no guideline on this question for DB schemes in France.

(42) In case of underfunding of company sponsored benefit plan, should the sponsor pay the whole underfunding or can increased employee contributions be required?

Companies should pay the whole underfunding. In France defined benefit plans, “Indemnités de Fin de Carrière” for instance plans are not financed by the employees; they are wholly financed by the employers.

(43) Does the sponsor have to cover underfunding before increasing contributions from employees or benefit cuts?

No.

(44) In what time delay the employer needs to pay the extra-contributions?

No rules.
(45) Is a recovery plan permitted and on how long can this recovery plan continue?

No rules.

(46) Is there any legal requirement for the actuary or any other person involved to report on the expected underfunding due to a too strict financing plan and what action can be taken by the IORP in order to change this financing plan?

No

(47) How can the IORP enforce the sponsor to fulfil his legal duty to pay the necessary contributions?

No rules.

(48) Should members (employees and beneficiaries) and/or employee’s representatives be informed in a situation of underfunding?

They should be informed but there is no legal obligation to inform them since the companies are wholly responsible for the payment of defined benefits.

(49) How is this information requirement structured (individually, together with the yearly overview of the benefits, only when requested by employees, …) and what is the maximum period allowed between the date of determination of the underfunding and the information to the employees?

There is no guideline on this question. This information’s to be mentioned in the annual report of the company (reporting under IFRS).

(50) Can members and/or beneficiaries or their representatives have a voice in the decision of a recovery plan?

No

(51) Are members and/or beneficiaries informed on the details of a recovery plan?

No rules.

6. 7. PRIORITY CREDITORS RIGHTS

(52) Which creditors have a higher priority on the remaining assets of the sponsor than the IORP in case of insolvency of the plan sponsor?

No priority rules. For plans operated by insurance companies, priority rules of the insurance company are applicable (article L 327-2 of the Insurance Code).
(53) In case of insolvency of their employer what is the priority the employees have on the remaining assets of their employer (sponsor) for their supplementary pension rights in case of a book reserve scheme and possibly in case of underfunding of the IORP?

There is no specific rule if the amounts are not funded via an insurance contact.

(54) What is the priority ex-employees, pensioners or other beneficiaries of the pension scheme have on the remaining assets of the sponsor?

There is no specific rule.

(55) If the employer becomes insolvent, but is an affiliate of a group of companies where the mother company is not insolvent, can the employees claim their supplementary pension rights from the mother company in case of a book reserve or in case of underfunding of the IORP?

Yes, this may work in front of the court.

6.8. Guarantee schemes

(56) Do guarantee schemes exist? If so, provide a detailed description of the schemes.

For outsourced liabilities, insurance companies guarantee fund (L 423-1 of Insurance Code) can be used. Furthermore, defined contribution plans in points, regulated by the Insurance Directive 79/267/CE (article 1-2°e), have specific pledges over their segregated funds.

(57) Are premiums paid by the sponsoring undertaking to the guarantee scheme risk-based?

No, they are not. Only insurance companies pay a contribution according to the paragraph R423-13 of the Insurance Code, that specifies the guarantee fund should have 0,05 % of total outstanding mathematical reserves of all member companies estimated as at the last 31st December.

(58) What is the procedure to be followed for the intervention of the guarantee scheme?

If the supervisory authority of insurance companies reckons the insolvency of an insurance company, the authority starts off the intervention of the guarantee fund according to the L 423-2 of the Insurance Code.

(59) Are all defined benefit and book reserve schemes covered by the guarantee schemes?

No, in France there is no guaranteed defined benefit or book reserve plan.
(60) Are the schemes different for book reserve schemes and funded schemes? Please describe?

Yes. There is no guaranteed pension for book reserve plans.

(61) Are all benefits covered including unvested benefits and recent benefit improvements?

No, only vested benefits (for example rights already purchased) and for defined contribution plans funded via insurance contracts.

(62) Are there ceilings on the benefit coverage?

According to article R423-1 of the Insurance Code, the guaranteed amounts are the liabilities valued as at the date of insolvency. There is a global ceiling of 70,000 € per person. Furthermore, there are some ceiling conditions for certain business lines, like disability etc.

(63) Will the guarantee scheme take over obligations or inject a one time payment in the IORP in case of a defined benefit scheme?

No. In France guaranteed defined benefit plans do not exist.

(64) Do the guarantee schemes have sufficient resources in e.g. time of crisis where a lot of sponsors could have solvency problems?

No. Sponsors do not have guarantee fund (only the insurance companies).

6. 9. ANY OTHER MEASURES

(65) Are there any other measures (not covered above) that contribute to the protection of the interests of the employees or ex-employees and their beneficiaries in case of insolvency and/or disappearance of the sponsoring employer?

There are no other measures, but government reinforced taxes on book reserve plans. In fact the Social Security Financing Law for 2010 doubled taxes on pension schemes. Moreover, this law urge sponsoring companies to outsource their pension plans (at least liability for the retired beneficiaries) set up from January 1st, 2010. This should lead companies to outsource their liabilities more drastically.

(66) Are their proposals for changing the measures already taken and what are they? When are they expected to be implemented?

Not at the moment
Please describe the views of the social partners on the effectiveness of the measures taken to protect the rights of the beneficiaries of company sponsored benefit plans in case of insolvency of the employer and/or the IORP (if publicly available or made available in an interview)

N/A

Is there evidence that the overall outcome of one of the specific systems operated in your country, provides inadequate protection for the rights of the beneficiaries of company sponsored benefit plans?

Generally, the French government insists on the outsourcing of pension liabilities to insurance companies. Yet, the minor role of pension funds in the French retirement systems (cf. infra) prevents from giving any sensitivity to this issue.

Is there evidence of how specific systems operated in your country proactively deal with different risks and improve risk management?

No.

6.10. Your assessment

Per type of funding method or IORP (including book reserves)

Please describe the shortcomings of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the sponsor and/or the IORP. If there are in your opinion no shortcomings, please explain?

Defined contribution plans are operated by insurance companies, mutual organisations or an “Institution Prévoyance”. These institutions are bound by a similar legislation as insurance institutions regarding solvency issues.

As for defined benefit plans, liabilities related to active employees and current pensioner are different; in fact in France employees do not have vested rights, benefits are unvested till the retirement day. Therefore “Indemnité de Fin de Carrière” plans and defined benefit pension plans for current employees are often funded via book reserves and they are not regulated regarding solvency issues. In fact, many companies outsource current pensioners’ pension liabilities to an insurance company, a mutual organisation or an “Institution Prévoyance”. Additionally, the Social Security Financing Law for 2010 urge sponsoring companies to outsource their pension plans (at least liabilities for the retired beneficiaries) set up from January 1st, 2010. Additionally tax rates on book reserve plans are twice as high as on outsourced plans.

Even after outsourcing the liability, sponsors are not totally free in the case of DB pension funds. In France most insurance contracts do not include the cost of mortality and pension increase risks. In that case the insurance company may require the sponsoring company to pay additional premiums, should interest or mortal-
Pension rates change. If the sponsoring company does not pay, pensions will not be increased and may be cut for younger employees.

There is no guideline in case that the sponsoring company goes bankrupt.

From our point of view, the main issue with the legislation is the lack of rule for pension plans managed by the sponsoring company even for retired participants. And the fact that many insurance contracts do not cover the biometric risk and the cost of regular pension increases, so sponsoring companies can be forced to pay further premiums. This is obviously not perfectly safe.

(71) Please describe your suggestions for improvement of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the employer and/or the IORP and describe the possible additional costs for these improvements and the possible risks that employers may decide to downside or close defined benefit arrangements?

In our opinion, all plans should be recognised in the balance sheet of the companies (not just companies reporting under IFRS), and not just mentioned in the appendix. This would provide clear information about the plan status and the sponsoring companies' obligations. Moreover, an annual report might be compulsory on these plans.

Furthermore, over a certain amount, liabilities should be re-insured by an insurance company, or assured by insurance pools. Tax legislation recently enforced should foster this evolution.
7. Germany

Main Findings

- Occupational pensions need to be financed via an IORP or via book reserves or "Unterstützungskassen".
- When the employment is terminated, an outgoing worker has accrued a vested pension right, if he financed the contributions by himself. In case of employer financed schemes, an outgoing worker has accrued a vested pension right, if he has fulfilled a vesting period of five years and his age is at least 25 years.
- Employers financing pensions via book reserves are obliged to subscribe to the German insolvency insurance covering the vested benefits in case of insolvency of the employer.
- For IORP's not under article 17 employers are also obliged to take out insolvency insurance in the same way as for book reserved plans. The premiums are lower than for pure book reserved plans. The benefits insured are the vested benefits.
- IORP's under article 17 are subject to control and assets covering technical provisions calculated in a very prudent way need to be available, assets covering solvency margins need to be available and recovery plans need to be communicated and approved by the control authorities.
- Furthermore, Contractual Trust Agreements exist by which the employees have a legal claim against the CTA and the CTA receives specific covering funds (specific assets of the sponsor, e.g. machines, an investment portfolio, a reinsurance policy,…) in case of insolvency of the employer. Even in the case a CTA exists, the employer is still obliged to take out insolvency insurance and the premiums towards the insolvency insured do not take account of the existence of these CTA's.

7.1. Description of the Legal Framework

(1) Which kind of IORPs can be used to finance pension schemes (insurance companies, national funds, company pension fund, multi-employer fund, sector pension fund, other kinds of entities created to finance pensions)?

In Germany there are five alternatives to implement an occupational pension plan.
- Direct Pension Promise (book reserve)
- Indirect Pension Promise via Support Fund (Unterstützungskasse)
- Direct Insurance
- Employer-run Pension Insurance (Pensionskasse)
- Pension Fund

The EC directive 2003/41/EC generally applies to the Employer-run Pension Insurance and the Pension fund; however there are exceptions (see below).
Due to article 2 (b) (d) and (e) support fund and direct pension promise are exempted from the scope of application of the directive.

Germany did make use of the possibilities given by article 4 of the directive 2003/41/EC with the consequence that direct insurance is exempted too.

Direct pension promise, direct insurance, employer-run pension insurance and a pension fund entitle each employee to a separate legal claim. The same does not apply to support funds.

For direct pension promise the beneficiary has a direct claim towards the sponsoring company.

For all alternatives to implement in occupational pension plan the employer has the obligation to fulfil the benefits promised. If one of the financing vehicles fails to do so the company has to make sure that the promised benefits are paid to the beneficiaries. Pension funds, pension insurance and support funds may be run by only one company, by group of companies or by several independent employers.

All pension plans in Germany - independent form the type of financing instrument - are ruled by the company pensions law (Betriebsrentengesetz, BetrAVG). The company pensions law rules all the labour related issues of the company pensions and includes important protection provision the sponsoring company has to respect. Furthermore the company pensions law rules all the insolvency coverage for the case that the sponsoring company becomes insolvent. In addition to that the company pensions law fixes the principles to increase pensions in payment.

For pension fund, pension insurance and direct insurance the insurance supervisory law (Versicherungsaufsichtsgesetz, VAG) regulates the operation of these financing vehicles. The insurance supervisory law is accompanied by many guidelines from the supervisory authority (BaFin) for example investment policy, solvency requirements and minimum standards for technical reserves.

(2) What are the minimum funding requirements for each of these kind of IORP’s and are there minima for book reserves?

In Germany minimum funding requirements depend on the kind of IORP mentioned above:

- **“Pensionskassen”** are a special type of a life insurance company. Depending on the legal form of the Pensionskasse (mutual company versus stock company) and other criteria there are regulated and non-regulated Pensionskassen. The non-regulated Pensionskassen are supervised in the same way as life insurance companies. The funding of life insurance companies has to be done carefully according to the Insurance Supervisory Law (VAG). This means in practice that the discount rate and the other assumptions calculating the reserve have to be done on a precaution basis. Especially for the discount rate in these days a maximum rate of 2.25 % is allowed for new entries. The regulated Pensionskassen are stronger regulated and therefore the technical assumptions have to be agreed by the supervisory office (BaFin) in advance. In some cases for example the technical discount rate may be above 2.25 %.

- **Direct insurance** is to be seen in the same way as life insurance companies and nonregulated Pensionskassen.
• Pension funds are allowed but not obliged to give an insurance type guarantee for the benefits provided. If there is such a type of guarantee the funding has to be done according to the regulations for life insurance. But pension funds are not forced to give an insurance type guarantee and in this case the calculation of the reserve may be done according to prudent person rule which means today that the discount rate may vary between 4.0% and 5.0%. Nevertheless the interest return on the assets has to be higher than the applied discount rate.

• For book reserve plans as well as for support fund plans there are no minimum requirements for book reserves as a security mechanism in case of insolvency of the employer. But there are of course minimum requirements for the book reserve for accounting principles in the balance sheet according to German Commercial Law (HGB) and German Tax Law (EStG).

(3) Is there a legal obligation to subscribe to external (solvency) guarantees? And what are these guarantees for each kind of IORP and for book reserves schemes?

As mentioned under question (1) the sponsoring company always has an obligation to fulfil or to provide the benefits promised. Besides this guarantee the external financing vehicles direct insurance, Pensionskasse and pension fund give a legal claim to the beneficiaries. Thus the sponsoring company only has to pay if the financing vehicle fails.

For book reserve schemes there is always a guarantee from the employer.

See section 3.8

(4) Does separate legislation on solvency exist for IORP’s falling under article 17 of the directive (plus a description)? Article 17 concerns IORP’s that take themselves the biometric risks and/or guarantee benefits, in case of insufficiency these IORP’s cannot claim supplementary contributions or reduce the benefits. How much of the IORP’s (as a percentage) are falling under article 17?

For IORP’s falling under article 17 (in Germany: “Pensionskasse” and pension fund with an insurance type guarantee) there are specific requirements on solvency according to the “Kapitalausstattungs-Verordnung” (KapAustV) for Pensionskassen and to the “Pensionsfonds-Kapitalausstattungsverordnung” (PFKAustV) for pension funds respectively.

These requirements are mentioned in the figure below.
<table>
<thead>
<tr>
<th>Calculation of the solvency margin</th>
<th>“Pensionskasse”</th>
<th>Pension Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4% of the technical reserve</td>
<td>4% of the technical reserve (only if the pension fund bears the investment risk, i.e. gives an insurance type guarantee)</td>
</tr>
<tr>
<td>plus</td>
<td></td>
<td>1% of the technical reserve if the pension fund does not bear the investment risk and the administration costs included in the premiums is guaranteed for more than 5 years</td>
</tr>
<tr>
<td>plus</td>
<td></td>
<td>25% of the net administration cost for contracts where the pension fund does not bear the investment risk and the administration costs included in the premiums is guaranteed for less than 5 years</td>
</tr>
<tr>
<td>plus</td>
<td>0.3% of the capital at risk</td>
<td>0.3% of the capital at risk (only if the pension fund bears the investment risk)</td>
</tr>
<tr>
<td>Minimum guarantee fund</td>
<td>one third of the solvency margin, at least 3 Mio €</td>
<td>one third of the solvency margin, at least 3 Mio €</td>
</tr>
</tbody>
</table>

(5) *Is the provision of company sponsored employee benefits compulsory for the employers and to which extent?*

Each employer has been free to decide on whether or not, to which extent, and via which funding vehicle to provide company benefits.

The Pension Reform 2001 and the relating Pension Provisions Act (AVmG) have introduced important new aspects and options. Since 1/1/2002, each employee covered by the social security pension system has a claim to deferred compensation (Anspruch auf Entgeltumwandlung, art. 1a BetrAVG) whether the employer already finances a company benefit scheme by “real” employer contributions or not. So, any employee may ask - even force - his employer to use a part of his future compensation to provide for a suitable company benefit arrangement.
Furthermore the employer is obliged to provide a tax exempt deferred compensation (Riester). Although the employee financed pension schemes are not included in this study it has to be pointed out that in case of insolvency of the employer these plans may be covered by the insolvency insurance system.

(6) Does the legislation provide for minimum vested rights if an employee leaves before retirement? Is this legislation different for the different funding systems or book reserves?

Vesting requirements and the actual amount of the vested rights are stipulated in art.1b and 2 BetrAVG. During the last 10 years the conditions were amended several times in favour of the employee. As of today the employee becomes vested in a pension plan, when he is 25 years of age when leaving the company and had at least 5 years of service.

The amount of the vested rights is ruled in different ways: In general for defined benefit plans the vested rights have to be calculated according to the prorata principle. For contribution related pension promises (beitragsorientierte Leistungszusage) the vested rights equal to the sum of the attained claim. For contribution plans with minimum benefits (which are not defined contribution plans) the vested claim is defined by the accumulated capital in the financing vehicle. The last type of pension plans is allowed only for direct insurance, Pensionskasse and pension fund.

(7) Is there legislation that requires that ex-employees and pensioners are treated the same as active employees (plus a description)?

For pensioners the benefits are fixed when the pension becomes payable. Pensions in payment have to be increased either every three years according to the increase of consumer price index (if the sponsoring company can provide for) or every year by 1% if the company has promised. For direct insurance and Pensionskassen the pension increase may follow the surplus earned within the direct insurance or Pensionskasse on those assets corresponding to the pensioners. The increase of pensions in payment does not depend on whether the beneficiary has terminated his labour contract before the pension became payable or receives the pension immediately after leaving the employer. For deferred vested claims there is no obligation to increase the pension claim between termination and retirement even if the pension amount is linked to the salary before retirement.

(8) Is there legislation on the increase in benefits during payment or the deferred period (plus a description)?

Benefits in payment need to be adjusted in line with the development of the Consumer Price Index (CPI), unless the economic situation of the company does not allow it. There is no such rule for the deferred period.
(9) Is there legislation that allows to reduce accrued pension rights in case of under funding?

A reduction of the accrued pension rights is not allowed in Germany. It is the obligation for the employer to ensure the pension benefits he has promised even if he chooses an external financing vehicle. Nevertheless there may be situations in which pension funds or Pensionskassen may reduce the benefits they have promised. But in those cases the employer has to fill the gap. There is a discussion in Germany whether the employer always has to fill a gap or whether he can avoid this secondary liability.

(10) Can benefits be paid in the form of a lump sum and to what extent?

Yes, benefits can be paid in the form of lump sum. For support funds, Pensionskassen and Pensionsfonds there are limits to be respected.

(11) Which kind of beneficiaries have priority rights on the assets of the IORP (pensioners, ex-employees, other beneficiaries, employees) and to what extend? Please describe the priority rules?

There is no privilege for groups or individuals. If the benefits fall due the promised amount has to be paid because of a legal claim of the beneficiary. Before retirement the attained claim has the same quality as the claim of a pensioner.

In case of insolvency there are special rules, c. f. chapter 3.7, 3.8 and 3.9.

(12) In case of book reserves, which kind of beneficiaries have priority rights on the assets of the employer (pensioners, ex-employees, other beneficiaries, employees) and to what extend? Please describe the priority rules?

In case of book reserves there is no group or individual with privileged rights. Pensions in payment have to be paid, attained claims may not be reduced or revoked.

(13) Has the country applied art. 4 of the Directive? If yes, comment on differences between pension insurer’s and IORP’s throughout all questions.

Germany has not applied art. 4 of the Directive.

(14) Has the country applied article 5 on small pension institutions of the Directive? If yes, how much (in percentage) beneficiaries are affiliated to these small pension institutions?

Germany has not applied art. 5 of the Directive but there are reliefs for smaller mutual IORPs.
7. 2. Overview of DB and BR Schemes

(15) What kind of company sponsored benefit schemes are provided? Defined benefit schemes, Defined contribution schemes, Cash balance schemes and other schemes (plus description)?

In Germany only Defined Benefit Schemes are allowed. In previous years company pension commitments were usually final-salary orientated and designed. Also fixed-amount commitments existed. Companies orientated to civil service institutions traditionally provided total-retirement-earnings systems (“Gesamtvorsorgungssysteme”) granting provision-heights directly influenced by social security pensions. Those traditionally designed pension promises still exist, at least for protective reasons and are closed for new entries. Today, however, more and more contribution-related, cost-orientated pension commitments come into focus. “Pure” Defined Contribution Schemes, leaving the employee with the investment risk according to the Anglo-Saxon scheme, are still unlawful in Germany.

(16) What % of covered employees benefit from the different type of schemes described in the previous question? Is this different for male and female employees?

A survey among 500 German companies (with at least 100 employees) in autumn 2006 by Höfer Vorsorge-Management GmbH & Co. KG has shown that 40 % of the pension schemes are contribution-related, 25 % are dependant on salary and 35 % are based on a fixed amount.

(17) Are pensions in payment or deferred increased? Is this increase conditional? What are the conditions?

Art. 16 BetrAVG (Betriebsrentengesetz, company pension law) and Supreme Labour Court legislation prescribes a triennial review of pensions in payment, in line with the development of the consumer price index, limited to the increase of comparable employees’ net income as at the commencement date of pension payment. In his decision the employer has to consider his own economic situation and the concerns of the pensioner. If the economic situation is bad the employer does not have to (fully) increase pensions.

A company can avoid such increases by granting (in advance) an annual increase of at least 1 % per annum (according to law this applies only to pension promises after 1/1/1999).

If the pension scheme is financed via a direct insurance or a “Pensionskasse” the employer does not have to increase pensions in payment if it is agreed that all benefits derived by profit distribution are used to increase benefits additionally.

For so-called “Beitragszusagen mit Mindestleistung” (pension scheme where the employer pays contributions i.e. in a pension fund and guarantees the sum of contributions as a minimum benefit) there is no obligation for the sponsoring employer to increase pensions in payment.

Entitlements of deferred employees are usually not increased until the pension is in payment.
(18) What % of labour force is covered by a company sponsored benefit scheme (including sector schemes or compulsory supplementary pension schemes)? Is this different for male and female employees?

% of labour force covered by a pension scheme
(including deferred compensation):

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2003</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
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</thead>
<tbody>
<tr>
<td>male</td>
<td>39</td>
<td>47</td>
<td>53</td>
<td>53</td>
<td>54</td>
</tr>
<tr>
<td>female</td>
<td>33</td>
<td>41</td>
<td>49</td>
<td>49</td>
<td>48</td>
</tr>
<tr>
<td>total</td>
<td>38</td>
<td>45</td>
<td>52</td>
<td>52</td>
<td>52</td>
</tr>
</tbody>
</table>

The increase over the years is mainly influenced by the introduction of a legal claim for deferred compensation in 2002.

(19) How high is the average retirement pension provided by the company sponsored benefit scheme, preferably as a percentage of last yearly salary? And how is this compared to the social security retirement pension? Are there significant differences between the averages for male and female employees?

The level of the benefits provided by company sponsored benefit scheme varies enormously. According to the socioeconomic panel (SOEP) the average monthly occupational pension in 2003 was 405 EUR’s (males: 473 EUR’s, females: 313 EUR’s) (source: Deutsches Institut für Altersversorgung, DIA 2005, SOEP). Please notice that these figures do not distinguish between company and employee financed benefits.

(20) What types of financing vehicles actually exist in your country and how many? Book reserves, pension funds, pension funds that fall under article 17 of the directive on IORPS, sector funds, insurance or other financing vehicles?

Company benefit schemes are financed via book reserves (“Direktzusage”), support fund (“Unterstützungskasse”), direct insurance (“Direktversicherung”), “Pensionskasse” or pension fund.
- number of Pensionskassen: 153 (source: annual report of the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) 2008)
- number of pension funds: 27 (source: annual report of the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) 2008)
- support funds: > 1500
(21) What % of covered employees receive their benefit via these above described financing vehicles?

A survey among 500 German companies (with at least 100 employees) in autumn 2006 by Höfer Vorsorge-Management GmbH & Co. KG showed the following distribution:

<table>
<thead>
<tr>
<th>Financing Vehicle</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>book reserves</td>
<td>70 %</td>
</tr>
<tr>
<td>support fund</td>
<td>20 %</td>
</tr>
<tr>
<td>direct insurance</td>
<td>73 %</td>
</tr>
<tr>
<td>Pensionskasse</td>
<td>44 %</td>
</tr>
<tr>
<td>pension fund</td>
<td>3 %</td>
</tr>
<tr>
<td>n/a</td>
<td>4 %</td>
</tr>
</tbody>
</table>

The percentages show that many sponsoring employers use more than one financing vehicle.

Covering funds for occupational pension schemes (2007): 438.8 billion €

(22) Please provide a short summary of the accounting rules applicable to employers that provide defined benefit schemes (e.g. equal to IAS19, similar to IAS 19 but …, no provisions contributions and/or benefits paid are equal to expenses, description of other rules)

According to German Commercial Law ("Handelsgesetzbuch", HGB) companies with book reserve plans are obliged to build provisions for pension commitments after 31/12/1986. For commitments before 1987 there is an option to build provisions in the balance sheet. If the company opts not to build provisions it has to show the pension obligation in the notes.

The option to build provisions in the balance sheet also holds true for companies with defined benefit plans which are financed via a support fund, a direct insurance, a “Pensionskasse” or a pension fund. Provisions are calculated with actuarial methods considering trends and turnover. The discount rate is given by the German federal bank ("Deutsche Bundesbank"). Under certain conditions provisions can be netted with corresponding plan assets, similar to IAS 19.

If an entity is listed on the stock exchange it is obliged to follow IAS 19 rules.
(23) What is the % of the employers that report under IFRS (IAS19) or very similar accounting rules?

A survey among 500 German companies (with at least 100 employees) in autumn 2006 by Höfer Vorsorge-Management GmbH & Co. KG showed that 76% of the companies with book reserve plans or support fund plans account according to German Tax Code / German Commercial Law, 24% additionally account according to IAS/FAS.

(24) Can you provide statistics on the provisions accounted for under these rules (per employee and/or in relation to the funds in the pension fund)?

As far as we know no statistics are available.

7.3. Requirement of additional assets

(25) Which type of additional assets (above the assets covering the technical provisions) are required (plus description)?

see question (4)

(26) Are these additional assets requirements different for IORP’s that fall under article 17 of the directive (plus description)?

see question (4)

(27) When can these additional assets actually be used? e.g. when more than the expected number of employees dies in a particular period, when the employer becomes insolvent, other?

These additional assets can only be used as a “risk buffer” for the IORP. If the assets are lower than required a recovery plan has to be implemented.

(28) For multi-employer funds, can these additional assets be used in case of insolvency of any of the employers? In case of ring-fencing per employer or in case of no ring-fencing and therefore solidarity between employers?

No, the additional assets can never be used in case of the insolvency of one of the employers, but only as a risk buffer for the IORP.
(29) Can these assets return to the employer and under which conditions?

Solvency assets can never return to the employer. Exceeding assets may be used to reduce future contributions or to increase pensions in payment.

7.4. Independence of the IORP from the Sponsor

(30) To what extent can the assets be invested in the sponsor’s securities – debt or shares and to what extent is this possibility actually used?

An investment in an affiliated company, independent from the fact whether this company is a sponsor or not, is not allowed. In general the investment is restricted to 5% for any debtor. If there are more than two sponsors of a pension fund or a Pensionskasse the percentage is restricted by 15% totally.

(31) To what extent subordinated loans can be used to cover pension obligations?

No legal restriction, but the debtor has to be located in the European Economic Area (EEA).

(32) To what extent can the assets be invested in items, such as property, machines, etc. used by the sponsor for its business and to what extent is this possibility actually used?

An investment in movable objects, working capital credit and consumer credit is not allowed. An investment in properties of the sponsoring company is allowed and is performed in practice but of minor importance.

(33) To what extent can the management of the IORP be the same as the management of the sponsor? Describe the corporate governance requirements for IORPS in this respect?

Requirements for members of the executive board (“Vorstand”) and the supervisory board (“Aufsichtsrat”) according to art. 7a Versicherungsaufsichtsgesetz (Insurance Supervisory Law):

- sufficient knowledge and understanding
- follow prudent person investment principles
- must have sound internal controls, good administration and record keeping

It is allowed that members of the management are on the payroll of the sponsoring employer.

(34) To what extent can other important functions, such as the actuary, auditor and compliance officer be nominated (and possibly directly or indirectly paid) by the employer?

Appointed actuary according to art. 11a VAG, auditor and trustee (“Treuhänder”) are appointed by the supervisory board of the IORP.

The appointed actuary can be employed by the IORP or an external person.

The auditor must not be paid by the employer.
7.5. Employee representatives’ involvement in the governance of the pension scheme

(35) For IORP’s: in which case and how many employee representatives need to be part of the board or other legal body of the IORP?

In general German employee representatives have a so-called “right of co-determination in social affairs” (see Betriebsverfassungsgesetz, BetrVG). This includes the codetermination with regard to the form and administration of social institutions which are limited to the company or the affiliated group. Social institutions in this case are Pensionskassen, pension funds and support funds.

Furthermore there is a right of codetermination for all financing vehicles – especially for book reserves – with regard to the corporate salary structure including occupational pension schemes.

There is no right of codetermination with regard to the decision of the company to introduce a company sponsored pension scheme at all and with regard to the choice of the financing vehicle and the amount of money he wants to spend. But if the employer wants to introduce or change an existing pension scheme the right of codetermination applies to the distribution of the available means and to the compliance of the principals of equal treatment.

The rights of codetermination can be exercised in the committees of the social institution. It is also allowed to guarantee the right of codetermination externally if agreed between works council / union and employer.

In addition to the rights of codetermination according to BetrVG there are special regulations concerning participation of the employees or employees’ representatives in IORP’s. For support funds the conditions are ruled in the Körperschaftssteuerrecht (see KStDVO).

For Pensionskassen in the legal form of a mutual insurance company applies Par. 118 b Abs. 3 Nr. 2 VAG (see above): 50 % (at the minimum) of the highest committee shall be occupied by the insured or representatives.

For direct insurances or pension funds there are no legal regulations about the participation of the employees in the executive board or other committees of the IORP’s.

(36) Are employee representatives involved in the financing plan of the IORP and/or to what extent is their advice or decision binding?

If employee representatives are members of the committees of an IORP, they can have an influence on the financial plan of the IORP. But in most cases the employee representatives do not have the majority so that as a consequence the employer actually determines the financing principles of the IORP. The employees or their representatives are informed and can make suggestions. Usually the executive board of the IORP decides in consent of the sponsoring company.

(37) For book reserve schemes, are employee representatives involved in any way in the determination of the level of the book reserves and/or the way these book reserves are set up?

No, employees or their representatives have no right or influence on the way the book reserves are set up.
(38) Do employees need to be informed about the level of the financing of their benefits in the IORP and to what extent?

Direct insurances, Pensionskassen and pension funds have to inform the employees about the expected benefits and about the current individual funded status. For all financing vehicles applies: The employee has a legal claim against the employer about information on his vested rights and on his rights if he wants to leave the company (see par. 4a BetrAVG).

(39) Can employees or their representatives require changes in the pension scheme based on the financing level of the scheme, e.g. increases in pensions, reduction of employee contributions?

No, not really. They can make suggestions but they generally have no right to demand increases or changes that would burden the employer.

(40) What are the communication requirements to employees on supplementary pensions? Are they different in case of book reserves or in case of an IORP?

See question (38)

7.6. UNDERFUNDING OF DB SCHEMES

(41) In case of compulsory systems to which extent future generations can be asked to pay possible underfunding for the current generation? In how far the systems can operate as pay as you go?

Support funds may be underfunded and usually are underfunded if there is no reinsurance. Thus for support funds pay as you go is admissible but an underfunding has to be compensated by the sponsor.

(42) In case of underfunding of company sponsored benefit plan, should the sponsor pay the whole underfunding or can increased employee contributions be required?

“Pensionskassen” and pension funds with an insurance type guarantee are supervised by the “Bundesanstalt für Finanzdienstleistungsaufsicht” (BaFin) with power to intervene if necessary. Underfunding is not allowed. If the “Pensionskasse” or pension fund with an insurance type guarantee is not able to fulfil the pension promise the employer has to pay extra contributions or fulfil part of the obligation by himself.

If a pension fund without an insurance type guarantee is underfunded, a recovery plan has to be established which recovers the deficit at least within ten years. If the deficit is more than 10% the exceeding part of the underfunding has to be compensated immediately.

For support funds funding is not required. For direct insurances the same regulations as for Pensionskassen apply.

The sponsoring employer is always subsidiarily liable. Employee contributions in case of underfunding are not allowed.
(43) Does the sponsor have to cover underfunding before increasing contributions from employees or benefit cuts?

The employer has always to ensure the benefits promised either by additional contributions or by paying (part of) the benefits by himself.

(44) In what time delay the employer needs to pay the extra-contributions?

see question 42

(45) Is a recovery plan permitted and on how long can this recovery plan continue?

see question 42

(46) Is there any legal requirement for the actuary or any other person involved to report on the expected underfunding due to a too strict financing plan and what action can be taken by the IORP in order to change this financing plan?

The actuary has to check and to confirm that the technical reserves comply with the liability. In his report to the supervisory board he has to check the actuarial assumptions and has to give recommendations if necessary. If the IORP does not observe the actuary has to inform the supervisory authority (BaFin). In case of underfunding the IORP has to inform the sponsor and has to ask for compensation.

(47) How can the IORP enforce the sponsor to fulfil his legal duty to pay the necessary contributions?

The payment of contributions is a contractual obligation between the sponsor and the IORP. Therefore the IORP can take the same steps as for any other contractor.

(48) Should members (employees and beneficiaries) and/or employee’s representatives be informed in a situation of underfunding?

No

(49) How is this information requirement structured (individually, together with the yearly overview of the benefits, only when requested by employees, …) and what is the maximum period allowed between the date of determination of the underfunding and the information to the employees?

Not applicable

(50) Can members and/or beneficiaries or their representatives have a voice in the decision of a recovery plan?
No

(51) Are members and/or beneficiaries informed on the details of a recovery plan?

no

7.7. PRIORITY CREDITORS RIGHTS

(52) Which creditors have a higher priority on the remaining assets of the sponsor than the IORP in case of insolvency of the plan sponsor?

In case of insolvency of the sponsoring company starts a procedure that is regulated by law, the so-called insolvency proceedings. The power of attorney and the power of decision of the company are transferred to the so-called liquidator. The liquidator has to consider legal regulations which rule how and in which order the remaining assets are used. Governmental rights (e.g. Tax) or social security institutions have priority. IORP’s as well as the employees do not have any priorities.

(53) In case of insolvency of their employer what is the priority the employees have on the remaining assets of their employer (sponsor) for their supplementary pension rights in case of a book reserve scheme and possibly in case of underfunding of the IORP?

Employees generally have no priority against the liquidator (see chapter 3.8).

(54) What is the priority ex-employees, pensioners or other beneficiaries of the pension scheme have on the remaining assets of the sponsor?

There is no priority.

(55) If the employer becomes insolvent, but is an affiliate of a group of companies where the mother company is not insolvent, can the employees claim their supplementary pension rights from the mother company in case of a book reserve or in case of underfunding of the IORP?

Generally not. But if the mother company or another company has declared a suretyship or a similar contractual guarantee the employee has a claim against this company. But this is rather rare.

7.8. GUARANTEE SCHEMES

(56) Do guarantee schemes exist? If so, provide a detailed description of the schemes
Yes, there are guarantee schemes in Germany, if the sponsoring company falls into insolvency, but not for every kind of IORP. The IORPs, which are not covered, are "Pensionskassen" and direct insurance, except in some specific cases, see below.

The PENSIONS-SICHERUNGS-VEREIN mutual insurance association (PSVaG) is an institution entrusted by law with responsibility for insuring corporate pension plans against insolvency; its sole purpose is to guarantee payment of corporate old-age pension benefits in the event of insolvency under the provisions of Section Four of the company pension law (BetrAVG) in the Federal Republic of Germany and the Grand Duchy of Luxembourg.

Covered by insolvency insurance are those pension schemes for which the fulfilment of accrued corporate pension entitlements is endangered by the employer’s insolvency. These include

1. direct benefit promises, also known as direct assurances
2. indirect benefit promises through
   a) support funds,
   b) direct pension insurance plans - only for revocable entitlements or for irrevocable entitlements that have been assigned, presented as security against loans or attached – and
   c) pension funds.

On the basis of a General Agreement (art. 8, Paragraph 1, BetrAVG in conjunction with art. 2, Paragraph 2 of the statute), the PSVaG transfers old-age pension benefit payment obligations assumed as a result of the insolvency of an employer to a consortium of (currently) 54 Life Insurance companies (see list of consortium affiliates, page 20). Executive insurer of the consortium for the PSVaG is the Allianz Lebensversicherung-AG, Stuttgart.

(57) Are premiums paid by the sponsoring undertaking to the guarantee scheme risk-based?

No with the exception that the premium for pension funds is only 1/5 of the normal premium.

(58) What is the procedure to be followed for the intervention of the guarantee scheme?

The sponsoring company annually has to inform the PSVaG about the vested rights of its employees and to pay a contribution which is yearly fixed by the PSVaG according to a legally prescribed method. If the employer becomes insolvent the PSVaG informs the employees about their guaranteed entitlements. Retirees and surviving dependants get their payments directly from the PSVaG from then on. Active and deferred vested employees are informed about their expected pension. Only legally vested rights are guaranteed by the PSVaG (see above). Increases of pensions in payment are not guaranteed by the PSVaG unless an adjustment was explicitly included in the pension scheme.

(59) Are all defined benefit and book reserve schemes covered by the guarantee schemes?
No, not at all. There are exceptions depending on the financing vehicle (see above) and on the amount. Pension payments are subject to a cap (7,665 EUR per month for 2010).

(60) Are the schemes different for book reserve schemes and funded schemes? Please describe?

No. Book reserve plans as well as support funds and pension funds are fully guaranteed (except for certain limits, see above). In case of insolvency of the sponsoring company the PSVaG gets access to existing covering funds in the IORP (not book reserve).

(61) Are all benefits covered including unvested benefits and recent benefit improvements?

Unvested benefits are not covered. Pension plan improvements during the past 2 years before insolvency are not covered. If the beneficiary is the owner of the sponsoring company there is no insolvency coverage for him.

(62) Are there ceilings on the benefit coverage?

Yes, there are (see question (59)). The ceiling for monthly paid benefits depends on the reference figure according to par. 18 Sozialgesetzbuch IV. In 2010 the ceiling for monthly paid benefits is 7,665 EUR. If the benefit is paid as a lump sum, 10% of the lump sum shall not exceed the ceiling of 7,665 EUR.

(63) Will the guarantee scheme take over obligations or inject a one time payment in the IORP in case of a defined benefit scheme?

The guarantee scheme takes over obligations. With approval of BaFin pension funds may continue in fulfilling the obligation.

(64) Do the guarantee schemes have sufficient resources in e.g. time of crisis where a lot of sponsors could have solvency problems?

Funds used to cover insolvency insurance claims are acquired pursuant to art. 10 BetrAVG in the form of contributions by those employers who provide corporate pensions in accordance with one of the pension schemes which are subject to insolvency insurance. The amendments to art. 10, Paragraph 2, BetrAVG in force since 2005 require that contributions must be sufficient to cover:

- the cash value of claims to insolvency insurance benefits filed during the current calendar year (base accounting interest rate as specified in art. 65, VAG);
- the difference between the cash values of insurable entitlements to benefits resulting from insolvencies accrued as of the end of the calendar year and of the preceding year (base accounting interest rate one-third higher than that calculated for current (benefits);
- administrative and miscellaneous costs;
• payments made into a compensation fund designated by the Bundesanstalt für Finanzdienstleistungssaufsicht (Federal Agency for Financial Services Supervision) and
• payments to a loss reserve account pursuant to art. 37, VAG.

Capitalized values and payable pensions as well as insurable pension entitlements were financed in the respective year of insolvency from contributions received by the PSVaG. The amounts required are calculated at the end of each year and prorated to all contributing employers. A characteristic feature of this process is the fact that contribution rates reflect differences in claims volumes from one year to another; consequently, an increase in the volume of claims results in an increase in assessed contributions, while a reduction in claims volume leads to lower contribution rates.

In addition to the previously existing option of drawing from the compensation fund, which requires the consent of the regulatory authority, Art. 10, Paragraph 2, Sentence 5, BetrAVG provides another instrument to be used for the purpose of levelling contribution peaks. According to this provision, the portion of required annual contributions which exceeds those of the preceding year can be distributed over the four following years.

7. 9. Any other measures

Are there any other measures (not covered above) that contribute to the protection of the interests of the employees or ex-employees and their beneficiaries in case of insolvency and/or disappearance of the sponsoring employer?

Yes, there are:
One possibility to provide the (former) employee and his dependents or a trust institution with priority claims by contractual agreements.

This can be priority rights which refer to a certain asset (pledging of an object (e.g. a machine or an investment portfolio) or a claim (e.g. of a reinsurance contract)) and have to be agreed upon in an individual contract. That is why it is generally used for the protection of individual pension promises for example for members of the management or other employees that are not covered by the statutory guarantee scheme.

For the protection of bigger working forces the setting up of CTA’s (Contractual trust arrangements) has become popular in Germany. A CTA is a contractual agreement between the employer and an independent legal entity. The CTA gets covering funds from the employer to be used for the beneficiaries in case of the insolvency of the employer. The employees get a legal claim against the CTA but only in case of insolvency of the sponsoring employer.

A CTA is a no IORP and is not covered by the pensions directive. CTA’s are very popular in Germany. Nevertheless employers have to pay contributions to the PSVaG.
(66) Are there proposals for changing the measures already taken and what are they? When are they expected to be implemented?

There are discussions regarding the existing guarantee scheme because it is not risk oriented. About 6.5% of the companies that are mandatory members of the PSVaG, pay about 90% of the contributions. But these discussions are not subject of considerations of the legislation. Quite the contrary is the case. Especially in the financial crisis in 2009 and the current economic situation have shown that the existing guarantee scheme works well. There are no changes expected for the short term.

(67) Please describe the views of the social partners on the effectiveness of the measures taken to protect the rights of the beneficiaries of company sponsored benefit plans in case of insolvency of the employer and/or the IORP (if publicly available or made available in an interview)

The existing guarantee scheme (PSVaG) is well appreciated by the social partners. The current financial and economic crisis has given rise to a discussion about risk-oriented contributions again, but the system in principle is not called into question. From employees’ and the unions’ point of view the proved system should be maintained.

(68) Is there evidence that the overall outcome of one of the specific systems operated in your country, provides inadequate protection for the rights of the beneficiaries of company sponsored benefit plans?

There is only one system in Germany (PSVaG) and this is providing adequate protection.

(69) Is there evidence of how specific systems operated in your country proactively deal with different risks and improve risk management?

The premium does not depend on the insolvency risk of the employer and therefore a discussion about this issue exists.

7. 10. Your assessment

(70) Please describe the shortcomings of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the sponsor and/or the IORP. If there are in your opinion no shortcomings, please explain

For book reserves, support funds and pension funds there is the insolvency risk of the employer and this risk is covered by the system. Pensionskasse and direct insurance are seen - due to the regulation - to be able to fulfil the attained claim without future contributions. Thus pension plans financed by these two instruments are not covered by the system.
(71) Please describe your suggestions for improvement of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the employer and/or the IORP and describe the possible additional costs for these improvements and the possible risks that employers may decide to downsize or close defined benefit arrangements?
8. **Greece**

### Main Findings

- No protection exists for the Retirement Indemnities and non-quoted companies even do not have book reserves for these benefits. On the other hand these benefits do not vest, so the employees leaving the employer before retirement are protected in the same way as employees made redundant for whatever reasons or employees loosing their job due to insolvency of the employer.
- Apart from the compulsory Retirement Indemnities, occupational pensions need to be financed externally.
- Pension funds need to be funded in accordance with the actuarial report and assets covering the technical provisions calculated need to be held. Recovery plans are allowed.
- No guarantee scheme exists
- Vesting of benefits is not required but can be regulated in the pension plan rules
- Yearly information on the financial situation of the IORP’s together with a benefit statement is provided.

### 8.1. Description of the Legal Framework

1. **Which kind of IORPs can be used to finance pension schemes (insurance companies, national funds, company pension fund, multi-employer fund, sector pension fund, other kinds of entities created to finance pensions)?**

   In Greece, Law 2112 provides for a Retirement Indemnity to all retiring personnel. That is the only obligatory defined benefit, but it does not create accrual tax relief to the employer until the benefit is payable. For these plans, employers usually do not have book reserves, only companies applying IFRS have book reserves but the IFRS accrual is not tax-deductible.
   
   For the same tax non-deductibility, book reserve plans do not exist.
   
   On the contrary, insurance companies and occupational (sector) funds create tax relief to employers and are the only option.
   
   The IORPs used so far are: Deposit Administration Funds (insurance companies) and occupational pension funds.

2. **What are the minimum funding requirements for each of these kind of IORP’s and are there minima for book reserves?**

   There are no minima and there are no book reserves.
(3) Is there a legal obligation to subscribe to external (solvency) guarantees? And what are these guarantees for each kind of IORP and for book reserves schemes?

There is no such obligation.

(4) Does separate legislation on solvency exist for IORP’s falling under article 17 of the directive (plus a description)? Article 17 concerns IORP’s that take themselves the biometric risks and/or guarantee benefits, in case of insufficiency these IORP’s cannot claim supplementary contributions or reduce the benefits. How much of the IORP’s (as a percentage) are falling under article 17?

There is no legislation pertaining to the solvency of the Retirement Indemnity benefit. There is, however, legislation requiring solvency margin for the occupational pension funds and the insurance companies administering DAFs. There are no public statistics available on the number of IORPs falling under article 17.

(5) Is the provision of company sponsored employee benefits compulsory for the employers and to which extent?

The provision of company-sponsored employee benefits is strictly voluntary.

(6) Does the legislation provide for minimum vested rights if an employee leaves before retirement? Is this legislation different for the different funding systems or book reserves?

There are no obligatory vested rights.

(7) Is there legislation that requires that ex-employees and pensioners are treated the same as active employees (plus a description)?

There is no such legislation.

(8) Is there legislation on the increase in benefits during payment or the deferred period (plus a description)?

Any indexation or other increase in benefits is discretionary.

(9) Is there legislation that allows to reduce accrued pension rights in case of underfunding?

For occupational plans, Ministerial Decree 16 (17/4/2003) provides for actuarial valuations that determine the adequacy of reserves and the level of benefits, including reduction of accrual. For DAF plans, the policy provides the same safety net.

(10) Can benefits be paid in the form of a lump sum and to what extent?

Any level of benefit can be paid in a lump sum.
(11) Which kind of beneficiaries have priority rights on the assets of the IORP (pensioners, ex-employees, other beneficiaries, employees) and to what extent? Please describe the priority rules?

All potential beneficiaries have the same priority rights.

(12) In case of book reserves, which kind of beneficiaries have priority rights on the assets of the employer (pensioners, ex-employees, other beneficiaries, employees) and to what extent? Please describe the priority rules?

If book reserves applied, the same priority rights would be applicable to all beneficiaries.

(13) Has the country applied art. 4 of the Directive? If yes, comment on differences between pension insurer’s and IORP’s throughout all questions.

Greece has not applied Art. 4 of the Directive yet, and it is not known when it will.

(14) Has the country applied article 5 on small pension institutions of the Directive? If yes, how much (in percentage) beneficiaries are affiliated to these small pension institutions?

Only DA funds have the right to cover less than 100 persons, while occupational funds (law 3029/2002 article 7, paragraph 3) require more than 100 persons. Article 5 is not applied yet.

8.2. OVERVIEW OF DB AND BR SCHEMES

(15) What kind of company sponsored benefit schemes are provided? Defined benefit schemes, Defined contribution schemes, Cash balance schemes and other schemes (plus description)?

The compulsory Retirement Indemnity is a Defined Benefit and it applies to all private employers. The voluntary DA funds are in majority Defined Contribution plans and the trend of the marketplace is that the remaining DB plans are gradually switching over to DC plans.

(16) What % of covered employees benefit from the different type of schemes described in the previous question? Is this different for male and female employees?

Even though there are no official statistics, a good estimate is that 90% of newly insured personnel are covered under DC pension plans.
(17) Are pensions in payment or deferred increased? Is this increase conditional? What are the conditions?

If the pensioner elects a pension instead of a lump sum, the conversion formula usually includes an increase, but there is no law against it.

(18) What % of labour force is covered by a company sponsored benefit scheme (including sector schemes or compulsory supplementary pension schemes)? Is this different for male and female employees?

There are no public or known statistics on the percentage of covered employees. There is no difference between male and female employees.

(19) How high is the average retirement pension provided by the company sponsored benefit scheme, preferably as a percentage of last yearly salary? And how is this compared to the social security retirement pension? Are there significant differences between the averages for male and female employees?

The DB plans that exist usually provide around 70% of the last yearly salary over the social security pensionable salary. The social security pension is 70% of pensionable salary which has a ceiling (currently at €2,435 for insureds before 1993 and €5,545 for insureds after 1993). There is no difference in benefits between men and women.

(20) What types of financing vehicles actually exist in your country and how many? Book reserves, pension funds, pension funds that fall under article 17 of the directive on IORPS, sector funds, insurance or other financing vehicles?

Insurance companies and sector (occupational) funds are the main financing vehicles used because they are the only ones with tax exemptions.

(21) What % of covered employees receives their benefit via these above described financing vehicles?

All covered employees receive their benefits through the vehicle that carries their plan.

(22) Please provide a short summary of the accounting rules applicable to employers that provide defined benefit schemes (e.g. equal to IAS19, similar to IAS 19 but ..., no provisions contributions and/or benefits paid are equal to expenses, description of other rules)

All private companies and insurance companies use the Greek General Accounting Principle which reports income and expenses without provisions. The only exception to the above are the companies and their subsidiaries inducted into the Athens Stock Exchange, which are required to use IAS19.

(23) What is the % of the employers that report under IFRS (IAS19) or very similar accounting rules?

There are under 500 companies that belong to the Athens Stock Exchange and several thousands that don’t.
(24) Can you provide statistics on the provisions accounted for under these rules (per employee and/or in relation to the funds in the pension fund)?

There is no public information (bulletin or other) that contains any provision statistics.

8.3. Requirement of additional assets

(25) Which type of additional assets (above the assets covering the technical provisions) is required (plus description)?

The solvency margin is required for insurance companies and for occupational funds providing a guarantee. No other type of additional asset is required.

(26) Are these additional assets requirements different for IORP’s that fall under article 17 of the directive (plus description)?

There is no difference between assets of IORPs under art.17 than others.

(27) When can these additional assets actually be used? e.g. when more than the expected number of employees dies in a particular period, when the employer becomes insolvent, other?

They can be used for any deviation from the expected risk.

(28) For multi-employer funds, can these additional assets be used in case of insolvency of any of the employers? In case of ring-fencing per employer or in case of no ring-fencing and therefore solidarity between employers?

Although, following legislation, multi-employer funds are allowed, there are no multi-employer funds in Greece.

(29) Can these assets return to the employer and under which conditions?

These additional assets can return to the employer only in case of dismantling of the fund. There are no examples of this in the past and there is no law specifying it. It has to be addressed in the by-laws of each occupational fund.
8.4. INDEPENDENCE OF THE IORP FROM THE SPONSOR

(30) To what extend can the assets be invested in the sponsor’s securities – debt or shares and to what extend is this possibility actually used?

It is not permitted to invest in the sponsor’s securities.

(31) To what extend subordinated loans can be used to cover pension obligations?

In order to cover an insurance company’s total solvency margin, publicly issued subordinated loans can be used for up to 50% of the difference between the required and the available solvency margin.

(32) To what extend can the assets be invested in items, such as property, machines, etc. used by the sponsor for its business and to what extend is this possibility actually used?

It is not permitted to invest in the sponsor’s business property or possessions.

(33) To what extend can the management of the IORP be the same as the management of the sponsor? Describe the corporate governance requirements for IORPs in this respect?

There is no law regulating the appointment of the IORP’s management, so it is allowed.

(34) To what extend can other important functions, such as the actuary, auditor and compliance officer be nominated (and possibly directly or indirectly paid) by the employer?

There is no law regulating the appointment of the IORP’s controlling bodies. Every decision, however, must be approved by the National Actuarial Authority, an independent supervisory body in existence since 2003.

8.5. EMPLOYEE REPRESENTATIVES’ INVOLVEMENT IN THE GOVERNANCE OF THE PENSION SCHEME

(35) For IORP’s: in which case and how many employee representatives need to be part of the board or other legal body of the IORP?

These matters are regulated in the IORP’s by-laws.

(36) Are employee representatives involved in the financing plan of the IORP and/or to what extend is their advice or decision binding?

These matters are regulated in the IORP’s by-laws. Usually employee representatives participate in these bodies.
(37) For book reserve schemes, are employee representatives involved in any way in the determination of the level of the book reserves and/or the way these book reserves are set up?

Not applicable, since book reserves do not exist.

(38) Do employees need to be informed about the level of the financing of their benefits in the IORP and to what extend?

Law 3029/2002 requires that employees get information yearly, after the close of the fiscal year.

(39) Can employees or their representatives require changes in the pension scheme based on the financing level of the scheme, e.g. increases in pensions, reduction of employee contributions?

Anyone with a stake in the scheme can request changes.

(40) What are the communication requirements to employees on supplementary pensions? Are they different in case of book reserves or in case of an IORP?

Law 3029/2002 requires that employees get information yearly, after the close of the fiscal year.

8. 6. UNDERFUNDING OF DB SCHEMES

(41) In case of compulsory systems to which extent future generations can be asked to pay possible underfunding for the current generation? In how far the systems can operate as pay as you go?

The only compulsory system is the Retirement Indemnity, which operates as a pay-as-you-go system.

(42) In case of underfunding of company sponsored benefit plan, should the sponsor pay the whole underfunding or can increased employee contributions be required?

This depends on the contract or by-laws, but usually only the employer is responsible for any deficit.

(43) Does the sponsor have to cover underfunding before increasing contributions from employees or benefit cuts?

There is no law regulating this issue.

(44) In what time delay the employer needs to pay the extra-contributions?

Whoever reports using IFRS is obliged to cover the underfunding by the close of the fiscal year, except for the allowable corridor.
(45) Is a recovery plan permitted and on how long can this recovery plan continue?

A recovery plan is always permitted, its length, however, is discretionary.

(46) Is there any legal requirement for the actuary or any other person involved to report on the expected underfunding due to a too strict financing plan and what action can be taken by the IORP in order to change this financing plan?

The actuary is obliged to report any underfunding or other irregularities and any necessary measures to rectify the situation will be taken by the IORP.

(47) How can the IORP enforce the sponsor to fulfil his legal duty to pay the necessary contributions?

The contract or by-laws describe the legal actions available to enforce payment.

(48) Should members (employees and beneficiaries) and/or employee’s representatives be informed in a situation of underfunding?

The yearly information requirement includes any underfunding issues. In special cases the members are informed in extraordinary assembly.

(49) How is this information requirement structured (individually, together with the yearly overview of the benefits, only when requested by employees, …) and what is the maximum period allowed between the date of determination of the underfunding and the information to the employees?

The yearly overall information must follow the closing of the fiscal year. The timing is discretionary, but must be reasonable.

(50) Can members and/or beneficiaries or their representatives have a voice in the decision of a recovery plan?

Most IORP’s contracts or by-laws provide for annual assemblies, where everyone has a voice about any subject.

(51) Are members and/or beneficiaries informed on the details of a recovery plan?

They are always informed.
8. 7. PRIORITY CREDITORS RIGHTS

(52) Which creditors have a higher priority on the remaining assets of the sponsor than the IORP in case of insolvency of the plan sponsor?

Only obligations to the state and direct salaries have a higher priority on the remaining assets of the plan sponsor.

(53) In case of insolvency of their employer what is the priority the employees have on the remaining assets of their employer (sponsor) for their supplementary pension rights in case of a book reserve scheme and possibly in case of underfunding of the IORP?

The employees and the IORP have the same priority, so the previous answer applies.

(54) What is the priority ex-employees, pensioners or other beneficiaries of the pension scheme have on the remaining assets of the sponsor?

All vested benefits are part of the IORP, so the previous answer applies.

(55) If the employer becomes insolvent, but is an affiliate of a group of companies where the mother company is not insolvent, can the employees claim their supplementary pension rights from the mother company in case of a book reserve or in case of underfunding of the IORP?

There is no law denying the employees the right to claim their supplementary pension by legal means from the mother company.

8. 8. GUARANTEE SCHEMES

(56) Do guarantee schemes exist? If so, provide a detailed description of the schemes.

There is no legislation providing for the formation of guarantee schemes. The only guarantees that protect the retirement rights of employees are the solvency margins in the case of sector (occupational) funds plus the reserves and the reserves in the case of an insurance company DA Fund.

(57) Are premiums paid by the sponsoring undertaking to the guarantee scheme risk-based?

There are no premiums, since there are no schemes.
(58) **What is the procedure to be followed for the intervention of the guarantee scheme?**

In the event of insolvency of a sponsor, the management together with a committee of employee representatives distribute the available monies to all beneficiaries proportionately according to the individual reserves (in case of a guaranteed technical interest rate), or according to the individual accrued benefit (or the present value of the projected benefit) (in case of DB plans). This procedure is prescribed by law but the extra protection of a guarantee scheme does not exist.

(59) **Are all defined benefit and book reserve schemes covered by the guarantee schemes?**

The previously described procedure applies.

(60) **Are the schemes different for book reserve schemes and funded schemes? Please describe?**

Book reserve schemes do not exist.

(61) **Are all benefits covered including unvested benefits and recent benefit improvements?**

Only vested benefits are covered by the above procedure.

(62) **Are there ceilings on the benefit coverage?**

Non-applicable.

(63) **Will the guarantee scheme take over obligations or inject a one time payment in the IORP in case of a defined benefit scheme?**

Non-applicable.

(64) **Do the guarantee schemes have sufficient resources in e.g. time of crisis where a lot of sponsors could have solvency problems?**

Non-applicable.
8. 9. ANY OTHER MEASURES

(65) Are there any other measures (not covered above) that contribute to the protection of the interests of the employees or ex-employees and their beneficiaries in case of insolvency and/or disappearance of the sponsoring employer?

No other measures.

(66) Are their proposals for changing the measures already taken and what are they? When are they expected to be implemented?

Not applicable.

(67) Please describe the views of the social partners on the effectiveness of the measures taken to protect the rights of the beneficiaries of company sponsored benefit plans in case of insolvency of the employer and/or the IORP (if publicly available or made available in an interview).

Not available.

(68) Is there evidence that the overall outcome of one of the specific systems operated in your country, provides inadequate protection for the rights of the beneficiaries of company sponsored benefit plans?

No evidence so far.

(69) Is there evidence of how specific systems operated in your country proactively deal with different risks and improve risk management?

No evidence so far.

8. 10. YOUR ASSESSMENT

(70) Please describe the shortcomings of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the sponsor and/or the IORP. If there are in your opinion no shortcomings, please explain.

So far, in Greece pensions have been closely connected to social security. Union representatives hardly discussed any other benefits for fear of losing or replacing vested rights. This might be one of the main reasons for the minimal inception of occupational funds.

As concerns the DA funds, where employers assign the obligation to insurance companies, they came into existence mainly to motivate employees’ longevity with their employer and to provide some extra compensation.
The legislation dealing with the sector (occupational) funds can certainly be improved and completed, which will definitely happen in time as experience grows.

Until now there is no official decision for new or amended regulations. However, after the latest developments in social security, the need will arise to take action in all directions, since workers will have to find other ways to increase their pension.

There are various important topics that have not been addressed yet by the legislation, but they should be.

Some basic ones are:

- Employer’s insolvency resulting in the default of the Retirement Indemnity
- The formation of an industry-wide Guarantee Fund
- Minimum Guarantee Funds per sponsor
- Risk Management
- The definition of groups that can start an occupational Fund (L.3029/2002 art.7 par.3)
- General rules and control mechanisms for the obligations and the assets of DA funds as well as of Retirement Indemnity provisions
- Vetting of all prospects for Chairman of the Board of occupational Funds.

Some topics might be dealt with in the by-laws that will be checked and approved by the Greek National Actuarial Authority.

(71) Please describe your suggestions for improvement of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the employer and/or the IORP and describe the possible additional costs for these improvements and the possible risks that employers may decide to downside or close defined benefit arrangements?
9. Iceland

Main Findings

- Occupational pensions for employees in the private sector are always in the form of defined contribution plans and need to be financed externally via an IORP or via insurance undertakings. The rights of the employees are limited to the rights he/she can claim on the IORP in which his/her pension rights are financed.
- Employees in the public sector have defined benefit plans financed via pension funds that are underfunded. However the state or other public authority are finally guaranteeing the pension benefits.
- IORP’s for occupational pensions for employees in the private sector are subject to control and in principle, assets covering technical provisions calculated in a prudent way need to be available. However, currently many pension funds are underfunded and no measures are temporarily taken.
- No guarantee scheme exists
- Benefits vest after 2 years of service
- In case IORP’s are underfunded they can reduce the rights of the members of the plans.
- Yearly information on the financial situation of the IORP’s is provided on request. Yearly benefit statements are provided.

9.1. Description of the Legal Framework

(1) Which kind of IORPs can be used to finance pension schemes (insurance companies, national funds, company pension fund, multi-employer fund, sector pension fund, other kinds of entities created to finance pensions)?

- commercial banks, savings banks and securities undertakings, as provided for in the Act on Financial Undertakings;
- life insurance companies, as provided for in the Act on Insurance Activities;
- pension funds

(2) What are the minimum funding requirements for each of these kind of IORP’s and are there minima for book reserves?

- A pension fund shall be fully funded. However a deficit up till 10 % for one year or a deficit up till 5 % for 5 years may be accepted
- According to a temporary provision to the Pension Act (129/1997) the 10% limit is 15% for the year 2009 and 2010 and the 5% limit is 10%.
- Book reserves are not allowed
(3) Is there a legal obligation to subscribe to external (solvency) guarantees? And what are these guarantees for each kind of IORP and for book reserves schemes?

No

(4) Does separate legislation on solvency exist for IORP's falling under article 17 of the directive (plus a description)? Article 17 concerns IORP's that take themselves the biometric risks and/or guarantee benefits, in case of insufficiency these IORP's cannot claim supplementary contributions or reduce the benefits. How much of the IORP's (as a percentage) are falling under article 17?

No

(5) Is the provision of company sponsored employee benefits compulsory for the employers and to which extent?

Yes, the employer shall contribute to a defined contribution scheme

(6) Does the legislation provide for minimum vested rights if an employee leaves before retirement? Is this legislation different for the different funding systems or book reserves?

Yes (1997:129, article 19)

(7) Is there legislation that requires that ex-employees and pensioners are treated the same as active employees (plus a description)?

Yes

(8) Is there legislation on the increase in benefits during payment or the deferred period (plus a description)?

Yes, payments shall be indexed in accordance with changes to the consumer price index (1997:129, article 14)

(9) Is there legislation that allows to reduce accrued pension rights in case of under funding?

Yes

(10) Can benefits be paid in the form of a lump sum and to what extend?

It is possible to pay lump sum if the amount is very low
(11) Which kind of beneficiaries have priority rights on the assets of the IORP (pensioners, ex-employees, other beneficiaries, employees) and to what extend? Please describe the priority rules?

No beneficiaries have any priority rights.

(12) In case of book reserves, which kind of beneficiaries have priority rights on the assets of the employer (pensioners, ex-employees, other beneficiaries, employees) and to what extent? Please describe the priority rules?

Not applicable.

(13) Has the country applied article 4 of the Directive? If yes, comment on differences between pension insurer’s and IORP’s throughout all questions.

No.

(14) Has the country applied article 5 on small pension institutions of the Directive? If yes, how much (in percentage) beneficiaries are affiliated to these small pension institution?

No.

9.2. Overview of DB and BR Schemes

(15) What kind of company sponsored benefit schemes are provided? Defined benefit schemes, Defined contribution schemes, Cash balance schemes and other schemes (plus description)?

Defined contribution schemes.

Observation: LSR, the Pension Fund for State Employees, and number of other smaller pension funds for public employees (i.e. employees of municipalities) acquire DB, i.e. the members of the pension funds does not bear the investment risk.

(16) What % of covered employees benefit from the different type of schemes described in the previous question? Is this different for male and female employees?

All employees in the private sector are covered by a defined contribution scheme.

(17) Are pensions in payment or deferred increased? Is this increase conditional? What are the conditions?

Yes, payments shall be indexed in accordance with changes to the consumer price index (1997:129, article 14).
(18) What % of labour force is covered by a company sponsored benefit scheme (including sector schemes or compulsory supplementary pension schemes)? Is this different for male and female employees?

All employees are covered by a defined contribution scheme.

(19) How high is the average retirement pension provided by the company sponsored benefit scheme, preferably as a percentage of last yearly salary? And how is this compared to the social security retirement pension? Are there significant differences between the averages for male and female employees?

The target level for a defined contribution scheme is 56% of average salary.

(20) What types of financing vehicles actually exist in your country and how many? Book reserves, pension funds, pension funds that fall under article 17 of the directive on IORPS, sector funds, insurance or other financing vehicles?

Pension funds.

(21) What % of covered employees receive their benefit via these above described financing vehicles?

All employees are covered by a defined contribution scheme.

(22) Please provide a short summary of the accounting rules applicable to employers that provide defined benefit schemes (e.g. equal to IAS19, similar to IAS 19 but ..., no provisions contributions and/or benefits paid are equal to expenses, description of other rules).

Larger Icelandic companies are generally expected to follow IFRS standards.

(23) What is the % of the employers that report under IFRS (IAS19) or very similar accounting rules?

Not available.

(24) Can you provide statistics on the provisions accounted for under these rules (per employee and/or in relation to the funds in the pension fund)?

No.
9.3. Requirement of additional assets

(25) Which type of additional assets (above the assets covering the technical provisions) are required (plus description) ?

- A pension fund shall be fully funded. However a deficit up till 15% for one year or a deficit up till 5% for 5 years may be accepted
- According to a temporary provision to the Pension Act (129/1997) the 10% limit is 15% for the year 2009 and the 5% limit is 10%.

(26) Are these additional assets requirements different for IORP’s that fall under article 17 of the directive (plus description) ?

Not applicable

(27) When can these additional assets actually be used? e.g. when more than the expected number of employees dies in a particular period, when the employer becomes insolvent, other?

Not applicable

(28) For multi-employer funds, can these additional assets be used in case of insolvency of any of the employers? In case of ring-fencing per employer or in case of no ring-fencing and therefore solidarity between employers?

Not applicable

(29) Can these assets return to the employer and under which conditions?

Not applicable

9.4. Independence of the IORP from the sponsor

(30) To what extent can the assets be invested in the sponsor’s securities – debt or shares and to what extent is this possibility actually used?

Total assets of a pension fund in securities issued on a regulated market by the same party or parties belonging to the same group may not comprise more than 10% of the net assets of the fund

(31) To what extend subordinated loans can be used to cover pension obligations?
A maximum of 5% of the net assets of the fund

(32) To what extent can the assets be invested in items, such as property, machines, etc. used by the sponsor for its business and to what extent is this possibility actually used?

Direct investments in real estate is prohibited

(33) To what extent can the management of the IORP be the same as the management of the sponsor? Describe the corporate governance requirements for IORPS in this respect?

It is the task of the board of directors to hire the managing director (1997:129, article 29)

(34) To what extent can other important functions, such as the actuary, auditor and compliance officer be nominated (and possibly directly or indirectly paid) by the employer?

It is the task of the board of directors to hire a director of auditing or reach an agreement with an independent supervisory party (1997:129, article 29)

It is the task of the board of directors to have an actuarial assessment carried out of the fund’s financial situation (1997:129, article 23). The Ministry of Finance issues the regulation for actuarial valuations.

9.5. Employee representatives’ involvement in the governance of the pension scheme

(35) For IORP’s: in which case and how many employee representatives need to be part of the board or other legal body of the IORP?

The number of directors and their election shall be stated in the Articles of Association (1997:129, article 27)

(36) Are employee representatives involved in the financing plan of the IORP and/or to what extent is their advice or decision binding?

In their capacity as board members

(37) For book reserve schemes, are employee representatives involved in any way in the determination of the level of the book reserves and/or the way these book reserves are set up?

Not applicable
(38) Do employees need to be informed about the level of the financing of their benefits in the IORP and to what extent?

The audited annual accounts shall be accessible to fund members (1997:129, article 43)

(39) Can employees or their representatives require changes in the pension scheme based on the financing level of the scheme, e.g. increases in pensions, reduction of employee contributions?

- In their capacity as board members
- By collective bargaining

(40) What are the communication requirements to employees on supplementary pensions? Are they different in case of book reserves or in case of an IORP?

A pension fund shall send a statement of contributions and no less frequently than once each year, send information on earned and projected pension entitlements of pension fund members, on the operation and financial situation of the fund and changes to its by-laws. The same information shall be sent to pension fund members who have reached pension age (1997:129, article 18)

A member of a pension fund has access to his own information in the fund register (1997:129)

9.6. UNDERFUNDING OF DB SCHEMES

(41) In case of compulsory systems to which extent future generations can be asked to pay possible underfunding for the current generation? In how far the systems can operate as pay as you go?

No solidarity between generations is possible

(42) In case of underfunding of company sponsored benefit plan, should the sponsor pay the whole underfunding or can increased employee contributions be required?

Only defined contribution schemes exist and no supplementary contributions can be required.

(43) Does the sponsor have to cover underfunding before increasing contributions from employees or benefit cuts?

No

(44) In what time delay the employer needs to pay the extra-contributions?
(45) Is a recovery plan permitted and on how long can this recovery plan continue?

Underfunding can exist for a while and in the end benefits will be reduced if necessary.

(46) Is there any legal requirement for the actuary or any other person involved to report on the expected underfunding due to a too strict financing plan and what action can be taken by the IORP in order to change this financing plan?

The actuary has to calculate the technical provisions and send his yearly report to the authorities.

(47) How can the IORP enforce the sponsor to fulfil his legal duty to pay the necessary contributions?

Normal contract law and article 18 of the pensions act.

(48) Should members (employees and beneficiaries) and/or employee’s representatives be informed in a situation of underfunding?

The beneficiaries need to be informed yearly of their pension rights.

(49) How is this information requirement structured (individually, together with the yearly overview of the benefits, only when requested by employees, …) and what is the maximum period allowed between the date of determination of the underfunding and the information to the employees?

Not applicable

(50) Can members and/or beneficiaries or their representatives have a voice in the decision of a recovery plan?

Not applicable

(51) Are members and/or beneficiaries informed on the details of a recovery plan?

Not applicable
9. 7. **Priority creditors rights**

(52) Which creditors have a higher priority on the remaining assets of the sponsor than the IORP in case of insolvency of the plan sponsor?

Contributions to pension funds have the same priority as salaries and an Act on a Wage Guarantee Fund for Bankruptcies exists.

(53) In case of insolvency of their employer what is the priority the employees have on the remaining assets for their supplementary pension rights in case of a book reserve scheme and possibly in case of underfunding of the IORP?

None, if all contributions have been paid.

(54) What is the priority ex-employees, pensioners or other beneficiaries of the pension scheme have on the remaining assets of the sponsor?

None.

(55) If the employer becomes insolvent, but is an affiliate of a group of companies where the mother company is not insolvent, can the employees claim their supplementary pension rights from the mother company in case of a book reserve or in case of underfunding of the IORP?

No.

9. 8. **Guarantee schemes**

In Iceland no guarantee schemes exist.

(56) Do guarantee schemes exist? If so, provide a detailed description of the schemes.

(57) Are premiums paid by the sponsoring undertaking to the guarantee scheme risk-based?

(58) What is the procedure to be followed for the intervention of the guarantee scheme?

(59) Are all defined benefit and book reserve schemes covered by the guarantee schemes?

(60) Are the schemes different for book reserve schemes and funded schemes? Please describe?

(61) Are all benefits covered including unvested benefits and recent benefit improvements?

(62) Are there ceilings on the benefit coverage?

(63) Will the guarantee scheme take over obligations or inject a one time payment in the IORP in case of a defined benefit scheme?
(64) Do the guarantee schemes have sufficient resources in e.g. time of crisis where a lot of sponsors could have solvency problems?

9. ANY OTHER MEASURES

(65) Are there any other measures (not covered above) that contribute to the protection of the interests of the employees or ex-employees and their beneficiaries in case of insolvency and/or disappearance of the sponsoring employer?

Not applicable

(66) Are their proposals for changing the measures already taken and what are they? When are they expected to be implemented?

Not applicable

(67) Please describe the views of the social partners on the effectiveness of the measures taken to protect the rights of the beneficiaries of company sponsored benefit plans in case of insolvency of the employer and/or the IORP (if publicly available or made available in an interview)

Not applicable

(68) Is there evidence that the overall outcome of one of the specific systems operated in your country, provides inadequate protection for the rights of the beneficiaries of company sponsored benefit plans?

Yes, pension schemes are generally underfunded

(69) Is there evidence of how specific systems operated in your country proactively deal with different risks and improve risk management?

No

9.10 YOUR ASSESSMENT

(70) Please describe the shortcomings of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the sponsor and/or the IORP. If there are in your opinion no shortcomings, please explain
Pension schemes are generally underfunded

(71) Please describe your suggestions for improvement of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the employer and/or the IORP and describe the possible additional costs for these improvements and the possible risks that employers may decide to downside or close defined benefit arrangements?

No suggestions
10. IRELAND

MAIN FINDINGS

- Occupational pensions need to be financed externally via an IORP
- IORP’s are subject to control and assets covering technical provisions calculated in a prudent way need to be available, however recovery plans are allowed and can take a fairly long period
- Benefits vest after 2 years
- A Pension Insolvency Payment Scheme exists that takes over the liabilities for pensioners of a scheme that is winding up due to the insolvency of the employer. The liabilities are only the liabilities for pensions in payment and up to the value of the assets that can be transferred to the Pension Insolvency Payment Scheme.
- Limited measures exist to improve the situation for employees’ and ex-employees benefits in the event of the IORP being underfunded and the employer being insolvent. The effectiveness of these measures in improving the situation for employees’ and ex-employees, and to a lesser extent pensioners, is very much scheme-specific however.
- Yearly information on the financial situation of the IORP’s together with a benefit statement is provided.

10.1. DESCRIPTION OF THE LEGAL FRAMEWORK

(1) Which kind of IORPs can be used to finance pension schemes (insurance companies, national funds, company pension fund, multi-employer fund, sector pension fund, other kinds of entities created to finance pensions) ?

Private Sector Company Pension Funds (Defined Benefit, defined contribution, Hybrid DB/DC)
Insurance Companies (Personal Retirement Bonds (PRBs), Personal Retirement Savings Accounts (PRSAs).
Multi-employer funds (the most important being the Construction Industry Fund)
The Civil Service is the biggest employer in the country and most civil servants working in the State or Semi-State sectors are members of Defined Benefit Plans.
Most private sector schemes and some public sector schemes are set up under trust.

(2) What are the minimum funding requirements for each of these kind of IORP’s and are there minima for book reserves ?

There is a statutory minimum funding standard for private sector defined benefit schemes. This assumes that pensions are bought out with a life insurance company at prevailing market rates and that active and deferred members’ benefits are valued on a basis which is prescribed by the Society of Actuaries in Ireland. (See Appendices for details ASP PEN-3?)
No Minimum applies for Defined Contribution Plans, PRBs or PRSAs.
No pre-funding is made for State pensions (other than the National Pensions Reserve Fund) but some semi-State companies do pre-fund (although recently the State has taken over the assets and liabilities of the universities sector).

Virtually no book reserve schemes exist in Ireland because tax-exempt status is only granted to schemes which pre-fund for pension liabilities.

(3) Is there a legal obligation to subscribe to external (solvency) guarantees? And what are these guarantees for each kind of IORP and for book reserves schemes?

No legal obligations exist by way of Pension Law. Trust deeds do not typically have explicit obligation for employer to make up funding deficit on termination of scheme. Trustees’ right to recover underfunding (as opposed to outstanding contributions) not yet tested in law.

(4) Does separate legislation on solvency exist for IORP’s falling under article 17 of the directive (plus a description)? Article 17 concerns IORP’s that take themselves the biometric risks and/or guarantee benefits, in case of insufficiency these IORP’s cannot claim supplementary contributions or reduce the benefits. How much of the IORP’s (as a percentage) are falling under article 17?

To our knowledge no schemes exist in Ireland which fall under article 17 of the directive.

(5) Is the provision of company sponsored employee benefits compulsory for the employers and to which extent?

No, employers need not provide or contribute to an employee’s pension provision arrangement. However, if there is no employer sponsored scheme, employers must provide the facility to deduct weekly/monthly pension contributions from employees’ pay and to pass those contributions on to a personal pension provision vehicle.

(6) Does the legislation provide for minimum vested rights if an employee leaves before retirement? Is this legislation different for the different funding systems or book reserves?

Yes. If the employee leaves two years after joining the scheme, then the employee is entitled to a deferred pension payable from normal retirement date.

(7) Is there legislation that requires that ex-employees and pensioners are treated the same as active employees (plus a description)?

There is legislation which grants priority call on assets for pensioners in the event of the winding up of the scheme. There is also legislation which grants statutory revaluation to deferred pensions for ex-employees generally in line with increases in the Consumer Price Index (subject to an annual limit of 4% and floor of 0%). Active and ex-employees’ rights receive the same priority on wind-up of a scheme. Active members’ accrued pension rights generally increase in line with salary increases during active membership.
(8) Is there legislation on the increase in benefits during payment or the deferred period (plus a description)?

There is no legislation regarding pension increases other than to place “guaranteed” pension increases at a lower priority level after active and ex-employees’ rights on wind-up of a scheme. See appendices for priority order on wind-up of schemes. See above for explanation of laws on increases during the deferred period. Note that only for leavers after June 2002 all the ex-employees’ deferred pension is increased. For leavers between 1st January 1993 and 1st June 2002, only the part of their deferred pension accrued for service after 1st January 1991. For ex-employees who left before 1 January 1993 none of their deferred pension is increased.

(9) Is there legislation that allows to reduce accrued pension rights in case of under funding?

When a DB scheme fails the statutory minimum funding standard, the trustees have to present a funding proposal to the Pensions Board (The Irish Pension Regulator) outlining their plans to bring it back up to fully funded status. If the trustees do not present a funding proposal, the Board has the power to make an order under Section 50, which requires the trustees to scale back benefits so that the scheme satisfies the minimum funding standard immediately. Alternatively, if the active members consent, the trustees submit a funding proposal which envisages the Pensions Board making a section 50 order which scales back benefits so the scheme satisfies the minimum funding standard by the date specified in the most recent funding proposal.

(10) Can benefits be paid in the form of a lump sum and to what extent?

A lump sum of up to one and a half years final salary can be taken tax free at retirement, if the individual is at normal retiring age and has completed at least 20 years service with the employer. For earlier retirement and/or shorter service, a reduced scale applies.

Very small pension amounts can be commuted in full.

(11) Which kind of beneficiaries have priority rights on the assets of the IORP (pensioners, ex-employees, other beneficiaries, employees) and to what extent? Please describe the priority rules?

In order of priority: Expenses of winding up the scheme, Additional Voluntary Contribution (AVC) proceeds, Pensions without increases for members who are past normal retirement age or who were in receipt of pension before the wind-up date, active and ex-employees’ preserved pension rights (see above for explanation of preserved pension). Non-preserved pensions and pension increases for all members rank equally at the bottom.

(12) In case of book reserves, which kind of beneficiaries have priority rights on the assets of the employer (pensioners, ex-employees, other beneficiaries, employees) and to what extent? Please describe the priority rules?

Not applicable as no book reserve schemes exist in Ireland.
(13) Has the country applied art. 4 of the Directive? If yes, comment on differences between pension insurer’s and IORP’s throughout all questions.

No.

(14) Has the country applied article 5 on small pension institutions of the Directive? If yes, how much (in percentage) beneficiaries are affiliated to these small pension institutions?

Certain exceptions are made for smaller schemes, but not if the scheme is to operate cross-border. According to the Pensions Board Annual Report, at the end of 2008 there were 24,200 members in Defined Benefit schemes with fewer than 100 members, representing just over 4% of the total membership of DB schemes.

10. OVERVIEW OF DB AND BR SCHEMES

(15) What kind of company sponsored benefit schemes are provided? Defined benefit schemes, Defined contribution schemes, Cash balance schemes and other schemes (plus description)?

Defined Benefit, Defined Contribution. A growing number of employers contribute to Personal Retirement Savings Accounts in employees’ names.

(16) What % of covered employees benefit from the different type of schemes described in the previous question? Is this different for male and female employees?

69% DB (39% in public sector schemes exempt from Funding Standard) 31% in DC schemes. No known distinction between males and females.

(17) Are pensions in payment or deferred increased? Is this increase conditional? What are the conditions?

Pensions in payment – increases depend on scheme rules Deferred pensions – statutory increases up to normal pension age generally in line with increases in the Consumer Price Index (subject to an annual limit of 4% and floor of 0%).

(18) What % of labour force is covered by a company sponsored benefit scheme (including sector schemes or compulsory supplementary pension schemes)? Is this different for male and female employees?

45% of people at work in employer sponsored schemes. No known distinction between men and women.
(19) How high is the average retirement pension provided by the company sponsored benefit scheme, preferably as a percentage of last yearly salary? And how is this compared to the social security retirement pension? Are there significant differences between the averages for male and female employees?

Varies widely. Top end 67% of salary. Average for DB likely in region of 50%, inclusive of social welfare pension.

The State pension is currently €11,970.40 per annum. Median for DB scheme likely in the region of €6,000 per annum given an average industrial wage of approximately €36,000.

Average for DC lower.

No statistics for gender differences, but likely that the female average is lower, because of demographic trend for women to spend less time in active workforce over a lifetime.

(20) What types of financing vehicles actually exist in your country and how many? Book reserves, pension funds, pension funds that fall under article 17 of the directive on IORPS, sector funds, insurance or other financing vehicles?

Pension funds, which may invest directly in securities and property, or through pooled vehicles managed by insurance companies or other fund managers, or through insurance policies.

(21) What % of covered employees receive their benefit via these above described financing vehicles?

Apart from the public sector schemes not subject to the Funding Standard (39%) the remaining 61% rely on these funding vehicles.

(22) Please provide a short summary of the accounting rules applicable to employers that provide defined benefit schemes (e.g. equal to IAS19, similar to IAS 19 but ..., no provisions contributions and/or benefits paid are equal to expenses, description of other rules)

Very similar to IAS. FRS widely used.

(23) What is the % of the employers that report under IFRS (IAS19) or very similar accounting rules?

No precise statistic but a majority of employers report under either FRS or IAS.

(24) Can you provide statistics on the provisions accounted for under these rules (per employee and/or in relation to the funds in the pension fund)?

No statistics available
10.3. Requirement of additional assets?

(25) Which type of additional assets (above the assets covering the technical provisions) are required (plus description)?

No additional assets over the technical provisions are required. However, surpluses are likely to arise over the required technical provisions because of the funding programme typically adopted. The technical provisions are based on a discontinuance position whereas funding is normally based on an ongoing position which allows for future salary increases. This, usually, requires a greater past service reserve than under the discontinuance measure.

(26) Are these additional assets requirements different for IORP’s that fall under article 17 of the directive (plus description)?

As far as we are aware no such IORPs exist in Ireland.

(27) When can these additional assets actually be used? e.g. when more than the expected number of employees dies in a particular period, when the employer becomes insolvent, other?

Any assets in the fund belong to the Trust. If a surplus exists, employer (and/or employee) contributions can be reduced and/or benefits can be enhanced. This will always require the consent of the sponsoring employer.

(28) For multi-employer funds, can these additional assets be used in case of insolvency of any of the employers? In case of ring-fencing per employer or in case of no ring-fencing and therefore solidarity between employers?

Multi-employer funds are rare in Ireland and are mainly set up on a defined contribution basis. Where Defined Benefit schemes exist, liabilities are shared.

(29) Can these assets return to the employer and under which conditions?

Often, on wind-up of a scheme, a surplus can be returned to the employer. However, legislation allows members the opportunity to make comments to the trustees before any surplus is returned to employers.

10.4. Independence of the IORP from the sponsor

(30) To what extent can the assets be invested in the sponsor’s securities – debt or shares and to what extent is this possibility actually used?

Pension scheme assets may be invested in the sponsor’s securities. However, the level of this investment as a percentage of the scheme’s assets must be disclosed in the Trustees’ Annual Report. Also any assets which
are invested in the sponsor’s securities must be excluded from the assets for technical provision calculations. Any overdue outstanding pension contributions from the sponsor are deemed to be self-investment.

(31) To what extent subordinated loans can be used to cover pension obligations?

As explained above, they must be excluded from the assets for solvency calculations. However, they can be offered as “comfort” as part of a funding proposal to restore solvency.

(32) To what extent can the assets be invested in items, such as property, machines, etc. used by the sponsor for its business and to what extent is this possibility actually used?

To date this has very seldom been used. However, you may see it being used more often as a contingent assets as part of a funding proposal.

(33) To what extent can the management of the IORP be the same as the management of the sponsor? Describe the corporate governance requirements for IORPs in this respect?

Unless members invoke the regulations, see below, the sponsoring employer can select the trustees. Frequently the trustee is the employer itself or corporate officers. Even if appointed by the employer, trustees are legally obliged to act independently and impartially.

(34) To what extent can other important functions, such as the actuary, auditor and compliance officer be nominated (and possibly directly or indirectly paid) by the employer?

These officers are appointed by the trustees, though often paid by the employer.

10. 5. Employee representatives’ involvement in the governance of the pension scheme

(35) For IORP’s: in which case and how many employee representatives need to be part of the board or other legal body of the IORP?

No legal requirement to have employees or members represented in trustee board unless there are 50 or more active members, and they demand participation in the selection of up to half of the trustees. Only a minority of employee groups have invoked this right. Many schemes have member representation on a voluntary basis.

(36) Are employee representatives involved in the financing plan of the IORP and/or to what extent is their advice or decision binding?

Only as trustees.
(37) For book reserve schemes, are employee representatives involved in any way in the determination of the level of the book reserves and/or the way these book reserves are set up?

Not applicable.

(38) Do employees need to be informed about the level of the financing of their benefits in the IORP and to what extent?

Trustee annual report contains actuarial statement which states whether the scheme met the Funding Standard. Members can get copies of actuarial valuation reports.

(39) Can employees or their representatives require changes in the pension scheme based on the financing level of the scheme, e.g. increases in pensions, reduction of employee contributions?

No.

(40) What are the communication requirements to employees on supplementary pensions? Are they different in case of book reserves or in case of an IORP?

Members are entitled to see trustee annual report, actuarial valuation reports, legal documents and scheme rules. Receive explanatory literature, annual statements of benefits and projections.

10. 6. UNDERFUNDING OF DB SCHEMES

(41) In case of compulsory systems to which extent future generations can be asked to pay possible underfunding for the current generation? In how far the systems can operate as pay as you go?

Social welfare pensions paid from Social Insurance Fund, which also pays unemployment, maternity and disability benefits. Until 2009 the Fund was in surplus (contributions exceeded outgo), now it is in deficit and expected to run out of money in 2010. Then those benefits will have to be paid from revenue.

Pensions for state employees are pay as you go.

In 2001 the National Pensions Reserve Fund was set up to fund pensions for public employees and social welfare pensions. It cannot be drawn on until 2025.

(42) In case of underfunding of company sponsored benefit plan, should the sponsor pay the whole underfunding or can increased employee contributions be required?

Negotiation of shared cost (increased employee and employer contributions) is possible. In absence of agreement, employer could refuse to subscribe to Funding Proposal, wind up scheme and pay only contributions falling due before the termination date.
(43) Does the sponsor have to cover underfunding before increasing contributions from employees or benefit cuts?

No. If employer is unable or unwilling to cover underfunding it can wind up plan and be responsible only for outstanding contributions at the time, not for full deficit. If the employer does not agree to a Funding Proposal (recovery plan) that meets the approval of the Pensions Board, the Board can order reductions in benefits. Since 2009 scheme trustees can instigate the call for benefit reductions if there is no prospect of getting an agreed Funding Proposal. Therefore, the employer is often in a position to negotiate increased contributions from employees as an alternative to closure or benefit reductions.

(44) In what time delay the employer needs to pay the extra-contributions?

Funding Proposals should be aimed at recovery over three years, but the Pensions Board has discretion to approve longer periods, not exceeding the working lifetime of the current members.

(45) Is a recovery plan permitted and on how long can this recovery plan continue?

See previous answer.

(46) Is there any legal requirement for the actuary or any other person involved to report on the expected underfunding due to a too strict financing plan and what action can be taken by the IORP in order to change this financing plan?

The financial assumptions for a Funding Proposal are prescribed, so there is little scope for them to be too strict or otherwise. If employer’s financial circumstances change, it could plead inability to pay.

(47) How can the IORP enforce the sponsor to fulfil his legal duty to pay the necessary contributions?

Employer must sign up to the Funding Proposal, so there is a legally enforceable agreement. No precedent as yet for trustees or the Pensions Board taking action for non payment of agreed contributions. In the case of insolvency of the employer there might not be anything to be gained by pursuing this course.

(48) Should members (employees and beneficiaries) and/or employee’s representatives be informed in a situation of underfunding?

The trustee annual report must state whether the Plan is solvent at the effective date of the report. It must also state whether any Funding Proposal in force is still on track to restore solvency by the agreed date. This is available on request to all members and beneficiaries and must be given to any authorised trade unions representing members.
Good practice suggests that employees be kept informed through normal communication channels.

(49) How is this information requirement structured (individually, together with the yearly overview of the benefits, only when requested by employees, …) and what is the maximum period allowed between the date of determination of the underfunding and the information to the employees?

See previous answer.

(50) Can members and/or beneficiaries or their representatives have a voice in the decision of a recovery plan?

Only as trustees, or if consent required to increase member contributions.

(51) Are members and/or beneficiaries informed on the details of a recovery plan?

Trustee annual report contains a review by the trustees of the financial development of the scheme during the scheme year, as shown by the audited accounts, and a statement explaining the latest actuarial funding certificate and high level details of the funding proposal (if any) submitted to the Pensions Board.

10. 7. PRIORITY CREDITORS RIGHTS

(52) Which creditors have a higher priority on the remaining assets of the sponsor than the IORP in case of insolvency of the plan sponsor?

There is no legislation (as yet) creating a debt on the employer in respect of funding deficits. Contributions due and unpaid are a priority creditor, ranking equal to taxes due and unpaid wages.

(53) In case of insolvency of their employer what is the priority the employees have on the remaining assets of their employer (sponsor) for their supplementary pension rights in case of a book reserve scheme and possibly in case of underfunding of the IORP?

Book reserve not relevant to this country. IORP does not have legal claim in respect of deficits, other than unpaid contributions.

(54) What is the priority ex-employees, pensioners or other beneficiaries of the pension scheme have on the remaining assets of the sponsor?

No claim.
(55) If the employer becomes insolvent, but is an affiliate of a group of companies where the mother company is not insolvent, can the employees claim their supplementary pension rights from the mother company in case of a book reserve or in case of underfunding of the IORP?

Book reserve not relevant to this country. Unlikely that IORP could have claim against parent company.

10. 8. GUARANTEE SCHEMES

(56) Do guarantee schemes exist? If so, provide a detailed description of the schemes.

Pension Insolvency Payment Scheme (since 1 February 2010) allows trustees to pass on liability for existing pensioners’ basic scheme pensions to the government where the employer is insolvent and the scheme is underfunded.

(57) Are premiums paid by the sponsoring undertaking to the guarantee scheme risk-based?

No premiums to be paid unless and until the employer is being wound up in the double insolvency situation.

(58) What is the procedure to be followed for the intervention of the guarantee scheme?

Scheme trustees apply by sending the Pensions Board information about the scheme and statement of insolvency of both employer and scheme. The Board then decides if the scheme qualifies. The trustees apply to the Minister for Finance for participation. The actuarial value of the liabilities is calculated, on a basis that is cost neutral to the exchequer. The trustees decide whether to accept the offer. If they proceed they pay over the actuarial value to the National Treasury Management Agency and the government takes over the liabilities.

(59) Are all defined benefit and book reserve schemes covered by the guarantee schemes?

Potentially any defined benefit scheme can apply.

(60) Are the schemes different for book reserve schemes and funded schemes? Please describe?

Not applicable

(61) Are all benefits covered including unvested benefits and recent benefit improvements?

Only pensions for retired members, excluding any increases in those pensions.

(62) Are there ceilings on the benefit coverage?

No monetary limit.
(63) Will the guarantee scheme take over obligations or inject a one time payment in the IORP in case of a defined benefit scheme?

Take over liability in return for payment of actuarial value.

(64) Do the guarantee schemes have sufficient resources in e.g. time of crisis where a lot of sponsors could have solvency problems?

Backed by National Pensions Reserve Fund, funded by receipt from schemes of actuarial value of the liabilities taken over, so should be cost neutral regardless of the level of demand.

10.9. ANY OTHER MEASURES

(65) Are there any other measures (not covered above) that contribute to the protection of the interests of the employees or ex-employees and their beneficiaries in case of insolvency and/or disappearance of the sponsoring employer?

Social Insurance Fund will pay unpaid employer’s contributions due in the 12 months prior to insolvency. Government has promised to consider a Pensions Minimum Guarantee Scheme that would supplement pensions up to a maximum of €12,000 and active and deferred members’ pensions up to €6,000. This has yet to be implemented.

(66) Are their proposals for changing the measures already taken and what are they? When are they expected to be implemented?

Some talk about creating a debt on the employer in respect of deficits, similar to what was done in UK, but little progress.

(67) Please describe the views of the social partners on the effectiveness of the measures taken to protect the rights of the beneficiaries of company sponsored benefit plans in case of insolvency of the employer and/or the IORP (if publicly available or made available in an interview)

No feedback as yet.

(68) Is there evidence that the overall outcome of one of the specific systems operated in your country, provides inadequate protection for the rights of the beneficiaries of company sponsored benefit plans?
There has been one high profile case where the employer is insolvent viz. Waterford Crystal, where defined benefit scheme members will almost certainly be left with less than they had been promised through their DB scheme which is also insolvent.

It is not clear how “inadequate protection” is to be interpreted. One could argue that if members end up with anything less than what they were promised, then the protection offered was inadequate. One could argue, on the other hand, that once members receive over a certain monetary minimum or percentage of expected benefits then the protection offered was adequate. One could even argue, that although members receive what they were promised in its entirety, or indeed more, the protection offered was inadequate (but that they were lucky in this instance). Conversely, one may argue that adequate protection was provided even though members won’t receive entirely what was promised to them.

(69) Is there evidence of how specific systems operated in your country proactively deal with different risks and improve risk management?

Funding Proposals must be based on prudent risk management principles. Section 50, whereby accrued benefits are being reduced, stress testing is required to ensure that Trustees give due consideration to investment risk and asset-liability matching issues.

10. 10. YOUR ASSESSMENT

(70) Please describe the shortcomings of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the sponsor and/or the IORP. If there are in your opinion no shortcomings, please explain

Combination of trust law – separation of IORP assets, independence of trustees- and statutory provisions – Minimum Funding Standard, Pensions Insolvency Payment Scheme – provide a measure of security. However, in practice, an employer can walk away from a funding deficit.

(71) Please describe your suggestions for improvement of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the employer and/or the IORP and describe the possible additional costs for these improvements and the possible risks that employers may decide to downside or close defined benefit arrangements?

If the government introduced debt on the employer legislation, there would almost certainly be wholesale closure of defined benefit schemes. Also the genuine fear that it would make Ireland less attractive to foreign companies, just at a time when the country has to compete to maintain overseas inward investment.
11. ITALY

MAIN FINDINGS

- Occupational pension benefits need to be financed externally via an IORP or internally via book reserves
- IORP’s are subject to control and assets covering technical provisions need to be available. Recovery plans can be agreed between the sponsor and the IORP and the plans must be communicated to the authorities.
- Apart from the TFR, no specific protection of the supplementary pensions financed “internally” via book reserves exists in case of bankruptcy of the sponsor, general bankruptcy rules apply.
- For defined benefit plans, no vesting requirements exist, pension plan rules can determine the vested rights.
- For TFR benefits specific vesting requirements exist and these benefits are protected by the guarantee fund set up for this specific compulsory benefit by the social security system.
- Yearly information on the financial situation of the IORP’s together with a benefit statement is provided.

11.1. DESCRIPTION OF THE LEGAL FRAMEWORK

(1) Which kind of IORPs can be used to finance pension schemes (insurance companies, national funds, company pension fund, multi-employer fund, sector pension fund, other kinds of entities created to finance pensions)?

- CONTRACTED OUT PENSION FUNDS (“CLOSED PENSION FUNDS”) – Defined Contribution Scheme - that can be instituted through:
  - Collective labour agreements or contracts between the trade unions and employers
  - Agreement between self-employed workers and/or freelancers
  - Only single agreements, in case labour contracts are not regulated by collective agreements
  - Regional agreements
  - Agreements between cooperative workers

- “OPEN” PENSION FUNDS (GROUP AND INDIVIDUAL) - Defined Contribution Scheme - that can be offered by:
  - Life Insurance Companies
  - Banks
  - SGR and SIM (Investment Firms)

- INDIVIDUAL LIFE INSURANCE (SO CALLED “PIP”) – Defined Contribution Scheme
- PRE-EXISTING (OLD) PENSION FUNDS – “internal” or “independent” with respect to companies “sponsor” (most of them is independent) and managed by:
  - Life Insurance Companies
  - Banks
  - Companies,
  and they can be managed with:
  - Defined Benefit Scheme
  - Defined Contribution Scheme
    - Life insurance policies are still possible

- There is also a defined benefit (compulsory) sector plan, the so called “TFR” (Termination Indemnity) benefit, managed by employer for the part that employees do not transfer to a pension fund.

(2) **What are the minimum funding requirements for each of these kind of IORP’s and are there minima for book reserves ?**

About these aspects, a possible reform is expected in the future. At the moment no minimum funding requirement exists.

(3) **Is there a legal obligation to subscribe to external (solvency) guarantees ? And what are these guarantees for each kind of IORP and for book reserves schemes ?**

There is not a legal obligation to subscribe to external guarantees.

(4) **Does separate legislation on solvency exist for IORP’s falling under article 17 of the directive (plus a description) ?** Article 17 concerns IORP’s that take themselves the biometric risks and/or guarantee benefits, in case of insufficiency these IORP’s cannot claim supplementary contributions or reduce the benefits. How much of the IORP’s (as a percentage) are falling under article 17?

Also about this aspect a possible reform is expected. The percentage of IORP’s falling under article 17 (PRE-EXISTING (OLD) PENSION FUNDS where the institution itself, and not the sponsoring undertaking, underwrites the liability to cover against biometric risk, or guarantees a given investment performance or a given level of benefits) is about 10% of the total IORP’s; the percentage in term of number of employees, ex employees and pensioners is about 4% of the total instead. *(Source: COVIP*\(^{10}\) *- Relazione per l’anno 2008)*

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\(^{10}\) **COVIP is the Italian Supervisory Authority of all supplementary pension schemes**
(5) Is the provision of company sponsored employee benefits compulsory for the employers and to which extent?

In case of TFR benefit there is a specific compulsory provision for the employers equal to TFR benefit accrued by employees at the valuation time or equal to IAS19 evaluation if the company is subjected to application of IAS/IFRS accounting principles.

(6) Does the legislation provide for minimum vested rights if an employee leaves before retirement? Is this legislation different for the different funding systems or book reserves?

Yes, with reference to defined contribution schemes, Decree n. 252/2005 provides rules about minimum vested rights if an employee leaves before retirement, whilst for defined benefit schemes, rules are established by each IORP; “Italian Civil Code” provides a specific legislation about TFR benefit managed by employer.

(7) Is there legislation that requires that ex-employees and pensioners are treated the same as active employees (plus a description)?

There is no specific legislation.

(8) Is there legislation on the increase in benefits during payment or the deferred period (plus a description)?

There is no specific legislation about IORP but each of them can establish own rules; limits exist during payment period when increase of the amount of pension is linked to the increase of salaries. With reference to TFR, during the deferred period, it increases each year at 1,5% plus 75% of inflation observed; the benefit is paid in the form of a lump sum.

(9) Is there legislation that allows to reduce accrued pension rights in case of under funding?

There is no specific legislation.

(10) Can benefits be paid in the form of a lump sum and to what extent?

Yes, with reference to defined contribution schemes, Decree n. 252/2005 provides also a lump sum payment (in some cases also taking into account some limits about the amount), whilst for defined benefit schemes, rules are established by each IORP (according to general indications provided by the law); TFR benefit is always paid in the form of a lump sum if it is not transferred to a pension fund.
(11) Which kind of beneficiaries have priority rights on the assets of the IORP (pensioners, ex-employees, other beneficiaries, employees) and to what extend? Please describe the priority rules?

In Italy a specific legislation that provides a priority rights on the assets of the IORP does not exist. See also answer to question (42)

(12) In case of book reserves, which kind of beneficiaries have priority rights on the assets of the employer (pensioners, ex-employees, other beneficiaries, employees) and to what extend? Please describe the priority rules?

In the case of PRE-EXISTING (OLD) PENSION FUNDS, where the pension scheme is managed by the employer himself, the general rules of bankruptcy will be applied; instead of in case of TFR benefit a specific guarantee fund has been instituted by Social Security System.

(13) Has the country applied art. 4 of the Directive? If yes, comment on differences between pension insurer’s and IORP’s throughout all questions.

Yes, Italy applies art. 4 of the Directive. Pension insurer’s can institute the so called “Gestione Separata”, that allows the determination of the increase of individual position with the method of “profit participation” (different from fair value approach).

(14) Has the country applied article 5 on small pension institutions of the Directive? If yes, how much (in percentage) beneficiaries are affiliated to these small pension institutions?

Italian rules do not provide differences based on number of members.

11.2. Overview of DB and BR Schemes

(15) What kind of company sponsored benefit schemes are provided? Defined benefit schemes, Defined contribution schemes, Cash balance schemes and other schemes (plus description)?

See answer question (1)

(16) What % of covered employees benefit from the different type of schemes described in the previous question? Is this different for male and female employees?

CONTRACTED OUT PENSION FUNDS (“CLOSED PENSION FUNDS”) – Defined Contribution System – 47,16% (included also the so called “Fondinps”):
“OPEN” PENSION FUNDS (GROUP AND INDIVIDUAL) – Defined Contribution Scheme – 18,24%
LIFE INSURANCE (SO CALLED “PIP”) – Defined Contribution Scheme – 16,04%

11 Source 2008 “COVIP – Relazione per l’anno 2008”
(OLD) PENSION FUNDS – Defined Contribution Scheme and/or Defined Benefit Scheme -  18,57%
There are no statistics available about male and female participation.

(17) Are pensions in payment or deferred increased? Is this increase conditional? What are the conditions?

The number of pensions in payment is at the same level of that observed in 2007; the percentage of number of pensioners on total members of IORP is 3,08% and the pensioners are mainly concentrated on PRE-EXISTING (OLD) PENSION FUNDS.

(18) What % of labour force is covered by a company sponsored benefit scheme (including sector schemes or compulsory supplementary pension schemes)? Is this different for male and female employees?

About 21% of labour force is covered by a company sponsored benefit scheme. (“COVIP – Relazione per l’anno 2008”) There are no statistics available about male and female participation.

(19) How high is the average retirement pension provided by the company sponsored benefit scheme, preferably as a percentage of last yearly salary? And how is this compared to the social security retirement pension? Are there significant differences between the averages for male and female employees?

- For Defined Contribution Scheme the expected percentage of retirement pension on last yearly salary is about 15 to 20% but is lower at the moment
- For Defined Benefit Scheme each IORP establishes own level of defined benefit. In any case the average aim is 20% of the last yearly salary.
- Social security retirement pension level depends on different aspects: one of them, in particular, is the registration year to the social security system:
  - Registration year before 1977 → so called “Sistema Retributivo” (benefit linked to salary) → pension level aim about 80% of the last salary but at the moment the actual percentage is lower
  - Registration between 1977 and 1995 → so called “Sistema Misto” (a part of benefit linked to salary and the other part linked to contribution history) → expected possible level is about 65% of the last salary
  - Registration after 1995 → so called “Sistema Contributivo” (benefit linked to contribution history) → expected pension level is about 50% of the last salary.

The differences between male and female can depend on various elements (actuarial coefficients, level of the salaries, age of the retirement, ....)
What types of financing vehicles actually exist in your country and how many? Book reserves, pension funds, pension funds that fall under article 17 of the directive on IORPS, sector funds, insurance or other financing vehicles?

- CONTRACTED OUT PENSION FUNDS (“CLOSED PENSION FUNDS”) – Defined Contribution Scheme – 41 (included also the so called “Fondinps”):
- “OPEN” PENSION FUNDS (GROUP AND INDIVIDUAL) - Defined Contribution Scheme - 81
- INDIVIDUAL LIFE INSURANCE (SO CALLED “PIP”) – Defined Contribution Scheme – 75
- PRE-EXISTING (OLD) PENSION FUNDS – Defined Contribution Scheme and/or Defined Benefit Scheme – 411
  i. Defined Contribution Scheme → 229
     1. “Internal” → 5; “independent” → 224 (9 with assumption of biometric risk – direct payment of benefits without agreement with Insurance Companies)
  ii. Defined Benefit Scheme → 128
      1. “Internal” → 107; “independent” → 21
  iii. Compound Scheme (both Defined Contribution and Defined Benefit) → 54
- The only IORP that would fall under article 17 of the directive are “independent” PRE-EXISTING (OLD) PENSION FUNDS with Defined and Compound Benefit Scheme (49) and with Defined Contribution Scheme with assumption of biometric risk (9)

What % of covered employees receive their benefit via these above described financing vehicles?

The percentage is calculated considering “active + pensioners”.

a. IORP with defined contribution scheme → 95%

b. IORP that would fall under article 17 of the directive → 4%

c. IORP with defined benefit scheme and where the sponsoring undertaking, underwrites the liability to cover against biometric risk → 1%

Please provide a short summary of the accounting rules applicable to employers that provide defined benefit schemes (e.g. equal to IAS19, similar to IAS 19 but …, no provisions contributions and/or benefits paid are equal to expenses, description of other rules)

In Italy the two categories are:

1) The defined benefit plans, for instance, the so called “TFR” benefit, managed by employer for the part of this benefit that employees does not transfer to pension fund
   - Employer applies IAS19 only if company is subjected to application of IAS/IFRS accounting principles, otherwise there is a specific rule which

12 Source 2008 “COVIP – Relazione per l’anno 2008”
provides the calculation of the TFR benefit accrued by employees at a valuation time

2) PRE-EXISTING (OLD) PENSION FUNDS – where the sponsoring undertaking underwrites the liability to cover against biometric risk, or guarantees a given investment performance or a given level of benefits

- Accounting rules are not identified by a specific legislation. Probably expected ongoing reform will provide these rules.

(23) What is the % of the employers that report under IFRS (IAS19) or very similar accounting rules?

No information is available.

(24) Can you provide statistics on the provisions accounted for under these rules (per employee and/or in relation to the funds in the pension fund)?

No information is available.

11.3. REQUIREMENT OF ADDITIONAL ASSETS

(25) Which type of additional assets (above the assets covering the technical provisions) are required (plus description)?

No additional assets are provided by specific legislation on IORP. The ongoing reform about article 7bis of Decree n. 252/2005 will probably rule also this aspect.

(26) Are these additional assets requirements different for IORP’s that fall under article 17 of the directive (plus description)?

See answer (25)

(27) When can these additional assets actually be used? e.g. when more than the expected number of employees dies in a particular period, when the employer becomes insolvent, other?

See answer (25)

(28) For multi-employer funds, can these additional assets be used in case of insolvency of any of the employers? In case of ring-fencing per employer or in case of no ring-fencing and therefore solidarity between employers?

See answer (25)
11.4. INDEPENDENCE OF THE IORP FROM THE SPONSOR

(30) To what extend can the assets be invested in the sponsor’s securities – debt or shares and to what extend is this possibility actually used?

- The investment in sponsor’s securities – bond or shares – is ruled by article 6, point 13, Decree n. 252/2005 (PRE-EXISTING (OLD) PENSION FUNDS have to respect these rules from May 2010).
  - In case of multi-employer fund (CLOSED PENSION FUNDS excluded) the limit is 20% of total assets of the fund
  - In case of multi-employer fund – CLOSED PENSION FUNDS – the limit is 30% of total assets of the fund
  - In case of one-employer fund
    - the limit is 5% of total assets of the fund
    - the limit is 10% of total assets of the fund (when the firm belongs to a group, the limit is for the group).
- No precise information are available about the extend actually used.

(31) To what extend subordinated loans can be used to cover pension obligations?

From the general point of view Pension Funds can not assume or give loans. Actually, only PRE-EXISTING (OLD) PENSION FUNDS, can give and assume loans (respectively for a limited amount based on parameters established by COVIP and for a limited period).

(32) To what extend can the assets be invested in items, such as property, machines, etc. used by the sponsor for its business and to what extend is this possibility actually used?

- Only PRE-EXISTING (OLD) PENSION FUNDS can invest own assets in properties. In particular they can invest in real estate with the limit of 20% of total assets of the fund (this limit can be modified only on the base of specific rules of COVIP).
- No precise information is available about the extend actually used.
(33) To what extent can the management of the IORP be the same as the management of the sponsor? Describe the corporate governance requirements for IORPs in this respect?

- There is not a limit. Normally only some manager of the IORP is also manager of the sponsor.
- Corporate governance requirements for IORP are based on good repute and appropriate professional qualifications.

(34) To what extent can other important functions, such as the actuary, auditor and compliance officer be nominated (and possibly directly or indirectly paid) by the employer?

Employer can directly or indirectly pay these functions only in case of “internal” PRE-EXISTING (OLD) PENSION FUNDS.

11.5. Employee representatives’ involvement in the governance of the pension scheme

(35) For IORP’s: in which case and how many employee representatives need to be part of the board or other legal body of the IORP?

For CONTRACTED OUT PENSION FUNDS (“CLOSED PENSION FUNDS”) is provided in the board the same number of employee and employer representatives. This case can concern also some PRE-EXISTING (OLD) PENSION FUNDS.

(36) Are employee representatives involved in the financing plan of the IORP and/or to what extend is their advice or decision binding?

Employee representatives in the board are involved in the financial plan of the IORP.

(37) For book reserve schemes, are employee representatives involved in any way in the determination of the level of the book reserves and/or the way these book reserves are set up?

Usually no.

(38) Do employees need to be informed about the level of the financing of their benefits in the IORP and to what extent?

All IORP, each years, have to send to members (employees) also information about the level of financing of their benefits.
(39) Can employees or their representatives require changes in the pension scheme based on the financing level of the scheme, e.g. increases in pensions, reduction of employee contributions?

Only employee representatives in the board of the IORP can participate to this kind of decision, according to each Fund’s rules.

(40) What are the communication requirements to employees on supplementary pensions? Are they different in case of book reserves or in case of an IORP?

All IORP, each year, have to send to members (employees) a communication about several aspects of their supplementary pensions.

11.6. Underfunding of DB schemes

(41) In case of compulsory systems to which extent future generations can be asked to pay possible underfunding for the current generation? In how far the systems can operate as pay as you go?

- To future generations, in theory, can be asked to pay possible underfunding for the current generation, for example increasing the level of contribution.
- About the second question no limits are provided.

(42) In case of underfunding of company sponsored benefit plan, should the sponsor pay the whole underfunding or can increased employee contributions be required?

- In case of book reserves (“internal” PRE – EXISTING Fund) the Company “sponsor” can manage the book reserves (or Funding) itself and even a whole underfunding may exist.
- In case of “external” PRE - EXISTING Fund you can find in the Statutes a rule where the Company “sponsor” (often a bank) must pay in case of underfunding. If there is not this rule the responsibility of the board increases.

Moreover the Decree n. 252/2005 (art.15) provides rules in case the employer becomes insolvent and in case of insolvency of the IORP.

In case of the employer becomes insolvent, an external commissioner will be entrusted in order to manage the closing of the Fund.

The same article provides that Italian Pension Funds, in case of serious underfunding, can be subjected only to “amministrazione straordinaria” and “liquidazione coatta amministrativa” regime (the bankruptcy cannot be applied).
If, for any kind of reason the Pension Fund decides to dissolve, the insurance policies in order to pay annuities are directly assigned to the pensioners and the active member can surrender or transfer according to art. 14 of the above mentioned Decree.

(43) Does the sponsor have to cover underfunding before increasing contributions from employees or benefit cuts?

Actually, a specific legislation that rules this aspect does not exist.

(44) In what time delay the employer needs to pay the extra-contributions?

Actually, a specific legislation that rules this aspect does not exist.

(45) Is a recovery plan permitted and on how long can this recovery plan continue?

See answer (42) Moreover, the PRE-EXISTING (OLD) PENSION FUNDS must send yearly to Covip and to Ministry of Labour, in case of underfunding, a technical balance in order to give continuous updates about financial situation. Every five years, these Funds have to prepare a “plan”, considering contributions, benefits, assets invested, adequacy to legislation, etc... in order to describe all the measures adopted for avoiding situation of underfunding.

(46) Is there any legal requirement for the actuary or any other person involved to report on the expected underfunding due to a too strict financing plan and what action can be taken by the IORP in order to change this financing plan?

In order to monitor benefit scheme financing level, usually an actuarial technical evaluation is made according to specific Fund’s rules. The board decides, if necessary, actions to take in order to change the financing plan in case of underfunding. See also answer (42) and (45).

(47) How can the IORP enforce the sponsor to fulfil his legal duty to pay the necessary contributions?

In Italy actually there is a large discussion about this point.

(48) Should members (employees and beneficiaries) and/or employee’s representatives be informed in a situation of underfunding?

There is no specific legislation. Only employee’s representatives in the Board know immediately situation of underfunding.
(49) How is this information requirement structured (individually, together with the yearly overview of the benefits, only when requested by employees, ...) and what is the maximum period allowed between the date of determination of the underfunding and the information to the employees?

There is no specific legislation.

(50) Can members and/or beneficiaries or their representatives have a voice in the decision of a recovery plan?

There is no a specific legislation. Only employee’s representatives in the Board can take decision about recovery plan.

(51) Are members and/or beneficiaries informed on the details of a recovery plan?

There is no specific legislation. Only employee’s representatives in the Board know immediately details of recovery plan.

11. 7. PRIORITY CREDITORS RIGHTS

(52) Which creditors have a higher priority on the remaining assets of the sponsor than the IORP in case of insolvency of the plan sponsor?

It depends each time on the kind of insolvency and on the different solutions provided by the law.

(53) In case of insolvency of their employer what is the priority the employees have on the remaining assets of their employer (sponsor) for their supplementary pension rights in case of a book reserve scheme and possibly in case of underfunding of the IORP?

- See question (42)
- Only in the case of TFR benefit a specific guarantee fund has been instituted by Social Security System.

(54) What is the priority ex-employees, pensioners or other beneficiaries of the pension scheme have on the remaining assets of the sponsor?

In Italy a specific legislation that provides a priority rights for the member of a pension scheme on the assets of the sponsor doesn’t exist. See also question (42).
(55) If the employer becomes insolvent, but is an affiliate of a group of companies where the mother company is not insolvent, can the employees claim their supplementary pension rights from the mother company in case of a book reserve or in case of underfunding of the IORP?

- See answer (42)
- Only in the case of TFR benefit a specific guarantee fund has been instituted by Social Security System.

11.8. Guarantee schemes

(56) Do guarantee schemes exist? If so, provide a detailed description of the schemes.

Yes, in the case of TFR benefit, the scheme is managed by employer for the part of this benefit that employee has not transferred to a pension fund. Moreover a specific guarantee fund has been instituted by Social Security System in case of employer’s insolvency. This guaranteed scheme is financed by a contribution of employer equal to 0.50% of every employee’s income. In the other cases in Italy there is a discussion about this point.

(57) Are premiums paid by the sponsoring undertaking to the guarantee scheme risk-based?

No.

(58) What is the procedure to be followed for the intervention of the guarantee scheme?

In case of insolvency of employer, the employees concerned have to send a formal request in order to obtain his accrued benefit from the guarantee fund (in case of TFR). See also answer (56).

(59) Are all defined benefit and book reserve schemes covered by the guarantee schemes?

No, the guarantee fund covers only TFR benefit managed by employer for the part of this benefit that employees have not transferred to a pension fund. See also answer (56).

(60) Are the schemes different for book reserve schemes and funded schemes? Please describe?

See answers (58) and (56).

(61) Are all benefits covered including unvested benefits and recent benefit improvements?

Guarantee fund covers only TFR benefit accrued up to the data of insolvency of employer. See also answer (56).
(62) Are there ceilings on the benefit coverage?
No.

(63) Will the guarantee scheme take over obligations or inject a one time payment in the IORP in case of a defined benefit scheme?
TFR guarantee fund pays directly to the employees the accrued benefits through a one time payment. See also answer (56).

(64) Do the guarantee schemes have sufficient resources in e.g. time of crisis where a lot of sponsors could have solvency problems?
It depends on the number of insolvencies. From a general point of view we think that also in time of crisis, where a lot of employers could have solvency problems, TFR guarantee fund have sufficient resources in order to pay benefits to employees (TFR guarantee fund has been instituted by the Social Security System). See also answer (56).

11. Any Other Measures

(65) Are there any other measures (not covered above) that contribute to the protection of the interests of the employees or ex-employees and their beneficiaries in case of insolvency and/or disappearance of the sponsoring employer?
Actually the terms of possible future reforms about these aspects are not known.

(66) Are their proposals for changing the measures already taken and what are they? When are they expected to be implemented?
Actually the terms of possible future reforms about these aspects are not known.

(67) Please describe the views of the social partners on the effectiveness of the measures taken to protect the rights of the beneficiaries of company sponsored benefit plans in case of insolvency of the employer and/or the IORP (if publicly available or made available in an interview)
We have no information available about this aspect.

(68) Is there evidence that the overall outcome of one of the specific systems operated in your country, provides inadequate protection for the rights of the beneficiaries of company sponsored benefit plans?
- No
- Only in the case of TFR benefit a specific guarantee fund has been instituted by Social Security System.
We observe that probably it is necessary to introduce further rules in order to give a more adequate protection for the rights of the beneficiaries of company sponsored benefit plans.

(69) Is there evidence of how specific systems operated in your country proactively deal with different risks and improve risk management?

No

11.10. YOUR ASSESSMENT

(70) Please describe the shortcomings of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the sponsor and/or the IORP. If there are in your opinion no shortcomings, please explain

- See answer (42)
- Only in the case of TFR benefit a specific guarantee fund has been instituted by Social Security System. This measure, in our opinion, has no shortcomings

(71) Please describe your suggestions for improvement of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the employer and/or the IORP and describe the possible additional costs for these improvements and the possible risks that employers may decide to downside or close defined benefit arrangements?

See answer (70)
12. LIECHTENSTEIN

MAIN FINDINGS

- Occupational pensions need to be financed externally via an IORP
- Benefits vest immediately
- IORP’s are subject to control and assets covering a significant fluctuation reserve and technical provisions calculated in a prudent way need to be available, recovery plans are allowed but over a maximum period of seven years.
- IORP’s are obliged to pay a premium to the Swiss LOB Guarantee Fund that covers the vested rights of the employees and beneficiaries in case of bankruptcy of the employer and underfunding of the IORP.
- Yearly global financial information on the IORP must be provided together with an annual benefit statement.

12.1. DESCRIPTION OF THE LEGAL FRAMEWORK

(1) Which kind of IORPs can be used to finance pension schemes (insurance companies, national funds, company pension fund, multi-employer fund, sector pension fund, other kinds of entities created to finance pensions)?

Pensions schemes in Liechtenstein according to local law (Gesetz über die betriebliche Personalvorsorge [BPVG]) must be a - from the employer separated - legal entity. This separate legal entity is either a foundation of an employer, a group or a community, a corporation under public law or a collective foundation of an insurance company or another provider. Most schemes are cash balance plans.

In a separate law (Pensionsfondsgesetz; PFG) Liechtenstein regulated the operations of institutions for occupational benefits, whereas the special legislation of the BPVG remains reserved according to Art. 5 of the Directive2003/41. The exception of the BPVG implicates that IORPs, which operate occupational provision according to BPVG do not fall under the Directive. The relevancy of PFG for IORPs for local employees is in practice inexistent.

In the PFG article 4 of the Directive is adopted for insurance companies. As BPVG is reserved the Directive is only applicable for occupational provision beyond BPVG. Up to now there is no such insurance contract known.

13 http://www.gesetze.li/DisplayLGBI.jsp?LGBIm=1988012
14 http://www.gesetze.li/Seite1.jsp?LGBIm=2007011
(2) What are the minimum funding requirements for each of these kind of IORP’s and are there minima for book reserves?

The liabilities of the IORP must be calculated at least every three years, in case of underfunding every year. The liabilities are calculated without projection of the salaries and with a prudent actuarial method and prudent assumptions advised by the actuary. The discount rate is usually 3.5% or lower. An underfunding has to be eliminated by the IORP itself. The IORP has to develop a plan to restore a sufficient funding level within 5 to 7 years. Such a plan can foresee:

- Increased contributions
- Reduction of future benefits
- Insertion of the employer
- Adjustment of the asset strategy based on a ALM study
- et cetera

(3) Is there a legal obligation to subscribe to external (solvency) guarantees? And what are these guarantees for each kind of IORP and for book reserves schemes?

There is no legal obligation and it is not common practice to have external guarantees.

(4) Does separate legislation on solvency exist for IORP’s falling under article 17 of the directive (plus a description)? Article 17 concerns IORP’s that take themselves the biometric risks and/or guarantee benefits, in case of insufficiency these IORP’s cannot claim supplementary contributions or reduce the benefits. How much of the IORP’s (as a percentage) are falling under article 17?

As there is the exception for IORPs which operate occupational provision according to BPVG from the Directive, no IORP falls under Art. 17 at the time.

The disclosure of IORPs must be done in line with Swiss GAAP FER 26 (Art. 33 Abs. 2 BPVV [Verordnung zum Gesetz über die betriebliche Personalvorsorge]). According to Swiss GAAP FER 26 an IORP must define a fluctuation reserve.

(5) Is the provision of company sponsored employee benefits compulsory for the employers and to which extent?

The law (BPVG) stipulates a minimum of contributions for old-age benefits and minimum benefits in case of death and disability.

(6) Does the legislation provide for minimum vested rights if an employee leaves before retirement? Is this legislation different for the different funding systems or book reserves?

Old age benefits have to be financed by the funding principle. According to Art. 11 BPVG an insured person is entitled to vested rights in case of leaving the IORP for other reasons than old age, disability or death. The amount corresponds to the actuarial reserve and is in a defined contribution plan equal to
The actuarial reserve in a defined benefit plan has to be calculated with the same mortality table, the same discount rate and the same assumptions, which are applied to calculate the benefits for individual entry and buy-in calculations (revolving door principle).

(7) Is there legislation that requires that ex-employees and pensioners are treated the same as active employees (plus a description)?

There is no specific legislation.

(8) Is there legislation on the increase in benefits during payment or the deferred period (plus a description)?

There is no obligation to increase benefits during payment or during deferred period (deferred benefits are uncommon anyway).

(9) Is there legislation that allows to reduce accrued pension rights in case of under funding?

In art. 11 para. 3. BPVG is stipulated, that an underfunding can be proportionally deducted from the vested rights in case of leaving the IORP. In practice vested rights and current pensions are not reduced during an underfunding. But there is one exception: When an IORP has to execute a so called partial liquidation and it is in an underfunding the vested right are proportionally and individually reduced. The fact of a partial liquidation is legally assumed in the following cases:
- relevant reduction of staff
- restructuring of the company
- termination of an affiliation contract (of a company with an IORP).

(10) Can benefits be paid in the form of a lump sum and to what extent?

The rules can foresee that benefits are paid as a lump sum. The lump sum has to be at least 90% of the actuarial reserve for the pension.

(11) Which kind of beneficiaries have priority rights on the assets of the IORP (pensioners, ex-employees, other beneficiaries, employees) and to what extent? Please describe the priority rules?

There are no legally priority rules. Basically all participants should be treated equally. In practice the interest rate on the savings capital of the active members is reduced by decision of the board while the discount rate of the pensioners can not be reduced.
(12) In case of book reserves, which kind of beneficiaries have priority rights on the assets of the employer (pensioners, ex-employees, other beneficiaries, employees) and to what extend? Please describe the priority rules?

Book reserves are not allowed in Liechtenstein for IORPs according to BPVG.

(13) Has the country applied art. 4 of the Directive? If yes, comment on differences between pension insurer’s and IORP’s throughout all questions.

No.

(14) Has the country applied article 5 on small pension institutions of the Directive? If yes, how much (in percentage) beneficiaries are affiliated to these small pension institutions?

See above.

12. 2. Overview of DB and BR Schemes

(15) What kind of company sponsored benefit schemes are provided? Defined benefit schemes, Defined contribution schemes, Cash balance schemes and other schemes (plus description)?

There is one defined benefit scheme. All other IORPs are cash balance schemes. Defined contribution schemes are not allowed.

(16) What % of covered employees benefit from the different type of schemes described in the previous question? Is this different for male and female employees?

The number of employees covered by the one defined benefit scheme is about 3’000 persons. This corresponds to about 10% of the workforce in Liechtenstein.

(17) Are pensions in payment or deferred increased? Is this increase conditional? What are the conditions?

Pensions in payment are increased if the financial situation of the IORP allows it and the board of the IORP decides so.

(18) What % of labour force is covered by a company sponsored benefit scheme (including sector schemes or compulsory supplementary pension schemes)? Is this different for male and female employees?

100%. There is no difference due to gender.
(19) How high is the average retirement pension provided by the company sponsored benefit scheme, preferably as a percentage of last yearly salary? And how is this compared to the social security retirement pension? Are there significant differences between the averages for male and female employees?

The social security retirement pension minimum is CHF 13'680, the maximum CHF 27'360. An employee with an annual salary of CHF 82'080 (3 x max. social security pension / up to this salary occupational provision is mandatory by BPVG) can expect an annual pension of about CHF 20'000 (24% of the annual salary, while the social security pension corresponds to 33.33% of the annual salary. For lower salaried employees the portion of social security pension is higher, for higher salaried employees lower (see graph below).

The majority of the pension schemes covers more than the legal minimum according to BPVG. As an example: one of the cash balance plans provides about 40% of the annual salary for each employee (see graph below).
The level of the provisions of IORP depends from the financial power of the employer and is different in the various sectors. Typically low salaried occupations (often done by women as e.g. in retail trade) are lower covered by its occupational benefit schemes.

(20) What types of financing vehicles actually exist in your country and how many? Book reserves, pension funds, pension funds that fall under article 17 of the directive on IORPS, sector funds, insurance or other financing vehicles?

See above.

(21) What % of covered employees receive their benefit via these above described financing vehicles?

Estimations:
- 10% by corporation under public law
- 45% by foundation of an employer, a group or a community
- 45% by collective foundation of an insurance company or another provider

(22) Please provide a short summary of the accounting rules applicable to employers that provide defined benefit schemes (e.g. equal to IAS19, similar to IAS 19 but ..., no provisions contributions and/or benefits paid are equal to expenses, description of other rules)

Employers are not allowed to provide defined benefit schemes themselves. Claims of any employee are addressed to the IORP (separate legal entity). So there are no accounting rules for the employer according to local law for any occupational benefits.
(23) What is the % of the employers that report under IFRS (IAS19) or very similar accounting rules?

Some few. Maybe 1% of the employers with 50 or more employees.

(24) Can you provide statistics on the provisions accounted for under these rules (per employee and/or in relation to the funds in the pension fund)?

Not applicable.

12.3. REQUIREMENT OF ADDITIONAL ASSETS

(25) Which type of additional assets (above the assets covering the technical provisions) are required (plus description)?

According to Swiss GAAP FER 26 the board has to determine a target size of the fluctuation reserves (solvency margin). This targeted fluctuation reserve should be based on the market risks of the various asset classes and the structure of the liabilities. In practice there is often used a simplified method, whereby a percentage of the asset class is defined (e.g. 30% for foreign shares, 25% for domestic shares, 15% for foreign bonds, 10% for domestic bonds, etc.). The targeted fluctuation reserve is usually about 15 to 25% of the mathematical reserves.

(26) Are these additional assets requirements different for IORP’s that fall under article 17 of the directive (plus description)?

The demanded fluctuation reserve by Swiss GAAP FER 26 is hardly to compare with the regulation in the Directive 2002/83/EG.

(27) When can these additional assets actually be used? e.g. when more than the expected number of employees dies in a particular period, when the employer becomes insolvent, other?

To answer this question it is important to understand the mechanism of the accounting principles of Swiss GAAP FER 26:

- The technical provisions have to be calculated according to rules adopted by the board and they contain:
  - Mathematical reserve or accrued vested benefits (DB) or savings accounts (cash balanced) of the employers (Vorsorgekapital aktiv Versicherte),
  - Mathematical reserve of the pensions in payment
  - Technical reserves (e.g. for early retirement, unexpected number of death or disability-cases [Risikoschwankungsreserve])
- If the available assets are lower than the technical provisions, the IORP has an underfunding and the board has to take measurements to eliminate the underfunding in a reasonable period (5 to 7 years)
- If the available assets are equal to the technical provisions, the degree of coverage is 100% and there is no fluctuation reserve. The IORP is not underfunded but it has a reserve deficit. The board is urged to handle the available assets economically.
- If the available assets are higher than the technical provisions but lower than the technical provisions plus the targeted fluctuation reserve, the IORP is not underfunded but it has a reserve deficit. The board is urged to handle the available assets economically.
- If the available assets are higher than the technical provisions plus the targeted fluctuation reserve, the IORP is in a good financial situation. The surplus may be used to increase the benefits.

In the strict sense fluctuation reserves can not be used. In practice the board may decide to increase the interest rate (a little) even if the aimed fluctuation reserve is not filled.

(28) For multi-employer funds, can these additional assets be used in case of insolvency of any of the employers? In case of ring-fencing per employer or in case of no ring-fencing and therefore solidarity between employers?

The additional assets in a multi-employer fund belong to all employees of all affiliated employers and can not be used to cover a shortfall in case of insolvency of a single employer.

(29) Can these assets return to the employer and under which conditions?

Any refunding to the employer out of an IORP is forbidden.

12.4. INDEPENDENCE OF THE IORP FROM THE SPONSOR

(30) To what extend can the assets be invested in the sponsor’s securities – debt or shares and to what extend is this possibility actually used?

Assets with the employer are forbidden by law (Art. 17 para. 2 BPVG) with very few exceptions.

(31) To what extend subordinated loans can be used to cover pension obligations?

Legally subordinates loans are not explicitly forbidden. But the board has to adopt asset rules, which have to be sufficient to the principles of safety, return and diversification. From this perspective subordinates loans may be legally implicitly forbidden.

(32) To what extend can the assets be invested in items, such as property, machines, etc. used by the sponsor for its business and to what extend is this possibility actually used?
Investments in property or machines used by the employer are not explicitly forbidden.

(33) To what extend can the management of the IORP be the same as the management of the sponsor? Describe the corporate governance requirements for IORPS in this respect?

The board of an IORP which operates occupational provision according to BPVG is assembled by the same number of representatives of the employees and the employer. The chairman can be an employer-representative if the employer bears the administration costs.

(34) To what extend can other important functions, such as the actuary, auditor and compliance officer be nominated (and possibly directly or indirectly paid) by the employer?

Only the board can mandate all providers, consultants and auditors.

12. 5. EMPLOYEE REPRESENTATIVES’ INVOLVEMENT IN THE GOVERNANCE OF THE PENSION SCHEME

(35) For IORP’s: in which case and how many employee representatives need to be part of the board or other legal body of the IORP?

Employee representatives have to be half of the number of the member of the board if the IORP operates occupational provision according to BPVG.

(36) Are employee representatives involved in the financing plan of the IORP and/or to what extend is their advice or decision binding?

Only the board of the IORP is responsible for the governance in any aspect.

(37) For book reserve schemes, are employee representatives involved in any way in the determination of the level of the book reserves and/or the way these book reserves are set up?

In Liechtenstein book reserve schemes are not allowed.

(38) Do employees need to be informed about the level of the financing of their benefits in the IORP and to what extend?

The employees have to be informed annually about the balance sheet, profit and loss account and attachment according to Swiss GAAP FER 26, which includes e.g. the degree of coverage.
(39) Can employees or their representatives require changes in the pension scheme based on the financing level of the scheme, e.g. increases in pensions, reduction of employee contributions?

Employees are involved by their representatives in the board in any decisions.

(40) What are the communication requirements to employees on supplementary pensions? Are they different in case of book reserves or in case of an IORP?

In addition to the duty of information concerning the status of the IORP the employees have to be informed about their individual contributions and benefits (annual insurance certificate).

12.6. UNDERFUNDING OF DB SCHEMES

(41) In case of compulsory systems to which extent future generations can be asked to pay possible underfunding for the current generation? In how far the systems can operate as pay as you go?

Basically an IORP operates according the funding principle. A pay as you go-system is not allowed. Practically restoration contributions are paid by the employees and the employer, which can be seen partly as a pay as you go-system.

(42) In case of underfunding of company sponsored benefit plan, should the sponsor pay the whole underfunding or can increased employee contributions be required?

The sponsor is in no case obliged to cover the underfunding. The board has to take measurements to eliminate the underfunding (e.g. recovery contributions, reduction of the interest rate for the savings capital of the employees [cash balanced] or reduction of the acquirable benefit [DB], other measurements).

(43) Does the sponsor have to cover underfunding before increasing contributions from employees or benefit cuts?

See above

(44) In what time delay the employer needs to pay the extra-contributions?

There is no delay for extra-contributions decided by the board, but there is the time frame of 5 to 7 years to eliminate the underfunding.

(45) Is a recovery plan permitted and on how long can this recovery plan continue?

It is not only permitted, but demanded by law. The time frame is 5 to 7 years.
(46) Is there any legal requirement for the actuary or any other person involved to report on the expected underfunding due to a too strict financing plan and what action can be taken by the IORP in order to change this financing plan?

The board of the IORP is obliged to control the efficiency of a recovery plan and to tighten, untighten or cancel the measures as the case may be.

(47) How can the IORP enforce the sponsor to fulfil his legal duty to pay the necessary contributions?

According to normal legislation (between two legal entities)

(48) Should members (employees and beneficiaries) and/or employee’s representatives be informed in a situation of underfunding?

In case of underfunding all participants, the employer and the supervisory authority have to be informed.

(49) How is this information requirement structured (individually, together with the yearly overview of the benefits, only when requested by employees, …) and what is the maximum period allowed between the date of determination of the underfunding and the information to the employees?

The information has to be provided as soon as the underfunding is known.

(50) Can members and/or beneficiaries or their representatives have a voice in the decision of a recovery plan?

The employees are involved by their representatives, beneficiaries not.

(51) Are members and/or beneficiaries informed on the details of a recovery plan?

Yes.

12. 7. PRIORITY CREDITORS RIGHTS

(52) Which creditors have a higher priority on the remaining assets of the sponsor than the IORP in case of insolvency of the plan sponsor?

None
(53) In case of insolvency of their employer what is the priority the employees have on the remaining assets for their supplementary pension rights in case of a book reserve scheme and possibly in case of underfunding of the IORP?

The IORP is obliged to demand possibly outstanding contributions. The employees only have rights on the assets of the IORP.

(54) What is the priority ex-employees, pensioners or other beneficiaries of the pension scheme have on the remaining assets of the sponsor?

There is no priority.

(55) If the employer becomes insolvent, but is an affiliate of a group of companies where the mother company is not insolvent, can the employees claim their supplementary pension rights from the mother company in case of a book reserve or in case of underfunding of the IORP?

As mentioned above the IORP has to demand for outstanding debits. If the mother company is not liable for the liabilities of the affiliated employer, there is no possibility to claim against the mother company.

12. 8. GUARANTEE SCHEMES

(56) Do guarantee schemes exist? If so, provide a detailed description of the schemes.

IORPs in Liechtenstein have been legally affiliated to the Swiss LOB15 Guarantee Fund16 as per 1st January 2007.

The law in Liechtenstein17 foresees in Art. 22e – 22h a foundation for domestic IORPs, very similar to the Swiss LOB Guarantee Fund. Due to the limited volume of the 2nd pillar in Liechtenstein it was preferred not to build up an own fund but to assign the duties to the existing Swiss LOB Guarantee Fund.

The main task of the LOB Guarantee Fund is to secure all the persons with second pillar insurance in the event of insolvency of the benefit schemes or of the group of insured (Affiliation of an employer to a collective/joint establishment). The LOB Guarantee Fund legally covers an insolvency of an IORP or Affiliation itself, but in practice an IORP or Affiliation can only become insolvent in case of an insolvency of the employer. The LOB Guarantee Fund covers the benefits of the insured employees (vested rights) and beneficiaries (pensions in payment). If there is an underfunding, it is covered by the LOB Guarantee Fund.

The LOB Guarantee Fund is financed by contributions of the affiliated IORPs. At the time the annual contribution is 0.02% of the vested benefits of the insured employees and 0.02% of the pensions in payment multiplied by 10.

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15 Law on Occupational Benefits
16 http://www.sfbvg.ch/
17 revised as per 1st January 2006
(57) Are premiums paid by the sponsoring undertaking to the guarantee scheme risk-based?

No

(58) What is the procedure to be followed for the intervention of the guarantee scheme?

In case of insolvency of the employer affiliated to a collective foundation of an insurance company or another provider the collective foundations deposits an insolvency request by the LOB Guarantee Fund if the contributions have not been paid.

In case of insolvency of an employer with an own pensions foundation, this IORP does not become insolvent automatically. Only if the IORP becomes illiquid and can not be recovered the supervisory authority (FMA19) will state insolvency of the IORP and announces it to the LOB Guarantee Fund.

(59) Are all defined benefit and book reserve schemes covered by the guarantee schemes?

Yes

(60) Are the schemes different for book reserve schemes and funded schemes? Please describe?

No, and no book reserves

(61) Are all benefits covered including unvested benefits and recent benefit improvements?

Only vested benefits are covered. If the LOB Guarantee Fund states that recent benefit improvements have been made without sufficient reserves at the time of the decision, it will cancel the improvements.

(62) Are there ceilings on the benefit coverage?

There is a limitation of the covered salaries of CHF 123,120.

(63) Will the guarantee scheme take over obligations or inject a one time payment in the IORP in case of a defined benefit scheme?

Both is possible.

(64) Do the guarantee schemes have sufficient resources in e.g. time of crisis where a lot of sponsors could have solvency problems?

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18 As Swissair had to declare bankruptcy in 2002 the Swissair pension fund paid out the vested benefits of the employer. The Swissair pension fund still exists as a beneficiaries pension fund.

19 http://www.fma-li.li/
Due to the fact that occupational benefits in Switzerland and Liechtenstein are separated from the employer and that benefit schemes have to recover an underfunding themselves, the system is quite stable. In case of insolvency of a sponsor the assets of the IORP are secure. Although the reserves of the LOB Guarantee Fund only amount to about CHF 490 Mio. (as per 31st December 2009) compared with assets of 2nd pillar in Switzerland and Liechtenstein of around CHF 600 to 700 Milliards at the time, the danger of a system collapse is low. The fact that insolvency payments of the LOB Guarantee Fund in the year 2009 have been lower than in other years may illustrate this.

12. 9. Any other measures

(65) Are there any other measures (not covered above) that contribute to the protection of the interests of the employees or ex-employees and their beneficiaries in case of insolvency and/or disappearance of the sponsoring employer?

No.

(66) Are their proposals for changing the measures already taken and what are they? When are they expected to be implemented?

There are no important changes planned. Depending of the financial situation of the LOB Guarantee Fund the contributions can be in- or decreased according to effective law.

(67) Please describe the views of the social partners on the effectiveness of the measures taken to protect the rights of the beneficiaries of company sponsored benefit plans in case of insolvency of the employer and/or the IORP (if publicly available or made available in an interview)

The system has a good reputation both at employees’ and employers’ side.

(68) Is there evidence that the overall outcome of one of the specific systems operated in your country, provides inadequate protection for the rights of the beneficiaries of company sponsored benefit plans?

No.

(69) Is there evidence of how specific systems operated in your country proactively deal with different risks and improve risk management?

It may be surprising that all IORP are affiliated to the LOB Guarantee Fund. Although an IORP of a corporation under public law will not become insolvent it pays contributions. This form of solidarity is not really called into question.
12. 10. Your Assessment

(70) Please describe the shortcomings of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the sponsor and/or the IORP. If there are in your opinion no shortcomings, please explain.

Overall the system is good, efficient and economical. The IORPs are primarily responsible to avoid or recover an underfunding.

(71) Please describe your suggestions for improvement of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the employer and/or the IORP and describe the possible additional costs for these improvements and the possible risks that employers may decide to downside or close defined benefit arrangements?

None
13. LUXEMBURG

1. MAIN FINDINGS

- Occupational pensions need to be financed externally via an IORP or via book reserves
- IORP’s are subject to control and assets covering technical provisions calculated in a prudent way need to be available, recovery plans require immediate recovery or very limited periods
- Employers using book reserves are required to pay premiums to the German insolvency insurer. The benefits insured are the total vested benefits.
- Benefits vest after maximum 10 years of service
- Each year information on the level of financing, the vested and projected benefits has to be provided

13. 1. DESCRIPTION OF THE LEGAL FRAMEWORK

(1) Which kind of IORPs can be used to finance pension schemes (insurance companies, national funds, company pension fund, multi-employer fund, sector pension fund, other kinds of entities created to finance pensions)?

In Luxembourg a pension scheme can use an insurance company, a pension fund which needs to be a separate legal entity or a financing via book reserves. There are two kinds of pension funds: pension funds regulated by the insurance supervisory authority (“Commissariat aux Assurances” - CAA) and pension funds (“Association d’épargne-pension” – ASSEP) under the prudential supervision of the regulator for banks and investment funds, the “Commission de Surveillance du Secteur Financier” (CSSF). There is also the “Société d’épargne-pension à capital variable” (SEPCAV) but the SEPCAV can only be used for defined contribution schemes.

The insurance companies do not fall in the scope as Luxembourg has not adopted article 4 of the Directive. Death and disability benefits are compulsorily covered by an insurance company or reinsured by an insurance company.

The legislation concerning the pension funds under the scope of this project can be found on the website of the “Commissariat aux Assurances” (www.commassu.lu) and the “Commission de Surveillance du Secteur Financier” (www.cssf.lu).
(2) What are the minimum funding requirements for each of these kind of IORP’s and are there minima for book reserves?

An IORP has to calculate the liabilities of pension benefits each year.

In the ASSEP, the beneficiaries are creditors of the fund. The technical provisions of the fund, representing the affiliated members’ rights, have to reach a minimum of five million Euros after a start up period of up to ten years.

The CSSF must approve the method and basis of calculation of the technical provisions which the pension fund proposes to use. The method and the basis of calculation of the technical provisions are set out in the financing plan.

The technical provisions shall be calculated on the basis of the actuarial methods recognized by the CSSF, in accordance with the following principles:

a) the minimum amount of the technical provisions shall be calculated by a sufficiently prudent actuarial valuation, taking account of all commitments for benefits and for contributions in accordance with the pension arrangements of the pension fund. It must be sufficient both for pensions and benefits already in payment to beneficiaries to continue to be paid, and to reflect the commitments which arise out of members’ accrued pension rights. The economic and actuarial assumptions chosen for the valuation of the liabilities shall also be chosen prudently taking account, if applicable, of an appropriate margin for adverse deviation;

b) the interest rates used shall be chosen prudently and determined in accordance with:
– the yield on the corresponding assets held by the pension fund and the future investment returns and/or
– the market yields of high-quality or government bonds;

For Luxembourg based plans (i.e. for Luxembourg employers), the minimum funding requirement is based on a discount rate of 5% and Luxembourg mortality tables Statec 65-95.

For DB schemes, in CAA pension funds, actuarial methods and assumptions must be appropriate to the pension scheme and the financial possibilities of the sponsoring employer. The approach taken by the legislation is qualitative in nature and there are no fixed quantitative limits.

As for Luxembourg insurance companies, the Commissariat aux Assurances ensures that CAA pension funds comply with the prudential principles laid down by law.

The CAA pension fund must have sufficient technical provisions in relation to its commitments; the minimum amount of such technical provisions shall be sufficient for the continuation of payment of pensions and benefits to the beneficiaries. They must reflect the commitments arising from the pension entitlements accrued to members.

Due to the fact that sponsoring companies assume a residual financial guarantee, constraints imposed on life insurance companies (in regard to the rules applicable for technical provisions) could be eased for CAA pension funds without taking excessive risks. They are always required to act in accordance with the principle of the “prudent man”.

In case of book reserves, the commitments resulting from a supplemental pension shall be subject to regular allocations to the book reserves to a financing plan and under the supervision of an actuary.

(3) Is there a legal obligation to subscribe to external (solvency) guarantees? And what are these guarantees for each kind of IORP and for book reserves schemes?

There is a legal obligation to subscribe to an external guarantee only in case of book reserves. A company that adopted an internal system of supplementary pension must compulsorily pay for reinsurance to a company providing insolvency insurance. This company needs to be approved by the Government and is a German organization, PSVaG.
This obligation does not exist for IORP’S.

(4) Does separate legislation on solvency exist for IORP’s falling under article 17 of the directive (plus a description)? Article 17 concerns IORP’s that take themselves the biometric risks and/or guarantee benefits, in case of insufficiency these IORP’S cannot claim supplementary contributions or reduce the benefits. How much of the IORP’s (as a percentage) are falling under article 17?

IORP’s falling under article 17 should constitute a solvency margin (pension funds CAA: art. 34 law 6-12-1991 and ASSEP: art. 77 law 13-07-2005).
We are not aware of pension funds falling under article 17 in Luxembourg.

(5) Is the provision of company sponsored employee benefits compulsory for the employers and to which extent?

The provision of company sponsored employee benefits is not compulsory.

(6) Does the legislation provide for minimum vested rights if an employee leaves before retirement? Is this legislation different for the different funding systems or book reserves?

Yes, there are minimum vested rights when an affiliate leaves before retirement after a certain period determined by the pension scheme (maximum 10 years of service in the company).

In DB schemes, minimum vested rights at normal retirement are equal to the retirement benefits calculated with salary at the leaving date and with service up to normal retirement age and then prorated taking into account service at leaving date. The minimum present value is calculated with a discount rate of 5 % and the Luxembourg mortality tables Statec 65-95.

This legislation is the same for the pension funds and book reserves.
(7) Is there legislation that requires that ex-employees and pensioners are treated the same as active employees (plus a description)?

There is no specific legislation.

(8) Is there legislation on the increase in benefits during payment or the deferred period (plus a description)?

There is no obligation to increase benefits during payment or during deferred period. It depends only on the decision of the company, or it can be specified in the rules of the pension scheme. In Luxembourg, we are not aware of any increase of benefits during the deferred period.

(9) Is there legislation that allows to reduce accrued pension rights in case of under funding?

No, in principle accrued pension rights cannot be reduced. The company must ensure at all times the solvency and liquidity of the pension fund as well as coverage of technical provisions by new contributions. In case of difficulties and under strict conditions, the employer may reduce benefits but only for the future.

(10) Can benefits be paid in the form of a lump sum and to what extend?

The benefits can be paid in the form of a lump sum if the pension regulations allow this form of payment. This is usually the case.

(11) Which kind of beneficiaries have priority rights on the assets of the IORP (pensioners, ex-employees, other beneficiaries, employees) and to what extend? Please describe the priority rules?

There are no priority rules. All beneficiaries are treated the same.

(12) In case of book reserves, which kind of beneficiaries has priority rights on the assets of the employer (pensioners, ex-employees, other beneficiaries, employees) and to what extend? Please describe the priority rules?

There are no priority rules. In case of bankruptcy, the vested rights of the affiliates, former affiliates and pensioners are supported by the insurer of the insolvency risk (PSVaG in Germany).

(13) Has the country applied art. 4 of the Directive? If yes, comment on differences between pension insurer’s and IORP’s throughout all questions.

Luxembourg has not applied article 4 of the Directive.
(14) Has the country applied article 5 on small pension institutions of the Directive? If yes, how much (in percentage) beneficiaries are affiliated to these small pension institutions?

The principle is provided in the law ASSEP (art. 4) but it’s not applicable today.

13.2. OVERVIEW OF DB AND BR SCHEMES

(15) What kind of company sponsored benefit schemes are provided? Defined benefit schemes, Defined contribution schemes, Cash balance schemes and other schemes (plus description)?

Cash Balance type pension schemes do not exist in Luxembourg.

Over the last few years there has been a clear move towards Defined Contributions type pension schemes although, it has to be said, that there is little available in the way of statistics on the subject.

In 2003 Social Security General Inspection statistics showed that 74% of schemes were of a Defined Contributions type.

A study conducted by Esofac Luxembourg in 2009 showed that out of the 49 Retirement Schemes analysed, 60% were Defined Benefits as opposed to 40% Defined Contributions. A definite link was also found between the size of the company and the type of retirement benefit; small and medium-sized companies had 54% Defined Contributions schemes whereas large companies offered 74% Defined Benefits retirement schemes.

As far as the financing of the schemes is concerned, although when legislation covering supplementary pension schemes was introduced in 2000 the majority of pension schemes (apparently 80%) were financed by book reserves, since then the opposite has happened. In fact, more and more pension schemes are being outsourced mainly towards group insurance or pension funds very often with a Defined Contributions formula. In 2003, still based on the Social Security statistics for retirement schemes, only 17% of schemes were financed by book reserves as opposed to 82% by group insurance and only 1% by pension funds.

(16) What % of covered employees benefit from the different type of schemes described in the previous question? Is this different for male and female employees?

No statistics to speak of actually exist on the subject. However, figures from 2007 regarding benefits in kind showed that in the private sector only 17% of resident employees actually benefited from a pension scheme at all. These statistics also pointed to the important disparity existing between the various sectors; while 66% of employees in the financial sector benefited from a pension scheme, only 15% in the manufacturing sector and 3% in construction did so.

Disparities which may exist between male and female employees are relative to whether the sector of activity adheres to a pension scheme or not. However, within the same pension scheme male and female affiliates are treated equally (Art. 16, law of 8 June 1999 which has taken over from Directive 96/97/CE of 20 December 1996).
It is also worth noting that the Esofac Luxembourg 2009 study reveals that, although more Defined Contributions pension schemes exist than Defined Benefits, the majority of affiliates – 71% - are still covered by a Defined Benefits scheme.

(17) Are pensions in payment or deferred increased? Is this increase conditional? What are the conditions?

Generally speaking, deferred pensions or pensions in payment are not index-linked; adjustment is always possible but depends on the company in question or on the pension plan itself. However, pension plans which index-linked pensions in payment do exist.

(18) What % of labour force is covered by a company sponsored benefit scheme (including sector schemes or compulsory supplementary pension schemes)? Is this different for male and female employees?

There are no statistics on this subject other than a 2007 study which showed that only 17% of resident employees in the private sector benefited from a pension scheme. Although this level of cover is quite low it has to be said that the level of the state pension scheme is, however, high.

If disparities exist between male and female employees they are linked to whether the sector of activity adheres to a pension scheme or not and within the same pension scheme male and female affiliates are treated equally.

(19) How high is the average retirement pension provided by the company sponsored benefit scheme, preferably as a percentage of last yearly salary? And how is this compared to the social security retirement pension? Are there significant differences between the averages for male and female employees?

Luxembourg social security is, at least for the time being, generous with its state pension scheme which explains – up to a point - the low level of supplementary pension scheme coverage of employees. The level of benefits paid out by pension schemes can vary wildly from one scheme to another. Retirement benefits due by a Defined Benefits pension scheme can thus vary from between 60 – 70% of the last salary or the average sum of the last salaries (taking into account, in one form or another, the state pension). There is no difference, here, between male and female averages.

(20) What types of financing vehicles actually exist in your country and how many? Book reserves, pension funds, pension funds that fall under article 17 of the directive on IORPS, sector funds, insurance or other financing vehicles?

Luxembourg has three types of financing vehicles: book reserves, pension funds and group insurance. Sector funds do not exist. The number of companies financing their pension schemes via book reserves is progressively decreasing which is essentially due to the move towards outsourcing that begun in 2000 with the implementation of current legislation, allowing for pension schemes to be financed through insurance or pension funds.
There are currently 4 CAA type pension funds and 11 ASSEP type pension funds (+4 SEPCAV which can only be used to finance Defined Contributions pension schemes). To the best of our knowledge no IORPs are covered by Article 17 and, as far as Luxembourg pension schemes are concerned, when pension funds take biometric risks they must be 100% reinsured by an insurance or reinsurance company.

(21) What % of covered employees receives their benefit via these above described financing vehicles?

Few statistics exist on this subject. In 2000 it appeared to be the case that 80% of pension schemes were financed via books reserves. Today, pension schemes are increasingly financed through group insurance.

(22) Please provide a short summary of the accounting rules applicable to employers that provide defined benefit schemes (e.g. equal to IAS19, similar to IAS 19 but ..., no provisions contributions and/or benefits paid are equal to expenses, description of other rules)

Companies quoted on the stock exchange are obliged to follow IAS 19 regulations but this is not the case for other companies. For the latter the cost of supplementary pensions will be represented by their contributions.

(23) What is the % of the employers that report under IFRS (IAS19) or very similar accounting rules?

An important part of the employers report under IFRS or USGAAP. If we focus on the employers that provide defined benefit plans financed by pension fund a great majority of employers are obliged to report under IFRS or USGAAP.

(24) Can you provide statistics on the provisions accounted for under these rules (per employee and/or in relation to the funds in the pension fund)?

No statistics are available in Luxembourg.

13.3. Requirement of additional assets

(25) Which type of additional assets (above the assets covering the technical provisions) is required (plus description)?

Firstly, it must be noted that as far as Luxembourg supplementary pension schemes are concerned, death and disability coverage needs to be financed via group insurance (Art. 18 (3), Law 8 June 1999). CAA pension funds are subject to financial monitoring by the insurance supervisory body, the Commissariat aux Assurances, which verifies in particular and for all of the fund’s activities, its solvency and the setting up of technical provisions and real assets in accordance with current Grand-Duchy regulations. The pension fund must have sufficient technical provisions to cover the entirety of its commitments; it can take on board death and disability cover but in this case 100% of the risk must be covered by reinsurance.
Moreover, in the company statutes, the sponsors must have committed themselves to guaranteeing at any moment the solvability and liquidity of the pension fund as well as the cover of technical provisions by making the necessary contributions immediately they are required.

Rather than arbitrarily regulating fund investments, legislation imposes the ‘prudent man’ principle. Assets representing the technical provisions must, therefore, also take into account the range of transactions carried out by the pension fund in order to ensure the security, performance and liquidity of the investment fund and the diversification and adequate dispersion of its investments.

ASSEPs which operate pension schemes in respect of which the ASSEP itself, and not the sponsoring undertaking or a life insurance undertaking or a bank, underwrites the liability to cover against biometric risk or guarantees a given investment performance or a given level of benefits, shall hold on a permanent basis additional assets above the technical provisions to serve as a buffer. The amount thereof shall reflect the type of risk and asset base in respect of the total range of schemes operated. These assets shall be free of all foreseeable liabilities and serve as a safety capital to absorb discrepancies between the anticipated and the actual expenses and profits. The amount of the additional assets above technical provisions held shall be at least equal to the amount which results from application of the rules laid down in Articles 27 and 28 of Directive 2002/83/EC. However, in practice such ASSEPs do not exist.

For the Luxembourg pension plans, the risk of death and disability will ultimately be covered by group insurance.

The CSSF may establish more specific rules for determination of the minimum amount and a maximum amount for the additional assets above technical provisions provided that they are prudentially justified (art. 77, law 13-07-05).

(26) Are these additional assets requirements different for IORP’s that fall under article 17 of the directive (plus description) ?

No.

(27) When can these additional assets actually be used? e.g. when more than the expected number of employees dies in a particular period, when the employer becomes insolvent, other?

These additional assets can only be used:

- When the IORP covers biometric risk and the claims are higher than anticipated over a particular period (this remains a fairly theoretical proposition in Luxembourg as death and disability risk is obligatorily covered by group insurance; this rule could, however, apply to in the case of cross-border pension funds).
- When the ASSEP guarantees a given investment performance or a given level of benefits and the investments made have not yielded the expected result.
(28) For multi-employer funds, can these additional assets be used in case of insolvency of any of the employers? In case of ring-fencing per employer or in case of no ring-fencing and therefore solidarity between employers?

The measures laid down to deal with the insolvency of an employer within a multi-employer fund are determined by the company statutes or the pension fund regulations. In principle additional assets are not intended for use in the case of insolvency of one employer. Any possible solidarity between employers will be provided for in these measures (whether the company statutes or the pension fund regulations). The statutes of a CAA pension fund require that the sponsors guarantee the solvability of the fund thereby necessitating solidarity between employers.

(29) Can these assets return to the employer and under which conditions?

These assets can never return to the employer. Should the level of assets be too high then the employer’s contributions can be reduced.

13. 4. INDEPENDENCE OF THE IORP FROM THE SPONSOR

In this part of the project, we need to investigate the level of the independence of the IORP from the sponsor. To this end we will provide an answer to the following questions:

(30) To what extent can the assets be invested in the sponsor’s securities – debt or shares and to what extend is this possibility actually used?

In a CAA or ASSEP pension fund investments in instruments issued by the sponsor cannot form more than 5% of the overall portfolio and, when the sponsor belongs to a group, the investments in instruments issued by the companies belonging to the same group as the sponsor cannot form more than 10% of the portfolio. When the pension fund operates on behalf of several sponsors, the investments made in instruments issued by these companies are made wisely with an eye to adequate diversification.

(31) To what extent can subordinated loans be used to cover pension obligations?

Investments of assets need follow the prudent man rules. As far as subordinated loans can form a probably small part of these rules, they can be used.

(32) To what extend can the assets be invested in items, such as property, machines, etc. used by the sponsor for its business and to what extend is this possibility actually used?

It is possible to hold assets invested in property used by the sponsor but this is not the case for material and equipment etc used by the sponsor. CAA pension funds can hold assets in property situated in the European Union but there are no measures allowing for investment in machines etc.
For ASSEP funds the law is more general: this type of pension fund must have, at any given moment for all the retirement schemes which it manages, adequate and appropriate assets to cover the technical provisions. The fund must place its assets in accordance with the ‘prudent person rule’ i.e. they must be placed so as to ensure the security, quality, liquidity and performance of the overall portfolio.

We do not, however, have any information regarding the actual investment of pension funds with these types of assets.

(33) To what extent can the management of the IORP be the same as the management of the sponsor? Describe the corporate governance requirements for IORPS in this respect?

The IORP Board of Directors must be made up, at least partially, of the sponsors’ representatives. There is no law forbidding the presence of the sponsors’ management at the internal workings of the pension fund.

CAA pension funds must be effectively managed by an accredited pension fund manager. If this is a legal entity, the managing body must be able to guarantee, among other things, its honour and its high level of professional knowledge as regards the management of pension funds.

For ASSEPs there is minimum number of three partners of whom one must be a representative of the sponsor; this is stated by law with no further precisions. As far as the statutes of the ASSEP are concerned they must obligatorily allow for one or more representative of the sponsor(s) on the Board of Directors.

(34) To what extent can other important functions, such as the actuary, auditor and compliance officer be nominated (and possibly directly or indirectly paid) by the employer?

It is the statutes of CAA pension funds which determine the rules regarding the expertise, the appointment and the dismissal of the administrator, auditor and actuary of the pension fund. Generally speaking, this falls under the jurisdiction of the fund’s Board of Directors (or General Meeting). On the other hand, the actuary, the fund administrator, the auditor etc are frequently paid by the sponsor(s).

In the case of ASSEP pension funds the statutes ought to determine, for example, that the fund delegates management of the liabilities and the assets to one or more administrators. In such a situation it is the Board of Directors which appoints and dismisses the administrators with the approval of the CSSF. The statutes determine who pays the administrators.

Legislation also provides for the company auditor to be appointed by the ASSEP Board of Directors and for him/her to be paid by the fund itself.
13. 5. Employee Representatives' involvement in the governance of the pension scheme

(35) For IORP's: in which case and how many employee representatives need to be part of the board or other legal body of the IORP?

CAA pension funds generally hold ASBL(1) status and in this case there is no obligation for employee representatives to be present on the Board of Directors. However, ASSEP pension funds cannot have fewer than three partners, at least one partner representing the employees, one partner representing the beneficiaries (or in there are no beneficiaries, one extra partner representing the employees and at least on partner representing the sponsors. ASSEP statutes can also insist on the presence of one or more beneficiary or employee representative on the Board of Directors as well as sponsor(s)' representatives.

(36) Are employee representatives involved in the financing plan of the IORP and/or to what extent is their advice or decision binding?

If employee representatives are on the IORP Board of Directors they participate fully in the decisions taken by the board, particularly as regards financing, and have the same rights as sponsor representatives.

(37) For book reserve schemes, are employee representatives involved in any way in the determination of the level of the book reserves and/or the way these book reserves are set up?

Employee representatives are not in any way involved in either the determination of the level of book reserves or in their setting up.

(38) Do employees need to be informed about the level of the financing of their benefits in the IORP and to what extent?

All employees should receive succinct information regarding the IORP’s situation and the current level of his/her individual vested rights on an annual basis in accordance with the IORP Directive.

(39) Can employees or their representatives require changes in the pension scheme based on the financing level of the scheme, e.g. increases in pensions, reduction of employee contributions?

Neither employees nor their representatives can insist on changes to the financing of the pension scheme as all such decisions are taken exclusively by the employer.

(40) What are the communication requirements to employees on supplementary pensions? Are they different in case of book reserves or in case of an IORP?

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(1) ASBL = Non Profit Organization
All employees with a pension scheme have the right to annual information regarding his/her rights to benefits on retirement and his/her rights upon possible loss of employee-status. In addition, as far as a pension fund is concerned, he/she also has the right to the information stipulated by Article 11 of the IORP Directive.

13. 6. UNDERFUNDING OF DB SCHEMES

We need to describe the legal requirements of the sponsor in case of underfunding.

(41) In case of compulsory systems to what extent can future generations be asked to pay possible underfunding for the current generation? In how far the systems can operate as pay as you go?

Compulsory systems do not exist in Luxemburg and pay as you go systems are not allowed anymore since the law of 1999.

(42) In case of underfunding of company sponsored benefit plan, should the sponsor pay the whole underfunding or can increased employee contributions be required?

The sponsor has to bear responsibility for all the under-funding. Employee contributions finance, in principle, a specific group insurance and cannot be invested in the company itself (in the case of book reserves); in theory they could be invested in a pension fund but in practice this is never be the case.

Moreover, any increase in employee contributions first requires the specific agreement of each employee. Refusal to accept an increase would mean that the employee would remain affiliated to the original system.

Finally, as regards employee contributions it is worth noting that the tax deductible amount is limited to 1200€ per year.

(43) Does the sponsor have to cover underfunding before increasing contributions from employees or benefit cuts?

Employees’ personal contributions are generally allocated to the financing of a group insurance (for a Defined Contributions scheme) and not to a Defined Benefits scheme (see above). They finance benefits which are distinct from those financed by the employer. Under-funding in pension funds can, therefore, never be resolved by increasing employee contributions.

A reduction of benefits is not possible either except for the future and within very strict regulations.

(44) In what time delay does the employer need to pay the extra-contributions?

When applying for accreditation a CAA pension fund must have specified in its business plan the steps that it would take in the event of under-funding. Nonetheless, the law states that the minimum amount of technical provisions must always be sufficient to cover both outgoing benefits as well as the commitments made as
regards vested rights to retirement benefits of employees and of ex-employees. Consequently, as soon as the technical provisions drop below the minimum sum, the employer must top it up with the necessary supplementary contributions.

The ASSEP type pension plan must, for its part, adopt a concrete and achievable recovery package to regain solvability. The package will be subject to approval by its prudential monitoring authority (CSSF) and will take into account the particular circumstances of the pension fund in question. There is, however, no legal time limit for dealing with the under-funding which must be negotiated with the monitoring authority.

(45) Is a recovery plan permitted and on how long can this recovery plan continue?

Yes, in the case of an ASSEP (see answer above). No maximum time limit is set by law.

(46) Is there any legal requirement for the actuary or any other person involved to report on the expected underfunding due to a too strict financing plan and what action can be taken by the IORP in order to change this financing plan?

When applying for accreditation a CAA pension fund must have specified in its business plan the steps that it would take in the event of under-funding. In such a situation the pension fund manager must alert the insurance supervisory body, the Commissariat aux Assurances. It is the responsibility of the liabilities administrator for an ASSEP fund to inform the CSSF of a situation of under-funding. The CSSF can also ask the liabilities administrator to supervise one or more aspects of the pension fund’s workings and areas of activity.

If an IORP wants to alter its financing plan it must submit the modifications to the prudential monitoring body on which it is dependant.

(47) How can the IORP enforce the sponsor to fulfil his legal duty to pay the necessary contributions?

In the IORP statutes or pension fund regulations the sponsor will have agreed to guarantee at any moment the solvability and liquidity of the fund as well as to cover the technical provisions by immediately making the necessary contributions and it is on this basis that the IORP can force the sponsor to assume the regular financing of the system.

(48) Should members (employees and beneficiaries) and/or employee’s representatives be informed in a situation of underfunding?

Technically there is no legal obligation to do so but, if further to the under-funding the employer is obliged to alter his pension scheme (e.g. by reducing future benefits) he will have to ask the opinion of employees’ representatives’ prior to taking any decision. It is, however, only an opinion that is required (and therefore not restrictive).
For IORPs it should also be noted that all employees receive succinct information regarding the situation of the fund and the current level of financing of his/her individual vested rights on an annual basis. Moreover, employees and beneficiaries and/or their representatives can receive the accounts and annual reports of the fund on request. Article 11 of the IORP Directive lists the information that is to be made available.

(49) How is this information requirement structured (individually, together with the yearly overview of the benefits, only when requested by employees, …) and what is the maximum period allowed between the date of determination of the underfunding and the information to the employees?

See answer above. Annual information in the case of a pension fund.

(50) Can members and/or beneficiaries or their representatives have a voice in the decision of a recovery plan?

No, an ASSEP recovery plan will be negotiated between the pension fund and the monitoring body on which it is dependant (CSSF). However, if the pension scheme and therefore the benefits which are linked to it are modified in any fashion, the employer will have to ask the opinion of the employees’ representative prior to taking any decisions.

(51) Are members and/or beneficiaries informed on the details of a recovery plan?

No, there is no procedure for this laid down by the law.

13. 7. Priority creditors rights

(52) Which creditors have a higher priority on the remaining assets of the sponsor than the IORP in case of insolvency of the plan sponsor?

The IORP has no particular preferential debt on the remaining assets of the sponsor and all preferential creditors will pass before the IORP.

(53) In case of insolvency of their employer what is the priority the employees have on the remaining assets of their employer (sponsor) for their supplementary pension rights in case of a book reserve scheme and possibly in case of underfunding of the IORP?

In so far as the employer’s contribution is classified as deferred salary, the employees hold preferential debt on their employer’s (sponsor’s) assets. Debts relating to salaries and indemnities take into consideration the last six months of work and have to be paid – up to a limit of six times the official minimum wage (Civil Code, Article 2101) - before any other preferential debt including those guaranteed by the Treasury’s priority.
There is no specific priority for book reserves in so far as the debts of employees, ex-employees and pensioners are covered by the insolvency insurer.

(54) What is the priority ex-employees, pensioners or other beneficiaries of the pension scheme have on the remaining assets of the sponsor?

There is no priority rule in the case of book reserves in so far as all debts are covered by the insolvency insurer.
In the case of pension funds, employees and ex-employees etc have no preferential debt status on their sponsor’s assets if the latter is declared bankrupt.

(55) If the employer becomes insolvent, but is an affiliate of a group of companies where the mother company is not insolvent, can the employees claim their supplementary pension rights from the mother company in case of a book reserve or in case of underfunding of the IORP?

As far as book reserves are concerned, all debts are covered by the insolvency insurer.
The mother company cannot be considered responsible for a pension fund if it never committed itself to ensuring its solvability and as such there is no recourse to be had at this level.

13. 8. GUARANTEE SCHEMES

We will need to describe if any guarantee scheme will take on outstanding obligations in case of insolvency of the sponsor.

(56) Do guarantee schemes exist? If so, provide a detailed description of the schemes.

An insolvency insurance guarantee has been set up by a German organisation (the PSVaG) for the insolvency of a sponsor whose pension scheme has been financed via book reserves (Law 8 June 1999, Art. 21 and following). As soon as the pension scheme is set up it is compulsory for the sponsor to become affiliated to this insurance and pay premiums covering the risk of insolvency.
Should the sponsor go bankrupt, employees and former employees will be able to present the insurer with a debt corresponding to their vested rights. Pensioners and their survivors will have all supplementary pensions due to them paid by the insurer rather than by the former employer. The trustee will be responsible for undertaking all the necessary measures.
The PSVaG is subrogated to the insolvent company and takes on board all benefits due. Payment of lump sums will be immediately undertaken by the PSVaG itself while the payment of annuities will be handed over to a syndicate of insurance companies who will agree to honour the PSVaG’s commitments in exchange for payment of a one-off premium covering the corresponding lump sum of these annuities plus management costs.

(57) What is the procedure to be followed for the intervention of the guarantee scheme?
It is the trustee’s responsibility to ensure that the PSVaG, via the intermediary of the General Inspection of the Social Security (the IGSS, the body which monitors the social aspect of pension funds), has all the necessary documentation to be able to implement the insolvability insurance measures. The trustee, the receiver etc. will immediately inform the insolvability insurer, via the intermediary of the IGSS, of the instigation of any procedures (bankruptcy proceedings, scheme of composition…) as well as of the names and addresses of the beneficiaries and the benefits owing to them. They will also communicate at the same time the names and addresses of employees and former employees who, at the instigation of these procedures, have vested rights and the amount of these rights. The company and the beneficiaries are obliged to furnish all necessary information to the people concerned (the trustee, the receiver…).

(58) Are all defined benefit and book reserve schemes covered by the guarantee schemes?

The Insolvability Insurance only covers pension schemes funded through book reserves.

(59) Are the schemes different for book reserve schemes and funded schemes? Please describe??

The Insolvability Insurance only covers pension schemes funded through book reserves.

(60) Are all benefits covered including unvested benefits and recent benefit improvements?

This insurance only covers the vested rights of employees and former employees at the moment of the instigation of bankruptcy proceedings (or other procedure such as a scheme of composition etc.). The insolvency insurer will take over payment of annuities due to pensioners. However, the insolvency insurer is not liable for any debt if the only, or principle, aim of setting up or improving the supplementary pension scheme was to engage the insurer’s responsibility. This scenario will be taken as being the case if, when the scheme was set up or modified, it was clear that the economic situation of the company would be unable to support the benefits imposed by the scheme. In addition, any improvements made to the scheme during the two years prior to the claim will not be taken into account in working out the benefits due.

(61) Are there ceilings on the benefit coverage?

No, the law stipulates (Law of 8 June 1999) that the total vested benefit will be insured.

(62) Will the guarantee scheme take over obligations or inject a one time payment in the IORP in case of a defined benefit scheme?

No, this system cannot be applied to an IORP.

(63) Do the guarantee schemes have sufficient resources in e.g. time of crisis where a lot of sponsors could have solvency problems?
Yes. The German organisation, the PSVaG, works on a contribution principle; every year it recalculates company-paid premiums based on the number of claims made.

(64) Are the premiums paid by the sponsoring undertaking to the guarantee scheme risk-based?

Yes, they are risk premiums which are used to cover the claims of the year in question.

13. 9. ANY OTHER MEASURES

(65) Are there any other measures (not covered above) that contribute to the protection of the interests of the employees or ex-employees and their beneficiaries in case of insolvency and/or disappearance of the sponsoring employer?

The fact that the IORP sets up an entity separate from the sponsor will protect employees, ex-employees and beneficiaries should the sponsor go bankrupt. The fund’s assets and the interest produced on them will belong exclusively to the employees, ex-employees etc and the sponsor’s trustee will, in effect, have no rights to the pension fund’s assets.

In the case of a CAA pension fund, the law even stipulates that the assets representing the technical provisions form a distinct entity protected by the preferential creditor guarantee in the same manner as persons insured by an insurance company. This priority overrides all other priorities.

(66) Are their proposals for changing the measures already taken and what are they? When are they expected to be implemented?

No.

(67) Please describe the views of the social partners on the effectiveness of the measures taken to protect the rights of the beneficiaries of company sponsored benefit plans in case of insolvency of the employer and/or the IORP (if publicly available or made available in an interview)

The social partners have not voiced an opinion on the subject.

(68) Is there evidence that the overall outcome of one of the specific systems operated in your country, provides inadequate protection for the rights of the beneficiaries of company sponsored benefit plans?

No.

(69) Is there evidence of how specific systems operated in your country proactively deal with different risks and improve risk management?
Per type of funding method or IORP (including book reserves)

(70) Please describe the shortcomings of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the sponsor and/or the IORP. If there are in your opinion no shortcomings, please explain.

In the case of book reserves the insolvability insurance is covered by a German organisation and if there are any legal dispute it would have to be resolved in the German courts. Although Luxembourg law is clear (all vested benefits as defined by the law of 8 June 1999 are covered in a situation of bankruptcy), the convention with Germany regarding recourse to PSVaG as the insolvability insurer, is more ambiguous. On the basis of this convention the PSVaG could in effect be within its right – laid down in its statutes - in limiting its intervention (opposing in certain circumstances the ceilings or applying exclusions which are applicable to German pension schemes). The person concerned would, in such a situation, have to take action against the PSVaG and then again against the Luxembourg State for failure to correctly implement the law of 8 June 1999.

The only guarantee the beneficiaries of an IORP have in the case of their sponsor’s bankruptcy, are the assets held by the funds and the interest thereby procured. Legislation, or a monitoring body, should consequently ensure the relative stability of these assets in view of pension commitments which are frozen at the time of bankruptcy.

(71) Please describe your suggestions for improvement of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the employer and/or the IORP and describe the possible additional costs for these improvements and the possible risks that employers may decide to downsize or close defined benefit arrangements?

The insolvability guarantee is sufficient for book reserves (excepting the imprecision resulting from the international convention signed with Germany).

With the aim of improving the rights of IORP beneficiaries in the event of the sponsor’s bankruptcy, it is suggested that affiliation of the sponsor to PVSaG, the German insolvency insurance, should become obligatory. The basis on which PVSaG’s contributions should be calculated, the partial value, must take into account the existing assets in the IORP. Thus the cost for the sponsor will be low and the risk of it putting a halt to a Defined Benefit scheme correspondingly so. In Germany, sponsors of an IORP are affiliated to the PSVaG and pay 20% of the contributions paid by sponsors financing their pension schemes via book reserves. We believe that it would be a good idea to adopt a similar practice.
14. MALTA

MAIN FINDINGS

- The regulatory system to allow for occupational pension schemes is still under construction
- According to the proposed legislations occupational pensions will need to be financed externally
- IORP’s will be subject to control and assets covering technical provisions calculated in a prudent way need to be available

14.1. DESCRIPTION OF THE LEGAL FRAMEWORK

(1) Which kind of IORPs can be used to finance pension schemes (insurance companies, national funds, company pension fund, multi-employer fund, sector pension fund, other kinds of entities created to finance pensions)?

The occupational pension system is only in the development stages, although indications are that retirement schemes may be established under either a trust or by way of a contract.

The enabling legislation is still being awaited, although the basic legislation to comply with the EU requirements can be found in the Special Funds (Regulation) Act. This can be found at the MFSA website: http://www.mfsa.com.mt/

The regulatory system to allow for occupational pension schemes is still under construction. A June 2009 submission to CEIOPS stated: “There are no cross-border cases of pension provisioning being passported from other Member States pass porting into Malta or from Malta into other Member States. To note that the Maltese pension system is still primarily based on the state pension and there is no system of private occupational pension provisioning. Notwithstanding a regulatory framework for the regulation of occupational pensions has been introduced in Malta, also, amongst other reasons, to ensure transposition of the Pensions Directive.”

On 31 January 2010 Prime Minister Lawrence Gonzi indicated that the government would be continuing the process of pension reform. Dr Gonzi did not give further details on the pensions reform process but included it in the various reforms being undertaken by the government.

The pensions reform was launched in 2006 when the retirement age was gradually raised and the process was launched for the raising of the thresholds of pensionable income.

The reform was based on three pillars of which only one has been brought into force so far – that of government-funding pensions. The law, however, also provides for individual and employer contributions into privately run pension schemes, one of which would be compulsory and the other a voluntary top-up. Regulations would also need to be issued on fiscal incentives that may be applied to encourage people to contribute to the private schemes.

The pensions reform was not brought fully into force because of economic conditions when the law was enacted. (www.timesofmalta.com)
(2) What are the minimum funding requirements for each of these kind of IORP’s and are there minima for book reserves?

Every occupational retirement scheme is required to have sufficient financial resources to enable it to conduct its business effectively and meet its liabilities.

An occupational scheme set up as a defined benefit scheme is subject to a requirement that the value of the assets of the scheme shall not be less nor more than a prescribed amount (regulations are still needed to specify this level)

The minimum technical funding requirement shall consist of assets that, had the Scheme wound up on the valuation effective date, would have provided for:

(i) benefits in the course of payment;

(ii) benefits, other than those referred to in paragraph (i), which consist of additional benefits secured or granted under the scheme on behalf of the beneficiary concerned by way of additional voluntary contributions or a transfer of rights from another scheme;

(iii) benefits with at least uniform attribution, other than those referred to in paragraphs (i) or (ii), payable in respect of reckonable service completed up to the effective date; and

(iv) the estimated expenses of administering the winding up of the scheme.

(3) Is there a legal obligation to subscribe to external (solvency) guarantees? And what are these guarantees for each kind of IORP and for book reserves schemes?

Being in the development stages, the current description of the protection which should be provided to beneficiaries is, at this stage, very high-level and there is no mention of external guarantees yet.

(4) Does separate legislation on solvency exist for IORP’s falling under article 17 of the directive (plus a description)? Article 17 concerns IORP’s that take themselves the biometric risks and/or guarantee benefits, in case of insufficiency these IORP’s cannot claim supplementary contributions or reduce the benefits. How much of the IORP’s (as a percentage) are falling under article 17?

No such legislation exists at this time.

(5) Is the provision of company sponsored employee benefits compulsory for the employers and to which extent?

Indications are that a mandatory company sponsored benefits system will be implemented. The timing is still uncertain, although 2010 or 2011 is mentioned.

(6) Does the legislation provide for minimum vested rights if an employee leaves before retirement? Is this legislation different for the different funding systems or book reserves?
No formal legislation regarding the minimum vested rights for exiting employees exist yet.

(7) Is there legislation that requires that ex-employees and pensioners are treated the same as active employees (plus a description)?

No formal legislation regarding the treatment of pensioners and ex-employees exist yet.

(8) Is there legislation on the increase in benefits during payment or the deferred period (plus a description)?

None yet.

(9) Is there legislation that allows to reduce accrued pension rights in case of under funding?

None yet.

(10) Can benefits be paid in the form of a lump sum and to what extend?

Beneficiaries will be allowed to receive part of their pension in the form of a lump sum. The extent, however, is not known at this time.

(11) Which kind of beneficiaries have priority rights on the assets of the IORP (pensioners, ex-employees, other beneficiaries, employees) and to what extend? Please describe the priority rules?

No such priority rules exist at this stage.

(12) In case of book reserves, which kind of beneficiaries have priority rights on the assets of the employer (pensioners, ex-employees, other beneficiaries, employees) and to what extend? Please describe the priority rules?

There has been not mention that book reserves will be employed in Malta.
(13) Has the country applied article 4 of the Directive? If yes, comment on differences between pension insurer’s and IORP’s throughout all questions.

Article 4 of the Directive could not be applied, because the occupational pension system is not in place yet.

(14) Has the country applied article 5 on small pension institutions of the Directive? If yes, how much (in percentage) beneficiaries are affiliated to these small pension institutions?

Again, Article 5 could not be applied yet.

14.2. Overview of DB and BR Schemes

(15) What kind of company sponsored benefit schemes are provided? Defined benefit schemes, Defined contribution schemes, Cash balance schemes and other schemes (plus description)?

Malta’s Special Funds Act (SFA) provides for the establishment of defined contribution and defined benefit schemes. There has been no mention of any other types of schemes.

(16) What % of covered employees benefit from the different type of schemes described in the previous question? Is this different for male and female employees?

No statistics can be given, as the system is not yet implemented.

(17) Are pensions in payment or deferred increased? Is this increase conditional? What are the conditions?

No information available yet.

(18) What % of labour force is covered by a company sponsored benefit scheme (including sector schemes or compulsory supplementary pension schemes)? Is this different for male and female employees?

No statistics can be given, as the system is not yet implemented.

(19) How high is the average retirement pension provided by the company sponsored benefit scheme, preferably as a percentage of last yearly salary? And how is this compared to the social security retirement pension? Are there significant differences between the averages for male and female employees?

No statistics can be given, as the system is not yet implemented.
(20) What types of financing vehicles actually exist in your country and how many? Book reserves, pension funds, pension funds that fall under article 17 of the directive on IORPS, sector funds, insurance or other financing vehicles?

No statistics can be given, as the system is not yet implemented.

(21) What % of covered employees receive their benefit via these above described financing vehicles?

No statistics can be given, as the system is not yet implemented.

(22) Please provide a short summary of the accounting rules applicable to employers that provide defined benefit schemes (e.g. equal to IAS19, similar to IAS 19 but ..., no provisions contributions and/or benefits paid are equal to expenses, description of other rules)

No information available yet.

(23) What is the % of the employers that report under IFRS (IAS19) or very similar accounting rules?

No statistics can be given, as the system is not yet implemented.

(24) Can you provide statistics on the provisions accounted for under these rules (per employee and/or in relation to the funds in the pension fund)?

No statistics can be given, as the system is not yet implemented.

14.3. REQUIREMENT OF ADDITIONAL ASSETS

(25) Which type of additional assets (above the assets covering the technical provisions) are required (plus description)?

The regulations addressing this had not yet been developed.

(26) Are these additional assets requirements different for IORP’s that fall under article 17 of the directive (plus description)?

N/A

(27) When can these additional assets actually be used? e.g. when more than the expected number of employees dies in a particular period, when the employer becomes insolvent, other?

N/A
(28) For multi-employer funds, can these additional assets be used in case of insolvency of any of the employers? In case of ring-fencing per employer or in case of no ring-fencing and therefore solidarity between employers?

N/A

(29) Can these assets return to the employer and under which conditions?

N/A

14. 4. INDEPENDENCE OF THE IORP FROM THE SPONSOR

(30) To what extent can the assets be invested in the sponsor’s securities – debt or shares and to what extent is this possibility actually used?

An occupational retirement scheme will not be allowed to invest more than 5% of its assets in contributor-related investments, which unless otherwise provided, include:

- instruments that are issued by the contributor or an affiliate;
- immovable property used, occupied or held under any title by the said person(s), or
- loans made to the said person(s).

(31) To what extent subordinated loans can be used to cover pension obligations?

The proposed legislation does not cover subordinated loans.

(32) To what extent can the assets be invested in items, such as property, machines, etc. used by the sponsor for its business and to what extent is this possibility actually used?

See question (30)

(33) To what extent can the management of the IORP be the same as the management of the sponsor? Describe the corporate governance requirements for IORPS in this respect?

Currently no details are available.

(34) To what extent can other important functions, such as the actuary, auditor and compliance officer be nominated (and possibly directly or indirectly paid) by the employer?

Currently no details are available.
14.5. EMPLOYEE REPRESENTATIVES’ INVOLVEMENT IN THE GOVERNANCE OF THE PENSION SCHEME

(35) For IORP’s: in which case and how many employee representatives need to be part of the board or other legal body of the IORP?

Employee representation is optional in an occupational retirement scheme. However, any arrangements for the provision of employee representation in an occupational retirement scheme should be discussed in advance with the MFSA.

(36) Are employee representatives involved in the financing plan of the IORP and/or to what extend is their advice or decision binding?

Current legislation do not address this.

(37) For book reserve schemes, are employee representatives involved in any way in the determination of the level of the book reserves and/or the way these book reserves are set up?

There looks to be no book reserve schemes in Malta.

(38) Do employees need to be informed about the level of the financing of their benefits in the IORP and to what extend?

Not known yet.

(39) Can employees or their representatives require changes in the pension scheme based on the financing level of the scheme, e.g. increases in pensions, reduction of employee contributions?

Not known yet.

(40) What are the communication requirements to employees on supplementary pensions? Are they different in case of book reserves or in case of an IORP?

Not known yet.
14.6. UNDERFUNDING OF DB SCHEMES

(41) In case of compulsory systems to which extent future generations can be asked to pay possible under-funding for the current generation? In how far the systems can operate as pay as you go?

Not known yet.

(42) In case of underfunding of company sponsored benefit plan, should the sponsor pay the whole under-funding or can increased employee contributions be required?

Where an actuarial valuation shows that, on the effective date of the valuation, the value of the scheme assets is less than the amount prescribed, the employer, shall -

(i) by making an appropriate payment to the retirement scheme administrator, or

(ii) by such other method as may be prescribed,
secure an increase in the value of the scheme assets which, taken with any contributions paid, is not less than the shortfall.

(43) Does the sponsor have to cover underfunding before increasing contributions from employees or benefit cuts?

Not known yet.

(44) In what time delay the employer needs to pay the extra-contributions?

The required increase in that value must be secured before the end of such period as may be prescribed reckoned from the date of the valuation, or

(45) Is a recovery plan permitted and on how long can this recovery plan continue?

Legislation does not state the permitted time.

(46) Is there any legal requirement for the actuary or any other person involved to report on the expected underfunding due to a too strict financing plan and what action can be taken by the IORP in order to change this financing plan?

Such specific legislation does not exist at this time.

(47) How can the IORP enforce the sponsor to fulfil his legal duty to pay the necessary contributions?

In the case of an occupational retirement scheme, any contributor failing to effect a payment in accordance with the payment schedule may be found guilty of an offence under the Special Funds Act (SFA).
(48) Should members (employees and beneficiaries) and/or employee’s representatives be informed in a situation of underfunding?

Not known yet.

(49) How is this information requirement structured (individually, together with the yearly overview of the benefits, only when requested by employees,…) and what is the maximum period allowed between the date of determination of the underfunding and the information to the employees?

Not known yet.

(50) Can members and/or beneficiaries or their representatives have a voice in the decision of a recovery plan?

Not known yet.

(51) Are members and/or beneficiaries informed on the details of a recovery plan?

Not known yet.

14.7. PRIORITY CREDITORS RIGHTS

(52) Which creditors have a higher priority on the remaining assets of the sponsor than the IORP in case of insolvency of the plan sponsor?

Not stated in legislation.

(53) In case of insolvency of their employer what is the priority the employees have on the remaining assets for their supplementary pension rights in case of a book reserve scheme and possibly in case of underfunding of the IORP?

Not yet stated in legislation.

(54) What is the priority ex-employees, pensioners or other beneficiaries of the pension scheme have on the remaining assets of the sponsor?

Not yet stated in legislation.
(55) If the employer becomes insolvent, but is an affiliate of a group of companies where the mother company is not insolvent, can the employees claim their supplementary pension rights from the mother company in case of a book reserve or in case of underfunding of the IORP?

Not yet stated in legislation.

14.8. Guarantee schemes

In Malta no guarantee schemes exist.

(56) Do guarantee schemes exist? If so, provide a detailed description of the schemes.

(57) Are premiums paid by the sponsoring undertaking to the guarantee scheme risk-based?

(58) What is the procedure to be followed for the intervention of the guarantee scheme?

(59) Are all defined benefit and book reserve schemes covered by the guarantee schemes?

(60) Are the schemes different for book reserve schemes and funded schemes? Please describe?

(61) Are all benefits covered including unvested benefits and recent benefit improvements?

(62) Are there ceilings on the benefit coverage?

(63) Will the guarantee scheme take over obligations or inject a one time payment in the IORP in case of a defined benefit scheme?

(64) Do the guarantee schemes have sufficient resources in e.g. time of crisis where a lot of sponsors could have solvency problems?

14.9. Any other measures

(65) Are there any other measures (not covered above) that contribute to the protection of the interests of the employees or ex-employees and their beneficiaries in case of insolvency and/or disappearance of the sponsoring employer?

No.

(66) Are their proposals for changing the measures already taken and what are they? When are they expected to be implemented?

No.

(67) Please describe the views of the social partners on the effectiveness of the measures taken to protect the rights of the beneficiaries of company sponsored benefit plans in case of insolvency of the employer and/or the IORP (if publicly available or made available in an interview)

Seeing how the occupation benefit system is still in development in Malta, no comments have been made by social partners.
(68) Is there evidence that the overall outcome of one of the specific systems operated in your country provides inadequate protection for the rights of the beneficiaries of company sponsored benefit plans?

Still to be seen.

(69) Is there evidence of how specific systems operated in your country proactively deal with different risks and improve risk management?

Still to be seen.

14.10. YOUR ASSESSMENT

Per type of funding method or IORP (including book reserves)

(70) Please describe the shortcomings of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the sponsor and/or the IORP. If there are in your opinion no shortcomings, please explain.

Because final legislation regarding company sponsored benefit schemes are not in place yet, we cannot comment on any shortcomings.

(71) Please describe your suggestions for improvement of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the employer and/or the IORP and describe the possible additional costs for these improvements and the possible risks that employers may decide to downside or close defined benefit arrangements?
15. THE NETHERLANDS

MAIN FINDINGS

- Occupational pensions are financed externally via an IORP falling under article 17 of the directive
- IORP's are subject to control and assets covering technical provisions calculated in a prudent way and significant buffers need to be available, recovery plans are allowed and obliged in case of underfunding and need to be authorized by the control authorities
- Benefits vest immediately
- No guarantee fund exists
- Information on the financial situation via the annual report is available to employees on request. Yearly benefit statements providing information on vested and projected rights are provided.

15.1. DESCRIPTION OF THE LEGAL FRAMEWORK

(1) Which kind of IORPs can be used to finance pension schemes (insurance companies, national funds, company pension fund, multi-employer fund, sector pension fund, other kinds of entities created to finance pensions)?

In The Netherlands a pension scheme can use an insurance company, a company pension fund which needs to be separate legal entity, a multi-employer pension fund which operates in a sector (industry-wide pension fund) or a professionals pension fund to finance a pension scheme. The insurance companies do not fall in the scope as The Netherlands have not adopted article 4 of the Directive.

Death benefits are mostly covered by the same pension provider.

The legislation concerning the pension funds under the scope of this project can be found on the website of the supervisory authority, Dutch National Bank. A significant part of the content of the website is available in English. (www.dnb.nl, select English and follow the links to “Open book supervision” and “Pension funds”).

The text of the Pensions Act is available in English and there is an extensive description of the Financial Assessment Framework. The same applies for insurance companies: follow the links to “Open book supervision” and select “Insurers”.

Dutch National Bank will hereafter be referred to as DNB, the Financial Assessment Framework will be referred to as FTK.

Company pension funds, industry-wide pension funds and professionals pension funds will be referred to as pension funds when a distinction is not relevant.

(2) What are the minimum funding requirements for each of these kind of IORP’s and are there minima for book reserves?
A pension fund needs to determine the liabilities on the basis of discounted cash flows representing the accrued pension benefits on a nominal basis. The cash flows are discounted on a term structure based on European swap rates, using mortality rates that include any foreseeable trends in longevity.

The pension fund must hold such an equity capital (“vereist eigen vermogen”) that there is a certainty of 97.5% that the pension fund will not have less assets than liabilities within a period of one year. The minimum funding requirements depend upon the risks a pension fund runs with respect to investments in shares and commodities, interest rate and currency risks, credit risks (counterparty risks) and biometrical risks. Depending on those risks, the funding ratio will need to be around 125% - 135%.

The pension fund must hold such a minimum equity capital (“minimaal vereist eigen vermogen”) that the expenses for one year can be covered. Depending on the risks a pension fund runs, the minimum funding ratio will need to be about 105%.

Book reserves are not allowed.

(3) Is there a legal obligation to subscribe to external (solvency) guarantees? And what are these guarantees for each kind of IORP and for book reserves schemes?

No, there is no legal obligation to subscribe to external (solvency) guarantees.

(4) Does separate legislation on solvency exist for IORP’s falling under article 17 of the directive (plus a description)? Article 17 concerns IORP’s that take themselves the biometric risks and/or guarantee benefits, in case of insufficiency these IORP’s cannot claim supplementary contributions or reduce the benefits. How much of the IORP’s (as a percentage) are falling under article 17?

The required equity capital for a pension fund running biometrical risks will be higher.

All pension funds fall under article 17.

(5) Is the provision of company sponsored employee benefits compulsory for the employers and to which extent?

The provision of company sponsored employee benefits is not compulsory. In many sectors the affiliation to the pension fund of the sector is compulsory. Such obligation can only be invoked by a joint request of the employers and employees that represents a significant majority of the employees within the sector.

(6) Does the legislation provide for minimum vested rights if an employee leaves before retirement? Is this legislation different for the different funding systems or book reserves?

Yes, the Pensions Act provides for time proportionally vesting of benefits. This is not related to the funding system and/or pension provider.

(7) Is there legislation that requires that ex-employees and pensioners are treated the same as active employees (plus a description)?
The funding requirements do not distinguish between ex-employees, pensioners and active employees.

(8) Is there legislation on the increase in benefits during payment or the deferred period (plus a description)?

No, there is no legal obligation to increase pension benefits during payment or deferral.

(9) Is there legislation that allows to reduce accrued pension rights in case of underfunding?

Yes, the Pension Act Pensions Act allows for the reduction of accrued pension benefits if certain conditions are met.

(10) Can benefits be paid in the form of a lump sum and to what extend?

No, in order to facilitate the advantageous fiscal treatment of pension benefits (EET), the pensions benefits have to be a periodical and equal payment in Euro’s.

(11) Which kind of beneficiaries have priority rights on the assets of the IROP (pensioners, ex-employees, other beneficiaries, employees) and to what extend? Please describe the priority rules?

No category of beneficiaries has priority rights on the assets of the pension fund.

(12) In case of book reserves, which kind of beneficiaries have priority rights on the assets of the employer (pensioners, ex-employees, other beneficiaries, employees) and to what extend? Please describe the priority rules?

Book reserves are not allowed.

(13) Has the country applied art. 4 of the Directive? If yes, comment on differences between pension insurer’s and IROP’s throughout all questions.

No.

(14) Has the country applied article 5 on small pension institutions of the Directive? If yes, how much (in percentage) beneficiaries are affiliated to these small pension institutions?

No.
15. 2. OVERVIEW OF DB AND BR SCHEMES

(15) What kind of company sponsored benefit schemes are provided? Defined benefit schemes, Defined contribution schemes, Cash balance schemes and other schemes (plus description)?

Defined benefit schemes and defined contribution schemes.

Defined benefit schemes are mostly based on career average and aim for increases of accrued pension benefits for active employees as well as increases of pension benefits during payment or deferment. The annual accrual must not exceed 2.25% of pensionable base.

Defined contribution schemes are mostly based on contributions that increase with age. The contributions will allow for the accrual of pension benefits that are based on average pay, given certain assumptions regarding salary increases and return on investments. The contributions must not exceed the equivalent of an annual accrual 2.25% of pensionable base.

Generally, the pension plan provides for a spouse pension, orphan’s pensions and waiver of premium in case of disability.

(16) What % of covered employees benefit from the different type of schemes described in the previous question? Is this different for male and female employees?

DB – final pay: 1%
DB – career average: 87%
DB – other: 0.5%
DC – defined contribution: 5%
DC – other: 2%

This is based on 2008 figures.

There is no significant difference between male and female employees.

(17) Are pensions in payment or deferred increased? Is this increase conditional? What are the conditions?

In general pension in payment and deferment are conditionally increased. The conditions are mostly related to the funding ratio of the pension fund.

(18) What % of labour force is covered by a company sponsored benefit scheme (including sector schemes or compulsory supplementary pension schemes)? Is this different for male and female employees?

In 2007, 11% of all employees was not participating in a company sponsored pension scheme (“Witte vlek op pensioengebied 2007”, Centraal Bureau voor de Statistiek, Den Haag/Heerlen, 2009).

For male employees, the percentage is 12%, for female employees the percentage is 10%.
(19) How high is the average retirement pension provided by the company sponsored benefit scheme, preferably as a percentage of last yearly salary? And how is this compared to the social security retirement pension? Are there significant differences between the averages for male and female employees?

No actual data available. A lot of publications, also from governmental institutes, still claim the income after retirement to be 70% of last earned salary. The income consists of the state benefit (see below) and the pension benefit which is drawn from the employer sponsored pension plan. As most plans are based on career average, this claim is somewhat ill-founded. For DC plans, the outcome will generally be lower as return on investments have not met the expectations.

Social security provides a pension benefit of € 8,871 per year per person of 65 year and older (“Algemene ouderdomswet”, “AOW”). The pension benefit is € 12,899 if the person is living alone. Occupational pension schemes must incorporate the state benefit by adopting an offset which is deducted from salary before pension accrual is determined.

For information on the AOW, visit the website of the Ministry of Social Affairs (www.minszw.nl, follow the links to “Onderwerpen”, “Algemene ouderdomswet”).

If the actual pension benefit is related to the last earned salary, there is a difference between male and female employees. As a group, female employees do not reach the same pension benefit due to less years of service. Actual figures are not available.

(20) What types of financing vehicles actually exist in your country and how many? Book reserves, pension funds, pension funds that fall under article 17 of the directive on IORPS, sector funds, insurance or other financing vehicles?

Pension schemes can use an insurance company, a company pension fund which needs to be separate legal entity, a multi-employer pension fund which operates in a sector (industry-wide pension fund) or a professionals pension fund as financing vehicles.

Pension funds will normally run biometrical risks, guarantee benefits or return on investments, but can opt to reinsure those risks and guarantees to some extent or completely.

New legislation is proposed, but not yet in effect, to allow for premium pension funds (“PPI”), pension funds that will not run any biometrical risks and will not guarantee benefits or return on investments. The financial and supervisory framework will be less demanding on these PPI’s.

(21) What % of covered employees receive their benefit via these above described financing vehicles?

Company pension funds cover 12% of the members.

Industry-wide pension funds cover 76% of the members.

Professionals pension funds cover 0.5% of the members.
(22) Please provide a short summary of the accounting rules applicable to employers that provide defined benefit schemes (e.g. equal to IAS19, similar to IAS 19 but ..., no provisions contributions and/or benefits paid are equal to expenses, description of other rules)

Stock listed companies must adopt IFRS.
Middle sized and big companies must adopt Dutch GAAP (“Richtlijn 271”). Essentially Richtlijn 271 allows for companies to account for defined benefit schemes as defined contribution schemes, although they must provide for (possible) future payments if they are related to past years of service. Richtlijn 271 also allows for the implementation of IAS 19 (in an annual report that is otherwise fully based on Dutch GAAP).

(23) What is the % of the employers that report under IFRS (IAS19) or very similar accounting rules?

No data available.

(24) Can you provide statistics on the provisions accounted for under these rules (per employee and/or in relation to the funds in the pension fund)?

No data available.

15.3. REQUIREMENT OF ADDITIONAL ASSETS

In some countries additional assets above the technical provisions are required. For example a solvency margin to cover risk benefits.

(25) Which type of additional assets (above the assets covering the technical provisions) are required (plus description)?

The pension fund must hold such an equity capital (“vereist eigen vermogen”) that the there is a certainty of 97.5% that the pension fund will not have less assets than liabilities within a period of one year. The minimum funding requirements depend upon the risks a pension fund runs with respect to investments in shares and commodities, interest rate and currency risks, credit risks (counterparty risks) and biometrical risks

The pension fund must hold such a minimum equity capital (“minimaal vereist eigen vermogen”) that the expenses for one year can be covered.

(26) Are these additional assets requirements different for IORP’s that fall under article 17 of the directive (plus description)?

The buffers (equity capital) will be larger if the pension fund runs biometrical risks. The guarantees on pension benefits are reflected in the 97.5% certainty that is the starting point when determining the required buffers.
(27) When can these additional assets actually be used? E.g. when more than the expected number of employees dies in a particular period, when the employer becomes insolvent, other?

These additional assets are, in general, not labelled for a specific purpose. The pension fund must monitor its equity capital and act upon any deficits.

(28) For multi-employer funds, can these additional assets be used in case of insolvency of any of the employers? In case of ring-fencing per employer or in case of no ring-fencing and therefore solidarity between employers?

These additional assets are, in general, not labelled for a specific purpose. The multi-employer pension fund must monitor its equity capital and act upon any deficits. Insolvency of one of the employers is not likely to substantially effect the financial position of the fund, given the fact that 1) pensions are accrued time proportionally, 2) must be fully funded and 3) must be rendered paid-up if the sponsoring employer fails to pay the premiums.

(29) Can these assets return to the employer and under which conditions?

These additional assets are, in general, not labelled for a specific purpose and can as such not be returned to the sponsoring employer. If certain conditions are met (i.e. the buffers are completely filled), it is possible for the multi-employer pension fund to reduce premiums.

15. 4. Independence of the IORP from the sponsor

(30) To what extend can the assets be invested in the sponsor’s securities – debt or shares and to what extend is this possibility actually used?

Investments in the sponsoring employer can not exceed 5% of the total investments. In case the sponsoring employer is part of a group, the investments in companies in the group can not exceed 10% of the total investments.

We have no data available to what extent pension funds hold investments in sponsoring employers.

(31) To what extend subordinated loans can be used to cover pension obligations?

Subordinated loans can not account for more than the lower of: half of the required equity capital, half of the minimally required equity capital and half of the actual equity capital.
(32) To what extent can the assets be invested in items, such as property, machines, etc. used by the sponsor for its business and to what extend is this possibility actually used?

Investments in the sponsoring employer can not exceed 5% of the total investments. In case the sponsoring employer is part of a group, the investments in companies in the group can not exceed 10% of the total investments.
We have no data available to what extent pension funds hold investments in sponsoring employers.

(33) To what extent can the management of the IORP be the same as the management of the sponsor? Describe the corporate governance requirements for IORPs in this respect?

The board of a pension fund must hold at least an equal number of employer compared to employee representatives and the byelaws of the pension fund must state the procedure to elect or nominate the members of the board. This effectively rules out the possibility to have a board that is the same of the management of the sponsoring employer.

Pension fund governance is provided for in the Pension Act, but more explicitly arranged in a report on pension fund governance (“Principes voor goed pensioenfondsbestuur”, see attachment) which is legally binding.

Pension fund governance requires, amongst other things, the board members to act independently and to balance the interests of all parties involved. A pension fund must organise itself in such a way as to ensure proper governance. In short, a governing body must clearly understand its responsibilities, how those responsibilities must be borne, how internal supervision is arranged, to be in control when activities are contracted out and how and to whom the governing body must report.

(34) To what extend can other important functions, such as the actuary, auditor and compliance officer be nominated (and possibly directly or indirectly paid) by the employer?

The actuary and auditor have a legal position in certifying the pension funds annual financial and actuarial accounts. To perform their task, they must be assigned by the pension fund. The nomination of the actuary and auditor is, in general, part of the byelaws of the pension fund. The actuary who certifies the actuarial report must be independent of the pension fund and can not perform other (consultancy) activities for the pension fund.

There is no legal requirement for a compliance officer, but having one is common practice. The compliance officer will be nominated by the board of the pension fund, but for a company pension fund it is not uncommon that the compliance officer also has this role within the company.
15.5. Employee Representatives' Involvement in the Governance of the Pension Scheme

(35) For IORP's: in which case and how many employee representatives need to be part of the board or other legal body of the IORP?

The board of a pension fund must hold at least an equal number of employer compared to employee representatives and the byelaws of the pension fund must state the procedure to elect or nominate the members of the board.

(36) Are employee representatives involved in the financing plan of the IORP and/or to what extend is their advice or decision binding?

A financing plan is a board decision and employee representatives constitute at least half of the board members.
Board decisions can be made with a normal majority or quantified majority and will in effect require the approval of at least one employee representative.

(37) For book reserve schemes, are employee representatives involved in any way in the determination of the level of the book reserves and/or the way these book reserves are set up?

Not applicable.

(38) Do employees need to be informed about the level of the financing of their benefits in the IORP and to what extend?

No, not directly. Information about the funding level is published in the annual accounts which are in most cases publicly available. Members have the right to get this information.

(39) Can employees or their representatives require changes in the pension scheme based on the financing level of the scheme, e.g. increases in pensions, reduction of employee contributions?

No.

(40) What are the communication requirements to employees on supplementary pensions? Are they different in case of book reserves or in case of an IORP?

New employees have to be informed about the pension plan by means of a start letter, which describes the plan in easy to understand wording.
Annually the pension fund has to inform employees on their accrued and projected pension benefits.
Employees need to be informed in case of increases in their pension as a result of index linking.
Employees leaving service need to be informed on their accrued pension benefits.
Book reserves are not allowed.
15.6. UNDERFUNDING OF DB SCHEMES

(41) In case of compulsory systems to which extent future generations can be asked to pay possible underfunding for the current generation? In how far the systems can operate as pay as you go?

Compulsory systems are not treated differently from other systems and need to be fully funded. If the financing plan allows for dynamic premiums, future premiums can be increased within the limits as set out in the financing plan and thus effectively bring about some solidarity between generations.

Pay as you go is not allowed.

(42) In case of underfunding of company sponsored benefit plan, should the sponsor pay the whole underfunding or can increased employee contributions be required?

Depending on the definition, an increase of the employee contributions is possible. If the employee contribution is defined as, for example, one third of the total contribution, the employee contribution will automatically be increased when the total contribution increases. If the employee contribution is defined as a flat rate of the pensionable base, a change in this rate will require the employees consent.

(43) Does the sponsor have to cover underfunding before increasing contributions from employees or benefit cuts?

No, unless the funding arrangement between the sponsoring employer and the pension fund provides for additional payments in case of underfunding. In other cases, it is matter of good will of the sponsoring employer to increase premiums.

(44) In what time delay the employer needs to pay the extra-contributions?

This also depends upon the funding arrangement between the sponsoring employer and the pension fund. From a legal point of view it is relevant whether the extra contributions are made in the context of a short or long term recovery plan. If so, the payments need to be done within the timeframe that is set out in the plan.

(45) Is a recovery plan permitted and on how long can this recovery plan continue?

Yes, if the pension fund does not hold the required buffer to cover for its risks it must draft a long term recovery plan, approved by DNB. The plan should see to a full recovery within a period of fifteen years.

If the pension fund does not hold the required buffer to cover for its next year expenses it must draft a short term recovery plan, approved by DNB. The plan should see to restoring this buffer within a period of three years.
(46) Is there any legal requirement for the actuary or any other person involved to report on the expected underfunding due to a too strict financing plan and what action can be taken by the IORP in order to change this financing plan?

Yes, the actuary should report on a financing plan that is too strict in his actuarial statement that has to be issued each year.

(47) How can the IORP enforce the sponsor to fulfil his legal duty to pay the necessary contributions?

The duty to pay the contributions originates from the agreement between pension fund and sponsoring employer. The normal legal procedures can be followed to enforce payments.

(48) Should members (employees and beneficiaries) and/or employee’s representatives be informed in a situation of underfunding?

No, not directly. The pension fund should however inform a board of participants, if such board is installed, as soon as it is obliged to draft a short or long term recovery plan.

(49) How is this information requirement structured (individually, together with the yearly overview of the benefits, only when requested by employees, …) and what is the maximum period allowed between the date of determination of the underfunding and the information to the employees?

See above.

(50) Can members and/or beneficiaries or their representatives have a voice in the decision of a recovery plan?

A board of participants has advisory rights on a short term recovery plan.

(51) Are members and/or beneficiaries informed on the details of a recovery plan?

The IORP has to inform the members on request. According to the Governance rules, member representatives are involved in the process.
15. 7. **Priority Creditors Rights**

(52) **Which creditors have a higher priority on the remaining assets of the sponsor than the IORP in case of insolvency of the plan sponsor?**

Debts incurred during bankruptcy (salary of trustee in bankruptcy, fixed payments for rent but also salaries and pension premiums for employees remaining in service during bankruptcy).

Preferential debts (claims of The Tax and Customs Administration, premiums for social security)

Arrears in salary will be reimbursed by the UWV (Institute for employee insurances) and pension providers can claim arrears in pension premiums, up to a year, against the UWV as well.

(53) **In case of insolvency of their employer what is the priority the employees have on the remaining assets of their employer (sponsor) for their supplementary pension rights in case of a book reserve scheme and possibly in case of underfunding of the IORP?**

Book reserves are not allowed.

Employees do not have an obvious claim on the remaining assets of their sponsoring employer with respect to their pensions in case of underfunding. In the pension system of The Netherlands, the employer, employee and pension provider are in a triangular relationship. The Pensions Act specifies a number of mandatory legal documents between the three parties involved. The basic principle of the Pensions Act is that social partners are primarily responsible for the occupational pension provisions. They jointly decide on the contents of the pension agreement. The employer is responsible for placing the pension contributions outside the company by establishing a company pension fund, joining an industry-wide pension fund, establishing a single-company fund or insuring the pension plan. This must be done on the basis of an agreement between the employer and pension provider. In case of underfunding, additional payments of pension premiums originate from the agreed upon short term recovery plan and will generally only lead to a claim of the pension fund against the insolvent sponsoring employer.

(54) **What is the priority ex-employees, pensioners or other beneficiaries of the pension scheme have on the remaining assets of the sponsor?**

None, see the explanation above. Ex-employees, pensioners or other beneficiaries only have a claim against their pension provider.

(55) **If the employer becomes insolvent, but is an affiliate of a group of companies where the mother company is not insolvent, can the employees claim their supplementary pension rights from the mother company in case of a book reserve or in case of underfunding of the IORP?**

No, see the explanation above.
15. 8. GUARANTEE SCHEMES

In the Netherlands no guarantee schemes exist.

(56) Do guarantee schemes exist? If so, provide a detailed description of the schemes.
(57) Are premiums paid by the sponsoring undertaking to the guarantee scheme risk-based?
(58) What is the procedure to be followed for the intervention of the guarantee scheme?
(59) Are all defined benefit and book reserve schemes covered by the guarantee schemes?
(60) Are the schemes different for book reserve schemes and funded schemes? Please describe?
(61) Are all benefits covered including unvested benefits and recent benefit improvements?
(62) Are there ceilings on the benefit coverage?
(63) Will the guarantee scheme take over obligations or inject a one time payment in the IORP in case of a defined benefit scheme?
(64) Do the guarantee schemes have sufficient resources in e.g. time of crisis where a lot of sponsors could have solvency problems?

15. 9. ANY OTHER MEASURES

(65) Are there any other measures (not covered above) that contribute to the protection of the interests of the employees or ex-employees and their beneficiaries in case of insolvency and/or disappearance of the sponsoring employer?

The Pensions Act requires pension providers to report unpaid premiums to (representatives) of the participants if certain conditions have been met. Furthermore, insurance companies are required to strain oneself to make the sponsoring employer pay before they can render paid-up the insurances. Risk insurances related to death and disability remain in place for at least three months. DNB can oblige pension funds to reinsure or transfer all risk if necessary on the basis of the actuarial and business managerial structure of the pension fund.

(66) Are their proposals for changing the measures already taken and what are they? When are they expected to be implemented?

No.

(67) Please describe the views of the social partners on the effectiveness of the measures taken to protect the rights of the beneficiaries of company sponsored benefit plans in case of insolvency of the employer and/or the IORP (if publicly available or made available in an interview)

The current financial framework FTK has been established after consultation of social partners and is currently reviewed with respect to its effectiveness.
(68) Is there evidence that the overall outcome of one of the specific systems operated in your country, provides inadequate protection for the rights of the beneficiaries of company sponsored benefit plans?

No, the measures described above are believed to ensure protection of the rights of the beneficiaries. However, the protection aims at pension benefits on a nominal basis. In a broader perspective, there is an ongoing discussion to base the financial framework FTK of pension funds on index-linked pension benefits (if applicable, but this is mostly so).

(69) Is there evidence of how specific systems operated in your country proactively deal with different risks and improve risk management?

DNB has introduced FIRM (Financial Institutes Risk analyses Method) and an increasing number of pension funds adopt this risk analysis model. The analyses focuses on the fund’s solvency position and management, on the fund’s cash position and management, on the fund’s organisation, span of control and integrity.

15.10. YOUR ASSESSMENT

(70) Please describe the shortcomings of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the sponsor and/or the IORP. If there are in you opinion no shortcomings, please explain

As the funding requirements are quit strict insolvency of the sponsor does not cause to much problems. The entitlements are fully funded. This is of course not the situation when the fund is in a situation of under funding and a recovery plan is in force. As indexations of pensions is in almost all the plans conditionally the insolvency of the sponsor could effect this part of the arrangement.

(71) Please describe your suggestions for improvement of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the employer and/or the IORP and describe the possible additional costs for these improvements and the possible risks that employers may decide to downside or close defined benefit arrangements?

Funding requirements are still under discussion in The Netherlands. The balance has to be found between the level of certainty at any particular moment (short term) and the cost to achieve that. One could take a longer term view but insolvency of the sponsor will have a greater effect. A Pension Protection Fund could solve that problem, but the market place is reluctant to implement a PPF. The experiences with the PBGC in the US and the PPF in the UK are the main reasons for that. It would be good idea to investigate in a non political environment the pros’ and con’s of such protection system.

The actuarial profession has evaluated the FTK and reported on their findings (in Dutch, “Notitie evaluatie financieel toetsingskader”, 23 december 2009, follow the link: http://www.ag-ai.nl/view.php?Pagina_Id=333). They have issued a list of recommendations to improve or sustain the FTK framework. The most important one is the rigid rule of using an interest term structure that proved to be inadequate in times of disturbance of financial markets.
Although the majority of the pension schemes are still based on a DB formula, in practice employers have limited their financial obligations on extra payments in case of underfunding. The result being that especially schemes administered by company pension fund have more the characteristics of DC. Collective DC schemes are becoming more and more common practice.
16. NORWAY

**Main Findings**

- Occupational pensions can be financed externally via an IORP or via book reserves
- An employer may also provide an occupational pension financed via book reserves. However the company is not entitled to any tax deductions for allocations to pensions provisions held as a book reserve. There is no legislation for book reserves and a limited number of schemes exist.
- IORP’s are subject to control and solvency I rules are applicable, recovery plans are allowed on an exceptional basis subject to approval of the authorities.
- Benefits vest immediately
- No guarantee fund exists
- Yearly an annual report with financial information about the IORP needs to be available to the employees and a yearly benefit statements needs to be provided

16.1. Description of the Legal Framework

(1) Which kind of IORPs can be used to finance pension schemes (insurance companies, national funds, company pension fund, multi-employer fund, sector pension fund, other kinds of entities created to finance pensions)?
- Life insurance companies
- Pension funds

(2) What are the minimum funding requirements for each of these kind of IORP’s and are there minima for book reserves?

The pension liabilities shall be fully funded

(3) Is there a legal obligation to subscribe to external (solvency) guarantees? And what are these guarantees for each kind of IORP and for book reserves schemes?

There are no obligations for external solvency guarantees

(4) Does separate legislation on solvency exist for IORP’s falling under article 17 of the directive (plus a description)? Article 17 concerns IORP’s that take themselves the biometric risks and/or guarantee benefits, in case of insufficiency these IORP’s cannot claim supplementary contributions or reduce the benefits. How much of the IORP’s (as a percentage) are falling under article 17?

Pension funds shall follow the same solvency rules as life insurance companies
All pension funds fall under article 17
(5) Is the provision of company sponsored employee benefits compulsory for the employers and to which extent?

Yes, a contribution of a minimum of 2% of any salary between 1 G (= NOK 72,881) and 12 G (= NOK 874,572) is compulsory.

(6) Does the legislation provide for minimum vested rights if an employee leaves before retirement? Is this legislation different for the different funding systems or book reserves?

Yes, a former employee is entitled to a paid-up policy and the corresponding technical provisions (2000:16, article 4-7)

A pension fund may decide to transfer its obligation to issue a paid-up policy to a life insurance company (2000:16, article 4-8)

A former employee may decide to transfer the paid-up policy to another life insurance company or pension fund (2000:16, article 4-9)

Increase in benefits from a paid-up policy is dependent on the investment return of the life insurance company or pension fund.

(7) Is there legislation that requires that ex-employees and pensioners are treated the same as active employees (plus a description)?

Yes, pensioners stay as member of the pension fund after retirement (2005:44, article 7-6)

(8) Is there legislation on the increase in benefits during payment or the deferred period (plus a description)?

No

(9) Is there legislation that allows to reduce accrued pension rights in case of under funding?

Accrued pension rights may not be reduced (2005:44, article 9 – 17)

(10) Can benefits be paid in the form of a lump sum and to what extend?

No
(11) Which kind of beneficiaries have priority rights on the assets of the IORP (pensioners, ex-employees, other beneficiaries, employees) and to what extent? Please describe the priority rules?

In case of liquidation of a pension fund the assets shall be distributed amongst the members relative to their premium reserve (2000:16, article 15 – 3)

(12) In case of book reserves, which kind of beneficiaries have priority rights on the assets of the employer (pensioners, ex-employees, other beneficiaries, employees) and to what extent? Please describe the priority rules?

If pension rights are held as book reserves, they may be defined as demand on salary and may have a priority in case of liquidation of a company. However this is uncertain and due to the very few cases of book reserves the problem is not material

(13) Has the country applied article 4 of the Directive? If yes, comment on differences between pension insurer’s and IORP's throughout all questions.

Yes, but no material differences

(14) Has the country applied article 5 on small pension institutions of the Directive? If yes, how much (in percentage) beneficiaries are affiliated to these small pension institution?

Yes, funeral funds and funds granting benefits less than 1 G (= NOK 72,881) are exempted

16.2. OVERVIEW OF DB AND BR SCHEMES

(15) What kind of company sponsored benefit schemes are provided? Defined benefit schemes, Defined contribution schemes, Cash balance schemes and other schemes (plus description)?

All private employees in Norway are covered by a statutory employment pension. This pension may either be a defined contribution scheme (according to the Pension Contribution Act) or a defined benefit scheme (according to the Corporate Pension Act).

In case of a defined contribution scheme the contribution shall minimum be 2 % of the part of salary between 1 G (= NOK 72,881) and 12 G (= NOK 874,572).

In case of a defined benefit scheme the retirement benefit shall at least be equal to a corresponding benefit of the minimum defined contribution scheme with a payment period of 10 years.
(16) What % of covered employees benefit from the different type of schemes described in the previous question? Is this different for male and female employees?

By end 2008 life insurance companies had 1,195,531 (2007: 1,174,062) active employees insured in corporate pension schemes (privat kollektiv pensjonsforsikring). Of these 342,096 (2007: 351,484) were under defined benefit schemes and 847,615 (2007: 816,601) were under defined contribution schemes.

By end 2008 life insurance companies had 113,276 (2007: 108,926) retirement pensioners in corporate pension schemes (privat kollektiv pensjonsforsikring).

By end 2008 total assets in pension funds were NOK 105 billion (2007: NOK 115 billion). There were 83,948 (2007: 117,039) members under employment and 43,310 (2007: 44,739) retired members. A number of pension funds are targeted towards the municipal sector. These are excluded from the numbers listed.

After the introduction of the statutory employment pension in 2006 there has been a clear trend from defined benefit schemes towards defined contribution schemes.

(17) Are pensions in payment or deferred increased? Is this increase conditional? What are the conditions?

Increase in pension under payment is dependent on the investment return of the life insurance company or pension fund. See also question (25).

(18) What % of labour force is covered by a company sponsored benefit scheme (including sector schemes or compulsory supplementary pension schemes)? Is this different for male and female employees?

All employees are covered by the statutory employment pension.

(19) How high is the average retirement pension provided by the company sponsored benefit scheme, preferably as a percentage of last yearly salary? And how is this compared to the social security retirement pension? Are there significant differences between the averages for male and female employees?

The target retirement pension from a defined benefit scheme will normally be 70% of salary including social security retirement pension.

(20) What types of financing vehicles actually exist in your country and how many? Book reserves, pension funds, pension funds that fall under article 17 of the directive on IORPS, sector funds, insurance or other financing vehicles?

- Defined contribution scheme:
  - Bank
  - Life insurance company
  - Pension fund
  - Administration company for mutual fund

- Defined benefit scheme:
  - Life insurance company
  - Pension fund
(21) What % of covered employees receive their benefit via these above described financing vehicles?

See question (16)

(22) Please provide a short summary of the accounting rules applicable to employers that provide defined benefit schemes (e.g. equal to IAS19, similar to IAS 19 but …, no provisions contributions and/or benefits paid are equal to expenses, description of other rules)

Larger Norwegian companies are generally expected to follow IFRS standards

(23) What is the % of the employers that report under IFRS (IAS19) or very similar accounting rules?

All most all larger companies

(24) Can you provide statistics on the provisions accounted for under these rules (per employee and/or in relation to the funds in the pension fund)?

See question (16)

16.3. REQUIREMENT OF ADDITIONAL ASSETS

(25) Which type of additional assets (above the assets covering the technical provisions) are required (plus description)?

- A number of additional reserves are allowed or required in the technical provisions as a supplement to the premium reserve
  - Additional statutory reserves: The life insurers of pension fund may decide to allocate extra funds on top of the statutory reserves. The additional statutory reserve shall be allocated on the contract level. In case the serves is more than 12% of the statutory reserve the extra amount shall be allocated as surplus to the contract (2005:44; article 9-17). These reserves ensure the solidity of the life insurance business. The maximum additional statutory reserve is set at the difference between the premium reserve calculated on the basis of a guaranteed return on policies outstanding, and the premium reserve on the basis of the actual guaranteed return in the policies. The reserve may be a maximum of 12 % of technical premium the premium reserve. Allocation may only be made from excess return, this means if the actual return is higher that the guaranteed return. Additional statutory reserves can be used to meet a shortfall in the individual customer’s guaranteed return
  - Market value adjustment reserve: This reserve shall correspond to the amount of the unrealised gains on financial assets at fair value. The reserves shall not be allocated on a contract level (2005:44,article 9-20). In accordance with the accounting standard for insurance contracts (IFRS 4) the market value adjustment reserve is shown as a liability.
Premium fund, deposit reserve and pensioners’ surplus fund: The provisions for these funds shall correspond to the value of the funds (2005:44; article 9-19). The premium fund contains premiums prepaid by policyholders as a result of taxation regulations for individual and group pension insurance and allocated profit share. The pensioners’ surplus fund contains surplus premium reserve amounts allocated in respect of pensions in payment that are part of group pension policies. The fund is applied each year as a single premium payment to secure additional benefits for pensioners.

- Fund for risk-smoothing:
  - This reserve is the former security reserve for paid-up policies. Up to 50 per cent of the risk result for group pensioners and paid-up policies can be allocated to cover any future negative risk result. The fund for risk smoothing is included as part of equity.
  - The surplus on biometric risks shall be allocated annually on a contract level. The life insurer or pension fund may decide that up till 50% of the surplus shall be allocated to the fund for risk-smoothing.
  - The fund for risk-smoothing may only be used to strengthen the statutory reserve with respect to biometric risks. The fund shall not be allocated on a contract level (2005:44, article 9-22).

- All life insurance companies and pension funds shall have own funds corresponding to 8% of weighted assets (2005:44, article 6-3). Furthermore they shall meet the solvency capital requirements under Solvency I (2005:44, article 6-4).

(26) Are these additional assets requirements different for IORP’s that fall under article 17 of the directive (plus description)?

No, there are the same for all IORP’s that have guaranteed return and/or benefits.

(27) When can these additional assets actually be used? e.g. when more than the expected number of employees dies in a particular period, when the employer becomes insolvent, other?

See question (25)

(28) For multi-employer funds, can these additional assets be used in case of insolvency of any of the employers? In case of ring-fencing per employer or in case of no ring-fencing and therefore solidarity between employers?

The IORP has no liability in excess of premiums paid by the employer. The additional statutory reserves are allocated to each employer. However the market value adjustment reserve and the fund for risk-smoothing may be used between employers. E.g. one employer with a negative risk result may be subsidized by other employers positive risk results.

(29) Can these assets return to the employer and under which conditions?

No.
16.4. INDEPENDENCE OF THE IORP FROM THE SPONSOR

(30) To what extent can the assets be invested in the sponsor’s securities – debt or shares and to what extent is this possibility actually used?

- A maximum of 4% of assets (including financial instruments issued) may be invested in a company who has a corporate pension scheme with the life insurance company or pension fund (2007:1457, article 5-1)
- If the company is part of a group the maximum that may be invested in the group is 8% (2007:1457, article 5-1)

(31) To what extent subordinated loans can be used to cover pension obligations?

See question (30)

(32) To what extent can the assets be invested in items, such as property, machines, etc. used by the sponsor for its business and to what extent is this possibility actually used?

See question (31), technical provisions may not be invested in machines etc.

(33) To what extent can the management of the IORP be the same as the management of the sponsor? Describe the corporate governance requirements for IORPS in this respect?

The activities and financial matters of a pension fund shall be kept separate from the sponsor (2005:44, article 7-7)
A pension fund shall have a daily manager nominated by the board. The manager may not be a member of the board (2005:44, article 7-6). However the daily manager may be employed by the sponsor or the role as daily manager may be outsourced to the sponsor

(34) To what extent can other important functions, such as the actuary, auditor and compliance officer be nominated (and possibly directly or indirectly paid) by the employer?

The auditor shall be nominated by the annual meeting (2005:44, article 7-4)
16.5. **Employee Representatives’ Involvement in the Governance of the Pension Scheme**

(35) **For IORP’s: in which case and how many employee representatives need to be part of the board or other legal body of the IORP?**

A pension fund shall have a board with a minimum of 5 members (3 members if total assets are less than NOK 100 million). The members shall be represented in the board (2005:44, article 7-6).

A pension fund with a minimum of 15 members shall have a management board with a minimum of 3 members. A minimum of one of these members shall be elected by and amongst the employees (2000:16, article 2 – 4).

(36) **Are employee representatives involved in the financing plan of the IORP and/or to what extend is their advice or decision binding?**

Yes, in their capacity as board members.

(37) **For book reserve schemes, are employee representatives involved in any way in the determination of the level of the book reserves and/or the way these book reserves are set up?**

Not applicable.

(38) **Do employees need to be informed about the level of the financing of their benefits in the IORP and to what extend?**

Yes, employees and pensioners in a pension funds shall be informed about (2005:44, article 7-11):
  - Changes to their pension schemes
  - Annually on the level of individually vested benefits, the investment strategy and the result of assets management and the resulting influence on the pension rights
  - Upon request a copy of the annual report

(39) **Can employees or their representatives require changes in the pension scheme based on the financing level of the scheme, e.g. increases in pensions, reduction of employee contributions?**

Yes, in their capacity as board members.

(40) **What are the communication requirements to employees on supplementary pensions? Are they different in case of book reserves or in case of an IORP?**

See question (38)
16.6. Underfunding of DB Schemes

(41) In case of compulsory systems to which extent future generations can be asked to pay possible underfunding for the current generation? In how far the systems can operate as pay as you go?

No, the pension fund shall be fully funded

(42) In case of underfunding of company sponsored benefit plan, should the sponsor pay the whole underfunding or can increased employee contributions be required?

A pension fund may not be underfunded. The FSA may close a fund if the employer is not willing to inject more capital in case of underfunding. The employees will never be asked to contribute.

(43) Does the sponsor have to cover underfunding before increasing contributions from employees or benefit cuts?

Yes

(44) In what time delay the employer needs to pay the extra-contributions?

Decided discretionary by the FSA

(45) Is a recovery plan permitted and on how long can this recovery plan continue?

Decided discretionary by the FSA.

In case of insolvency of the employer, the pension fund may be liquidated. In case of liquidation of a pension fund the remaining assets are allocated between members (active employees and pensioners) relative to their statutory reserve. Allocated funds to individual members shall be used to buy a paid-up policy.

(46) Is there any legal requirement for the actuary or any other person involved to report on the expected underfunding due to a too strict financing plan and what action can be taken by the IORP in order to change this financing plan?

Yes, the appointed actuary shall inform the FSA regarding any underfunding.

(47) How can the IORP enforce the sponsor to fulfil his legal duty to pay the necessary contributions?

There is contract between the IORP and the sponsor on the pension scheme. The IORP may use all legal possibilities to collect the premiums from the sponsor. It is the general understanding that the IORP does not have any liability beyond the premiums paid by the sponsor.
(48) Should members (employees and beneficiaries) and/or employee’s representatives be informed in a situation of underfunding?

See question (38)

(49) How is this information requirement structured (individually, together with the yearly overview of the benefits, only when requested by employees, …) and what is the maximum period allowed between the date of determination of the underfunding and the information to the employees?

See question (38)

(50) Can members and/or beneficiaries or their representatives have a voice in the decision of a recovery plan?

Yes, in their capacity as board members

(51) Are members and/or beneficiaries informed on the details of a recovery plan?

Yes, see question (38)

16.7. PRIORITY CREDITORS RIGHTS

(52) Which creditors have a higher priority on the remaining assets of the sponsor than the IORP in case of insolvency of the plan sponsor?

The IORP has no priority

(53) In case of insolvency of their employer what is the priority the employees have on the remaining assets for their supplementary pension rights in case of a book reserve scheme and possibly in case of underfunding of the IORP?

Not applicable

(54) What is the priority ex-employees, pensioners or other beneficiaries of the pension scheme have on the remaining assets of the sponsor?

None

(55) If the employer becomes insolvent, but is an affiliate of a group of companies where the mother company is not insolvent, can the employees claim their supplementary pension rights from the mother company in case of a book reserve or in case of underfunding of the IORP?
16. 8. GUARANTEE SCHEMES

In Norway no guarantee schemes exist.

(56) Do guarantee schemes exist? If so, provide a detailed description of the schemes.
(57) Are premiums paid by the sponsoring undertaking to the guarantee scheme risk-based?
(58) What is the procedure to be followed for the intervention of the guarantee scheme?
(59) Are all defined benefit and book reserve schemes covered by the guarantee schemes?
(60) Are the schemes different for book reserve schemes and funded schemes? Please describe.
(61) Are all benefits covered including unvested benefits and recent benefit improvements?
(62) Are there ceilings on the benefit coverage?
(63) Will the guarantee scheme take over obligations or inject a one time payment in the IORP in case of a defined benefit scheme?
(64) Do the guarantee schemes have sufficient resources in e.g. time of crisis where a lot of sponsors could have solvency problems?

16. 9. ANY OTHER MEASURES

(65) Are there any other measures (not covered above) that contribute to the protection of the interests of the employees or ex-employees and their beneficiaries in case of insolvency and/or disappearance of the sponsoring employer?

No

(66) Are their proposals for changing the measures already taken and what are they? When are they expected to be implemented?

No

(67) Please describe the views of the social partners on the effectiveness of the measures taken to protect the rights of the beneficiaries of company sponsored benefit plans in case of insolvency of the employer and/or the IORP (if publicly available or made available in an interview)

None available

(68) Is there evidence that the overall outcome of one of the specific systems operated in your country, provides inadequate protection for the rights of the beneficiaries of company sponsored benefit plans?

No
(69) Is there evidence of how specific systems operated in your country proactively deal with different risks and improve risk management?

No

16.10 YOUR ASSESSMENT

(70) Please describe the shortcomings of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the sponsor and/or the IORP. If there are in your opinion no shortcomings, please explain

No material shortcomings as the plans are funded with an insurance company or pension fund. The companies and funds meet the Solvency I rules

(71) Please describe your suggestions for improvement of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the employer and/or the IORP and describe the possible additional costs for these improvements and the possible risks that employers may decide to downside or close defined benefit arrangements?

No suggestions
17. Portugal

Main findings

- Occupational pensions are financed externally via an IORP or an insurance undertaking.
- Pension funds are subject to control and assets covering technical provisions calculated in a prudent way need to be available, recovery plans can take maximum 5 years. For some plans, the calculations of the technical provisions does not take account of future salary increases.
- There is no requirement on vesting, pension plan rules may determine the vested rights.
- Yearly an annual report with financial information about the IORP needs to be available to the employees and a yearly benefit statements needs to be provided if the plan foresees employee contributions.

17.1 Description of the legal framework

(1) Which kind of IORPs can be used to finance pension schemes (insurance companies, national funds, company pension fund, multi-employer fund, sector pension fund, other kinds of entities created to finance pensions)?

In Portugal, a pension scheme can be financed using a life insurance company or a company pension fund which needs to be a separate legal entity (Artº 32º, Dec-Lei 12_06). Book reserves are not used.

(2) What are the minimum funding requirements for each of this kind of IORP’s and are there minima for book reserves?

An IORP has to calculate the liabilities of pension benefits, each year. The minimum funding requirements for any kind of IORP’s and any kind of defined benefit plan are calculated without projection of the salaries and with a prudent actuarial method and prudent assumptions recommended by the supervisory authority, the Instituto de Seguros de Portugal (ISP) (Ponto 14, Norma 21_1996 do ISP).

For DB plans of the banking sector, which represent around 90% of the pension plans in Portugal, the minimum requirements are calculated with projections of salaries and with a prudent actuarial method and prudent assumptions pointed out by the banking supervisory authority, Banco de Portugal, and according to IAS19 (Aviso 7_2008 do Banco de Portugal). The assumptions need to take account of the results of an ALM study. The assumptions and method applied are more prudent than for the other pension funds. If these liabilities are not covered, the sponsoring company will set up a recovery plan approved by authorities.

There is a legal obligation to employees of insurance companies too, with defined benefit plans. At the end of each year, they must be financed 100% for pensioners and 95% for employees (Artº 2, Capítulo II, Norma 5_2007 do ISP). There are no minima for book reserves.
(3) Is there a legal obligation to subscribe to external (solvency) guarantees? And what are these guarantees for each kind of IORP and for book reserves schemes?

No external guarantees need to be subscribed, however there is a legal obligation for IORP’s that take the investment risk to set up a solvency marging. (Determinação da Margem de Solvência, Artº 46º, Dec-Lei 12_06).

(4) Does separate legislation on solvency exist for IORP’s falling under article 17 of the directive (plus a description)? Article 17 concerns IORP’s that take themselves the biometric risks and/or guarantee benefits, in case of insufficiency these IORP’s cannot claim supplementary contributions or reduce the benefits. How much of the IORP’s (as a percentage) are falling under article 17?

There’s no separate legislation.

(5) Is the provision of company sponsored employee benefits compulsory for the employers and to which extent?

The provision of company sponsored employee benefits is not compulsory, unless there is a pension plan.

(6) Does the legislation provide for minimum vested rights if an employee leaves before retirement? Is this legislation different for the different funding systems or book reserves?

Legislation does not provide for minimum vested rights. If the pension plan provides vested rights, the minimum vested rights at normal retirement age in a DB scheme are equal to the retirement benefits calculated with salary and service at the leaving date. The vested rights at the leaving date are equal to the present value of the vested rights at normal retirement age. The legislation is not clear about assumptions (Artº 9º do Dec-Lei 12_06).

(7) Is there legislation that requires that ex-employees and pensioners are treated the same as active employees (plus a description)?

There is no legislation.

(8) Is there legislation on the increase in benefits during payment or the deferred period (plus a description)?

There is no obligation to increase benefits during payment or during deferred period, although for some pension plans there is an obligation because of the rules of the plan.

(9) Is there legislation that allows to reduce accrued pension rights in case of underfunding?

No, in principle accrued pension rights cannot be reduced, if the pension fund has no sufficient assets, the employer will be required to pay additional contributions. If the employer does not pay (Artº 78 do Dec-Lei...
12_06), the IORP must dissolve the pension fund, and the assets will be used according priorities established in law (Artº 31 do Dec_Lei 12_06).

(10) Can benefits be paid in the form of a lump sum and to what extend?

Yes, the benefits can be paid in the form of a lump sum (Artº 8 do Dec_Lei 12_06). However, some plans pay a lump sum and a periodic pension for tax reasons.

(11) Which kind of beneficiaries has priority rights on the assets of the IORP (pensioners, ex-employees, other beneficiaries, and employees) and to what extend? Please describe the priority rules?

For pension funds, the priority rules are established in law (Artº 31, Dec_Lei 12_06). The priority rules are: fund expenses, individual accounts if applicable, pensioners, and employees with retirement age or higher, vested ex-employees, others employees vested rights and increase benefits for pensioners.

(12) In case of book reserves, which kind of beneficiaries has priority rights on the assets of the employer (pensioners, ex-employees, other beneficiaries, and employees) and to what extend? Please describe the priority rules?

There are no rules for book reserves in legislation.

(13) Has the country applied article 4 of the Directive? If yes, comment on differences between pension insurer’s and IORP’s throughout all questions.

Portugal has not applied article 4 of the Directive.

(14) Has the country applied article 5 on small pension institutions of the Directive? If yes, how much (in percentage) beneficiaries are affiliated to this small pension institution?

Portugal has not applied article 5 of the Directive.
17.2 Overview of DB and BR Schemes

(15) What kind of company sponsored benefit schemes are provided? Defined benefit schemes, Defined contribution schemes, Cash balance schemes and other schemes (plus description)?

Defined benefit schemes and defined contribution schemes.

(16) What % of covered employees benefit from the different type of schemes described in the previous question? Is this different for male and female employees?

Statistics from 2008 indicate that around 90% of the pension plans are defined benefit, 10% are defined contribution plans and plans that simultaneously are defined contribution and defined benefit. 2% of the defined contribution schemes are managed via life insurance companies and 98% are managed financed via pension funds managing entities (Quadro 34, Estatísticas de Fundos de Pensões, ISP).

There are no differences between male and female.

(17) Are pensions in payment or deferred increased? Is this increase conditional? What are the conditions?

For tax reasons the majority of employees use the option of a periodic pension. If the plan does not provide for a lump sum, pensions in payment are often increased. The modalities for the increase are described in the rules of the plan. Increases are usually limited to inflation.

(18) What % of labour force is covered by a company sponsored benefit scheme (including sector schemes or compulsory supplementary pension schemes)? Is this different for male and female employees?

For banks, insurance companies and the telecommunication sector, there are company sponsored benefit schemes. There are no differences for male and female employees.

(19) How high is the average retirement pension provided by the company sponsored benefit scheme, preferably as a percentage of last yearly salary? And how is this compared to the social security retirement pension? Are there significant differences between the averages for male and female employees?

The Portuguese Social Security retirement pension for employees is quite significant and is, on average, equal to 60% of the last salary (Dec-Lei 187_07). The level of the benefits provided by company sponsored benefits schemes varies enormously. Defined benefit schemes often provide between 70% and 100% of the last salary, including the Social Security retirement pension, if applicable. There are no differences between the averages for male and female employees.
(20) What types of financing vehicles actually exist in your country and how many? Book reserves, pension funds, pension funds that fall under article 17 of the directive on IORPS, sector funds, insurance or other financing vehicles?

Pension funds that fall under article 17 of the directive on IORPS and life insurance.

(21) What % of covered employees receives their benefit via these above described financing vehicles?

99.6% of the covered employees receive their benefit via pension fund, 0.4% via insurance (Quadro 26, Estatísticas de Fundos de Pensões, ISP).

(22) Please provide a short summary of the accounting rules applicable to employers that provide defined benefit schemes (e.g. equal to IAS19, similar to IAS 19 but ..., no provisions contributions and/or benefits paid are equal to expenses, description of other rules)

If an entity is listed on the stock exchange it has to follow IAS 19 rules (Directriz Contabilística nº 19, DC19 - Portuguese accounting rule similar to IAS 19).

(23) What is the % of the employers that report under IFRS (IAS19) or very similar accounting rules?

Banks, telecommunication sector and all listed companies.

(24) Can you provide statistics on the provisions accounted for under these rules (per employee and/or in relation to the funds in the pension fund)?

No statistics available

17.3 Requirement of additional assets

(25) Which type of additional assets (above the assets covering the technical provisions) are required (plus description)?

IORP’s that guarantee a given investment performance must have 4% of pension funds value and if IORP’s do not assume the investment risk, it will be 1% (Artº 46º do Dec-Lei 12_06).
In addition, the IORP’s must have a minimum fund asset that is 1/3 part of solvency margin described above (Artº 44º, Dec-Lei 12_06), subject to a minimum amount of 800.000 euros.

(26) Are these additional assets requirements different for IORP’s that fall under article 17 of the directive (plus description)?

Not applicable
(27) When can these additional assets actually be used? e.g. when more than the expected number of employees dies in a particular period, when the employer becomes insolvent, other?

These additional assets can be used but the IORP have to present a short term financing plan which includes an adequate activity plan.

(28) For multi-employer funds, can these additional assets be used in case of insolvency of any of the employers? In case of ring-fencing per employer or in case of no ring-fencing and therefore solidarity between employers?

Not applicable

(29) Can these assets return to the employer and under which conditions?

If there is an excess of funding for five consecutive years for the total liabilities, it can return to the employer, under supervisory authority’s previous approval (art. 81º, Decreto-Lei 12/2006).

17.4 Independence of the IORP from the sponsor

(30) To what extend can the assets be invested in the sponsor’s securities – debt or shares and to what extend is this possibility actually used?

The assets can be invested max 5% in the sponsor’s securities and max 10% in the securities of companies in the same group (Ponto 2, Artº 12º, Norma 9_2007 do ISP).

(31) To what extend subordinated loans can be used to cover pension obligations?

Subordinated loans are not explicitly considered.

(32) To what extend can the assets be invested in items, such as property, machines, etc. used by the sponsor for its business and to what extend is this possibility actually used?

The assets can be invested max 5% in the sponsor’s securities (Ponto 2, Artº 12º, Norma 9_2007 do ISP).

(33) To what extend can the management of the IORP be the same as the management of the sponsor? Describe the corporate governance requirements for IORPS in this respect?

The legislation refers that IORP’s must act in an independent way and in the interest of the beneficiaries and sponsors (Artº34, Dec-Lei 12_06).
(34) To what extend can other important functions, such as the actuary, auditor and compliance officer be nominated (and possibly directly or indirectly paid) by the employer?

The actuary (Artº 39º Norma 7_2009), the auditor (Artº 56º, 12_2006) are nominated by the IORP and approved by the general assembly of the pension fund and their fees are paid by the pension fund.

17.5 EMPLOYEE REPRESENTATIVES’ INVOLVEMENT IN THE GOVERNANCE OF THE PENSION SCHEME

(35) For IORP’s: in which case and how many employee representatives need to be part of the board or other legal body of the IORP?

There is a commission – Comissão de Acompanhamento - for each pension fund with more than 100 employees (Artº 32º, Norma 7_2009, ISP). This commission must have employee representatives, sponsor representatives and IORP representatives. They have meetings periodically and they must be informed of all changes in the pension fund. There must be a minimum of 1/3 of employee representatives.

(36) Are employee representatives involved in the financing plan of the IORP and/or to what extend is their advice or decision binding?

The decisions on the financing plan are taken by the board. The Board informs the Comissão de Acompanhamento.

(37) For book reserve schemes, are employee representatives involved in any way in the determination of the level of the book reserves and/or the way these book reserves are set up?

No.

(38) Do employees need to be informed about the level of the financing of their benefits in the IORP and to what extend?

Employees must be informed of the pension plan (Ponto 4, Artº 61, Dec-Lei 12_06). If the plan is contributory (the employees can also contribute to the fund), all employees receive a benefit statement with their individual situation.

(39) Can employees or their representatives require changes in the pension scheme based on the financing level of the scheme, e.g. increases in pensions, reduction of employee contributions?

For all changes in the benefits, the employer needs to agree. Employee representatives need to be consulted, but their advice is not binding. In a number of cases collective agreements are needed, where employees and employers need to come to an agreement.
(40) What are the communication requirements to employees on supplementary pensions? Are they different in case of book reserves or in case of an IORP?

A report on the activities of the pension fund (art. 53º, ponto 5, Decreto-Lei 12/2006).

17.6 UNDERFUNDING OF DB SCHEMES

(41) In case of compulsory systems to which extent future generations can be asked to pay possible underfunding for the current generation? In how far the systems can operate as pay as you go?

Although the government social security system is a pay as you go system, for IORP this system does not exist in Portugal.

(42) In case of underfunding of company sponsored benefit plan, should the sponsor pay the whole underfunding or can increased employee contributions be required?

Normally, the sponsor should pay the whole underfunding.

(43) Does the sponsor have to cover underfunding before increasing contributions from employees or benefit cuts?

In case of underfunding the sponsor have to cover the deficit (Artº 78º, Dec-Lei 12_06).

(44) In what time delay the employer needs to pay the extra-contributions?

If the assets do not cover the long term liabilities a short term recovery plan has to be approved by the supervisory authority. The extra-contributions must be paid within a year. For pensioners, the extra-contributions must be paid in 180 days (nº 2 e 4, art. 78º, Decreto-Lei 12/2006).

(45) Is a recovery plan permitted and on how long can this recovery plan continue?

Legislation refers to a short term recovery plan. It can be extended to 1 or 3 years.

(46) Is there any legal requirement for the actuary or any other person involved to report on the expected underfunding due to a too strict financing plan and what action can be taken by the IORP in order to change this financing plan?

The actuary needs to advice and inform the IORP’s on the expected underfunding. (art. 55º, Decreto-Lei 12/2006).
(47) How can the IORP enforce the sponsor to fulfil his legal duty to pay the necessary contributions?

The payment of contributions is a contractual obligation for the sponsors to the IORP. Furthermore, IORP is obliged to inform the supervisory authority. If the sponsor doesn’t pay after one year, IORP must propose a recovery plan. (art. 78º, Decreto-Lei 12/2006).

(48) Should members (employees and beneficiaries) and/or employee’s representatives be informed in a situation of underfunding?

For contributory plans, the IORP must inform once a year about the funding situation; for other plans, only under request (art. 61º, Decreto-Lei 12/2006).

(49) How is this information requirement structured (individually, together with the yearly overview of the benefits, only when requested by employees,) and what is the maximum period allowed between the date of determination of the underfunding and the information to the employees?

The law does not require the provision of the information directly to employees, only to the employees representatives (“comissão de acompanhamento”, Artº 53º do 12_06) through the pension fund board.

(50) Can members and/or beneficiaries or their representatives have a voice in the decision of a recovery plan?

Yes, via their representatives in the “comissão de acompanhamento”. Furthermore there is always an information and consulting requirement, but the advice provided is not binding.

(51) Are members and/or beneficiaries informed on the details of a recovery plan?

Via the “comissão de acompanhamento”.
17.7 Priority creditors rights

(52) Which creditors have a higher priority on the remaining assets of the sponsor than the IORP in case of insolvency of the plan sponsor?

The assets will be used according priorities established in law (art. 31º, Decreto-Lei 12/2006). The priority rules are: fund expenses, individual accounts if applicable, pensioners, and employees with retirement age or higher, vested ex-employees, vested rights of employees and increase in benefits for pensioners.

(53) In case of insolvency of their employer what is the priority the employees have on the remaining assets for their supplementary pension rights in case of a book reserve scheme and possibly in case of underfunding of the IORP?

None

(54) What is the priority ex-employees, pensioners or other beneficiaries of the pension scheme have on the remaining assets of the sponsor?

None

(55) If the employer becomes insolvent, but is an affiliate of a group of companies where the mother company is not insolvent, can the employees claim their supplementary pension rights from the mother company in case of a book reserve or in case of underfunding of the IORP?

No specific regulation.

17.8 Guarantee schemes

In Portugal no guarantee schemes exist.

(56) Do guarantee schemes exist? If so, provide a detailed description of the schemes.

(57) Are premiums paid by the sponsoring undertaking to the guarantee scheme risk-based?

(58) What is the procedure to be followed for the intervention of the guarantee scheme?

(59) Are all defined benefit and book reserve schemes covered by the guarantee schemes?

(60) Are the schemes different for book reserve schemes and funded schemes? Please describe?

(61) Are all benefits covered including unvested benefits and recent benefit improvements?

(62) Are there ceilings on the benefit coverage?

(63) Will the guarantee scheme take over obligations or inject a one time payment in the IORP in case of a defined benefit scheme?

(64) Do the guarantee schemes have sufficient resources in e.g. time of crisis where a lot of sponsors could have solvency problems?
17.9 ANY OTHER MEASURES

(65) Are there any other measures (not covered above) that contribute to the protection of the interests of the employees or ex-employees and their beneficiaries in case of insolvency and/or disappearance of the sponsoring employer?

No.

(66) Are their proposals for changing the measures already taken and what are they? When are they expected to be implemented?

No.

(67) Please describe the views of the social partners on the effectiveness of the measures taken to protect the rights of the beneficiaries of company sponsored benefit plans in case of insolvency of the employer and/or the IORP (if publicly available or made available in an interview)

Not available

(68) Is there evidence that the overall outcome of one of the specific systems operated in your country provides inadequate protection for the rights of the beneficiaries of company sponsored benefit plans?

No.

(69) Is there evidence of how specific systems operated in your country proactively deal with different risks and improve risk management?

No.

17.10 YOUR ASSESSMENT

Per type of funding method or IORP (including book reserves)

(70) Please describe the shortcomings of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the sponsor and/or the IORP. If there are in your opinion no shortcomings, please explain

In case of underfunding, the sponsor has to cover the deficit. But, if the sponsor becomes insolvent, it cannot cover the deficit and thus, beneficiaries are exposed to the insolvency of the sponsor.
(71) Please describe your suggestions for improvement of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the employer and/or the IORP and describe the possible additional costs for these improvements and the possible risks that employers may decide to downside or close defined benefit arrangements?

To protect the rights of beneficiaries in case of insolvency of the employer, a compensation fund should be established. This compensation fund would be responsible for the pensions of those who are already retired and at least for a part of the pension for those who are still at work. This compensation fund could be funded by a fee that all pension schemes would have to pay, as a percentage of their liabilities. It could be the same fee for every entity or different percentages according to the level of risk they present, which should be determined with very precise rules.

In Portugal, the regulation on pension funds governance (Norma 7/2009, ISP), produced a better liaison between pension funds managing entities and beneficiaries. A positive issue was the creation of the “Comissão de Acompanhamento” for pension funds with more than 100 participants. (2nd Pillar). Another positive topic was the creation of the “Provedor”, which gave a voice to employees and pensioners in case of disagreement with the pension fund managers. (only for 3rd Pillar).
18. SPAIN

MAIN FINDINGS

- Apart from a few exceptions occupational pensions need to be financed externally
- Pension funds are subject to severe control and assets covering technical provisions calculated in a prudent way need to be available, recovery plans can take maximum 5 years
- In practice, at retirement lump sums are paid and in case periodic pensions are paid, they are usually insured or reinsured with an insurer.
- The few exceptions, where book reserves are still allowed, concern closed plans since 1996. In such cases, the entities using book reserves are closely supervised by the financial supervisor and the actuarial calculations have to be performed under assumptions at least as prudent as in the case of pension funds.
- No guarantee fund exists
- There is no requirement for vesting, but tax legislation is such that most benefits are vested immediately
- Yearly an annual report with financial information about the IORP needs to be available to the employees and for IORP’s a yearly benefit statements needs to be provided

18. 1. DESCRIPTION OF THE LEGAL FRAMEWORK

(1) Which kind of IORPs can be used to finance pension schemes (insurance companies, national funds, company pension fund, multi-employer fund, sector pension fund, other kinds of entities created to finance pensions)?

Under the Spanish legislation, all employer’s pension commitments **must be externally funded** either through an Insurance Entity (this can be a Stock Company, a Mutual Company or a “Mutualidad de previsión social” which is a kind of friendly society subject to rules similar to insurance companies) or a Pension Fund (either exclusively sponsored by one employer in favour of its employees or a multiemployer fund).

Book reserves are forbidden except in the case of financial institutions regarding their commitments that were in force before 1996. Those financial institutions that wanted to use a book reserve had to obtain a specific authorization from the Financial Authority. In 2010, only very few financial institutions still keep book reserves.

Death in service and disability benefits are almost universally covered by insurance contracts either directly purchased by the employer or reinsured by the pension fund.

Most of the commitments for retirement benefits have been changed from Defined Benefit to Defined Contribution. In most cases when a Pension fund has to pay a guaranteed annuity, this is reinsured by the pension fund with an insurance company, Therefore most pensions in payment are ultimately borne by insurance companies.

Applicable legislation (on pension funds and on insurance) can be found on the website of the Insurance and Pensions Supervisor (Dirección General de Seguros y Fondos de Pensiones) at www.dgsfp.meh.es/sector/legislacion.asp).
(2) What are the minimum funding requirements for each of these kind of IORP’s and are there minima for book reserves?

The regulation establishes that the accumulated accrued benefit must be externally funded. The Law doesn’t mention any specific funding vehicle, meaning that this rule is applicable to all pension commitments regardless of the vehicles chosen to fund it. This implies that pension arrangements must be fully funded, there is no other minimum mentioned. On the other side the law doesn’t make any reference on how the benefits should be considered to accrue. In practice the accrual of benefits is considered to take place at the rate established by the accounting rules. The accrual of benefit is generally established on a projected basis (projecting salary and, if applicable, the Social Security benefit) up to the moment of expected retirement. However, at plan inception or when the plan rule is changed, the past service cost can be amortized. If an actuarial loss produces any deficit in a pension fund, an amortization plan should be established over a maximum of 5 years (10 years with the Supervisor authorization).

A maximum discount rate is fixed for the actuarial calculations of pension funds (4.33% in 2009 and 2010). The Insurers have to calculate their Technical Provisions (and therefore, frequently, they use the same rate for premiums) using a maximum interest rate which presently is 2.60%, but a higher rate can be used if they have matching investments that should yield a higher return, in which case those investment should be clearly assigned to the contracts that they are backing.

(3) Is there a legal obligation to subscribe to external (solvency) guarantees? And what are these guarantees for each kind of IORP and for book reserves schemes?

There is no obligation to subscribe to an external solvency guarantee. The employer has to fund externally its accrued obligation, and the assets held by the pension fund or the Insurer can be used only for the payment of the benefits derived from the pension commitment. The insurance company or the pension fund are subject to their own solvency rules but have no obligation to subscribe any further guarantee.

In the very rare cases of employers that have chosen, and have been explicitly allowed, to keep a book reserve there is no obligation to subscribe any external guarantee, but the book reserve has to be determined using actuarial calculations and assumptions at least as prudent as those that are required for the pension funds.

(4) Does separate legislation on solvency exist for IORP’s falling under article 17 of the directive (plus a description)? Article 17 concerns IORP’s that take themselves the biometric risks and/or guarantee benefits, in case of insufficiency these IORP’s cannot claim supplementary contributions or reduce the benefits. How much of the IORP’s (as a percentage) are falling under article 17?

Each funding institution (Insurer or Pension Fund) has an obligation to maintain a certain solvency margin above the actuarial value of the benefits that they are guaranteeing.

The basis for the calculation of that solvency margin are similar for both types of institutions. However the percentage to be used to determine the amount of solvency margin is higher for insurers than for a pension fund (until 2008 it used to be the same).
If for any reason the pension fund has not sufficient assets to cover its benefit obligations this would, in practice, attract higher contributions from the employer. In theory, if the employer has been contributing every year the requested amounts, it could refuse to pay these higher contribution, but not such case has ever arouse until now.

(5) Is the provision of company sponsored employee benefits compulsory for the employers and to which extent?

As a general rule, the provision of company sponsored employee benefits is not compulsory. However, in some economic sectors the collective agreement establishes that employers in those sectors must provide certain benefits regarding either retirement or death in service or disability or all of them. In other cases it is at the Company level that the benefit scheme is negotiated. Normally the Collective agreements are renegotiated every two or three years and, as part of that bargaining, the benefit schemes can be changed, or terminated, but in practice it is very difficult to introduce any change that would imply a reduction. However over the last twenty years, many schemes have been changed from Defined Benefit to Defined Contribution and closed to new entrants, or established with lower benefits or contributions for the new and future employees.

Under no circumstance any of those schemes can substitute, in total or in part, any benefit provided by Social Security. Private schemes are always supplementary to Social Security. Social Security is compulsory and cannot be contracted out.

(6) Does the legislation provide for minimum vested rights if an employee leaves before retirement? Is this legislation different for the different funding systems or book reserves?

No, the legislation does not impose any minimum vesting on private pension plans, except when the employee pays the contribution or part of it. When the employee participates in part of the cost of the plan, a vesting must be provided for his part of the contributions.

In fact there are may plans in force with no vesting.

However, when the funding vehicle is a Pension Fund, even when all the contributions are paid by the employer, the Law considers them as income in kind of the employee and therefore full vesting must be provided.

When the funding vehicle is an insurance contract, the employer can choose the tax treatment of the premiums paid. If the premiums are considered income in kind of the employee, the employer can immediately deduct them from a tax point of view as an expense, the employee will have to pay income tax on those amounts but full vesting must be established in his favour. If the employer does not treat the premiums as income in kind of the employee, it will not be able to deduct those premiums as expense from a tax point of view until the benefits are effectively paid. In the latter case the employer can choose to establish some vesting or not.

In the very few cases of book reserves no vesting is offered.

(7) Is there legislation that requires that ex-employees and pensioners are treated the same as active employees (plus a description)?
No. There is no such obligation under any regulation. In practice, there is no plan that provides such treatment to ex-employees or pensioners, except in some cases for limited groups of employees who are encouraged to pre-retire (leave the company some years before they can reach their retirement under the Social Security scheme). It is relatively usual that employees who leave the employer under a “pre-retirement” agreement are granted some of their rights as if they remained active employees, until they reach their retirement in the Social Security Scheme.

(8) Is there legislation on the increase in benefits during payment or the deferred period (plus a description)?

No. In fact most of the plans, when the benefit is paid as a pension, establish that benefits remain constant without any update.

(9) Is there legislation that allows to reduce accrued pension rights in case of under funding?

The legislation allows for benefits to be reduced, as long as the reduction is agreed between the employer and the employees. In fact, if the fund shows a deficit and a proper amortization plan (that means acceptable for the Supervisor) is not put in place, the benefits should be reduced. However the reduction must be also agreed among the parties involved (employer and employees). Even if it is not clearly stated, the reduction would not affect everyone in the same way. Pensions in payment would normally not be reduced. In the past there have been situations where active employees have lost almost all their benefits but pensions in payment have not been reduced. If a fund has a deficit and no adequate amortization plan is submitted to the Supervisor, then the Supervisor would have the power to intervene and adopt the measures deemed adequate (either increase of contributions, reduction of benefits or even liquidation of the fund).

(10) Can benefits be paid in the form of a lump sum and to what extend?

Yes. In fact this is the most frequent way of payment for the retirement benefit (100% of the benefit is paid as a lump sum)

(11) Which kind of beneficiaries have priority rights on the assets of the IORP (pensioners, ex-employees, other beneficiaries, employees) and to what extend? Please describe the priority rules?

The priority would be for pensioners. Employees and, eventually, ex-employees with any vested right would fall behind with the same level of priority.

(12) In case of book reserves, which kind of beneficiaries have priority rights on the assets of the employer (pensioners, ex-employees, other beneficiaries, employees) and to what extend? Please describe the priority rules?
In the few cases still existing with book reserves there is no vesting. In those cases only pensioners would have a clear right to claim. As in many cases there is no vesting, active employees would not have a clear right to claim any amount. In terms of priority, the pensioners would have the same level of priority when claiming their pension than active employees when claiming their salaries. That means that only the salaries corresponding to the three months immediately before bankruptcy is declared (in the case of pensions in payment from a book reserve the amount of the benefits of that period) would have a certain degree of priority above general creditors.

(13) Has the country applied art. 4 of the Directive? If yes, comment on differences between pension insurer’s and IORP’s throughout all questions.

Spain has not applied article 4 of the Directive.

(14) Has the country applied article 5 on small pension institutions of the Directive? If yes, how much (in percentage) beneficiaries are affiliated to these small pension institutions?

Spain has not applied article 5 of the Directive.

There is no specific regulation for small pension institutions. It is not common for small employers to have pension commitments in favour of their employees. In some sectors, the collective agreement establishes some levels of lump sum in case of death or disability and possibly a jubilee award at retirement. Those benefits are generally insured, and there is no small pension institution as such.

The Law on pension plans envisages the possibility of promoting multiemployer plan but this formula has not been yet used by many employers because they prefer to buy insurance.

18. 2. OVERVIEW OF DB AND BR SCHEMES

(15) What kind of company sponsored benefit schemes are provided? Defined benefit schemes, Defined contribution schemes, Cash balance schemes and other schemes (plus description)?

Today, the most frequent type of arrangement is a defined contribution plan with the accumulated amount paid as a lump sum at retirement. For death in service or disability the plans tend to define a benefit as a certain multiple of annual salary at the moment of death or disability that is also paid as a lump sum.

There are very few defined benefit retirement plans that are open to new participants, but some employers still have this type of commitment with their old employees.

There are almost no cash balance plans. When a defined contribution plan offers a certain guarantee of return, it normally is because the plan is insured and the insurer guarantees those terms (minimum return is generally offered only for yearly periods that are rolled over).

(16) What % of covered employees benefit from the different type of schemes described in the previous question? Is this different for male and female employees?
This type of statistic is not detailed in Spain. Information that used to be delivered is pretty much aggregated and without any accompanying breakdown. Furthermore the last information available so far refers to 2008. However, the pension arrangements never differentiate benefit levels for males and females. In the case of defined benefits the premium charged by the insurers or the contributions determined by the pension fund are calculated using mortality tables that differentiate by sex. When the participant of a defined contribution retirement plan decides to transform the entitlement of a lump sum into an annuity, the rates used by the Insurer would also be determined using mortality tables that differentiate by sex.

(17) Are pensions in payment or deferred increased? Is this increase conditional? What are the conditions?

Most of the benefits are paid as lump sums and therefore there is no automatic increase of benefits in that regard.

In the few cases where the benefits are paid as a pension there is not a general rule about increasing the benefits once in payment. It is a clear minority of the plans with pension benefits that establish that pensions should be increased every year with inflation. In very few cases the increase is not related to inflation but to the average salary increase of the active employees.

(18) What % of labour force is covered by a company sponsored benefit scheme (including sector schemes or compulsory supplementary pension schemes)? Is this different for male and female employees?

No accurate information is available on the proportion of the employees covered by a supplementary plan. In general the benefits from the supplementary plan are not high when compared with the Social Security benefits, except in the case of higher paid employees.

When employees are covered by Defined Benefit plans men and women are treated equally (however the cost charged by a pension fund or an Insurance Company to cover those benefits are different because the mortality tables used in the actuarial calculations differentiate by sex).

In the case of Defined Contribution plans the contributions made don’t differentiate among men and women, but if the beneficiary wants to convert the accumulated fund into an annuity (rather than taking out this amount as a lump sum) the rates used by the insurance companies or the pension fund would be different for men and women.
(19) How high is the average retirement pension provided by the company sponsored benefit scheme, preferably as a percentage of last yearly salary? And how is this compared to the social security retirement pension? Are there significant differences between the averages for male and female employees?

The Social Security has set a cap for the contributing salary and a cap on the benefits it pays. That means that, in 2010, employees earning less than around 40,000 euros, and having contributed to the Social Security Scheme at least 35 years, could reasonably expect a replacement ratio of around 80% if they take their retirement at age 65 or later.

In the very few cases where the supplementary plan is of a defined benefit nature, the target used in the past could reach 100% or 95% of last salary, adding up the benefits from the Social Security and the supplementary plans. This meant that the benefit from the supplementary plan could vary a lot depending on the level of salary of the employee retiring. The benefit could vary between 10% and a very high percentage for higher paid employees. Now a more frequent target of those defined benefit cases would be between 60% and 70%. As a result, under those more recent plans the benefit from the supplementary plan is frequently zero because the Social Security benefit provides already a percentage above the total target.

Men and women are treated the same under those arrangements.

(20) What types of financing vehicles actually exist in your country and how many? Book reserves, pension funds, pension funds that fall under article 17 of the directive on IORPS, sector funds, insurance or other financing vehicles?

The funding vehicles must necessarily be “Pension Funds” or “Insurance Contracts”.

Book Reserves are only allowed in the case of financial institutions and only in what concerns employers’ commitments acquired before 1996. Book Reserves require also an explicit authorization by the Supervisor of the financial institution.

(21) What % of covered employees receive their benefit via these above described financing vehicles?

In the case of defined benefit plan almost all cases are ultimately paid by an Insurer. The insurance policy is either directly purchased by the employer or is contracted by the pension fund when a benefit guarantee is involved.

(22) Please provide a short summary of the accounting rules applicable to employers that provide defined benefit schemes (e.g. equal to IAS19, similar to IAS 19 but …, no provisions contributions and/or benefits paid are equal to expenses, description of other rules)

The employers are subject to the “Plan General Contable” which adapts to the local conditions the Accounting Directive. Concerning pension commitments the local rules are very similar to IAS19.
(23) What is the % of the employers that report under IFRS (IAS19) or very similar accounting rules?

All employers are subject to rules very similar to IAS 19.

(24) Can you provide statistics on the provisions accounted for under these rules (per employee and/or in relation to the funds in the pension fund)?

Accurate statistics are not available. As in most cases book reserves are not allowed, employers would normally account for the net amount of assets and liabilities.

18.3. REQUIREMENT OF ADDITIONAL ASSETS

(25) Which type of additional assets (above the assets covering the technical provisions) are required (plus description)?

A solvency margin is required both in the case of insurance and in the case of a Pension Fund. In the case of insurance contracts the general solvency rules of the Insurer are applicable. In the case of Pension Funds that have not transferred the risks to an insurer, the solvency margin is determined using rules similar to the ones of the insurers but with different (lower) percentages.

(26) Are these additional assets requirements different for IORP’s that fall under article 17 of the directive (plus description)?

No, the requirements are the same.

(27) When can these additional assets actually be used? e.g. when more than the expected number of employees dies in a particular period, when the employer becomes insolvent, other?

On a going concern basis, the solvency margin is a permanent requirement as long as the IORP covers any risk. In that regard, any deviation in the funds evolution that would diminish the solvency margin below the minimum required, has to be compensated immediately. If the amount to pay is too high to provide it in one payment, an amortization plan can be established but the maximum period would be 5 years.

(28) For multi-employer funds, can these additional assets be used in case of insolvency of any of the employers? In case of ring-fencing per employer or in case of no ring-fencing and therefore solidarity between employers?

No solidarity between employers is allowed. Assets must always remain ring fenced.
(29) Can these assets return to the employer and under which conditions?

Assets can return to the employer only when it can be established that the assets will not be needed to pay benefits. In the case of insurance it would be easier to have assets returning to the employer since normally the employer is the “legal owner” of those assets even if they should be used exclusively to pay benefits. In the case of a pension fund the assets are owned by the employees and beneficiaries and therefore it is more complicated to have them returning to the employer even if the assets exceed the obligations.

18. 4. INDEPENDENCE OF THE IORP FROM THE SPONSOR

In this part of the project, we need to investigate the level of the independence of the IORP from the sponsor.

To this end we will provide an answer to the following questions:

(30) To what extent can the assets be invested in the sponsor’s securities – debt or shares and to what extent is this possibility actually used?

Pension fund can invest only in securities (shares or fixed income) issued by the Sponsor only when these are freely quoted in the market, but the total investment in the Sponsor cannot exceed 5% of the assets of the Fund.

There is no information about how much this capacity is being used, but I would think that it is common to make use of it by the fund. However, taking into account that the investment can only be made in securities quoted in the stock market (the term used is “organised market”), this practice would take place almost only when the Sponsor is a large corporation.

(31) To what extent subordinated loans can be used to cover pension obligations?

Books reserves are not allowed. Subordinated loans would not affect directly the IORP.

(32) To what extent can the assets be invested in items, such as property, machines, etc. used by the sponsor for its business and to what extend is this possibility actually used?

The fund cannot invest more than 30% of its assets in real estate, and no more than 10% can be in a single building or premises. The regulation does not mention any difference if the buildings or premises owned by the Fund are being used by the Sponsor or not. In general it is not frequent that pension funds invest in real estate.

(33) To what extent can the management of the IORP be the same as the management of the sponsor? Describe the corporate governance requirements for IORPS in this respect?

Although it is not frequent, members of the management of the Sponsor can form part of the management Pension Fund Management Company. However, the ultimate responsible of the investment policy of the Fund
is the Control Committee, where there is a significant representation of the Sponsor Company. Members representing the Sponsor in that Committee must be less than 50% of the members of that committee.

(34) **To what extend can other important functions, such as the actuary, auditor and compliance officer be nominated (and possibly directly or indirectly paid) by the employer?**

In the case that a Pension Fund is used as vehicle to externally fund a pension commitment the Law differentiate two roles that have to be fulfilled by actuaries. First, the “day to day” actuary can be an employee or have some links with the IORP and/or the Sponsor of the Plan. Second, the “reviewing” actuary must perform a detailed review of the actuarial and financial aspects of the evolution of the fund. This review has to be undertaken at least once every three years, and the actuary doing it is subject to an independency test (of course, this duty cannot be performed by the “day to day” actuary). Auditors are also subject to clear conditions of independence from the IORP and the Sponsor of the Plan and of the Fund.

18.5. **Employee representatives’ involvement in the governance of the pension scheme**

(35) **For IORP’s: in which case and how many employee representatives need to be part of the board or other legal body of the IORP?**

A Controlling Committee, with at least 50% of the members being representatives of the employees and beneficiaries, has to be set from inception.

(36) **Are employee representatives involved in the financing plan of the IORP and/or to what extend is their advice or decision binding?**

The controlling Committee has significant involvement in the key decisions on the plan and on the fund (and how this is invested). However, in the case of a defined benefit plan without employees’ contributions, the employer’s representatives within the controlling committee have the authority to take decisions that would affect investments.

(37) **For book reserve schemes, are employee representatives involved in any way in the determination of the level of the book reserves and/or the way these book reserves are set up?**

No book reserves allowed (with very few exceptions). When book reserves exist (very few cases) employees are not involved but they are informed of the level of book reserves.

(38) **Do employees need to be informed about the level of the financing of their benefits in the IORP and to what extent?**

Yes. They should receive at least yearly information. In many cases information would be sent quarterly.
(39) Can employees or their representatives require changes in the pension scheme based on the financing level of the scheme, e.g. increases in pensions, reduction of employee contributions?

If a Pension Fund had assets above its obligations excess will frequently be applied to absorb future contributions.

If the assets are below the liabilities and that deficit cannot be completely absorbed by an amortization plan (that can be extended over 5 years or a longer period with the Supervisor approval but not exceeding ten years) then the employer would normally start the design of any required change (higher contributions or lower benefits), but in any case the proposed change will have to be negotiated and approved by the Plan Control Committee that has a majority of seats held by employees’ representatives.

(40) What are the communication requirements to employees on supplementary pensions? Are they different in case of book reserves or in case of an IORP?

Communication requirements depend on the funding vehicle used. In the case of book reserves there is no requirement of producing any individual communication.

18.6. UNDERFUNDING OF DB SCHEMES

(41) In case of compulsory systems to which extent future generations can be asked to pay possible underfunding for the current generation? In how far the systems can operate as pay as you go?

All supplementary plans above Social Security are requested by law to use individual funding schedules, the actuarial calculations cannot be based on any type of aggregate method.

No system that would use any component based on pay as you go, or any other type of aggregation would be allowed.

(42) In case of underfunding of company sponsored benefit plan, should the sponsor pay the whole underfunding or can increased employee contributions be required?

Both actions would be allowed, however most of the plans have only employer’s contributions, therefore the employer would be expected to fill the gap. In the case of a pension fund there is a maximum annual contribution (at an individual level) regardless if the contribution is the normal contribution of the year or if it is an extraordinary contribution to amortise a deficit. Only under some specific conditions this maximum could be exceeded.

(43) Does the sponsor have to cover underfunding before increasing contributions from employees or benefit cuts?
No. However it would be very unusual to have employees contributing.

(44) In what time delay the employer needs to pay the extra-contributions?

It has to start immediately. If an amortization schedule is set up this must be spread over 5 years or shorter. If a longer period is required then the Plan has to obtain the approval by the Supervisor. The amortization cannot be set up over periods longer than ten years.

If a plan is already amortizing a deficit and a new shortfall arises, this new amount can be amortised only during the remaining period of the initial amortization schedule.

(45) Is a recovery plan permitted and on how long can this recovery plan continue?

If the deficit is amortised over several years there is a maximum period of five years that could be extended, with the explicit authorization of the Supervisor, but never over more than ten years in total.

(46) Is there any legal requirement for the actuary or any other person involved to report on the expected underfunding due to a too strict financing plan and what action can be taken by the IORP in order to change this financing plan?

The amortization plan has to be set up by an actuary. Changes to the amortization plan should also be backed by an actuarial report and are restricted. If new deficits arise the amortization cannot be extended beyond the termination date of the original amortization plan (that has a maximum of five years). Although the actuary has to certify the amounts, he/she has no obligation (neither the legal capacity) to communicate any matter directly to the Supervisor.

(47) How can the IORP enforce the sponsor to fulfil his legal duty to pay the necessary contributions?

The IORP is treated as a general creditor.

(48) Should members (employees and beneficiaries) and/or employee’s representatives be informed in a situation of underfunding?

Yes. When the vehicle used is a Pension Fund a Controlling Committee, with at least 50% of the members being representatives of the employees and beneficiaries, has to be set from inception. When the funding vehicle is an insurance, a certificate has to be handled to the employees’ representatives informing on the funding status.

(49) How is this information requirement structured (individually, together with the yearly overview of the benefits, only when requested by employees, …) and what is the maximum period allowed between the date of determination of the underfunding and the information to the employees?
Each employee has to receive information about the pension funding at least once per year.

(50) Can members and/or beneficiaries or their representatives have a voice in the decision of a recovery plan?

In the case of a pension fund, the Controlling Committee has to approve it.

(51) Are members and/or beneficiaries informed on the details of a recovery plan?

They are informed of the funding status, but not necessarily of the details of the recovery plan. However, in most cases they would receive a description of the recovery plan (either the Employer or the Unions will be informing about that).

18. 7. PRIORITY CREDITORS RIGHTS

(52) Which creditors have a higher priority on the remaining assets of the sponsor than the IORP in case of insolvency of the plan sponsor?

Ministry of finance (taxes), Ministry of Labour (Social Security Contributions)

(53) In case of insolvency of their employer what is the priority the employees have on the remaining assets of their employer (sponsor) for their supplementary pension rights in case of a book reserve scheme and possibly in case of underfunding of the IORP?

Book reserves are not allowed. In the case of underfunding, there is no specific priority.

(54) What is the priority ex-employees, pensioners or other beneficiaries of the pension scheme have on the remaining assets of the sponsor?

If those benefits were not properly funded, there would be no priority over the general creditors of the employer, but assets that were already within the pension fund or the insurance company are fully protected from other creditors. Those assets can only be used to pay benefits.
(55) If the employer becomes insolvent, but is an affiliate of a group of companies where the mother company is not insolvent, can the employees claim their supplementary pension rights from the mother company in case of a book reserve or in case of underfunding of the IORP?

Only in very specific cases. In any case there is no specific legislation on such situations and the general commerce and labour regulations would be used to judge that situation.

18.8. Guarantee schemes

(56) Do guarantee schemes exist? If so, provide a detailed description of the schemes.

No guarantee schemes exist. Most of the existing plans are defined contribution plans for retirement and defined benefit only for death in service and disability. The most frequent way of paying the benefits is as a lump sum. There are still some retirement benefits paid as pensions but these are either pension in payment coming from plans already closed to new participants, or certain groups of older active employees that will benefit from plans also closed to new participants. Up to now there are almost no defined contribution plans with guaranteed returns or minimum benefits.

Under such environment there is no feeling of the need to establish any type of guaranteed scheme above the present structure.

(57) Are premiums paid by the sponsoring undertaking to the guarantee scheme risk-based?

Not applicable

(58) What is the procedure to be followed for the intervention of the guarantee scheme?

There is no guarantee scheme, but there is a continuous surveillance by the Insurance and Pensions Supervisor. If the Supervisor observes that the Insurer or the Pension Fund are not properly funded and cannot redress the situation in a relatively short term, they will intervene, and force the adoption of the measures to better protect all the benefits of the pension plan.

(59) Are all defined benefit and book reserve schemes covered by the guarantee schemes?

Not applicable. Furthermore, book reserves are not allowed as a general rule.

(60) Are the schemes different for book reserve schemes and funded schemes? Please describe?

Not applicable. Furthermore, book reserves are not allowed as a general rule.
(61) Are all benefits covered including unvested benefits and recent benefit improvements?

Not applicable

(62) Are there ceilings on the benefit coverage?

Not applicable

(63) Will the guarantee scheme take over obligations or inject a one time payment in the IORP in case of a defined benefit scheme?

In the case of bankrupt of an Insurer, there are mechanisms that would take over the obligations (if the policyholder agrees to it) and improve the recovery of any gap between assets and liabilities, but not necessarily compensate all the losses.

In the case of pension funds, there is no regulation equivalent to the insurance regulation.

(64) Do the guarantee schemes have sufficient resources in e.g. time of crisis where a lot of sponsors could have solvency problems?

Not applicable

18. 9. Any other measures

(65) Are there any other measures (not covered above) that contribute to the protection of the interests of the employees or ex-employees and their beneficiaries in case of insolvency and/or disappearance of the sponsoring employer?

No

(66) Are their proposals for changing the measures already taken and what are they? When are they expected to be implemented?

No

(67) Please describe the views of the social partners on the effectiveness of the measures taken to protect the rights of the beneficiaries of company sponsored benefit plans in case of insolvency of the employer and/or the IORP (if publicly available or made available in an interview)

This is not a major issue at this stage since most of the social debate is focused on Social Security and not on supplementary pension arrangements.
(68) Is there evidence that the overall outcome of one of the specific systems operated in your country, provides inadequate protection for the rights of the beneficiaries of company sponsored benefit plans?

No

(69) Is there evidence of how specific systems operated in your country proactively deal with different risks and improve risk management?

Not relevant

18.10. YOUR ASSESSMENT

Per type of funding method or IORP (including book reserves)

(70) Please describe the shortcomings of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the sponsor and/or the IORP. If there are in you opinion no shortcomings, please explain

These are two completely different situations: insolvency of the IORP or of the employer.
In the case that the Pension Fund assets are not sufficient to meet the obligations derived of a pension plan, the employer would be expected to fill the gap and the regulations require that a plan to re-establish equilibrium should be set. The plan cannot exceed a period of five years except if there is an explicit authorization of the Supervisor in which case it could be extended over up to ten years.
If the plan is funded through an insurance contract an the Insurer goes bankrupt, if the employer had already paid the premiums he was requested, it is no longer legally bound to contribute again to recover the insurer’s default. However this is somehow a little unclear issue since some advisors feel that if such situation was to be discussed in the Court it would be very probable that the employer could be forced to back up the shortfall.
In case of bankruptcy of an employer, if the IORP is properly funded, there would be no issue about the liabilities that could have been accrued until then but, of course, there would be no further contributions. If when the employer defaults there was a “refunding plan” in force there is no priority of that debt over the rest of creditors.
(71) Please describe your suggestions for improvement of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the employer and/or the IORP and describe the possible additional costs for these improvements and the possible risks that employers may decide to downsize or close defined benefit arrangements?

It is difficult to suggest any measure that would improve the present situation.

We must take into account that the decision to ban Book Reserves and to request external funding through legally separate institutions (pension fund or insurance) is relatively recent (it entered in force in 2000) and that was a measure that took nearly seven years of discussions. As a consequence of that rule, most of the pension arrangements existing at that time were changed into defined contribution plans.

There are now very few defined benefit plans in force. Under defined contribution arrangements the issues of insolvency of the employer or the IORP are not relevant.

Finally, the level of coverage of Social Security is relatively high for most of the working population. In that environment employees that benefit from a supplementary pension arrangement are considered privileged compared to the rest, therefore there is no significant social concern about putting in place any type of new regulation to protect that group of privileged workers.
19. SWEDEN

MAIN FINDINGS

- Occupational pensions can be financed externally via an IORP or via book reserves
- IORPs are subject to control and assets covering technical provisions calculated in a prudent way need to be available, recovery plans require recovery in maximum 3 years
- IORPs are required to have funds for pension supplements and special indexation funds
- Book reserves need to be calculated in the same way as technical provisions in IORP’s and need to include the same pension supplements and special indexation reserves.
- Employers using book reserves are required to take out insurance at the insurance company PRI Pensionsgaranti. However the coverage of the PRI Pensionsgaranti is limited to the vested benefits.
- Benefits vest immediately
- Yearly an annual report with financial information about the IORP needs to be available to the employees and a yearly benefit statements need to be provided

19. 1. DESCRIPTION OF THE LEGAL FRAMEWORK

(1) Which kind of IORPs can be used to finance pension schemes (insurance companies, national funds, company pension fund, multi-employer fund, sector pension fund, other kinds of entities created to finance pensions) ?

- Insurance companies
- Insurance funds (understödsförening, försäkringsförening)
- Pension funds (pensionsstiftelse)
- Book reserves

(2) What are the minimum funding requirements for each of these kind of IORP’s and are there minima for book reserves ?

- The pension liabilities shall be fully funded according to instructions issued by the FSA
- The book reserves shall be calculated according to instructions issued by the FSA

(3) Is there a legal obligation to subscribe to external (solvency) guarantees ? And what are these guarantees for each kind of IORP and for book reserves schemes ?

There is no legal obligation for external solvency guarantees. However pension liabilities in the ITP – plan backed by pension funds or held as book reserves shall be insured for credit risk by the insurance company PRI Pensionsgaranti.
Other pension liabilities may also be insured for credit risk by the insurance company PRI Pensionsgaranti. An employer’s allocation to book reserves is not tax deductible if not insured for credit risk.

(4) Does separate legislation on solvency exist for IORP’s falling under article 17 of the directive (plus a description)? Article 17 concerns IORP’s that take themselves the biometric risks and/or guarantee benefits, in case of insufficiency these IORP’s cannot claim supplementary contributions or reduce the benefits. How much of the IORP’s (as a percentage) are falling under article 17?

No, under the ITP – plan the ultimate liability is with the employer.

(5) Is the provision of company sponsored employee benefits compulsory for the employers and to which extent?

No, but compulsory for members of Confederation of Swedish Industry and other industry organisations due to collective agreements.

(6) Does the legislation provide for minimum vested rights if an employee leaves before retirement? Is this legislation different for the different funding systems or book reserves?

Yes, if an employee leaves an insurance fund he/she is entitled to a paid-up policy (1972:262, article 19). A former employee is always entitled to a paid-up policy within the ITP – plan.

(7) Is there legislation that requires that ex-employees and pensioners are treated the same as active employees (plus a description)?

Yes, an insurance fund shall keep a separate register of former employees with paid up policies (1972:262, article 15). Changes in by-laws of an insurance fund may not lead to a reduction in benefits to pensioners (1972:262, article 38). Pensioners have priority rights in case of liquidation of a insurance fund (1972:262, article 56).

(8) Is there legislation on the increase in benefits during payment or the deferred period (plus a description)?

No, retirement benefits within the ITP-plan are increased by the same index as those benefits funded with the insurance company Alecta.

(9) Is there legislation that allows to reduce accrued pension rights in case of under funding?

Yes, an insurance fund may change it by-laws and reduce accrued pension rights (1972:262, article 37). Changes in by-laws of an insurance fund may not lead to a reduction in benefits to pensioners (1972:262, article 38).
(10) Can benefits be paid in the form of a lump sum and to what extent?

Yes, an insurance fund may pay death benefits benefits as lump sums if the fund has more than 500 members.

(11) Which kind of beneficiaries have priority rights on the assets of the IORP (pensioners, ex-employees, other beneficiaries, employees) and to what extent? Please describe the priority rules?

Pensioners have priority rights in case of liquidation of a insurance fund (1972:262, article 56).

(12) In case of book reserves, which kind of beneficiaries have priority rights on the assets of the employer (pensioners, ex-employees, other beneficiaries, employees) and to what extent? Please describe the priority rules?

Pensions due but not paid and pension rights accrued within the six months period before the bankruptcy and pension benefits accrued or payable within the six months period after the bankruptcy have priority rights.

(13) Has the country applied article 4 of the Directive? If yes, comment on differences between pension insurer’s and IORP’s throughout all questions.

Yes.

(14) Has the country applied article 5 on small pension institutions of the Directive? If yes, how much (in percentage) beneficiaries are affiliated to these small pension institutions?

Yes, but probably less than one percent of all employees.

19.2. OVERVIEW OF DB AND BR SCHEMES

(15) What kind of company sponsored benefit schemes are provided? Defined benefit schemes, Defined contribution schemes, Cash balance schemes and other schemes (plus description)?

ITP – plan for white collar employees. DB – plan for persons born before 1979 (ITP 2) and DC – plan for persons born after 1978 (ITP 1)
SAF/LO – plan for blue collar employees. DC - plan

(16) What % of covered employees benefit from the different type of schemes described in the previous question? Is this different for male and female employees?

1.8 million people are members of the ITP – plan
3.0 million people are members of the SAF / LO – plan
The total Swedish population above 25 years are 6.5 million
(17) Are pensions in payment or deferred increased? Is this increase conditional? What are the conditions?

All retirement benefits within the ITP-plan are increased by the same index as those benefits funded with the insurance company Alecta. The increase is conditional on the funding status of Alecta. Payments to current pensioners have priority.

(18) What % of labour force is covered by a company sponsored benefit scheme (including sector schemes or compulsory supplementary pension schemes)? Is this different for male and female employees?

Almost the whole labour force.

(19) How high is the average retirement pension provided by the company sponsored benefit scheme, preferably as a percentage of last yearly salary? And how is this compared to the social security retirement pension? Are there significant differences between the averages for male and female employees?

The ITP – plan is coordinated with the social security. The retirement pension is expected to be 65 % of income up till 20 base amounts (= SEK 848,000) and 32.5 % of income between 20 and 30 base amounts (= SEK 1,272,000).

(20) What types of financing vehicles actually exist in your country and how many? Book reserves, pension funds, pension funds that fall under article 17 of the directive on IORPS, sector funds, insurance or other financing vehicles?

- Insurance companies
- Insurance funds (fall under article 17)
- Pension funds (do not fall under article 17)
- Book reserves (do not fall under article 17)

(21) What % of covered employees receive their benefit via these above described financing vehicles?

Within the ITP – plan pension rights for 450,000 people are either backed by pension funds or held as book reserves. This means that these rights are protected by a credit insurance at PRI Pensionsgaranti.

(22) Please provide a short summary of the accounting rules applicable to employers that provide defined benefit schemes (e.g. equal to IAS19, similar to IAS19 but ..., no provisions contributions and/or benefits paid are equal to expenses, description of other rules)

Large Swedish companies are generally expected to follow IFRS standards.

(23) What is the % of the employers that report under IFRS (IAS19) or very similar accounting rules?
All most all large employers

(24) Can you provide statistics on the provisions accounted for under these rules (per employee and/or in relation to the funds in the pension fund)?

Total liabilities within the ITP plan are estimated at SEK 360 billions of which SEK 240 billions are funded with Alecta and SEK 120 billions are backed by pension funds or held as book reserves

19.3. REQUIREMENT OF ADDITIONAL ASSETS

(25) Which type of additional assets (above the assets covering the technical provisions) are required (plus description)?

According to instructions issued by the FSA the calculation of technical provisions for retirement pensions backed by pensions fund or held as book reserves shall include a safety margin consisting of two elements:

- A reduction in the force of interest by 0.002
- A surcharge of 5% of technical provisions

The pension liability backed by pensions fund or held as book reserves and credit insured by PRI Pensionsgaranti is split into 3 elements:

- Net present values
- Funds for pension supplements
- Special indexation funds

(26) Are these additional assets requirements different for IORP’s that fall under article 17 of the directive (plus description)?

Yes, the funds for pension supplements and special indexation funds are unique for PRI Pensionsgaranti. Insurance funds under article 17 follow the solvency rules for insurance companies.

(27) When can these additional assets actually be used? e.g. when more than the expected number of employees dies in a particular period, when the employer becomes insolvent, other?

Funds for pensions supplements for PRI Pensionsgaranti are funds to cover future inflation or other unspecified costs in the future; a standard surcharge of net present value (4.5% in 2009). Special indexation funds for PRI Pensionsgaranti are additional provisions for index-linking pensions, or for other pension-related purposes and calculated collectively. The funds may only be utilised upon agreement between the Confederation of Swedish Industry and Federation of Salaried Employees in Industry and Services.

The additional assets are either funded with Alecta or backed by pension funds or held as book reserves.
(28) For multi-employer funds, can these additional assets be used in case of insolvency of any of the employers? In case of ring-fencing per employer or in case of no ring-fencing and therefore solidarity between employers?

No, assets for each employer are kept separately.

(29) Can these assets return to the employer and under which conditions?

Yes, surplus of capital may be repaid to the employer. By surplus of capital is meant assets minus pension liabilities. If there is no surplus on capital the employer is still entitled to use investment return to pay benefits due.

19.4. INDEPENDENCE OF THE IORP FROM THE SPONSOR

(30) To what extend can the assets be invested in the sponsor’s securities – debt or shares and to what extend is this possibility actually used?

A maximum of 5% of the assets of an insurance fund may be invested in assets, bonds or other debt instrument issued by the employer. The maximum is 10% of assets issued by a group in which the employer takes part (1972:262, article 24 b).

A maximum of 5% of the assets of a pension fund may be invested in assets, bonds or other debt instrument issued by the employer. The maximum is 10% of assets issued by a group in which the employer takes part (1967:531, article 10).

(31) To what extend subordinated loans can be used to cover pension obligations?

See point question (30)

(32) To what extend can the assets be invested in items, such as property, machines, etc. used by the sponsor for its business and to what extend is this possibility actually used?

A pension fund may not accept a property from the employer (1967:531, article 11)

(33) To what extend can the management of the IORP be the same as the management of the sponsor? Describe the corporate governance requirements for IORPS in this respect?

The management of a pension funds may be the same as the sponsor. The board shall consist of same number of representatives from the employer respectively the employees. The chairman of the board is selected by the supervisory authority if the two parties cannot agree (1967:531, article 16)

The board members in a pension fund shall be fit and proper (1967:531, article 16 a)
(34) To what extend can other important functions, such as the actuary, auditor and compliance officer be nominated (and possibly directly or indirectly paid) by the employer?

Unless stated differently in the by-laws, a sponsor of a pension fund is entitled to select the auditor
(1967:531, article 17 b)

19.5. Employee representatives’ involvement in the governance of the pension scheme

(35) For IORP’s: in which case and how many employee representatives need to be part of the board or other legal body of the IORP?

The board of an insurance fund shall consist as a minimum of the same number of representatives from the employees as from the employer. (1972:262, article 27)
The board of a pension fund shall consist of the same number of representatives from the employer respectively the employees. The chairman of the board is selected by the supervisory authority (1967:531, article 16)

(36) Are employee representatives involved in the financing plan of the IORP and/or to what extend is their advice or decision binding?

Yes, in their capacity as board members

(37) For book reserve schemes, are employee representatives involved in any way in the determination of the level of the book reserves and/or the way these book reserves are set up?

The level of book reserves shall follow the FSA instruction (FFFS 2007:24)
Trade unions are represented at the board of PRI Pensionsgaranti

(38) Do employees need to be informed about the level of the financing of their benefits in the IORP and to what extend?

The pension liabilities shall be fully funded

(39) Can employees or their representatives require changes in the pension scheme based on the financing level of the scheme, e.g. increases in pensions, reduction of employee contributions?

Yes, in their capacity as board members

(40) What are the communication requirements to employees on supplementary pensions? Are they different in case of book reserves or in case of an IORP?
An insurance fund is obliged to inform its members and other persons entitled to benefits on the fund and its activities and the retirement benefits and the agreements leading to these benefits (1972:262, article 20 a).

A pension fund is obliged to inform the employees and their relatives on the fund and its activities (1967:531, article 10 d).

A sponsor is obliged to inform the employees and their relatives on the retirement benefits and the agreements leading to these benefits (1967:531, article 10 d).

19.6. **UNDERFUNDING OF DB SCHEMES**

(41) *In case of compulsory systems to which extent future generations can be asked to pay possible underfunding for the current generation? In how far the systems can operate as pay as you go?*

Underfunding is not allowed.

Formally Alecta may increase premiums for current employees to increase payments to current pensioners.

(42) *In case of underfunding of company sponsored benefit plan, should the sponsor pay the whole underfunding or can increased employee contributions be required?*

No, under the ITP – plan the ultimate liability is with the employer. All contributions under the ITP – plan are paid by the employers.

(43) *Does the sponsor have to cover underfunding before increasing contributions from employees or benefit cuts?*

Yes.

(44) *In what time delay the employer needs to pay the extra-contributions?*

In case of liquidation of a pension fund the FSA may grant an employer a time delay of up till 3 years in paying any debts to the pension fund (1967:531, article 19).

(45) *Is a recovery plan permitted and on how long can this recovery plan continue?*

If an insurance fund’s own funds are less than the solvency margin the fund or its board shall submit a recovery plan to the FSA (1972:262, article 71).

(46) *Is there any legal requirement for the actuary or any other person involved to report on the expected underfunding due to a too strict financing plan and what action can be taken by the IORP in order to change this financing plan?*
See question (45)

(47) How can the IORP enforce the sponsor to fulfil his legal duty to pay the necessary contributions?

Normal legal procedures

(48) Should members (employees and beneficiaries) and/or employee’s representatives be informed in a situation of underfunding?

See question (40)

(49) How is this information requirement structured (individually, together with the yearly overview of the benefits, only when requested by employees, ...) and what is the maximum period allowed between the date of determination of the underfunding and the information to the employees?

See question (40)

(50) Can members and/or beneficiaries or their representatives have a voice in the decision of a recovery plan?

Yes, in their capacity as board members

(51) Are members and/or beneficiaries informed on the details of a recovery plan?

See question (40)

19. 7. PRIORITY CREDITOR RIGHTS

(52) Which creditors have a higher priority on the remaining assets of the sponsor than the IORP in case of insolvency of the plan sponsor?

The IORP has no priority rights. In case of bankruptcy of the sponsor, the asset of the pension funds are used to purchase pension insurance for all pension liabilities that are covered by the fund. If there is a short-fall all beneficiaries have a claim on the sponsor in the bankruptcy procedure for the remaining amount. They have no other priority than the one mentioned under question 12. The pension fund as such has no claim on the sponsor as it does not carry the responsibility for the pensions, it only serves as collateral for the pension liabilities of the sponsor.

(53) In case of insolvency of their employer what is the priority the employees have on the remaining assets for their supplementary pension rights in case of a book reserve scheme and possibly in case of underfunding of the IORP?
See question (12)

(54) What is the priority ex-employees, pensioners or other beneficiaries of the pension scheme have on the remaining assets of the sponsor?

See question (12)

(55) If the employer becomes insolvent, but is an affiliate of a group of companies where the mother company is not insolvent, can the employees claim their supplementary pension rights from the mother company in case of a book reserve or in case of underfunding of the IORP?

No, unless otherwise agreed

19.8. Guarantee schemes

(56) Do guarantee schemes exist? If so, provide a detailed description of the schemes.

Yes, for the ITP – plan a guarantee schemes exists. Liabilities held as book reserves or backed by a pension fund shall be insured against credit risk on the employer with PRI Pensionsgaranti

(57) Are premiums paid by the sponsoring undertaking to the guarantee scheme risk-based?

Yes, the employer pays an annual premium of 0.3% of liabilities held as book reserves and 0.1% of liabilities backed by a pension fund.
The premium is the same for all employers but PRI Pensionsgaranti may request additional guarantees based on an individual credit assessment of the employer

(58) What is the procedure to be followed for the intervention of the guarantee scheme?

PRI Pensionsgaranti will fund the pension liabilities with the insurance company Alecta

(59) Are all defined benefit and book reserve schemes covered by the guarantee schemes?

Yes

(60) Are the schemes different for book reserve schemes and funded schemes? Please describe?

No, but the premium rate is different, see question (57)

(61) Are all benefits covered including unvested benefits and recent benefit improvements?
The ITP – plan only deals with vested benefits
Unvested benefits in smaller or individual plans may not be covered

(62) Are there ceilings on the benefit coverage?

No

(63) Will the guarantee scheme take over obligations or inject a one time payment in the IORP in case of a defined benefit scheme?

See question (58)

(64) Do the guarantee schemes have sufficient resources in e.g. time of crisis where a lot of sponsors could have solvency problems?

It may be assumed so. At end 2009 the capital base of PRI Pensionsgaranti was SEK 17 billions compared to an insured amount of SEK 149 billions. At the end of 2008, the capital base was SEK 15 millions compared to an insured amount of SEK 136 billions

19.9. Any other measures

(65) Are there any other measures (not covered above) that contribute to the protection of the interests of the employees or ex-employees and their beneficiaries in case of insolvency and/or disappearance of the sponsoring employer?

No

(66) Are their proposals for changing the measures already taken and what are they? When are they expected to be implemented?

No

(67) Please describe the views of the social partners on the effectiveness of the measures taken to protect the rights of the beneficiaries of company sponsored benefit plans in case of insolvency of the employer and/or the IORP (if publicly available or made available in an interview)

The ITP – plan has been established by the labour market partners

(68) Is there evidence that the overall outcome of one of the specific systems operated in your country, provides inadequate protection for the rights of the beneficiaries of company sponsored benefit plans?
(69) Is there evidence of how specific systems operated in your country proactively deal with different risks and improve risk management?

No

19.10 YOUR ASSESSMENT

(70) Please describe the shortcomings of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the sponsor and/or the IORP. If there are in your opinion no shortcomings, please explain

No material shortcomings as the large plans are either funded with an insurance company or insurance fund or insured for credit risk

(71) Please describe your suggestions for improvement of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the employer and/or the IORP and describe the possible additional costs for these improvements and the possible risks that employers may decide to downside or close defined benefit arrangements?

No suggestions
20. United Kingdom

Main Findings

- Occupational pensions are almost exclusively financed externally via an IORP
- IORPs are subject to regulation and assets covering technical provisions calculated in a prudent way need to be available; however recovery plans have no fixed timescale, and these typically take up to ten years and sometimes longer
- A Pension Protection Fund exists that takes over the liabilities of a scheme that is winding up due to the insolvency of the employer. For those under normal retirement age the benefits covered are limited to a cap (although this will only affect high earners) and reduced by 10%. Mandatory indexation is reduced under the PPF.
- Via a summary funding statements employees are informed about the financial situation of the IORP a yearly benefit statements needs to be provided

20.1. Description of the Legal Framework

(1) Which kind of IORPs can be used to finance pension schemes (insurance companies, national funds, company pension fund, multi-employer fund, sector pension fund, other kinds of entities created to finance pensions) ?

In the UK a defined benefit pension scheme must be set up as a separate legal entity managed by trustees to gain tax relief. These trusts may be sponsored by a single employer or multiple employers. Multi-employer funds in the UK mainly exist for employers belonging to the same group. There are IORPs which provide benefits for specific industry sectors although this is a relatively uncommon arrangement in the UK.

Death benefits are often reinsured with an insurance company, although many funds choose to hold additional reserves against such claims.

A very small number of book reserve arrangements also exist but are not common in the UK because they are not as tax efficient, and do not provide the benefit security that members would expect.

(2) What are the minimum funding requirements for each of these kind of IORP’s and are there minima for book reserves ?

An IORP has to calculate the liabilities of pension benefits every three years, and (with the exception of IORPs with less than 100 members) provide annual updates in non valuation years.

The liabilities (technical provisions) are calculated based on methods and assumptions chosen by the trustees having taken actuarial advice and considered the sponsor’s covenant and (normally) agreed with the sponsor. If these liabilities are not covered by the assets of the IORP the trustees and the sponsoring company must agree a recovery plan.
(3) Is there a legal obligation to subscribe to external (solvency) guarantees? And what are these guarantees for each kind of IORP and for book reserves schemes?

There is no legal obligation and it is not common practice to have external guarantees with regard to ongoing funding, except for the Pension Protection Fund. However, if a scheme winds up any deficit does fall as a debt on the sponsoring employer.

(4) Does separate legislation on solvency exist for IORPs falling under article 17 of the directive (plus a description)? Article 17 concerns IORPs that take themselves the biometric risks and/or guarantee benefits, in case of insufficiency these IORPs cannot claim supplementary contributions or reduce the benefits. How much of the IORPs (as a percentage) are falling under article 17?

There are separate regulations governing Regulatory Own Funds and such IORPs are required to hold additional reserves in addition to the technical provisions. There appear to be very few (if any) of these IORPs operating in the UK although the legal position of certain types of IORP is unclear.

(5) Is the provision of company sponsored employee benefits compulsory for the employers and to which extent?

Employers with five or more employees must set up an arrangement for employees (not necessarily of defined benefit in nature), but are not required to contribute to it. There are plans to introduce auto-enrolment, and also a minimum level of contributions from employees and employers, but again these will not be defined benefit in nature.

(6) Does the legislation provide for minimum vested rights if an employee leaves before retirement? Is this legislation different for the different funding systems or book reserves?

Yes. Pension rights are vested provided the member has two years of service in the pension scheme. IORPs must also offer an employee with more than 3 months service the opportunity to transfer the value of the accrued entitlement to an alternative arrangement.

(7) Is there legislation that requires that ex-employees and pensioners are treated the same as active employees (plus a description)?

There is legislation which requires benefits for members leaving service to be based on the benefits that would have been granted to a member who remained in service until retirement age, but reduced in proportion to the period of service actually completed.

(8) Is there legislation on the increase in benefits during payment or the deferred period (plus a description)?
Pensions in payment accrued after 6 April 2005 and pensions in deferment accrued after 5 April 2009 must increase by inflation, subject to a cap of 2.5% per annum. For pensions accrued after 5 April 1997 but before the dates specified above the cap was 5% per annum. The requirements for pensions accrued before 6 April 1997 are more complex.

(9) Is there legislation that allows to reduce accrued pension rights in case of under funding?

No, accrued pension rights cannot be reduced without member consent. If the pension fund has insufficient assets, the employer will be required to pay additional contributions. In the event of employer insolvency, the fund will either transfer to the the PPF (described in 3.8 below) or be required to wind up - in both these scenarios benefits may be reduced. However, transfer values may be reduced on the account of underfunding at any time provided a report is obtained from the actuary.

(10) Can benefits be paid in the form of a lump sum and to what extent?

Benefits can be paid in the form of a lump sum. Pension can also usually be commuted for a lump sum provided that the value of the lump sum does not exceed 25% of the total value of benefits. There are also provisions which allow small pensions to be paid as a lump sum in certain circumstances.

(11) Which kind of beneficiaries have priority rights on the assets of the IORP (pensioners, ex-employees, other beneficiaries, employees) and to what extend? Please describe the priority rules?

On winding up there is a priority order set out in legislation. Generally assets should be used to provide PPF (see 3.8) benefits first then other benefits. If one class of benefits is not covered in full assets should be applied in proportion to the coverage. In the event that benefits are covered in full the IORP’s rules determine how any surplus should be used.

(12) In case of book reserves, which kind of beneficiaries have priority rights on the assets of the employer (pensioners, ex-employees, other beneficiaries, employees) and to what extent? Please describe the priority rules?

N/A.

(13) Has the country applied article 4 of the Directive? If yes, comment on differences between pension insurer’s and IORP’s throughout all questions.

The UK has not applied article 4 of the Directive.

(14) Has the country applied article 5 on small pension institutions of the Directive? If yes, how much (in percentage) beneficiaries are affiliated to these small pension institution?
The UK has applied some specific exemptions to schemes with less than 100 members, which are covered in other answers (eg the exemption from annual actuarial reports and funding statements).

20. 2. Overview of DB and BR Schemes

(15) What kind of company sponsored benefit schemes are provided? Defined benefit schemes, Defined contribution schemes, Cash balance schemes and other schemes (plus description)?

Cash Balance schemes exist in the UK but are not common. The majority of schemes in the UK are DB or DC in nature, however DC schemes are increasing in popularity compared to DB schemes.

(16) What % of covered employees benefit from the different type of schemes described in the previous question? Is this different for male and female employees?

In the private sector, active membership of defined benefit schemes was 2.6 million in 2009, with 1 million active membership in defined contribution schemes. (source: TPR Purple Book 2009)

(17) Are pensions in payment or deferred increased? Is this increase conditional? What are the conditions?

See question (8) above – these increases are not conditional.

(18) What % of labour force is covered by a company sponsored benefit scheme (including sector schemes or compulsory supplementary pension schemes)? Is this different for male and female employees?

Accurate figures are not available, but indications are that 50-60% of the actively working population are covered by an employer sponsored benefit scheme, including private pension policies that employers may contribute to. (source: Pension Commission 2005)

(19) How high is the average retirement pension provided by the company sponsored benefit scheme, preferably as a percentage of last yearly salary? And how is this compared to the social security retirement pension? Are there significant differences between the averages for male and female employees?

Historically, most defined benefit schemes in the UK aimed to provide a pension equal to two thirds of final pensionable salary, providing the employee has worked for forty years. However, we have seen a trend towards benefit structures which will either target lower benefits or require employees to work longer. Defined contribution schemes have a lot more variation than this. An individual in a Company sponsored pension would normally expect this to provide the majority of pension, with the social security pension only intended to provide sufficient income to maintain a basic standard of living.

(20) What types of financing vehicles actually exist in your country and how many? Book reserves, pension funds, pension funds that fall under article 17 of the directive on IORPS, sector funds, insurance or other financing vehicles?
Company defined benefit schemes are normally financed via a pension fund. A pension fund needs to be set up as a legally separate entity in the form of a trust. There are approximately 7,000 defined benefit plans in the UK.1

(21) What % of covered employees receive their benefit via these above described financing vehicles?

Most defined benefit schemes in the UK are set up as a trust based pension funds.

(22) Please provide a short summary of the accounting rules applicable to employers that provide defined benefit schemes (e.g. equal to IAS19, similar to IAS 19 but ..., no provisions contributions and/or benefits paid are equal to expenses, description of other rules)

If an entity is listed on the stock exchange it is obliged to follow IAS 19 rules. Other companies that are required to submit their accounts may follow IAS 19 if they wish, and if not then they are required to follow UK FRS 17 (Financial Reporting Standard 17) rules. These are very similar requirements to IAS 19.

(23) What is the % of the employers that report under IFRS (IAS19) or very similar accounting rules?

The majority of UK employers report under either IAS19 or FRS17.

(24) Can you provide statistics on the provisions accounted for under these rules (per employee and/or in relation to the funds in the pension fund)?

Our annual survey of a sample of FTSE 100 companies indicated that the average IAS19 funding level was 93% at 31 December 2008.

20. 3. Requirement of additional assets

(25) Which type of additional assets (above the assets covering the technical provisions) are required (plus description)?

In the UK, schemes (other than Regulatory Own Funds) are not required to hold assets in excess of their technical provisions. Regulatory Own Funds are occupational pension schemes which cover any liability for risks linked to death, disability or longevity, guarantee any investment performance, or guarantee to provide defined benefits, itself, rather than via sponsoring employers. In practice such schemes are very rare in the UK.

(26) Are these additional assets requirements different for IORP’s that fall under article 17 of the directive (plus description)?

N/A
(27) When can these additional assets actually be used? e.g. when more than the expected number of employees dies in a particular period, when the employer becomes insolvent, other?

N/A

(28) For multi-employer funds, can these additional assets be used in case of insolvency of any of the employers? In case of ring-fencing per employer or in case of no ring-fencing and therefore solidarity between employers?

N/A

(29) Can these assets return to the employer and under which conditions?

N/A

20. 4. INDEPENDENCE OF THE IORP FROM THE SPONSOR

(30) To what extend can the assets be invested in the sponsor’s securities – debt or shares and to what extend is this possibility actually used?

The assets can be invested up to a maximum of 5% in the sponsor’s securities.

(31) To what extend subordinated loans can be used to cover pension obligations?

Subordinated loans to cover pension obligations are not allowed.

(32) To what extend can the assets be invested in items, such as property, machines, etc. used by the sponsor for its business and to what extend is this possibility actually used?

Assets cannot be invested in these kind of assets.

(33) To what extend can the management of the IORP be the same as the management of the sponsor? Describe the corporate governance requirements for IORPS in this respect?

In the trustee board of the IORP there are almost always representatives of the employer. There are also rules relating to how many members of the scheme must be trustees (see 3.5 below).

(34) To what extend can other important functions, such as the actuary, auditor and compliance officer be nominated (and possibly directly or indirectly paid) by the employer?
The actuary and the auditor must be appointed by the trustees of the pension fund and their fees are paid either by the pension fund or the sponsor.

20. 5. Employee representatives’ involvement in the governance of the pension scheme

(35) For IORPs: in which case and how many employee representatives need to be part of the board or other legal body of the IORP?

Trustee boards should include at least one third member nominated trustees.

(36) Are employee representatives involved in the financing plan of the IORP and/or to what extend is their advice or decision binding?

The decisions on the financing plan are taken by the trustees that usually contain employee representatives.

(37) For book reserve schemes, are employee representatives involved in any way in the determination of the level of the book reserves and/or the way these book reserves are set up?

Book reserve schemes are not common in the UK.

(38) Do employees need to be informed about the level of the financing of their benefits in the IORP and to what extend?

Every year members receive a Summary Funding Statement. On this statement the level of financing of the benefits is a required item.

(39) Can employees or their representatives require changes in the pension scheme based on the financing level of the scheme, e.g. increases in pensions, reduction of employee contributions?

Normally the employer instigates any changes in the benefits. Employees and/or representatives need to be consulted, but their views are not binding. The Trustees can reduce future benefit accrual if agreement on funding cannot be reached.

(40) What are the communication requirements to employees on supplementary pensions? Are they different in case of book reserves or in case of an IORP?

A Summary Funding Statement must be supplied to members every year (or every three years for schemes with less than 100 members).
20.6. UNDERFUNDING OF DB SCHEMES

(41) In case of compulsory systems to which extent future generations can be asked to pay possible under-funding for the current generation? In how far the systems can operate as pay as you go?

Compulsory systems do not currently exist in the UK.

(42) In case of underfunding of company sponsored benefit plan, should the sponsor pay the whole under-funding or can increased employee contributions be required?

Employee contributions can be increased, but normally to help cover the cost of future accrual. If the scheme did have a deficit, then as funds are not segregated it would be impossible to separate the two.

(43) Does the sponsor have to cover underfunding before increasing contributions from employees or benefit cuts?

No

(44) In what time delay the employer needs to pay the extra-contributions?

If the assets do not cover the long term liabilities a recovery plan has to be approved by the Pensions Regulator. Recovery plans are usually less than ten years long, but can be longer.

(45) Is a recovery plan permitted and on how long can this recovery plan continue?

Recovery plans are permitted, and whilst there is no stated maximum period over which to make up a deficit, the Pensions Regulator will normally investigate schemes that have recovery plans longer than ten years.

(46) Is there any legal requirement for the actuary or any other person involved to report on the expected underfunding due to a too strict financing plan and what action can be taken by the IORP in order to change this financing plan?

The normal situation in the UK is to form the financing plan based on the funding needs of the scheme. The actuary is required to update the trustees on the progress of funding on an annual basis (unless the scheme has less than 100 members). If the current funding plan is no longer appropriate the trustees can seek to renegotiate with the employer or bring forward the next valuation of the scheme.

(47) How can the IORP enforce the sponsor to fulfil his legal duty to pay the necessary contributions?

The rules of the scheme may state who has the power to set contribution rates. If the employer won’t pay the agreed contributions, then the Pensions Regulator has various powers to enforce this.
(48) Should members (employees and beneficiaries) and/or employee’s representatives be informed in a situation of underfunding?

Members of all schemes must be provided with a Summary Funding Statement following the completion of each valuation. This statement gives information of the funding position of the scheme (whether underfunded or not) and the action being taken to redress any underfunding. Schemes with more than 100 members must also obtain annual updates of the funding position and provide an updated Summary Funding Statement based on this.

(49) How is this information requirement structured (individually, together with the yearly overview of the benefits, only when requested by employees, …) and what is the maximum period allowed between the date of determination of the underfunding and the information to the employees?

This information must be provided to all members of the scheme (including ex-employees entitled to deferred benefits and pensioners). A valuation must be completed within 15 months of the effective date and the statement should normally be provided within three months of this deadline.

(50) Can members and/or beneficiaries or their representatives have a voice in the decision of a recovery plan?

Only through the member nominated trustees.

(51) Are members and/or beneficiaries informed on the details of a recovery plan?

This information is included in the Summary Funding Statement.

20. 7. **Priority creditors rights**

(52) Which creditors have a higher priority on the remaining assets of the sponsor than the IORP in case of insolvency of the plan sponsor?

The employees have higher priority for e.g. their salaries, others may have priority depending on the company finance structure (e.g., any banking arrangements supported by security agreements).

(53) In case of insolvency of their employer what is the priority the employees have on the remaining assets for their supplementary pension rights in case of a book reserve scheme and possibly in case of underfunding of the IORP?

Any pension underfunding ranks alongside all other unsecured creditors (unlike unpaid salaries which would be a priority creditor).
(54) What is the priority ex-employees, pensioners or other beneficiaries of the pension scheme have on the remaining assets of the sponsor?

The scheme will normally have the same priority as the other unsecured creditors of the sponsor.

(55) If the employer becomes insolvent, but is an affiliate of a group of companies where the mother company is not insolvent, can the employees claim their supplementary pension rights from the mother company in case of a book reserve or in case of underfunding of the IORP?

Unless the parent company is legally regarded as a sponsor of the scheme, or has provided a specific scheme guarantee, there would normally be no basis for such a claim.

20.8. Guarantee schemes

(56) Do guarantee schemes exist? If so, provide a detailed description of the schemes.

In the UK, the Pension Protection Fund (PPF) provides compensation in the event of employer insolvency, providing the insolvency occurred after 5 April 2005. For schemes that suffered employer insolvency before this date pensions may be paid by the Financial Assistance Scheme (FAS), subject to successful application. For those under normal retirement age the benefits covered by the PPF are limited to a cap (although this will only affect high earners) and reduced by 10%. Mandatory future indexation is also reduced under the PPF. Pensions paid from the PPF and FAS are standardised so some other benefits (eg spouse's pensions) may also differ to the original scheme.

(57) Are premiums paid by the sponsoring undertaking to the guarantee scheme risk-based?

Yes, it is compulsory for levies to be paid by all eligible (defined benefit) IORPs (or their sponsors) to maintain the Pension Protection Fund. The FAS is funded by assets recovered from eligible schemes, with the shortfall funded by government on a pay as you go basis.

(58) What is the procedure to be followed for the intervention of the guarantee scheme?

The FAS was set up on a retrospective basis and it was for trustees of schemes to notify the FAS if they believed the scheme would qualify. The FAS would then collect data from the trustees and assess whether the scheme does qualify.

On the insolvency of an employer the insolvency practitioner is required to notify the PPF of any associated defined benefit schemes. There will then be a process whereby the PPF assesses the eligibility of the scheme. A valuation will be carried out by an actuary – if the scheme has sufficient assets to cover the compensation that the PPF would pay then the scheme is required to wind up without further involvement from the PPF. If the valuation shows the scheme does not have sufficient assets, those assets are transferred to the PPF and beneficiaries become entitled to compensation paid from the PPF.
(59) Are all defined benefit and book reserve schemes covered by the guarantee schemes?

Most defined benefit schemes are covered by either the PPF or FAS (restrictions as described above) although there are a few specific exemptions outlined in regulations.

(60) Are the schemes different for book reserve schemes and funded schemes? Please describe?

N/A

(61) Are all benefits covered including unvested benefits and recent benefit improvements?

Unvested benefits are covered, but in the case of the PPF, benefit improvements or discretionary increases granted in the three years before sponsor insolvency are normally disregarded when calculating compensation.

(62) Are there ceilings on the benefit coverage?

Yes – for those under the scheme’s normal pension age benefits are restricted to a maximum amount (roughly £30,000 pa at present) and reduced by 10%. The provisions for the FAS are similar except that the 10% reduction applies to all.

(63) Will the guarantee scheme take over obligations or inject a one time payment in the IORP in case of a defined benefit scheme?

Both the PPF and FAS take over obligations (subject to the ceilings above) rather than inject payments.

(64) Do the guarantee schemes have sufficient resources in e.g. time of crisis where a lot of sponsors could have solvency problems?

The FAS is government backed and no further schemes will qualify for this. The PPF is funded by levies placed on schemes and can increase levies or reduce benefits if necessary.

20.9. ANY OTHER MEASURES

(65) Are there any other measures (not covered above) that contribute to the protection of the interests of the employees or ex-employees and their beneficiaries in case of insolvency and/or disappearance of the sponsoring employer?

When a company ceases to sponsor a scheme this normally triggers the requirement to pay additional contributions to the scheme. The default is for this to be equal to the buyout deficit in respect of that company’s
employees (or former employees) although there are mechanisms for this amount to be reduced so as not to impede corporate restructuring.

The pensions regulator has various powers to prevent employers from abandoning the scheme, and may also have the power to claim contributions from a parent company.

(66) Are there proposals for changing the measures already taken and what are they? When are they expected to be implemented?

No.

(67) Please describe the views of the social partners on the effectiveness of the measures taken to protect the rights of the beneficiaries of company sponsored benefit plans in case of insolvency of the employer and/or the IORP (if publicly available or made available in an interview)

We believe there is broad support for the existence of the PPF, but concerns have been raised within the employer-sponsored pension industry about whether current levels of compensation can be maintained purely from funds raised through the annual levy. We think it should be politically unacceptable for the UK government to allow it to fail, and so government support may become necessary if it cannot be financed through levies on a sustainable basis.

(68) Is there evidence that the overall outcome of one of the specific systems operated in your country, provides inadequate protection for the rights of the beneficiaries of company sponsored benefit plans?

There is no evidence that the current system is inadequate. However, we understand that this study was requested and reference to the Robin’s case is required. The protection was indeed weaker prior to the existence of the Pension Protection Fund and weaker still prior to the legislation which meant that pension deficits on winding-up a pension scheme became a debt on the sponsoring employer.

(69) Is there evidence of how specific systems operated in your country proactively deal with different risks and improve risk management?

No

20. 10. YOUR ASSESSMENT

(70) Please describe the shortcomings of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the sponsor and/or the IORP. If there are in your opinion no shortcomings, please explain.

The PPF is described above. In the case of insolvency the benefits covered by the PPF for those under normal retirement age are limited to a cap (although this will only affect high earners) and reduced by 10%.
Mandatory future indexation is also reduced under the PPF for all members. However, these apparent shortcomings must be balanced against affordability of the protection.

(71) Please describe your suggestions for improvement of the measures taken to protect the rights of the beneficiaries of company sponsored employee plans in case of insolvency of the employer and/or the IORP and describe the possible additional costs for these improvements and the possible risks that employers may decide to downside or close defined benefit arrangements?

There are many methods by which security could be increased, but all of this will have significant costs. For example, PPF benefits could be increased closer to 100% (although the UK government set current compensation levels presumably believing them to be adequate) or funding requirements could be increased to reduce future calls upon the PPF, but these would significantly increase the costs for sponsors. The cost of providing the current level of security has already added fuel to the pre-existing trend away from defined benefit schemes in the UK.