



**STICHTING  
VAN DE ARBEID**

**GUIDELINES FOR PENSION FUND GOVERNANCE**

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## Contents

1.	Background to the Guidelines for Pension Fund Governance	4
2.	Recent developments and amendments to existing regulations	7
3.	Basic premises for pension fund governance	9
4.	Guidelines for Pension Fund Governance: pension funds	13
5.	Guidelines for Pension Fund Governance: directly insured pension schemes	18
6.	Closing remarks	21

### Appendices (in Dutch only)

1.	Overzicht van de taken en bevoegdheden van pensioenfondsbesturen <i>(Overview of the duties and powers of a pension fund's governing body)</i>
2.	Wettelijke verantwoording in het jaarverslag <i>(Legal accountability in the annual report)</i>
3.	Samenstelling van de Werkgroep Pensioenen en de Projectgroep PFG <i>(Composition of the Pensions Working Group and the Pension Fund Governance Project Group)</i>
4.	Overzicht adviesrechten deelnemersraad (PSW en concept-PSW) <i>(Overview of the participation council's rights to render advice (Pensions Act and draft Pensions Act))</i>
5.	Ondernemingskamer en PFG <i>(Enterprise Section and pension fund governance)</i>
6.	Nadere afspraken van de Stichting van de Arbeid en het CSO inzake de ontwerp-‘Principes voor goed pensioenfondsbestuur (pension fund governance)’ en het medezeggenschapsconvenant <i>(Further agreements between the Labour Foundation and the Coordinating Body of Associations for the Elderly with regard to the Guidelines for Pension Fund Governance and the participation agreement)</i>

## 1. Background to the Guidelines for Pension Fund Governance

Society requires companies, institutions and organisations to ensure the supervision of their performance and to be accountable to their stakeholders.

The Labour Foundation believes that the pensions sector, like other sectors, must draw some conclusions for the sector from the discussions about governance in recent years. In addition, pension scheme administrators for sectoral pension funds, company pension funds and insurance companies must answer the question posed by society and politicians of how their performance could be improved. This question chiefly concerns their accountability to stakeholders and how their internal supervision is arranged – in other words, pension fund governance.

The present Guidelines for Pension Fund Governance have been drawn up by the Labour Foundation in response to a request from the Minister for Social Affairs and Employment to address the issue of pension fund governance.<sup>1</sup>

### *The Minister's request*

Following a period of intense focus on updating corporate governance, provisionally concluded by the recommendations of the Tabaksblat Committee, in recent years attention has turned to the pensions sector, partly as a result of the significant financial interests represented in this sector.

In 2004, the Dutch pension fund umbrella organisations of the Association of Company Pension Funds (*Stichting voor Ondernemingspensioenfondsen*, OPF) and the Dutch Association of Sectoral Pension Funds (*Vereniging van Bedrijfstakpensioenfondsen*, VB) almost simultaneously launched projects to develop a set of recommendations for a draft code of conduct for the governance of the funds covered by their respective organisations.

Also in 2004, the then Deputy Minister for Social Affairs and Employment commissioned a large study by research agencies Allen & Overy and Boer & Croon, with the aim of focusing the governance discussion on the pensions sector.<sup>2</sup> In a letter dated 21 September 2004, the Minister for Social Affairs and Employment presented the findings of this study to the Labour Foundation. In this letter, the Minister indicated that it is primarily the responsibility of employers' and employees' organisations to address the governance issue. He therefore asked the Foundation to inform him, within two months, of its proposed approach and the timeframe within which it believed it would be able to implement its plans.

The Minister expressly asked that pensioners be involved in the discussion regarding the form governance should take. He also asked the Foundation to consider the extent to which governance issues should differ for directly insured pension schemes.

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<sup>1</sup> In these Guidelines, 'pension fund governance' refers equally to the governance of pension funds and the governance of directly insured pension schemes.

<sup>2</sup> Allen & Overy and Boer & Croon, *Pension Fund Governance: Unity in Diversity (Pension Fund Governance; Eenheid in Verscheidenheid)*, Independent Study and Recommendations, 6 September 2004.

Furthermore, the Minister asked the Foundation to focus in particular on cohesion with the Staatsen Committee's report entitled *The Pension Fund as a Task-based Organisation (Het pensioenfonds als taakorganisatie)*, published in November 2003. In a letter dated 8 September 2004, the Minister informed the House of Representatives that it should not expect the Committee's recommendations to form the basis for detailed regulations. Instead, the recommendations comprise a frame of reference that can be used to check whether pension funds have discharged their responsibilities in the right way. In the letter of 21 September, the Minister also indicated that he wished to further consider whether any facilitating legislation was desirable with regard to pension fund governance.

The above-mentioned frame of reference has since been adopted.<sup>3</sup> The Cabinet based the frame of reference on the general principle that pension funds must limit their scope to the provision of pension payments and activities directly related to this. Each fund's tasks must be defined in its articles of association. A secondary principle is that pension funds must be fully free in their investments.

Funds must put all activities that do not fall within this scope under a legal entity that is fully separate from the fund itself. In the view of the Minister for Social Affairs and Employment, good pension fund governance demands that the employees of the fund cannot also be employees of the separate legal entity.

Having members who sit on the governing body of both organisations is also to be avoided. In so far as such joint membership does exist, the governing body of the pension fund must state clearly why this does not hinder good pension fund governance.

Finally, the frame of reference indicates that the governing body of a pension fund must lay down in the fund's Investment Policy Statement (*Verklaring inzake de beleggingsbeginselen*)<sup>4</sup> the principles it follows and the measures it takes to ensure sufficient independence from the companies in which it invests.

### *Plan of approach*

The Labour Foundation presented its ideas for a plan of approach for pension fund governance to the Minister for Social Affairs and Employment in a letter dated 2 December 2004.<sup>5</sup>

In this letter, the Foundation expressed its belief that a plan of approach aimed at updating pension fund governance and making it more explicit must be given substance as soon as possible. The basic premises and guidelines for pension fund

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<sup>3</sup> The Minister sent the frame of reference to the Labour Foundation by letter dated 8 July 2005 (ref. AV/PB/2005/51012). See also the House of Representatives, parliamentary session 2004-2005, 28294 no. 22.

<sup>4</sup> Pension institutions are obliged to draw up this type of statement pursuant to European Directive 2003/41/EG (Pension Fund Directive).

<sup>5</sup> Labour Foundation, *Opzet plan van aanpak Pension Fund Governance (Proposed Plan of Approach for Pension Fund Governance)* and accompanying letter to the Minister for Social Affairs and Employment, dated 2 December 2004 (ref. S.A.04.101.79/K). See also [www.stvda.nl](http://www.stvda.nl).

governance should aim for a significant degree of standardisation, but with regard to implementation (including the implementation of instruments designed to achieve standardisation), account should be taken of the significant and varied differences that exist between funds. These include the differences between small and large funds, between sectoral pension funds and company pension funds, between funds that fully administer their pension schemes themselves and those that outsource many administration tasks, between funds with relatively young members and few pensioners and funds with a relatively high proportion of pensioners, and between funds in the market sector and those in the non-profit sector.

The Labour Foundation endorsed the Minister's request to work in consultation with the pensions sector, and involve pensioners, to develop a workable plan of approach that aims to increase the quality and transparency of pension fund governance in the Netherlands.

To this end, the Labour Foundation set up the Pension Fund Governance Project Group, which includes not only representatives of the social partners, but also representatives of the OPF and VB pension fund umbrella organisations, the Dutch Association of Insurance companies (*Verbond van Verzekeraars, VvV*) and the Coordinating Body of Associations for the Elderly (*Coördinatieorgaan Samenwerkende Ouderenorganisaties, CSO*).<sup>6</sup>

#### *Adoption of the Guidelines*

This report, which sets out the basic premises and Guidelines for Pension Fund Governance, constitutes the Labour Foundation's response to the Minister's requests, as described above.

The report contains the outcomes of the discussion about the basic premises and Guidelines for pension fund governance. The OPF, VB, VvV and CSO have all contributed valuable input to this. These organisations and the Labour Foundation have, of course, also made use of other, external sources.

The draft report has been submitted to all the organisations participating in the Project Group, and has subsequently been endorsed by all of them. In view of this endorsement and other factors, the Foundation's governing body adopted this report on 16 December 2005.

#### *Contents of the report*

Section 2 contains a brief overview of recent developments and existing regulations.

Section 3 outlines the Labour Foundation's basic premises in drawing up and working out in more detail the Guidelines for Pension Fund Governance.

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<sup>6</sup> The members of the Project Group are listed in Appendix 3 (in Dutch only).

Section 4 contains the Guidelines that the Labour Foundation believes should be followed in pension fund governance. These Guidelines are primarily intended for the administration of pension schemes within a pension fund that have been agreed between social partners.

Section 5 indicates how employers, together with insurance companies, can give form and substance to the basic premises and Guidelines in the administration of directly insured pension schemes.

Section 6 deals with the implementation and evaluation of the Guidelines.

Finally, the Labour Association notes that the Association of Occupational Pension Funds (*Unie van Beroepspensioenfondsen*) has prepared a separate code of pension fund governance for occupational pension funds, which is more specifically tailored to the characteristics of those funds.

## **2. Recent developments and amendments to existing regulations**

To develop the Guidelines for Pension Fund Governance, the Labour Foundation first formulated a number of basic premises (Section 3). It is also important to recognise that recent developments and the existing legislation and regulations (including recent amendments) serve as both a basis and a framework for pension fund governance. An overview of these developments is provided below, and shows that the legal context in which the governing bodies of pension funds operate has tightened and their freedom has been significantly curtailed.

### *Recent developments and Financial Assessment Framework*

The magnitude of the financial problems facing pension scheme administrators since 2000 have raised essential questions among those involved: the funds, their members, employers, the supervisory organ, politicians and academics. These questions have primarily concerned the financing and security of pensions, the nature of the pension agreement, and the role and transparency of pension fund governance. Important issues include the setting of pension contributions, the payment of a surplus, and the relationship between the pension fund and company (or institution). The discussion on these topics, which in many cases predated 2000, resulted in a new Financial Assessment Framework that sets strict rules for pension contributions, covering costs, the explicit definition of the objectives, and the conditions of the surplus policy. In addition, for the purpose of transparency, the increased costs of pension schemes were made clear, as were the relationship between the fund and company and the company's responsibilities for the fund as a result of the national and international tightening of the rules for financial reporting (International Financial Reporting Standards). Furthermore, the impending Pensions Act (*Pensioenwet*) will introduce an 'administration agreement' (*uitvoeringsovereenkomst*), which will give a legal basis to the clarification of the relationship between employers and pension scheme administrators.

Alongside these developments, a discussion began about the transparency of pension fund governance and the information provided to pension scheme members. The

discussion concerning transparency and governance has resulted in the present Guidelines. Pension scheme administrators have improved the information they provide, and this information will be clearly covered in the new Pensions Act.

These developments have clear implications for the activities of the governing bodies of pension funds, as shown, for example, by the conversion by parties in collective bargaining agreements of final-pay pension schemes to average-pay schemes, with a conditional indexation of both accrued pension rights and payable pensions. Whereas in the past decisions about indexation exclusively concerned dormant and payable pensions, such decisions now also apply to active scheme members. This development requires the governing bodies of pension funds to account time and again for their indexation decision to both active members and pensioners, and to request the advice of the participation council on this. This need to justify the indexation decision also arises from the Financial Assessment Framework, in which the conditional or unconditional nature of the indexation is an important factor. Another important change arises from the provision in the Financial Assessment Framework that pension contributions must cover costs.

#### *Organisation and responsibilities of the governing body*

The Pensions and Savings Funds Act (*Pensioen- en Spaarfondsenwet*, PSW) and the impending Pensions Act<sup>7</sup> both contain a large number of articles concerning the responsibilities and performance of a pension fund's governing body. Important provisions concern the representation of employees and employers in the fund's governing body, and the possibility for representatives of pensioners to also play a role in that body. In addition, the PSW and Pensions Act provide that members of the governing body must be guided by 'the interests of the members, former members and general stakeholders of the fund and ensure that each of these groups feels equally represented' (PSW Art. 5.4). The same article also stipulates that the day-to-day policy of a pension fund must be determined by at least two people. The necessary requirements are also made for the expertise and integrity of members of the governing body, to be monitored by the supervisory organ.

#### *Participation*

The PSW (Art. 6) and the impending Pensions Act both contain provisions regarding participation in pension funds (through the participation council). The Pensions Act will also contain rules for the participation of pensioners in directly insured schemes. The participation council has the right to prior consultation on a large number of issues, such as amendments to the fund's articles of association and regulations, the adoption of the annual report, the annual accounts, the actuarial report, the budget, the actuarial and technical business reports, the investment policy and the payment of surpluses.<sup>8</sup> Furthermore, by law the ratio between employees and pensioners (or their representatives) in the participation council must mirror the ratio between active members and pensioners.

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<sup>7</sup> The Pensions Act will replace the Pensions and Savings Funds Act (PSW). The proposed Act will shortly be put before the House of Representatives. Information about the content of the Pensions Act in this document is derived from the draft legislative proposal submitted for review.

<sup>8</sup> Also referred to as 'indexation policy'. This deals with the indexation of payable pensions and, for indexed average-pay schemes, the indexation of the accrued pension rights of active members.

### *Information and communication*

The new Pensions Act will also contain extensive regulation for the provision of information to stakeholders, continuing in the direction set by the new Financial Assessment Framework and the Pensions Covenant. The Labour Foundation notes here that it has long argued for the provision of adequate information to all involved.<sup>9</sup>

### *External supervision*

The PSW (and the Pensions Act) also contain many rules for the financial set-up of a pension fund and how the fund must account for this set-up to the external supervisory organ. By law, the external supervisory organ for pension scheme administrators for company pension funds, sectoral pension funds, insurance companies and occupational pension funds is De Nederlandsche Bank (DNB). Issues to be supervised include the required coverage ratio (the ratio between assets and liabilities), the measures that must be taken if the coverage ratio drops too low, and the performance of the governing body.

## **3. Basic premises for pension fund governance**

### *General*

By publishing these Guidelines for Pension Fund Governance, the Labour Foundation aims to contribute to the improvement of pension fund governance. The Guidelines aim to increase the quality, due care and transparency of pension scheme administrators of company pension funds, sectoral pension funds and insurance companies in the Netherlands.

To prevent any misunderstanding, the Foundation notes that pension fund governance specifically concerns the *administration* of pension schemes, and not the *creation* or *content* of these schemes, nor the choice of form (i.e., pension fund or directly insured scheme). Pension fund governance begins when employers or employers' organisations and employees or employees' organisations have agreed on the content of the pension (the scheme) and the form of the scheme has been chosen (i.e., a company pension fund, a sectoral pension fund or a directly insured pension scheme).<sup>10</sup>

The Labour Foundation calls for pension scheme administrators (and, for directly insured schemes, the employers involved) to apply the Guidelines for Pension Fund Governance and to interpret them in a way that suits the fund or scheme in question, ensuring an up-to-date system of pension fund governance is set up and introduced.

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<sup>9</sup> See Labour Foundation, *Up-to-date and Financially Viable Pensions for All Employees: Updated Agenda with Recommendations for Local Pension Consultation in the Coming Years (Moderne en betaalbare pensioenen voor alle werknemers: geactualiseerde agenda met aanbevelingen voor het decentrale pensioenoverleg voor de komende jaren)*, 17 May 2001, publication no. 5/01.

<sup>10</sup> However, decisions to change the chosen form are indeed covered by the Guidelines for Pension Fund Governance.

To allow for the practical application and individual interpretation of the Guidelines at decentralised level, scope has expressly been left for differentiation and customisation based on the individual characteristics of and differences between the funds and directly insured pension schemes in question. It is also very important that express account be taken of existing pensioners. This scope is critical, as the Labour Foundation realises that the implementation of pension fund governance will carry inevitable costs for pension funds, in particular through the additional administrative burden. These costs will weigh relatively more heavily upon smaller sectoral pension funds and company pension funds than larger pension funds. The importance of good governance justifies this additional burden.

As defined in the report *Pension Fund Governance: Unity in Diversity*, pension fund governance concerns careful management, internal supervision, accountability, expertise, transparency and communication. The Labour Foundation takes this definition as the basis for these Guidelines. A necessary condition for pension fund governance is that the fund's governing body must clearly understand its responsibilities,<sup>11</sup> how those responsibilities are borne, how internal supervision is arranged, and how and to whom the governing body must account.

In the opinion of the Labour Foundation, a fund's governing body should periodically account for the policy it has followed to all stakeholders (or their representatives): namely members, former (i.e., dormant) members, those entitled to draw a pension<sup>12</sup> and the employers who are financially involved. In addition, there must be effective and transparent internal supervision of the governing body's own performance.

In the case of directly insured schemes, the insurance company must account to the employer for the results achieved, to the extent that this is relevant to the pension and administration agreement. The employer must inform the Works Council<sup>13</sup> and representatives of pensioners of the above-mentioned results and indicate the extent to which the conditions for indexation have been met. In addition, the insurance company must ensure effective and transparent internal supervision of its own performance.

### *Accountability*

Issues for which the governing body must periodically account are the policy it has followed and, in particular, the issue of whether the governing body has taken fair account of the interests of all stakeholders in its decisions (as is required by law). The duty of accountability must also be seen as an organised dialogue between the governing body and stakeholders, which must also have some bearing on the governing body's policy choices for the future. This dialogue in no way detracts from the ultimate responsibility of the governing body, but the governing body must understand (and strive to understand) the wishes of the stakeholders to be able to

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<sup>11</sup> Appendix 1 contains an inventory of the tasks and responsibilities of a pension fund's governing body (in Dutch only).

<sup>12</sup> The term 'entitled to draw a pension' encompasses anyone who receives a pension payment from the fund, i.e., pensioners with an old age pension, relatives of deceased members with a surviving dependant's pension and members with a disability pension.

<sup>13</sup> In these Guidelines, 'Works Council' also refers to other employee representative bodies, such as the 'personeelsvertegenwoordiging' and the 'personeelsvergadering'.

ensure that they also view its policy as fair. Good accountability strengthens trust in pension funds as an institution.

### *Participation*

With regard to participation in the administration of pension schemes, the Labour Foundation has already recognised that it is in society's interest to find the right balance between the interests of active members and those of former members. In this context, the Labour Foundation has made a voluntary agreement with the CSO, with the aim of improving the participation of pensioners. The Labour Foundation considers this agreement important for the form participation takes in practice: i.e., participation in sectoral pension funds can take place through the statutory participation council, and participation in company pension funds can take place either through a statutory participation council or through the proportional representation of pensioners in the governing body.

### *Internal supervision*

Internal supervision concerns the critical assessment of the performance of the pension fund and its governing body by independent experts. This assessment primarily concerns policy and management procedures and processes, checks and balances, the way in which the administration of the scheme is managed and directed, and the way in which long-term risks for the pension fund and coverage ratio are managed. To be able to fulfil this supervisory task well requires a large degree of expertise and governance experience. Good – and transparent – internal supervision increases the sector's ability to manage itself. It leads to a better quality of governing body, and reduces the risk that wrong procedures are followed and/or wrong decisions are taken. Moreover, the Labour Foundation believes that well-organised internal supervision will eventually result in less intensive external supervision.

### *Accountability and participation*

The Labour Foundation points out that, in addition to differences, there is also some common ground between the accountability and participation functions. For instance, the participation council's right to prior consultation automatically implies a duty of accountability for the governing body, namely in terms of explaining proposed decisions that must be put before the participation council for advice, and justifying the decisions ultimately taken. In particular, this is shown by the participation council's right to prior consultation with regard to the proposed decision to adopt the annual report and annual accounts.<sup>14</sup> The Foundation has previously recognised this and indicated that 'the fund's governing body has a duty of accountability towards the participation council.'<sup>15</sup>

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<sup>14</sup> An overview of the participation council's right to prior consultation is given in Appendix 3 (in Dutch only).

<sup>15</sup> 'The Labour Foundation's Views on the Powers of the Participation Council in Conjunction with a Future Right of Appeal', in *Voluntary Agreement between the Labour Foundation and CSO on Improving the Participation of Pensioners in the Administration of Pension Schemes*, 25 June 1998, Appendix 1 (in Dutch only).

The Labour Foundation also believes that situations in which both the accountability organ and the participation council render advice on the same topics must be avoided.

For funds with a participation council, the Labour Foundation also argues for extensive and, above all, practical cooperation between the council and the accountability organ. In order to avoid unnecessarily having too many organs, the Labour Foundation considers it possible for the council and accountability organ to be integrated, with the consent of all parties involved in the fund. This does not invalidate the option of having the two separate organs co-exist. A possible alternative is to have both organs, officially and legally separate, but ensure they strive to cooperate extensively in practice.

The above also makes it clear that the discussion on how to incorporate the participation function in the Guidelines for Pension Fund Governance has not yet been concluded.

#### *Accountability and participation in the future*

With regard to how, in the future, the participation function can be incorporated in the Guidelines as an essential part of good pension fund governance, as well as how the law would need to be amended to reflect this, the Labour Foundation and the CSO have made a further agreement. According to this agreement, the issue will be further considered in 2008, based on the results of the evaluation of the participation agreement, together with the results of the assessment and evaluation of the present Guidelines for Pension Fund Governance. In this consideration of the issue, the focus will be on ensuring that all groups are or will be fairly represented in terms of participation in the administration of pension schemes.

In order to link the results of the evaluation of the participation agreement to those of the evaluation of the Guidelines for Pension Fund Governance, the Labour Foundation and CSO have further agreed to extend the term of the participation agreement to 1 January 2008 and to evaluate its agreements and recommendations as early as possible in 2008, with 1 January 2008 as reference date.

During 2006 and 2007, participation can be managed by the participation agreement, the existing legal framework (in the material sense) and any possible amendments to this, at the request of the parties to the participation agreement, based on the results of the intermediary evaluation that took place last summer.<sup>16</sup>

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<sup>16</sup> See also the further agreements between the Labour Foundation and CSO, dated 5 December 2005, in Appendix 6 (in Dutch only).

### *Legal basis for the Guidelines*

The Labour Foundation believes that good pension fund governance cannot be free of obligation. Although a pension fund's governing body is always responsible for the implementation of and compliance with these Guidelines, the Foundation believes that compliance should be required by law and verified by DNB.

The form such a legal obligation might take remains to be discussed by the Minister for Social Affairs and Employment and the Labour Foundation. Prior to this discussion, the Labour Foundation will consult the CSO, the VB, the OPF and the VvV. The guiding principle will remain that any further specification of the Guidelines for Pension Fund Governance will continue along the path to self-regulation.

## **4. Guidelines for Pension Fund Governance: pension funds**

The Labour Foundation believes that the governing bodies of pension funds and the parties involved in those governing bodies should follow the Guidelines below in their policy. Although these Guidelines apply in principle to all pension scheme administrators, directly insured schemes administered by insurance companies have certain specific characteristics that justify a separate set of Guidelines (see Section 5).

### **A Governing body**

#### *General*

- A 1. Collectivity and solidarity are key values in the Dutch pension system. Living up to these values requires transparency and openness, the governing body's accountability for its actions and those it has assigned to others, and good internal supervision. The continued viability of the system is also determined by the financial affordability of pension schemes.
- A 2. The pension fund's governing body is charged with managing the pension fund, and so is and remains responsible for all that is done or not done by or on behalf of the fund.
- A 3. The governing body is responsible for compliance with the pension fund's articles of association and rules and all relevant legislation and regulations, as well as for the management of risks related to the fund's activities.
- A 4. The pension fund shall limit its activities to the administration of pension schemes and activities that are directly related to this.

Any other activities shall be carried out by a legal entity that is fully separate from the pension fund. In such situations, no employees may work for both the fund and the separate legal entity. Dual membership of the governing bodies of both organisations should also be avoided.

The pension fund's governing body shall set out the principles it follows and measures it takes to ensure sufficient independence from the companies in which it invests, to whatever extent, in the Investment Policy Statement.

- A 5. The governing body shall take an independent position in the performance of its governing duties. It shall ensure that the pension fund operates solely for the benefit of all its stakeholders. The governing body shall weigh the interests of its stakeholders carefully and fairly, and shall provide insight into this weighing up. The stakeholders are the pension scheme members, former members, those entitled to draw a pension, and the employer(s) who are financially involved.
- A 6. The governing body shall ensure an effective internal complaints and arbitration procedure is in place.
- A 7. The governing body shall ensure that the administrative organisation of the pension fund and external administrator(s) at least meets the requirements imposed by the external supervisory organ.

*Transparency, openness and communication*

- A 8. The governing body shall allow its policy and decision-making procedures to be inspected.
- A 9. The governing body shall ensure that the fund's articles of association stipulate who may appoint or elect, suspend and dismiss members of the governing body, and the corresponding procedures.
- A 10. Irrespective of the size of the fund, the governing body shall ensure an annual report is published that at least meet the requirements set by the Foundation for Annual Reporting (*Raad voor de Jaarverslaglegging*), RJ 400 and RJ 610.<sup>17</sup>
- A 11. The governing body shall ensure an effective communications policy is in place, which aims to ensure that scheme members, former members and those entitled to draw a pension are informed, in an understandable way, about their pension results, the fund's ups and downs, and any relevant changes.

*Expertise and performance of the governing body*

- A 12. The governing body shall ensure that it meets all expertise requirements imposed by De Nederlandsche Bank (DNB) on the basis of legislation and regulation. In addition, the governing body shall lay down its own 'expertise plan', which stipulates the requirements for the body's members.

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<sup>17</sup> See Appendix 2 (in Dutch only) for the inventory drawn up by accountancy firm PricewaterhouseCoopers, published in the report by Allen & Overy and Boer & Croon, *Pension Fund Governance: Unity in Diversity*, 6 September 2004, pp. 265-267.

- A 13. The governing body shall lay down a procedure for the periodic evaluation of the performance of the governing body as a whole and that of its individual members.
- A 14. If the governing body considers the performance of one of its members to be unsatisfactory, it shall be entitled, in accordance with the articles of association, to ask the party responsible for appointments to appoint another member.

## **B Accountability**

### *General*

- B 1. The governing body shall set up an accountability body and lay down its organisation and powers in the fund's articles of association and regulations.
- B 2. Active members, those entitled to draw a pension and the employer(s) financially involved in the fund shall be represented in the accountability body.

In principle, seats and votes shall be evenly divided between the groups represented (i.e., each group shall receive a third of the seats and/or votes). If the governing body decides to deviate from equal division, it must have the approval of the group involved, unless the group is not represented in the fund.

If the governing body so wishes, dormant members may also be represented in the accountability body.

- B 3. The governing body shall account to the accountability body for its policy and how it has been implemented, as well as compliance with these Guidelines.
- B 4. If the fund has a participation council, the governing body may decide to compose the accountability body of some or all members of the participation council, supplemented by employers' representatives, taking into account Guideline B 2.
- B 5. If the governing body decides to separate the composition of the accountability body from that of the participation council, or if the fund has no participation council, the governing body shall be responsible for the set-up of the accountability body. In principle, representatives of active members, pensioners and employers shall be elected by the group concerned or appointed by the group's representative organisations.
- B 6. Membership of the accountability body shall not be compatible with membership of the governing body or the internal supervisory organ.
- B 7. At least once a year, the governing body shall discuss the policy followed and the results thereof with the accountability body.

*Rights and powers of the accountability body*

- B 8. The accountability body shall have the power to give an opinion on the actions of the governing body, based on the annual report, the annual accounts and other information (including the findings of the internal supervisory organ), with regard to the policy implemented by the governing body and its policy decisions for the future. This opinion, together with the governing body's response to it, shall be published and included in the fund's annual report.
- B 9. The accountability body shall also have at least the following rights:
- a. The right to consult with the governing body;
  - b. The right to consult with the external accountant and external actuary;
  - c. The right to information;
  - d. The right to a written and substantiated response to its opinion on the policy implemented by the governing body (see B 8).
- In addition, the accountability body shall have the right to render advice on:
- e. The determination of and amendments to the remuneration policy for members of the governing body;
  - f. Policy amendments that regard the accountability body;
  - g. The form, set-up and composition of the internal supervisory organ;
  - h. The determination of and amendments to an internal complaints and arbitration procedure;
  - i. The determination of and amendments to the communication and information policy.
- B 10. If the accountability body believes the governing body is not performing as it should, it may appeal to the Enterprise Section of the Amsterdam Court of Appeal, with the request to:<sup>18</sup>
- a. Have a study carried out by one or more independent researchers into the policy and affairs of the pension fund;
  - b. Assess the performance of the governing body.
- B 11. A decision by the accountability body to submit a request as referred to in B10 requires a qualified majority.

**C Internal supervision***General*

- C 1. The governing body of the pension fund shall be responsible for organising transparent internal supervision.
- C 2. Internal supervision shall consist of the critical review of the performance of the pension fund and its governing body by independent experts.

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<sup>18</sup> See Appendix 5 (in Dutch only).

- C 3. Internal supervision shall involve at least the following responsibilities:
- The assessment of policy, management procedures and processes, and checks and balances within the fund;
  - The assessment of how the fund is managed;
  - The assessment of how long-term risks are managed by the governing body.

In addition, internal supervision shall involve the right to:

- All information considered necessary by the supervisory organ for the performance of its duties;
  - Consultation with the governing body on all duties of the governing body;
  - Consultation with the external accountant and actuary.
- C 4. The internal supervision function shall report to the governing body (either following an inspection, or else on an annual basis). The governing body shall discuss the internal supervision report and any decisions or proposed decisions based on the report with the accountability body. The internal supervision findings shall be included in the annual report.

#### *Implementation*

- C 5. The governing body may choose from a number of options for the organisation of internal supervision, such as:
- Inspection;
  - The creation of a separate organ for internal supervision;
  - A one-tier board system;<sup>19</sup>
  - An audit committee.
- C 6. If the governing body chooses to have internal supervision carried out by means of inspection, it shall assign an inspection committee to review the performance of the pension fund and its governing body with regard to the responsibilities and rights listed in C3 once every three years, or more often if the accountability body deems this necessary.

The inspection committee shall be appointed by the governing body, and shall consist of at least three independent experts.

- C 7. The governing body may also choose to give internal supervision a broader form by creating a separate organ for internal supervision, either through a one-tier board system or through an audit committee. If so, inspection is not required.

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<sup>19</sup> A pension fund (i.e., a foundation) can implement a one-tier board system by making a distinction between the roles, tasks and responsibilities of 'executive management' and those of 'non-executive management', and having non-executive management supervise executive management. A condition for this is that the division of tasks between general management and executive management must be laid down in the foundation's articles of association. See, for instance, Allen & Overy and Boer & Croon, *Pension Fund Governance: United in Diversity*, 2004, Appendix VIII (in Dutch only).

If this broader form is chosen, the following shall apply:

- The form, responsibilities and rights of internal supervision (which shall be at least equal to those listed in C3) shall be laid down in the fund's articles of association.
- The articles of association shall also stipulate that the supervisory organ must consist of at least three people.
- For a separate internal supervisory organ, the articles of association shall stipulate how and by whom the independent members shall be appointed.
- For a one-tier board, the differences in responsibilities and powers of executive management and general management shall be laid down in the articles of association.
- An audit committee charged with internal supervision shall include at least three independent experts. These independent experts shall report separately on an annual basis to the governing body, in accordance with C 4.

## **5. Guidelines for Pension Fund Governance: directly insured pension schemes**

### *General*

The Labour Foundation believes that pension schemes offered by an insurance company (i.e., directly insured schemes) should also have a good and transparent governance structure. In this, it is important to recognise that the position of the insurance company differs substantially from that of the pension fund on a number of points. Without detriment to the basic premises formulated in this document, these differences must be reflected in the Guidelines themselves.

Pension scheme administrators are responsible for the administration of the pension scheme as agreed by the social partners or the employer and employees. If the scheme is administered by a pension fund, the governing body draws up the pension scheme rules and regulations, which define the rights and duties of the scheme members and the pension scheme administrator. If the scheme is administered by an insurance company (i.e., it is a directly insured scheme), the rules and regulations are not drawn up by the insurance company, but instead by the social partners or the employer and employees.

In the case of a pension fund, the social partners or employer and employees are and remain involved in and responsible for administration, as they are represented in the fund's governing body.

In the case of an insurance company, the implementation of the pension scheme rules and regulations is transferred by agreement to an insurance company. Pension scheme rules and regulations and administration agreements can vary greatly in terms of surplus policy, guarantees, profit sharing, surplus interest, a separate investment trust, etc. This means that the involvement of the employer in the administration of the scheme can also vary.

Once the insurance premium has been paid, the insurance company is obliged to fulfil the terms of the agreement, including making pension payments to those entitled to receive them.

Like pension funds, insurance companies fall under the supervision of De Nederlandsche Bank (DNB). Insurance companies also have their own internal supervisory organ, such as a supervisory board, which is responsible for supervising the governing body and all company activities involved in insuring pensions.

The Labour Foundation believes employers and insurance companies involved in directly insured schemes should apply the following Guidelines in their policy.

### *Accountability*

- D 1. If the administration agreement contains provisions whereby, during the term of the contract, the employer has influence on deposits or investments in connection with profit sharing, or in any other way has influence on the results of the pension insurance, then the employer shall account for the choices it has made to the Works Council<sup>20</sup> and the representatives of pensioners.
- D 2. The insurance company shall annually account to the employer (the insuree) regarding the results achieved, in so far as this is relevant in relation to the administration agreement. The insurance company must annually account to the employer regarding the results if it makes use of an investment trust or profit-sharing scheme exist.
- D 3. The employer shall ensure the Works Council and representatives of those entitled to draw a pension are up to date with the results as referred to in D 2.
- D 4. For a pension commitment with conditional indexation, the employer shall justify to the Works Council and representatives of pensioners whether and to what extent the conditions for indexation have been met. The insurance company shall supply the data necessary for this to the employer, in accordance with D 2.
- D 5. The employer and insurance company shall make agreements concerning an effective communication policy. This policy shall aim to ensure members are informed, in an understandable way, about their pension results, the nature of the pension insurance and any relevant changes.
- D 6. The insurance company shall inform the employer of any changes in legislation or regulations that have implications for the pension agreement or administration agreement.
- D 7. The employer shall ensure the Works Council and the representatives of those entitled to a pension are up to date with the information referred to in D 6.

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<sup>20</sup> In these Guidelines, 'Works Council' also refers to other employee representative bodies, such as the 'personeelsvertegenwoordiging' and the 'personeelsvergadering'..

- D 8. The insurance company shall inform members, either via the employer or directly, of any changes regarding to their insured pension and pension rights.
- D 9. The employer shall enable the Works Council (in addition to the provisions of Article 27 of the Works Council Act (WOR)) and representatives of pensioners to advise on the administration agreement and any extension thereof.
- D 10. The employer shall give the Works Council and representatives of pensioners the opportunity to render advice on the level of service that the employer proposes to agree with the insurance company.
- D 11. In the event of a surplus arrangement that is separate from the insured scheme, the employer shall account for its actions with regard to this arrangement to the Works Council and representatives of pensioners.

*Internal supervision*

- D 12. The internal supervisory organ of an insurance company (e.g., the supervisory board) shall critically assess the performance of the company's management and/or directors.
- D 13. The internal supervisory organ shall assess the annual accounts of the insurance company and ensure it has a well-organised administrative system and internal controls. The administration of directly insured schemes is an explicit part of internal supervision. The reports of the internal supervisory body shall be obtainable free of charge from the insurance company or its directors. In the reports, special attention shall be given to the extent to which payment arrears occur and the company's arrears policy.
- D 14. The internal supervisory organ shall report its findings to, and discuss them with, the management and/or directors of the insurance company.
- D 15. If a surplus fund exists, the employer shall organise the internal supervision of this fund in the ways described in Section 4.
- D 16. The insurance company shall have a low-threshold, solutions-oriented internal complaints policy that is accessible for employers, members, former members and those entitled to draw a pension, as well as for the Works Council and representatives of pensioners.
- D 17. In the administration agreement, the employer shall be informed of the internal complaints procedure.
- D 18. In the pension scheme rules and regulations, the members shall be kept up to date with regard to the internal complaints procedure.
- D 19. The insurance company shall handle complaints clearly and in understandable language.

## 6. Closing remarks

For the continuity of the system of supplementary pensions as we know it in the Netherlands, stakeholders' ability to trust the administration of their pension scheme is essential. Accountability on the part of administrators for their actions, internal supervision by independent experts and an effective system of participation, combined with openness and communication, can strengthen that trust.

In these Guidelines for Pension Fund Governance, the Labour Foundation provides a number of rules that it believes will lead to an improvement in the quality of pension fund governance, as well as contribute to the continuity of good retirement pensions for employees through supplementary collective pension schemes.

The Labour Foundation hopes that pension scheme administrators will promptly and wholeheartedly put these Guidelines into practice.

### *Implementation and evaluation*

The Labour Foundation believes that the Guidelines for Pension Fund Governance should come into effect as soon as possible – preferably as of 1 January 2006 – and that their implementation should begin with full speed from that point onwards. As of 1 January 2008, pension scheme administrators' pension fund governance must comply with the Guidelines for Pension Fund Governance. The Labour Foundation asks the umbrella organisations of the VB, the OPF and the VvV to strongly promote the implementation of these Guidelines and to help pension scheme administrators and employers in this.

As soon as possible after 1 January 2008, an assessment and evaluation should begin, in which (amongst other things) the way in which form and substance are given to these Guidelines, to the duty of accountability and to internal supervision is assessed. The assessment and evaluation will also explicitly focus on the following:

- Whether the rights and powers of the accountability body are sufficient for it to be able to perform effectively;
- How pension funds give form to, organise and compose their internal supervision function (including in relation to the accountability body's advice on this topic);
- How differences between pension scheme administrators manifest themselves in the implementation of the Guidelines;
- The findings of the external supervisory body with regard to the implementation and their assessment of internal supervision, and whether the greater attention to internal supervision has led to less intensive external supervision;
- How, in practice, pension fund governing bodies have interpreted the term 'qualified majority' as referred to in B 11, and how far this term has led to problems in practice;
- The distance pension funds have put between themselves and any subsidiary activities (see A 4.);

- In staffing their internal supervision function, whether funds have (in addition to other options) also made use of a central pool of independent and expert individuals.<sup>21</sup>

With regard to the execution of the inventory and evaluation, the Labour Foundation will make agreements with the Minister for Social Affairs and Employment in mid 2007. Furthermore, the Labour Foundation will consult with the Ministry of Social Affairs with regard to the the practical implications of the results of the evaluation. To this end, the Foundation will consult with the CSO, OPF, VB and VvV.

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<sup>21</sup> This will not be part of the evaluation if, at the time of the evaluation, it appears that no such central pool of independent and expert individuals exists.