Limits and barriers to transferring investments in DC pensions and the regulation of financial advice for retirement

1. Members in individual defined contribution (DC) pension arrangements have significant flexibility in deciding how to invest their retirement savings. They also can, under certain conditions, change their decision over time and transfer their accumulated balances to finance retirement to different investment strategies or different pension funds. Unfortunately, many members may lack the knowledge and expertise to make investment decisions that will optimise their pension outcomes.

2. Frequent investment transfers can have negative implications for individual retirement savings, financial markets, and the overall economy. Frequent investment changes make it more difficult for individuals to be in a long-term investment strategy and reduce the potential gains stemming from long-term investing. Individuals end up with lower returns overall than they would have received by remaining invested in a single fund. Pension funds need more liquidity and thus hold more liquid assets to be able to meet transfer requests, reducing the duration of their investment strategy and the potential returns from long-term and patient investing. Finally, large transfer volumes threaten market stability due to the impact on asset prices and exchange rates.

3. Moreover, the negative implication of transfers between investment strategies and pension funds on individual retirement savings, financial markets and the economy as a whole can be worse when driven primarily by recommendations to 'time the market' and short-term reactions to market downturns. These strategies emphasise the short-term and ignore the long-term nature of saving for retirement, and imply higher risks for the participants.

4. Most countries seem to impose limits or barriers to frequent transfers between investment funds or pension providers. The goal is to ensure that the investment of assets for retirement achieves its main objective of optimising the financial outcomes for individuals in retirement. In addition, regulation tries to ensure that any financial advice provided for pension investments leads to positive outcomes for members.

5. This report provides an overview of the main limits and barriers to frequent transfers between investment strategies and pension funds in selected jurisdictions. It also examines the regulation of financial advice for retirement, looking at the type of financial advice and the different regulatory requirements. The motivation for this report comes from concerns in some jurisdictions, where members may be transferring large volumes of assets between funds with conservative and aggressive investment strategies, with significant implications to their financial well-being, foreign exchange markets, and the cost of internal and external debt. In addition, these transfers may be driven primarily by 'unregulated' financial advisors that are providing recommendations to 'time the market' that can present high risk to participants. In light of these concerns, the OECD decided to examine international experiences and regulations that address these issues.

6. This first report of the technical assistance first introduces the limits and barriers to transferring investments in DC pension arrangements in selected jurisdictions. It includes both limits and barriers to transfers between funds within a given provider as well as between different providers. The report also describes the approaches for the regulation of financial advice for retirement and provides examples in selected jurisdictions. The regulations define the type of financial advice to which regulations apply, who is allowed to provide financial advice, the information to disclose when providing financial advice, the duty of care standards, and how financial advisors can be remunerated. The report concludes with a preliminary list of potential policy lessons to draw from international experience.

Limits and barriers to transferring investments in DC pension arrangements

7. Explicit limits or implicit barriers to frequent transfers between investment funds or pension providers are quite common in jurisdictions having widespread DC pension arrangements. The most common explicit limits are limits on the frequency of transfers, but explicit limits can also be put in place regarding which investment strategies certain individuals can switch to. Certain types of funds may be restricted to specific age groups, for example, as is the case in Chile where individuals nearing and in retirement are not allowed to invest in the most aggressive strategies.

8. Implicit barriers that can deter frequent transfers without prohibiting them include administrative procedures, processing times, and additional fees that pension providers can charge.

9. Limits and barriers can apply to transfers between funds within a given pension provider and/or transfers between different providers. Limits often apply to only certain types of plans, for example those for mandatory contributions or plans offered through an employer. The following sections summarise the different types of limits in place in 30 selected jurisdictions.[1]

Limits on transfers between funds within a given provider

10. Providers of DC pension arrangements generally have a range of investment options of varying risk profiles available for members to choose from, and often allow members to transfer between the different options available. Many jurisdictions also regulate the types of investment funds that each provider can offer. The regulatory framework often imposes explicit limits on the frequency of transfers and the types of investment strategies that can be transferred into. Administrative procedures, slow processing times, and fees are also potential barriers to frequent fund transfers within a provider, though to a lesser extent than for transferring between providers.

11. Table 1 summarises the explicit limits and barriers in place to transfer between funds in the selected jurisdictions. The second column ("Pension type") indicates to which type of pension arrangement, within the jurisdiction, the limits apply. The third column ("Funds offered") shows the fund types that regulation allows or requires the providers to

[1] Australia, Canada, Chile, Colombia, Costa Rica, Czech Republic, Estonia, Denmark, Europe, Hong Kong (China), Israel, Ireland, Italy, Japan, Korea, Latvia, Lithuania, Mexico, New Zealand, Peru, Poland, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Turkey, United Kingdom, United States

offer.[2] The remaining columns describe limits and barriers to changing investment strategies within a given provider. "Frequency" indicates any limit as to how often the individual can transfer funds. "Investment strategies" indicates any limit with respect to certain types of investment strategies into which individuals can transfer. "Administrative procedures" detail any time-consuming steps required for funds to be transferred. "Processing time" indicates any delay in fully executing the transfer. Finally, "fees" indicates whether providers can charge members for the transfer of funds.

Table 1. Limits on transfers between investment strategies within a given pension provider

Jurisdiction	Pension type	Funds offered	Frequency	Investment strategy	Administrative procedure	Processing time	Fees
Chile	Mandatory	5 funds of different risk profiles		Cannot invest in the most aggressive fund from 10 years before retirement; cannot invest in the two most aggressive funds in retirement		Trades executed 4 days after request based on the price two days after; daily volume limits of 5% invested assets for the system as a whole; if requests exceed this limit trades are delayed to the following day	
Colombia	Mandatory	3 funds of different risk profiles	every 6 months				
Costa Rica	Mandatory	1 fund per provider		No other option unless changing provider			
Estonia	Mandatory	4 risk levels					
Israel	Mandatory	Providers must offer at least 3 lifecycle funds plus one for beneficiaries as a default; in addition they may offer up to 10 other specialised funds			Employers must approve change for employer contributions (severance)	Up to 3 days	
Latvia	Mandatory	Unlimited	2/ per year				Exit fees not allowed
Mexico (After January 2020)	Mandatory	Target-date funds	After 3 years		Request form and final confirmation	5 days	

[2] Unlimited means that there are no explicit limits on the number or investment profile of funds that each provider can offer, but that is not to say that general investment limits and guidelines do not apply.

Jurisdiction	Pension type	Funds offered	Frequency	Investment strategy	Administrative procedure	Processing time	Fees
Mexico (Before January 2020)	Mandatory	Age-appropriate funds of varying risk profiles	After 3 years	Automatically transferred to age appropriate funds on birthdays unless the individual opts out	Request form and final confirmation	5 days	
Peru	Mandatory	4 funds of different risk profiles		Over 60 cannot invest in growth fund			
Romania	Mandatory	1 fund per provider		No other option unless changing provider			
Slovak Republic	Mandatory	At least two different risk profiles (equity fund and guaranteed bond fund)		Can save in two different funds, but one must be a guaranteed bond fund, and after the age of 52 10% must be allocated to the guaranteed fund, increasing by another 10% each year until the age of 61, but individuals can reduce this allocation by half			
Hong Kong (China)	Mandatory (Provident Fund)	Unlimited				Up to several days; fund valuation once per day	Not allowed
Singapore	Mandatory (Provident Fund)	Unlimited for savings in excess of 20k in Ordinary Account and 40k in Special Account; funds up to these thresholds are invested in an interest-bearing account		Maximum investment limits in equities (35%) and gold (10%)	Investment knowledge questionnaire		
Denmark	Mandatory Employer	Unlimited, but many offer only one option					
Korea	Mandatory employer	Unlimited	Once every half-year				
Sweden	Mandatory Premium Pension; Occupational pensions	Unlimited					
Australia	Mandatory superannuation	Unlimited					
Lithuania	Quasi-mandatory	Lifecycle funds			Request in writing; risk warning		Costs incurred if transfers more than once per year

Jurisdiction	Pension type	Funds offered	Frequency	Investment strategy	Administrative procedure	Processing time	Fees
United Kingdom	Quasi-mandatory Employer	Unlimited					
Canada	Voluntary Employer	Unlimited, and providers are not required to have more than one option					
Ireland	Voluntary Employer	Unlimited					
Italy	Voluntary employer	Unlimited					
Japan	Voluntary Employer	Unlimited					
United States	Voluntary Employer	Unlimited					
Turkey	Voluntary Employer (EPS)	Unlimited					
Czech Republic	Voluntary participating funds	At least a conservative fund					Charge up to CZK 500 if transfer more than 1/year
Ireland	Voluntary Personal	Unlimited					
Slovak Republic	Voluntary Personal					Up to 5 days	
Spain	Voluntary Personal	Unlimited					
Japan	Voluntary Personal (iDeCo)	Unlimited					
Poland	Voluntary Personal (IKE, IKZE)	Unlimited					Depends on product type; may have exit charges
Turkey	Voluntary Personal (IPS)	Unlimited	6/year after two months				
Korea	Voluntary Personal (IRP)	Unlimited					
New Zealand	Voluntary Personal (Kiwisaver)	Unlimited					
Europe	Voluntary Personal (PEPP)	TBD	After 5 years, or less if the provider allows				
Slovenia	Voluntary supplementary	3 funds of different risk profiles	1/year	Over 50 cannot invest in riskiest fund, over 60 can only invest in most conservative fund			

12. Explicit limits to transfer between investment strategies are more common in jurisdictions where regulation limits the types of investment options that providers can offer. Seven out of ten jurisdictions that regulate the allowable investment options also have explicit limits on transfers between funds. Three of these, limit the frequency of transfers (Colombia, Mexico, Slovenia) and five have restrictions around which funds can be transferred to (Chile, Peru, Singapore, Slovak Republic, Slovenia). Only three jurisdictions regulating the allowable investment options have no explicit limits on switching between funds (Czech Republic, Estonia, Lithuania,).

13. Similarly, mandatory pension arrangements tend to impose limits on transfers more often than voluntary arrangements. Of the 17 jurisdictions with mandatory contributions, four have limits for the frequency of transfers and four have limits with respect to the investment strategy. This compares to three jurisdictions with frequency limits and one with limits on the investment strategy among the 17 jurisdictions with voluntary arrangements.

14. Jurisdictions where providers have more freedom to decide the profiles of their investment options also tend to freely allow individuals to switch between these options, though minor administrative hurdles and exit fees can still apply. Fifteen out of nineteen jurisdictions that have no restrictions on the investment options offered do not have explicit limits on switching between options. Two jurisdictions only allow for one investment strategy per provider, so members are not able to change strategies without changing providers (Costa Rica, Romania). Only three jurisdictions (occupational plans in Korea and Turkey, Latvia) impose explicit limits on the frequency of switching between investment strategies despite not having any regulatory limits on options offered. However, in both Korea and Turkey no limits are imposed for personal plans.

15. The most common explicit limit to switching between funds is the frequency with which this can be done. Seven jurisdictions impose limits on frequency, ranging from six times per year (Turkey) to after five years on the same fund (PEPP in Europe), though this latter limit is imposed as a maximum, and individual providers can allow more frequent transfers. The limits can be on the number of transfers within a calendar year, or alternatively the minimum holding period after switching before the member can switch again. In Latvia, individuals cannot transfer between investment strategies more than twice per year, whereas transfers are allowed every half year for occupational plans in Korea and after 6 months in Colombia. In Slovenia, transfers can only be made once per year. In Mexico individuals are required to remain invested in the recommended fund for at least 3 years.

16. Limits on certain types of investment strategies, namely those of a riskier profile, can also be imposed. These types of limits commonly apply to individuals near or in retirement, as in Chile where those up to 10 years before the retirement age are forbidden from investing in the riskiest funds. Mexico previously transferred automatically members aged 60 and over to the most conservative fund. In Peru those aged 60 and over are not allowed to invest in the most aggressive fund at all. Similarly, in Slovenia, those over 50 cannot invest in the riskiest fund and beyond age 60 the only option is the conservative fund. In the Slovak Republic, individuals are gradually transitioned to the conservative fund, though they may opt to retain some equity exposure if desired. Singapore imposes quantitative limits on investment in equities and gold. Limits may also be imposed on switching between specific fund profiles, typically between the most conservative and

aggressive funds. While such a limit does not exist in the jurisdictions assessed, some specific investment platforms have such limits in place.[3]

17. Indirect barriers can also slow the process of transferring, but these barriers are not normally significant. Processing times to transfer funds remain under a week in all jurisdictions. Lithuania and Mexico both require request to transfer funds in writing, and Mexico requires an additional confirmation from the member that they agree for the transfer to be executed. Singapore requires members who want to transfer funds out of the centralised provider's fund to take a questionnaire assessing their financial knowledge to ensure that they are aware of the risks they will be taking. Israel requires employer approval to transfer employer contributions such as those relating to severance.

Limits on transfers between providers

18. Limits are also commonly imposed on how often members can transfer their pension between different providers. It is sometimes argued that the ability to switch between providers can promote competition. However, frequent switching can also be a barrier to implementing long-term investment strategies and result in aggressive marketing and sales tactics that can result in worse investment outcomes.

19. Limits on the frequency of transfers between providers is common. Table 2 shows that ten jurisdictions out of 31 impose such limits (excluding plans linked to an employer when members can only change providers when changing employment). These limits range from changing once per month (Romania, and Costa Rica after one month with a provider) to after five years (PEPP in Europe), though this latter limit is imposed as a maximum and providers can allow more frequent switching. Colombia and Latvia both limit changes to once per year, and Estonia allows three times per year but transfers are only processed in January, May and September. Members having personal plans in Italy can change after two years with their provider. Both Mexico (before the recent change to target date funds) and Peru allow members to change providers before the minimum waiting periods of one and two years, respectively, if returns have been exceptionally poor. In Hong Kong, limits apply to employee contributions only, which can only be transferred once per year. In Israel vesting periods may apply. The majority of jurisdictions with such limits (8 out of 10) have mandatory pension arrangements.

Table 2. Limits on transfers between providers

Jurisdiction	Pension type	Frequency	Administrative procedure	Processing time	Fees
Chile	Mandatory			Transfer effective the first day of the following month	
Colombia	Mandatory	Within the private system, once per year; between the public and private systems every 5 years up to 10 years before retirement			

[3] E.g. AMUNDI's robo-advisor platform in France.

Jurisdiction	Pension type	Frequency	Administrative procedure	Processing time	Fees
Costa Rica	Mandatory	After 1 month			
Estonia	Mandatory	3/year, in January, May and September	2 different applications for moving existing funds and future contributions		Varies by channel used to submit the application (banks, pension account). Fees do not apply for those older than 5 years less than the retirement age
Israel	Mandatory	There may be a vesting period in some cases, particularly relating to insurance coverage		Transfer only takes place after individual has contributed to new provider	
Latvia	Mandatory	1/ year			Exit fees not allowed
Mexico (Before January 2020)	Mandatory	after 1 year; a second change within the year if poor returns			
Mexico (After January 2020)	Mandatory	min 1 year; a second change within the year if poor returns			
Peru	Mandatory	after 24 months; 180 days if poor returns		2 months	
Romania	Mandatory		Written request with validated application to another fund	Transfers take place once per month	Can be charged if transferring within 2 years up to 5% of value
Slovak Republic	Mandatory	Cannot switch during the period following the application for a pension benefit until the offer is no longer binding, or after the date on which the individuals conclude a pension insurance contract or scheduled pension payment agreement.	The individual must have a signed agreement with the new provider, but then must apply in person for the Acceptance Certificate from the Social Insurance Agency, which is issued in printed form. Employees must also inform their employer.		If less than one year has elapsed since the individual last switched from one provider to another, the individual shall pay the Social Insurance Agency (that is responsible for issuance the acceptance certificate) a fee of € 16 doe the issuance of the acceptance certificate.
Hong Kong (China)	Mandatory (Provident Fund)	For employer contributions, when changing employment; for employee contributions, once per year; if personal, anytime		Within 30 days	Not allowed

Jurisdiction	Pension type	Frequency	Administrative procedure	Processing time	Fees
Singapore	Mandatory (Provident Fund)	Not possible - a single, centralised provider			
Denmark	Mandatory Employer	Changing employment, unless changing to employer under same collective agreement		No more than 5 days	Pots under 20 000 DKK can be transferred free of charge up to 3 years after employment terminates. Otherwise fees are normally 1500-1900, but the receiving entitiy usually covers these fees.
Korea	Mandatory employer				
Sweden	Mandatory Premium Pension; Occupational pensions				
Australia	Mandatory superannuation				Exit fees banned
Lithuania	Quasi-mandatory				Transfer costs
United Kingdom	Quasi-mandatory Employer		Financial advice required for pots >30k with a guarantee		Exit fees allowed
Canada	Voluntary Employer	Changing employment or plan termination			
Ireland	Voluntary Employer	Changing employment			
Italy	Voluntary employer	After 2 years or for collective plans when changing employer			
Japan	Voluntary Employer	Changing employer			
United States	Voluntary Employer	Changing employment			
Turkey	Voluntary Employer (EPS)	Changing employment			
Czech Republic	Voluntary participating funds				Charge of up to CZK 800 if switch within 5 years
Ireland	Voluntary Personal				
Slovak Republic	Voluntary Personal	Cannot switch during pay-out period	The individual must have a signed agreement with the new provider, and apply for the change in writing	Up to 30 days to process application	Up to 5% if changing the during the first year; not allowed thereafter
Spain	Voluntary Personal		Written request	Up to 5 days to order transfer	Not allowed except in relation to the valuation of transferred assets

Jurisdiction	Pension type	Frequency	Administrative procedure	Processing time	Fees
Japan	Voluntary Personal (iDeCo)			Up to a few months	Cannot contribute during processing time
Poland	Voluntary Personal (IKE, IKZE)			Up to 14 days	Changing provider before 12 months can incur additional fees
Turkey	Voluntary Personal (IPS)				Entrance fees are typically charged, up to a total of 8.5% of the gross minimum monthly wage during the first five years.
Korea	Voluntary Personal (IRP)				
New Zealand	Voluntary Personal (Kiwisaver)		Application with new provider, with proof of address and bank account		Potential exit fee from existing provider
Europe	Voluntary Personal (PEPP)	After 5 years, or less if the provider allows			
Slovenia	Voluntary supplementary	Changing employment (collective); no limit (individual)	Written request	Up to 3 months	Administrative cost up to 15 EUR

20. Long processing times can serve as indirect limits on the frequency of transfers, and processing times for changing providers tend to be longer than those to change funds within a provider. Transfers can take up to several months in Japan, Peru, and Slovenia and over a week in Chile, Hong Kong, Poland, Romania, and the Slovak Republic. In Israel, the transfer only takes place after the individual has made contributions to the new provider.

21. Other administrative procedures requiring individuals to make more effort or spend more time, can slow the transfer process and act as a deterrent for frequent transfers. In the United Kingdom, members are required to receive financial advice when transferring an account over 30 000 GBP that offers a guarantee. Romania, Slovenia, and Spain require that transfer requests be submitted in writing and the Slovak Republic requires an application in person for the mandatory arrangement Estonia requires two separate applications for transferring future contributions and transferring existing assets.

22. Additional fees can also make transfers less appealing. Providers in numerous jurisdictions can charge exit fees for transferring providers. Some jurisdictions have imposed caps on how much can be charged (Czech Republic, Romania, Slovenia, Turkey). Additionally, jurisdictions may impose certain conditions for exit fees to be charged (Czech Republic, Denmark, Estonia, Poland, Romania, Slovak Republic, Turkey). However, some jurisdictions have banned exit fees altogether (Australia, Hong Kong, Latvia).

Regulation of financial advice for retirement

23. The regulatory framework for financial advice in many jurisdictions includes tools that regulators and supervisors can use to ensure that financial advice is appropriate and not harmful to consumers. Mass recommendations from unregulated financial advisors for individuals to change investment funds can be harmful as they can result in significant transfer volumes that are having a material impact on asset prices and exchange rates, with

implications for market stability. “Financial advisors” advertising themselves as experts whose advice will help pension savers to time the market and take advantage of price fluctuations by switching between conservative and aggressive funds can be particularly harmful, as timing the market is generally not possible. Such recommendations can also have a negative impact in people’s long-term retirement saving because they emphasize a short-term view of investment and ignore the savers long-term investment horizon. Moreover, conflicts of interest that advisors face need to be regulated regardless of the channel used to provide the retirement investment advice, including subscription services through mobile phone applications.

24. The regulation of financial advice will need to address several aspects of the provision of financial advice. First, it will need to define to which type of advice the regulations apply. Afterward, it can specify requirements for individuals to be able to provide financial advice, the type of information financial advisors need to disclose, duty of care standards, and how financial advisors can be remunerated. Jurisdictions also look at how to ensure that requirements for advice provided via different distribution channels are covered by the regulatory framework. The examples discussed herein can help to inform the Chilean authorities of different options that could be effective to counter the harmful unregulated advice being distributed in Chile.

What type of financial advice is regulated?

25. The types of advice differ in the extent to which they are tailored to specific individuals. The most basic type of financial advice is guidance, which provides only objective factual information without any specific recommendation. General advice goes further by providing a recommendation, but with no consideration of personal circumstances. Personalised advice is tailored to the specific characteristics of the individual, including their demographic profile, family situation, financial situation, risk tolerance and financial knowledge. Personalised advice can distinguish between simplified (or scaled) advice, and comprehensive advice. Simplified advice provides advice for a specific financial question without necessarily considering an individual’s full financial situation. This could be the case, for example, in considering how to invest one’s pension contributions. Comprehensive advice goes further by considering an individual’s entire situation, and could include, for example, how much additional pension contributions are needed to be comfortable in retirement given other income sources and expected expenses. Different regulations can apply to different types of advice, with personalised advice generally subject to more strict regulation than guidance.

26. The clarity of the definitions of different types of advice matters, because different regulations can apply to different types of advice. In the UK, regulation applies to any type of advice where a recommendation is given, regardless of whether it is personalised, though stricter standards can apply to personalised and comprehensive advice. In Australia and the European Union, only personalised advice is considered to be in scope. In Australia, advice about switching a pension provider or to divert future contributions to another provider is always considered to be personal, regardless of the format of how this advice is provided.

27. The purpose of the advice may also determine the applicable regulation. In the United States, for example, advice related to retirement is subject to a separate legal provision and regulation than financial advice for other objectives. As such, advisors providing financial advice for certain retirement plans are subject to different requirements (e.g. fiduciary standards) than broker/dealers or financial advisors that provide advice for other purposes.

28. The regulatory perimeter of advice is a subject of debate in several jurisdictions. First, the line between guidance and general advice has proven to be a concern in Canada, the United Kingdom and the United States. Employers in these jurisdictions have been reluctant to provide guidance or information to their employees related to their pensions for fear of not complying with the stricter regulatory requirements for general advice. As a result, authorities in these jurisdictions have had to clarify the boundary between guidance and general advice and what information the employer can safely provide. In other jurisdictions, there has also been a reluctance by financial advisors providing personalised advice to provide simplified advice with limited scope due to fears of regulatory liability. Both New Zealand and the United Kingdom have had to clarify the boundary between simplified and comprehensive advice in order to provide comfort to advisors that they are complying with the necessary regulations.

29. Where doubt remains about the regulatory perimeter, many jurisdictions prioritise the likely perception of the client, regardless of any disclaimers that may be offered suggesting that the advice is not within the regulatory perimeter. This is the case in Australia, where any disclaimer cannot diminish legal compliance with the rules, and the substance of the recommendation will override any disclaimer. Avoiding regulatory liability through disclaimers has been an issue in particular for advice offered through digital platforms. European regulators have likewise responded by considering how consumers are likely to perceive the recommendations in their application of regulatory requirements.

30. Regulation can address many facets of the provision of financial advice. The first question the regulatory framework should address is who can provide advice and what requirements they need to meet to do so. Secondly, the information the advisor is required to disclose to consumers should be defined. Third, regulation should determine how much care advisors need to put into the advice they provide. Finally, there may be limitations regarding how advisors can be remunerated for providing financial advice to avoid conflicts of interest.

Who is allowed to provide financial advice?

31. Financial advisors that provide recommendations are generally required to be registered with the supervisory or regulatory body to obtain a license to operate. In Australia, for example, even advisors giving general advice are required to obtain a license.

32. Requirements to obtain a license can include minimum levels of education, completion of exams or other requirements, fit and proper requirements, or ongoing education to maintain skills and knowledge.

33. Many jurisdictions have moved to increase the minimum qualification requirements for financial advisors. Efforts to do so have been carried out in Australia, Canada, the European Union, New Zealand and the United Kingdom.

34. Continued professional development requirements are also becoming more common, with requirements introduced in several of these jurisdictions. Additional requirements may be imposed for certain types of products. Not all financial advisors may be allowed to recommend certain complex products such as derivatives (e.g. New Zealand).

35. There tend to be fewer requirements around those providing only guidance. In several jurisdictions, such as Australia and the United Kingdom, low-cost government agencies have been set up to ensure that the public has access to accurate information regarding financial and retirement planning. Pension funds also commonly provide general

guidance on their websites in the form of calculators and other tools that can help individuals determine the expected outcomes from different savings and investment strategies.

36. However, it can sometimes be complicated to determine whether some information sources should or do provide guidance or general advice, particularly when there is a commercial interest behind the suggestions made. There is a fine line, for example, between these types of advice and commercial marketing. Several jurisdictions have moved to limit marketing materials in response to specific consumer protection concerns that have arisen. In Lithuania, any advertisement relating to pension accumulation may only contain factual information that are included in the official periodic reports issued, while Poland has completely banned pension-related marketing. In Romania, agents are not allowed to interfere in the process of a member switching a pension provider. In France, the Sapin II law forbids any marketing of forex products to retail consumers due to their risky and complex nature.

What information do financial advisors need to disclose?

37. Disclosure requirements are important to further the transparency of the content and nature of the advice provided, the cost of this advice and any potential conflicts of interest that the financial advisor faces. Clearly defining the type of advice provided – whether it is independent, or personalised – clarifies the regulation that should be applicable. Disclosure of all applicable fees is important for the consumer to understand how much they will be paying for the advice. Disclosure of any conflicts of interest, including any commissions that the advisor will receive from the sale of a financial product, may encourage advisors to avoid conflicts of interest and help consumers to understand the incentives of the advisor to recommend certain products. More jurisdictions (e.g. United Kingdom) are also requiring that the advisor provide a suitability report explaining why the recommendation is appropriate for the client.

38. Regulators and supervisors are increasingly recognising the limitations of disclosure. Most jurisdictions have historically relied primarily on disclosure to address the issue of conflicts of interest in financial advice. Jurisdictions are now trying to simplify disclosures and make them more understandable (e.g. Canada, European Union, New Zealand, United States). Some jurisdictions are also increasing the disclosure about ongoing advice and assessment of suitability (e.g. Australia, European Union). They are also trying to address challenges related to the conflicts of interest in financial advice through other mechanisms such as requirements for a written policy to manage conflicts of interest and restrictions around how advisors are compensated for their services.

What is the duty of care for the financial advisor?

39. Duty of care standards require financial advisors to act ethically when providing recommendations to consumers. The requirements as to the extent of care that the advisor must take can vary depending on the type of advice being provided. However, an advisor making any recommendation, regardless of whether it is personalised, normally cannot mislead or deceive the client and must act with care, skill and diligence. For example, in Lithuania, pension funds cannot publish anything incorrect, unclear or misleading, and any advisory service is required to base communications on a pension calculator that is correct and transparent about its assumptions.

40. On top of providing clear and correct information, advisors providing personalised advice are required to understand the client's profile and financial situation in order to

determine whether the recommendation provided is appropriate. Factors to take into account include age, family situation, financial situation, financial knowledge, investment experience and objectives as well as risk appetite.

41. Given an assessment of these factors, regulation generally requires that the financial advisor provide advice that is either suitable for the client or in their best interest. A suitable recommendation is one that is reasonable given the client's needs. One that is in their best interest requires that the advice is free from bias and that advisor to put the interests of the client above their own interest. As such, it expressly forbids advisors to make a recommendation because they themselves would benefit more (through commissions or otherwise). Written conflicts of interest policies may also be required to ensure that any potential bias is either managed or eliminated (e.g. Canada, European Union, United States).

42. Jurisdictions vary as to whether and how they apply requirements for advice to be either suitable or in the best interest of the client. Australia, for example, requires that pension advice be in the best interest of clients, whereas Mexico requires only suitability. Numerous jurisdictions have struggled with a uniform application of duty of care standards to different types of advisors. In the United States, only independent advisors are currently held to a best interest standard. A proposed measure to apply this standard also to advisors providing financial advice for retirement was rescinded, and is now being replaced with a broader measure known as "Regulation Best Interest". This will apply to all financial advisors and broker/dealers, and requires that they act in the client's best interest, but does not require the typical interpretation of best interest that they follow a fiduciary standard of 'undivided loyalty and good faith'. Rather, it only requires a reasonable justification for the appropriateness of the advice.

43. The US and Europe present two case studies relating to the application of duty of care that could be relevant to the current situation of unregulated advisors in Chile. The first is the practice of 'scalping' in the US, which was deemed to be fraudulent. The second is the emergence of social trading, which was not typically regulated under the existing regulatory frameworks.

44. In the United States there was a certain financial advisor practice referred to as 'scalping', where the advisor would purchase a large amount of a certain stock that he would then recommend to all of his clients. After the price rose due to the increased demand, he would sell the stock and benefit from the increase. The courts found that this practice violated the anti-fraud provision in the law that prohibited advisors from any actions that could deceive his client. This conclusion was justified based on the client-advisor relationship and the fiduciary duty of advisors, as the advisor was clearly putting his own interests above those of the clients.

45. More recently, electronic trading platforms have emerged that allow subscribers to copy, or mirror, the trading strategies of other 'expert' traders. Such platforms often fall through the cracks of existing regulatory frameworks, and are classified as simple brokers executing the desired trades. However, under new EU regulation (MIFID II), platforms on which trades are performed automatically are now classified as asset managers. This places additional regulatory requirements on these platforms not only with respect to disclosure but also with respect to due diligence. Investors are now required to fill out a profiling questionnaire to determine their financial knowledge and risk tolerance in order to establish a minimum level of suitability of the investment strategy that they will copy. Furthermore, the traders that investors are allowed to copy must meet some minimum criteria relating to trading experience and having reasonable trading strategies.

46. Platforms that require the individual to confirm execution of each trade rather than automating the process are classified as providing simplified advice under MIFID II. As such, they are subject to the relevant due diligence and suitability requirements, and it must be clear that determining suitability is the responsibility of the platform and not of the client.

How can financial advisors be remunerated?

47. Some jurisdictions have imposed limits as to how financial advisors are allowed to be remunerated for their services in order to eliminate some of the conflicts of interest that they face. Australia, the Netherland and the United Kingdom have completely banned all conflicted remuneration for advisors, including commissions as well as volume targets and kickbacks. Denmark and Finland have banned commissions for independent insurance brokers only. Other commissions that regulation has specifically targeted due to their opacity are trailing commissions. Canada has banned these types of commissions, and Australia has imposed a cap. Mexico has introduced a claw back of the commission that agents receive to switch pension providers, reducing the total compensation if the client does not remain with the new provider for at least 30 months, providing a disincentive for advisors to recommend frequent switching. Financial advisors in Mexico are also forbidden from receiving kickbacks from the advice they provide.

Preliminary policy lessons

- It is appropriate to impose explicit barriers to switching funds, like restricting the frequency of transfers, limiting risky investment strategies for older individuals, and restricting movements between very conservative and aggressive funds on the basis that these types of changes will rarely be in the investor's best interest.
- It is expedient to increase implicit barriers to switching funds, for example by requiring the client to confirm their decision after informing them of the risks that they face in switching, or imposing delays in processing times to facilitate portfolio management in line with the long-term strategy.
- Target-date funds instead of the multi-fund system increase the expectation that everyone should remain invested in the same fund for life.
- Definitions of financial advice should ensure clear differentiation between guidance, general recommendations, and personalised recommendations.
- Client perception should be weighed more in the application of rules than any disclaimer offered by the provider.
- Registration and qualification requirements for financial advisors should be clear, and applicable to any services providing investment recommendations.
- Bans on certain marketing practices that can lead to detrimental outcomes for consumers are opportune.
- Disclosure requirements for conflicts of interest in financial advice should include conflicts where the advisor financially benefits from large volumes of individuals following his advice.
- Review the duty of care requirements and ensure that information provided must be accurate and not misleading even for guidance and general advice. Due diligence and Know Your Customer rules (KYC) should be required for personalised advice.