

# **IOSCO Standards Implementation Monitoring (ISIM) for Principles (1-5) Relating to the Regulator**



**OICU-IOSCO**

**THE BOARD  
OF THE  
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS**

**FR/03/2023**

**FEBRUARY 2023**

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## 1. EXECUTIVE SUMMARY

The IOSCO Assessment Committee (AC) has developed IOSCO Standards Implementation Monitoring (ISIM) as a tool to monitor the implementation of a set of IOSCO Principles and Standards by member jurisdictions.

This report sets out the findings of the second ISIM Review carried out by the AC, which is a review of the first five principles of the IOSCO Principles Relating to the Regulator (Principles 1-5).<sup>1</sup> These five Principles are part of IOSCO's 38 *Objectives and Principles of Securities Regulation*<sup>2</sup> (Principles), which provide core elements of an essential regulatory framework for securities regulations.

The Principles establish the desirable attributes of a regulator. An independent and accountable regulator with appropriate powers and resources is essential to ensuring the achievement of the three core objectives of securities regulation:

- the protection of investors;
- ensuring that markets are fair, efficient, and transparent; and
- the reduction of systemic risk.

The Principles consider the enforcement and market oversight work of the regulator and the need for close cooperation between regulators essential to the achievement of the regulatory function. Regulators also have an important role to play in identifying, monitoring, mitigating, and managing systemic risk, in regularly reviewing the perimeter of regulation and in addressing conflicts of interest and misalignment of incentives.

More precisely, Principles 1-5 state that:

Principle 1 - The responsibilities of the Regulator should be clear and objectively stated.

Principle 2 - The Regulator should be operationally independent and accountable in the exercise of its functions and powers.

Principle 3 - The Regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.

Principle 4 - The Regulator should adopt clear and consistent regulatory processes.

Principle 5 - The staff of the Regulator should observe the highest professional standards, including appropriate standards of confidentiality.

**The main objective of this review is to present a global overview of the status of implementation of each of the five Principles by the participating member jurisdictions, based on their self-assessments.** The review also aims to identify gaps in implementation as well as examples of good practices in implementing these Principles.

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<sup>1</sup> [First ISIM on Secondary and Other Markets Principles](#)

<sup>2</sup> <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD561.pdf>

A total of 55 member jurisdictions<sup>3</sup> have participated in the ISIM exercise with contributions from both emerging and developed markets, and balanced representation from across all regions.

The review was originally based on the implementation progress reported by the participating jurisdictions as of 17 October 2019. However, as a result of the COVID-19 pandemic, the report was delayed due to re-prioritization of IOSCO work in response to the global pandemic. The report went through a fact checking exercise in April 2022. Due to the large amount of new information received, the report was updated and a second and final fact-checking exercise was conducted in October 2022. Any relevant updates received relating to the rules and regulations mentioned in the report since the original cut-off date have been included in the report.

## ***Key Findings***

Based on the information reported by the participating jurisdictions, the Review found that the implementation of Principles 1-5 is generally high across most of the participating member jurisdictions. The review noted that a variety of different approaches to implementation have been observed and several good practices and examples have been provided in the report. While the status of implementation varies across jurisdictions, the gaps in implementation have been observed mostly in nascent and emerging market jurisdictions.

### *Principle 1*

The review found that compliance with Principle 1 was generally high. Most participating jurisdictions have clearly defined responsibilities, powers, and authority. Where regulators have powers to interpret their own authority, the criteria for interpretation are clear and the process is transparent. Where more than one regulator is responsible for securities regulation, there are arrangements for co-operation and communication and limited regulatory gaps and differences. Some gaps have been identified for two participants with respect to the responsibilities, powers and authority of the regulators.

### *Principle 2*

The ISIM Review found that compliance with this Principle varied among participating jurisdictions. Most jurisdictions self-assessed themselves as operationally independent, while the review identified, for a few of the participants, features which could hinder independence, including with respect to terms in place to ensure independence for the authority's head and governing board. Similarly, most of the participants self-assessed themselves as having stable and continuous sources of funding, while some noted that this was not the case in their jurisdictions. Exceptions were also noted for some jurisdictions in terms of adequate legal protection of their staff in conducting their duties. Gaps were identified with respect to operational independence of the regulator from political interference, lack of stable and continuous source of funding, adequate legal protection, independence for head and governing board, transparency of the accountability system and independent review process.

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<sup>3</sup> The term *jurisdiction* is used throughout the report to refer to IOSCO members who have participated in the ISIM Review. Please refer to Annexure 2 for a list of the 55 participating jurisdictions.

### *Principle 3*

The ISIM Review found that, overall, a high level of implementation by participating member jurisdictions has been observed for Principle 3. Generally, participants have demonstrated that they have adequate powers, resources and capacity to perform their functions and exercise their powers. However, a few gaps have been identified by the Review Team in terms of sufficient powers, funding and staff retention strategies.

### *Principle 4*

The ISIM Review has found that, overall, a high level of compliance has been observed regarding the implementation of Principle 4. Most of the participants have demonstrated that they have clear and equitable procedures, consult with the public, publicly disclose their policies, have regards for cost of compliance and observe standards of procedural fairness, transparency, and confidentiality. However, some gaps have been noted in terms of clear procedures, and procedural fairness and confidentiality standards.

### *Principle 5*

The ISIM Review has found that compliance with Principle 5 was generally very high. All of the participating jurisdictions in the ISIM Review have legislative requirements or a Code of Conduct setting out professional standards for staff relating to preventing conflicts of interest and preventing the misuse or disclosure of confidential information. Further, most of the participating jurisdictions reviewed had processes for investigating and enforcing breaches of the standards. However, some gaps have been identified which could constitute a potential conflict of interest with respect to trading, observance of confidentiality and privacy, procedural fairness and investigation of violations of these standards.

## ***Recommendations***

The report makes several jurisdiction-specific recommendations for jurisdictions to consider in terms of conducting potential reforms in response to the identified gaps in implementation (please refer to Section 6 for additional information).

## ***Practices***

For each of the five Principles, the review has identified several practices on key issues relating to the reviewed Principles already in place in various jurisdictions. These practices are intended to serve as useful, yet not exhaustive, examples with a caveat that there is no single correct approach to a regulatory issue. The means of implementation for all Principles can vary among jurisdictions depending upon their local market conditions and regulatory structure.

## **2. BACKGROUND**

The IOSCO Assessment Committee (AC) was established in 2012 with the main objective of encouraging full, consistent and effective implementation of IOSCO Principles and other standards set out in IOSCO reports or resolutions approved by IOSCO across the IOSCO

membership. The AC has developed ISIM as a new tool to monitor the implementation of the IOSCO Principles by member jurisdictions.

As a part of the AC Forward Work Program, in May 2019, the IOSCO Board approved the project specification for conducting this ISIM exercise on the Regulator Principles (P1-5).

The ISIM exercise will allow IOSCO to present a global overview of the implementation of the Principles by member jurisdictions and gather useful feedback on the subject. In contrast to country reviews, the ISIM exercise aims to be less resource intensive, be desk-based and cover a larger population of member countries. The review presents an opportunity for both developed and emerging market jurisdictions to participate in an implementation monitoring exercise on Principles Relating to the Regulator based on the revised IOSCO Assessment Methodology.<sup>4</sup>

The other benefits of ISIM include:

- i. The reporting process through the ISIM exercise incentivizes jurisdictions to reflect and consider the extent of their implementation efforts under the relevant IOSCO Principles and encourages greater consistency in implementation;
- ii. The ISIM exercise analyzes the similarities and differences in implementation by the various jurisdictions and identifies good practices, which will be useful in future policy, capacity building and technical assistance work, and may potentially serve as aspirational examples for other member jurisdictions;
- iii. The ISIM exercise allows the AC to cover a large number of members and their status of implementation against a number of, or set of, Principles, all based on the application of the IOSCO Methodology. It differs from a full-fledged Country Review as it focuses on one area of the securities regulatory regime provided by each of the 10 categories under the Methodology, as opposed to covering all 38 Principles for a single member jurisdiction.
- iv. This program covers a large number of jurisdictions including Growth and Emerging Market (GEM) jurisdictions, and therefore balances IOSCO's monitoring efforts in terms of its coverage of jurisdictions.

## **2.1. IOSCO PRINCIPLES RELATED TO THE REGULATOR**

The three IOSCO core objectives of securities regulation are:

- (i) The protection of investors;
- (ii) Ensuring that markets are fair, efficient and transparent; and
- (iii) The reduction of systemic risk.

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<sup>4</sup> This *Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation* ("Methodology") is designed to provide IOSCO's interpretation of Principles and to give guidance on the conduct of a self-assessment or third-party assessment of the level of Principles implementation.

The three objectives are closely related and, in some respects, overlap.

The IOSCO Principles are one of the key international standards and codes (including those on clearing and settlement) recognized by the Financial Stability Board (FSB)<sup>5</sup> and the International Monetary Fund (IMF)<sup>6</sup> as being key to sound financial systems and deserving priority implementation.

IOSCO has 38 Objectives and Principles of Securities Regulation (Principles), which provide core elements of a framework for securities regulations. The IOSCO Principles have been organized into several sections, including Principles Relating to the Regulator (1-8); Principles for Self-Regulation (9); Principles for the Enforcement of Securities Regulation (10-12); Principles for Cooperation in Regulation (13-15); Principles for Issuers (16-18); Principles for Auditors, Credit Rating Agencies, and Other Information Service Providers (19-23); Principles for Collective Investment Schemes (24-28); Principles for Market Intermediaries (29-32); Principles for Secondary and Other Markets (33-37); and Principles Relating to Clearing and Settlement (38).

## 2.2. Scope

The Principles relating to the Regulator are as follows:

|   |   |
|---|---|
| <b><i>Principle 1:</i></b>              | The responsibilities of the Regulator should be clear and objectively stated.   |
| <b><i>Principle 2:</i></b>              | The Regulator should be operationally independent and accountable in the exercise of its functions and powers.                            |
| <b><i>Principle 3:</i></b>              | The Regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.            |
| <b><i>Principle 4:</i></b>              | The Regulator should adopt clear and consistent regulatory processes.   |
| <b><i>Principle 5:</i></b>              | The staff of the Regulator should observe the highest professional standards, including appropriate standards of confidentiality.         |
| <b><i>Principle 6:</i></b> <sup>7</sup> | The Regulator should have or contribute to a process to identify, monitor, mitigate and manage systemic risk, appropriate to its mandate. |
| <b><i>Principle 7:</i></b> <sup>7</sup> | The Regulator should have or contribute to a process to review the perimeter of regulation regularly.                                     |

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<sup>5</sup> [https://www.fsb.org/work-of-the-fsb/about-the-compendium-of-standards/key\\_standards/](https://www.fsb.org/work-of-the-fsb/about-the-compendium-of-standards/key_standards/)

<sup>6</sup> <https://www.imf.org/external/np/fsap/faq/index.htm>

<sup>7</sup> Principle 6, 7 and 8 are not being assessed in this ISIM Review.



|                                  |  |
|----------------------------------|--|
| <b>Principle 8:</b> <sup>7</sup> | The Regulator should seek to ensure that conflicts of interest and misalignment of incentives are avoided, eliminated, disclosed or otherwise managed. |
|----------------------------------|--|

This review covers the implementation of the first five Principles related to the Regulator (Principles 1-5). The remaining three Principles related to the Regulator (Principles 6-8) will be the focus of a future ISIM exercise.

### 3. OBJECTIVES, METHODOLOGY AND REVIEW TEAM

#### 3.1. Nature of the Review and Objectives

As set out in the project specification approved by the IOSCO Board for this review, the final report is expected to:

- i. Set out the main findings on the status of implementation of the Regulator Principles (P1-P5);
- ii. Identify gaps in implementation;
- iii. Identify good practices in implementation;
- iv. Identify any area which might be useful to IOSCO for future policy work, capacity building or technical assistance.

The main objective of the review is to provide a global overview of the status of implementation of each of the above-listed five Principles by IOSCO member jurisdictions, based on the self-assessments provided by member jurisdictions. The member jurisdictions indicated the legal and regulatory regimes in place regarding implementation of the Principles Relating to the Regulator (Principles 1-5). Specifically, through this exercise, the Review Team asked jurisdictions to identify the published and in-force source(s) of their legal authority consistent with the Principles. The review also sought to identify differences in approaches and the progress of implementation (or proposed implementation) of the Principles.

The Assessment Methodology and Questionnaire used by the Review Team and sent to Participating Jurisdictions for self-assessment purposes is attached as **Annexure-1 (Assessment Methodology and Questionnaire)**. The Assessment Methodology and Questionnaire is based largely on the IOSCO Methodology.

The Review is based on progress reported by the jurisdictions (**Participating Jurisdictions**) as of 17 October 2019, and includes updates received in April and October 2022.<sup>8</sup>

*The findings in this Report are based on analysis of self-assessments submitted by the Participating Jurisdictions. Where necessary, the Review Team contacted Participating Jurisdictions to clarify and/or verify the statements made in the responses; however, the*

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<sup>8</sup> Although the ISIM Review identified gaps in implementation, a few participating jurisdictions did not provide feedback or clarifications during the fact-checking period.

*Review Team did not seek to independently assess all statements. Moreover, this Review does not involve rating the jurisdictions against the benchmarks provided in the Methodology; it does, however, identify gaps in implementation and gives recommendations that are intended to address these gaps.*

### 3.2. Review Team

The Review was conducted by a team led by Ms. Sharon Kelly from *Autorité des marchés financiers* of Quebec. The team was comprised of staff from the following authorities: Mr. Uwe Kehl and Mr. Leonardo Alcantara Moreira (Comissão de Valores Mobiliários Brazil), Mr. Tim Binning (Dubai Financial Services Authority), Ms. Neetasha Rauf and Ms. Eileen Wong (Securities Commission Malaysia), Ms. Yan Kiu Chan (Ontario Securities Commission), Mr. Mathieu Simard (*Autorité des marchés financiers* of Quebec), and Ms. Raluca Tircoci-Craciun, Ms. Hemla Deenanath and Ms. Lalida Chuayruk (IOSCO General Secretariat) (**‘Review Team’**).<sup>9</sup>

### 3.3. Review Process

The Review was a desk-based exercise, which included the review of responses from 55 IOSCO members<sup>9</sup> to the Questionnaire designed by the Review Team based on IOSCO’s 2017 Methodology.<sup>10</sup> The Questionnaire was circulated on 17 October 2019, with responses due on 29 November 2019.

As a result of the COVID-19 pandemic, the report was delayed due to re-prioritization of IOSCO work in response to the global pandemic. Any relevant updates related to the rules and regulations mentioned in the report since the cut-off date have been included in the form of footnotes.

The respondent jurisdictions were asked to provide the status of implementation of the five Principles along with references to relevant legislation, regulation or policy, through a Questionnaire. These self-assessment responses became the primary source material for the Review Team’s review.

## 4. PARTICIPATING JURISDICTIONS

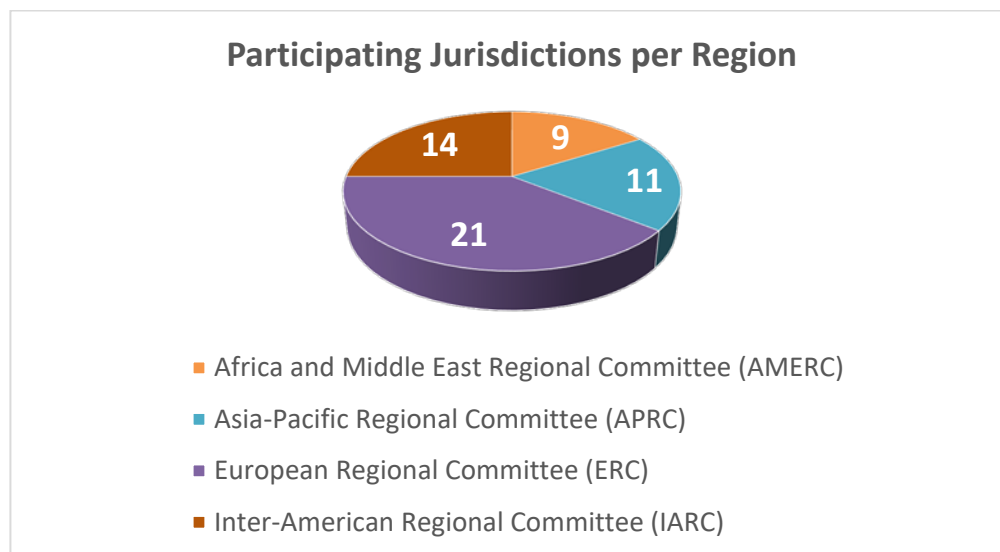
All IOSCO member jurisdictions, including Ordinary, Associate and Affiliate members, were invited to participate in the Review. A total of 55 IOSCO members contributed to the Review, out of which 24 are also members of IOSCO Board. A list of participating jurisdictions is set out at **Annexure 2**.

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<sup>9</sup> While a representative of the Central Bank of Russia (CBR) was originally a member of the Review Team and the CBR participated in this Review, in the immediate aftermath of the conflict in Ukraine, arrangements were put in place so that the CBR would not be able to participate in any respect in any IOSCO processes or fora until further notice (<https://www.iosco.org/news/pdf/IOSCONEWS644.pdf>).

<sup>10</sup> Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation available at: [http://www.iosco.org/about/?subsection=key\\_regulatory\\_standards](http://www.iosco.org/about/?subsection=key_regulatory_standards).

The distribution of members based on region:



| Region  | No. of Participants |
|---|---------------------|
| Africa and Middle East Regional Committee (AMERC) <sup>11</sup> | 9                   |
| Asia- Pacific Regional Committee (APRC) <sup>12</sup>           | 11                  |
| European Regional Committee (ERC) <sup>13</sup>                 | 21                  |
| Inter-American Regional Committee (IARC) <sup>14</sup>          | 14                  |
| <b>Total Number of Participants</b>                             | <b>55</b>           |

Out of the 55 member jurisdictions participating in this ISIM, the following jurisdictions have been identified by the IMF as being countries with **systemically important financial sectors**:<sup>15</sup>

- i. **From the ERC region:** Belgium, France, Germany, Ireland, Italy, Luxembourg, Spain, Türkiye and the United Kingdom;

<sup>11</sup> AMERC Jurisdictions: Egypt, Saudi Arabia, Qatar, Palestine, West African Monetary Union (WAMU), Mauritius, Angola, Dubai, Kuwait

<sup>12</sup> APRC Jurisdictions: Thailand, Japan FSA, Japan MAFF, Japan METI, Singapore, China, India, Fiji, New Zealand, Australia, Hong Kong

<sup>13</sup> ERC Jurisdictions: Gibraltar, Greece, Slovenia, Kazakhstan, AIFC Astana, Türkiye, Israel, Czech Republic, North Macedonia, Portugal, Italy, Liechtenstein, Spain, Isle of Man, Luxembourg, UK, Belgium, Germany, France, Guernsey, Ireland.

<sup>14</sup> IARC Jurisdictions: British Columbia, Ontario, Quebec, Paraguay, Uruguay, Panama, Trinidad and Tobago, Brazil, Mexico, Bahamas, El Salvador, Chile, Dominican Republic, Argentina.

<sup>15</sup> <https://www.imf.org/en/News/Articles/2015/09/14/01/49/pr10357>

- ii. **From the APRC region:** Australia, China, Hong Kong, India, Japan and Singapore; and
- iii. **From the IARC region:** Brazil, Canada (British Columbia, Ontario and Quebec), and Mexico.

Out of 55 members participating in this ISIM Review, 30 members are from growth and emerging market (GEM) jurisdictions, while 25 are from developed markets.

## 5. KEY FINDINGS – PRINCIPLE BY PRINCIPLE

### 5.1. Principle 1: The responsibilities of the Regulator should be clear and objectively stated.

#### *IOSCO Methodology*

The IOSCO Methodology for Principle 1 states that the regulator's responsibilities, powers, and authority should be:

- Clearly defined and objectively set out, preferably in law, and in the case of powers and authority, enforceable.
- The criteria for interpretation of the regulator's authority should be clear and transparent and the interpretative process should be transparent enough to preclude situations in which an abuse of discretion can occur.

The Principle further states that, when more than one regulator is responsible for securities regulation:

- Legislation should be designed to avoid regulatory differences or gaps and the same type of conduct and product should generally be subject to consistent regulatory requirements.
- Responsible regulators should be required to cooperate and communicate in areas of shared responsibility and there should be arrangements for cooperation and communication between responsible regulators through appropriate channels.

#### 5.1.1. Implementation Overview

The basic premise of Principle 1 is to ascertain whether the regulator's responsibilities and powers are clearly and objectively stated to provide assurance to investors and market participants that it is able to protect the market's integrity through fair and effective oversight.

This assurance that the regulator is able to act responsibly, fairly and effectively, can be demonstrated by a clear definition of responsibilities, preferably set out in law; and strong cooperation among responsible regulators, through appropriate channels.

The desirable attributes of a regulator include an organizational structure and powers that permit it to achieve the basic objectives of securities regulation.

The ISIM Review found that, overall, compliance with this Principle was generally high. Most participating jurisdictions have clearly defined responsibilities, powers, and authority. Where regulators have powers to interpret their own authority, the criteria for interpretation are clear and the process is transparent. Where more than one regulator is responsible for securities regulation, there are arrangements for co-operation and communication and limited regulatory gaps and differences. Some good practices and gaps have been identified for implementation of the key issues of Principle 1 and are presented below.

### **5.1.2. Findings**

#### **Responsibilities, powers and authority (KQ1a)**

Unless the regulator's responsibilities are clearly and objectively stated, investors and market participants may be uncertain about the degree to which the regulator is able to protect the market's integrity through fair and effective oversight. Where this uncertainty exists, concerns about the market's integrity may become a self-fulfilling prophecy, to the detriment of all market participants. The capacity of the regulator to act responsibly, fairly and effectively, therefore, is assisted by a clear definition of responsibilities, preferably set out in law; and strong cooperation among responsible regulators, through appropriate channels.

In the majority of participating jurisdictions, authorities have demonstrated that they have clear responsibilities, powers and authority. Moreover, the objectives, functions and powers of the regulator were specified and conferred directly on the regulator by the relevant legislation.

Among the participating jurisdictions, the authority and powers of the regulator are identified and described differently, which is not unusual. Some are identified more broadly in general provisions, whereas others are identified in specific provisions. Regardless of whether the authority and powers are set forth broadly or more specifically, the underlying objectives remain the same: to ensure that the regulator has adequate powers to perform the necessary functions of licensing, supervision, inspection, investigation, and enforcement.

#### **Enforceability (KQ1a)**

All but one participating jurisdiction<sup>16</sup> reviewed were able to identify the powers that enable them to enforce their authority in case of non-compliance. However, the nature and range of enforcement powers varied from jurisdiction to jurisdiction. Different legal systems implied that the enforceability of powers varied considerably. For example, in some jurisdictions the range of potential sanctions were much more varied and extensive than in others – these included administrative measures, disciplinary actions and criminal sanctions.

In the majority of participating jurisdictions, regulators have specific provisions in their respective laws, which define and set out powers in relation to inspection, investigation,

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<sup>16</sup> KQ1a: Except Palestine.

surveillance and enforcement, and many have wide discretionary powers to take all actions necessary for enforcement matters.

### **Interpretation of Power (KQ1b)**

The vast majority of the participating jurisdictions reviewed stated that they have the ability to interpret their authority and that the criteria for interpretation were clear and transparent. Some of the mechanisms used for doing so ranged from regulatory guides, information sheets, opinions, guidelines, codes, public comments, regulations, policy statements, circulars, guidance, frequently asked questions (FAQs), no action letters,<sup>17</sup> and exemptions.

Most participating jurisdictions have processes in place for developing and issuing interpretative documents and publish these documents. In general, most participating jurisdictions indicated that they must act in accordance with legislative/legal powers and regulatory objectives/mandate and that they have laws that set out the scope of their regulatory discretion, which varies across jurisdictions.

The majority of participating jurisdictions have also indicated that their interpretative process is transparent enough to preclude situations in which an abuse of discretion can occur.<sup>18</sup>

A number of jurisdictions mentioned that if there was an abuse of discretion of a regulator to interpret its authority, the matter could be referred to the courts, which would ultimately have the power to interpret the legislation. Transparency was also considered very important by jurisdictions, as decisions regarding interpretation must be publicized, also being subject to court review.

Many jurisdictions noted that the regulator must give reasons for its decisions and that decisions are subject to further appeal to preclude situations in which an abuse of discretion can occur.

### **Cooperation among responsible regulators (KQ2)**

In terms of regulatory oversight of securities markets, the IOSCO Methodology states that, where the responsibilities for securities regulation are shared by more than one regulator and there are differences in the responsibilities and powers of those regulators, it is important for jurisdictions to ensure that the responsibilities and powers of each of the relevant responsible regulators taken in combination are sufficient to address each component of the Principles. This requires an explanation of how powers and responsibilities considered relevant in the Methodology are distributed and executed in a jurisdiction or where and how regulatory powers are distributed e.g., by function, security, service or entity.

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<sup>17</sup> A no-action letter is a letter written by the staff members of a government agency, requested by an entity subject to regulation by that agency, indicating that the staff will not recommend that the agency take legal action against the entity, should the entity engage in a course of action proposed by the entity through its request for a no-action letter. Please refer to the following link for more details - <https://www.investor.gov/introduction-investing/investing-basics/glossary/no-action-letters>

<sup>18</sup> KQ1c: Except Palestine and North Macedonia.

The ISIM Review demonstrated that there are different regulatory structures in the participating jurisdictions. This is in line with the IOSCO Methodology, which states that the Principles do not prescribe a specific structure for the regulator. Moreover, there is no single correct approach to a regulatory issue, and legislation and regulatory structures vary between jurisdictions and reflect local market conditions.

In terms of different regulatory structures observed during the review, while some participating jurisdictions have adopted a “twin peaks” model,<sup>19</sup> other jurisdictions have multifunctional regulators. For some jurisdictions, the central bank is also responsible for some aspects of securities regulation.<sup>20</sup> For those participating jurisdictions where only one organization is responsible for overseeing securities regulation, the issues regarding regulatory gap, consistent regulatory requirements, and co-operation of shared responsibilities were not applicable.

### Cooperation agreements

Where oversight and supervision of the financial markets may be split between a central bank and the securities regulator, the distinction is usually made in legislation. The most common arrangement for cooperation and communication between domestic regulators is through Memoranda of Understanding (MoUs).

**For example, in Panama,** in the case of financial conglomerates, the law establishes the carrying out of joint inspections with the Superintendency of Banks, for which they have signed an MoU between regulators for such purposes. Some participating jurisdictions also have national level committees designed to facilitate coordination.

Most participating jurisdictions, irrespective of the type of regulatory framework and structure, have cooperative agreements with other financial sector regulators and governmental authorities to minimize any regulatory gaps. In addition, in a number of jurisdictions, different regulators apply standards that are imposed under the same underlying legislation. As a result, there are no differences in the underlying requirements.

**For example,** regarding the requirement for consistent regulatory requirements, the “same business, same rules” principle is enshrined in European Union (EU) legislation and, consequently, in **many ERC jurisdictions’** own laws, rules and regulations.

Some authorities also mentioned cross membership on the boards of different national regulators as another mechanism for cooperation.

**For example,** additional coordination mechanisms noted by the **UK FCA** include a duty to coordinate the exercise of their functions, a mechanism where the Prudential Regulatory

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<sup>19</sup> Usually referring to a model of financial regulation which sees regulation split into two broad regulatory functions – market conduct regulation and prudential regulation – with a separate peak regulator for each function.

<sup>20</sup> For example, the Central Bank of Brazil oversees the prudential and systemic risk regulation of financial institutions, which also encompasses capital market intermediaries.

Authority (PRA) can require FCA to refrain from specified action, for example, to reduce the risk of regulatory actions by the FCA threatening financial stability in the UK or the disorderly failure of a firm, and both regulators are required to publish an account of how effectively they have coordinated in their annual reports.

Many participating jurisdictions indicated that communication between the authorities occurs very smoothly since the law prevents competent authorities from invoking professional secrecy in their dealings with each other.

### 5.1.3. Gaps in Implementation

The following gaps have been identified with regard to the responsibilities, powers and authority of the regulators (KQ1a):

- **Palestine**'s responses did not demonstrate that their responsibilities, powers and authority were clearly defined and objectively set out, preferably in law, and in the case of powers and authority, enforceable.
- **Palestine** and **North Macedonia**'s responses were not sufficient to demonstrate that the regulator could interpret its authority in a clear and transparent way, including to preclude situations in which an abuse of discretion can occur. (KQ 1b and c).

## 5.2. Principle 2: The Regulator should be operationally independent and accountable in the exercise of its functions and powers

### *IOSCO Methodology*

The Methodology for Principle 2 states that, while a regulator should be accountable under a jurisdiction's legal and governing structure, it should be operationally independent from external political or commercial interference. Without such independence, investors and other market participants may come to doubt the regulator's objectivity and fairness, with deleterious effects on the market's integrity.

Generally, the regulator's independence will be enhanced by a stable source of funding that is sufficient to exercise its powers and responsibilities.

In some jurisdictions, particular matters of regulatory policy require consultation with or even approval by, a government, minister, or other legislative authority. The circumstances in which such consultation or approval is required or permitted should be clear and the process sufficiently transparent or subject to review to safeguard its integrity. Generally, it is not appropriate for these circumstances to include decision-making on day-to-day technical matters.

The capacity of the regulator to act independently will be enhanced by adequate legal protection for the regulator and its staff when acting in the *bona fide* discharge of their functions and powers.



### **5.2.1 Implementation Overview**

The basic premise of Principle 2 is to ensure that the regulator is able to clearly demonstrate that it is able to carry out its regulatory functions and enforce its authority and powers independently from external sectoral, political or commercial interference. To determine whether this is the case, the regulator must demonstrate that any consultation with or approval by a government minister or other authority does not include operational decisions. The regulator must also demonstrate that it has a stable source of funding sufficient to exercise its powers and responsibilities, and that it has adequate legal protection for itself and its staff when acting in the bone fide discharge of its functions and powers. Finally, the regulator must demonstrate that it is publicly accountable in the use of its powers and resources, that there is a system permitting judicial review of final decisions of the regulators, and that the regulator has safeguards in place to protect confidential and commercially sensitive information to protect such information from inappropriate use or disclosure.

The ISIM Review found that compliance with this Principle varied among participating jurisdictions. Most jurisdictions self-assessed themselves as operationally independent, while the review identified, for a few of the participants, features which could hinder independence, including with respect to terms in place to ensure independence for the authority's head and governing board. Similarly, most of the participants self-assessed themselves as having stable and continuous sources of funding, while some noted that this was not the case in their jurisdictions. Exceptions were also noted for some jurisdictions in terms of adequate legal protection of their staff in conducting their duties. Some good practices and gaps for this Principle have been identified below.

### **5.2.2 Findings**

#### **Operational independence from political interference (KQ 1)**

One of the fundamental requirements of Principle 2 is that the regulator should have the ability to operate on a day-to-day basis, independently from external political interference in the exercise of its functions and powers. The IOSCO Methodology defines the term “interference” as a formal or informal level and method of contact that affects day-to-day decision-making and is unsusceptible to review or scrutiny.

It is challenging to assess regulator's independence from the state or a government body, particularly with respect to the likelihood of political interference. Participating jurisdictions must be able to demonstrate that they are able to conduct their day-to-day operations without political interference. An example of features that could create potential political interferences in the regulator's day-to-day operations or that could give rise to the perception of potential political interference, includes a jurisdiction where a government or a ministerial body has the power to make decisions related to certain day-to-day operations of a regulator, the existence of such powers is not consistent with this Principle. More specifically, this could entail a government or ministerial body getting involved in, or participating in, an enforcement case, including the outcome of the case.

The majority of participating jurisdictions<sup>21</sup> have stated that they are an independent body with legal personality and statutory powers to exercise their responsibilities, in compliance with – and within the boundaries of the applicable laws and regulations, with respect to their day-to-day operations, such as licensing, supervising, inspecting, investigating, and enforcing, without external political interference. However, the review identified a number of structural features in different participating jurisdictions that have the potential to affect independence of the regulator or create the perception to affect independence of the regulator, even if there is no evidence of independence in fact being affected. These circumstances might include: statutory requirements for the government or a Minister to make or to be consulted on certain decisions; statutory powers of a government to give directions to a regulator about how it performs its functions; or the board of a regulator including ministers or other government officials without the necessary legal and institutional safeguards in place to ensure the independence of the regulator and to avoid conflicts of interest. It bears noting that, as per the IOSCO Methodology, independence or accountability is not necessarily compromised just because the regulator is part of the government and/or the top officials of the regulator are political appointments, including appointees that previously served in the government.

In addition to being independent from political interference, under Principle 2, it is also essential for jurisdictions to have the ability to operate on a day-to-day basis without interference from commercial and other sector interests. All participating jurisdictions except one<sup>22</sup> appear to have this ability.

#### **Process of consultation with, or approval by, a government body established by law (KQ2a, 2b)**

The ISIM Review noted that many jurisdictions are not required to consult with, or receive approval from, a government body or other authority for regulatory policy matters. For jurisdictions where a consultation with or approval by a government minister or other authority is required for certain regulatory policy matters under their remit, most of them<sup>23</sup> appear to have a process that is established by law or other statutes, which typically includes specific provisions to oversee such consultations.

In specific circumstances in which consultation with a government minister or other authority is required, most participating jurisdictions responded that they excluded decision making on day-to-day technical matters.<sup>24</sup>

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<sup>21</sup> KQ1a: Except Palestine

<sup>22</sup> KQ1b: Except Palestine.

<sup>23</sup> KQ2a: Except the following participating jurisdictions responded “No”: Palestine and Slovenia. Slovenia reported that there is one particular matter of regulatory policy that requires Government approval, the Tariff, for which the ATVP always allows public consultation. The Tariff is adopted by the ATVP's Council, submitted for a public consultation and later approved by the government. Although the consultation process is not formalized in the law it is always carried out. The following participating jurisdictions responded “N/A”: Singapore, India, Qatar, Dubai, Kuwait, Paraguay, Uruguay, Brazil, El Salvador, Dominican Republic, Argentina, and Liechtenstein.

<sup>24</sup> KQ2b: Except Palestine, West African Monetary Union, Angola and North Macedonia. The following participating jurisdictions responded “N/A”: India, Qatar, Dubai, Kuwait, Paraguay, Uruguay, Brazil, El Salvador, Dominican Republic, Argentina, Czech Republic, and Liechtenstein.

Some participating jurisdictions<sup>25</sup> have stated that specific operational matters require the consultation or the approval of a government body. While this is not necessarily a gap in implementation, to avoid any potential perception of political interference, it is recommended that certain legal and institutional safeguards be put in place to maintain full independence in operational matters.

### **Clarity, transparency and integrity of the consultation process with a government body (KQ 2c)**

Under Principle 2, in jurisdictions where particular regulatory policy matters require consultation with, or approval by, a government minister or other authority, the circumstances in which such consultation or approval is required or permitted must be clear and the process of consultation must be sufficiently transparent, or subject to review to safeguard its integrity. On this issue, all participating jurisdictions but one<sup>26</sup> responded favourably to having clear and transparent consultation processes in place and, where a consultation with or approval by a government minister or other authority is required for certain regulatory policy matters, those same participating jurisdictions reported that the circumstances where such approval or consultation is necessary are clear and sufficiently transparent, or subject to review to safeguard its integrity. Several participating jurisdictions replied that this question is not applicable to their jurisdictions' regulatory framework.<sup>27</sup>

In terms of having a transparent process for consultation, certain participating jurisdictions have stated that all communications regarding a consultation with a government body, including any recommendation made by the governing body, is publicly disclosed or is available to the public.

#### **For example:**

- In **Portugal**, the CMVM has reported that all communications regarding the consultation with a government body are accessible by any person under the right of access to public information regarding ongoing or concluded administrative procedures. In addition, any person may have access to the relevant documentation under the *Law on Access to Administrative Documents of Portugal*.
- In the **UK**, the FCA has reported that the *Financial Services and Markets Act* provides that any recommendations made by the HM Treasury must be publicly disclosed and laid before the UK Parliament for inspection. In this way, the process remains transparent, and its integrity is safeguarded.

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<sup>25</sup> KQ 2b: Palestine, West African Monetary Union and Angola.

<sup>26</sup> KQ2c: Except Palestine.

<sup>27</sup> KQ2c: The following participating jurisdictions replied "N/A": India, Qatar, Kuwait, Paraguay, Uruguay, Brazil, El Salvador, Dominican Republic, Argentina, Greece, North Macedonia and Liechtenstein.

### **Stable and continuous source of funding (KQ 3)**

Another important factor to be considered when looking at a regulator's independence is whether the regulator has a stable and continuous source of funding sufficient to meet its regulatory and operational needs. Generally, the regulator's independence will be enhanced by a stable source of funding, which also demonstrates that the regulator remains independent from the market participants that it supervises.

Most of the participating jurisdictions<sup>28</sup> consider that the regulator has a stable and continuous source of funding sufficient to meet its regulatory and operational needs. The sources of funding are typically market participant funding (e.g., registration/licence/authorization fees, supervision fees, taxes, penalties), government or state-funding, income from investments or reserves, or a combination of those sources.

It bears noting the fact that some jurisdictions are largely or fully funded by their government or state may make the regulator dependent on the government's discretion and may raise questions about the ability of the regulator to perform its responsibilities and execute its powers independently from any political interference. Such risk may be mitigated by the establishment of mechanisms that ensure the independence of the regulator in the allocation of its resources for its regulatory and operational activities.

Several jurisdictions have implemented measures to secure the stability of their core funding, such as the implementation of a thorough annual and mid-year's budgeting process to ensure they have sufficient funding to meet their regulatory and operational needs. Some participating jurisdictions, such as the Isle of Man, Portugal, and Trinidad and Tobago, are in the process of reviewing their funding structure to make sure they have a better stable source of funding.

**Funding by the financial sector:** Many of the participating jurisdictions reported that they are entirely or largely funded by fees charged to supervised market participants (e.g., registration/licence/authorization fees, supervision fees, taxes, penalties) without any funding or very limited funding from their government or state.

While out of the scope of the requirements of Principle 2, it is interesting to note that some jurisdictions confirmed that the revenues they raise from regulated market participants are governed under statutory provisions, which may or may not be approved by a government body. Such statutory provisions may be amended if there is a need to balance future revenues with regulatory and operational needs.

**Funding by a combination of the financial sector and by a government or a state:** Some jurisdictions<sup>29</sup> have reported that they raise their revenues from supervised market participants and are also funded partly through a specific allocation from their government or their state,

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<sup>28</sup> KQ3: Except Trinidad and Tobago, Brazil, and Chile.

<sup>29</sup> Isle of Man, Italy, Liechtenstein, Gibraltar and Palestine.

which is often limited.<sup>30</sup> In general, such government allocation may be considered as a safety net to ensure sufficient funding. One jurisdiction<sup>31</sup> has stated that the regulator has sufficient funding to cover its operational needs, but any financial deficit would be covered by the government or the state.

**For example:**

- In **Liechtenstein**, the State contribution serves as a buffer when the contributions from the private sector fail to cover the annual budget of the FMA and is subject to a limit under statutory provisions. Since the foundation of the FMA in 2005, the funding model and the amount of the State contribution have remained unchanged.
- In **Gibraltar**, the GFSC is primarily funded by the industry it regulates. In addition, the GFSC receives an annual subvention from HM Government of Gibraltar. The proportion of funding received from HM Government of Gibraltar is less than 10% of total income.
- In **India**, SEBI is entirely funded by the regulatory fees it levies on regulated entities, intermediaries and market participants. It does not avail any grant/assistance from the Government even for unexpected or large capital expenses. Further, SEBI undertakes a review exercise, at regular intervals, to rationalize or recalibrate its fee structure to meet the projected future expenditure and to ensure that the fee structure does not unfairly burden stakeholders.

**Funding by a government or a state:** A few jurisdictions<sup>32</sup> have reported that they are mostly or fully funded through specific allocations from their government or another government entity.

**For example:**

- In **AIFC Astana**, the AFSA has its own budget formed by the funds of the republic's budget in the form of a targeted transfer in accordance with the budget legislation of the Republic of Kazakhstan, as well as funds and payments contributed by the authorized persons of Astana International Financial Centre.
- Furthermore, it is worth noting that in **Trinidad and Tobago**, the TTSEC is currently carrying out an exercise to allow the recovery of its operating expenditure from current and proposed fees in order to decrease its reliance on government subventions.

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<sup>30</sup> In Isle of Man, the Government Budget 2020-21 announced its intention to move to a predominantly industry-funded model on a phased basis. On October 30, 2020, the FSA published Discussion Paper on Funding Financial Regulation and Designated Business Oversight that set out broad strategy to move towards a predominantly industry-funded model.

<sup>31</sup> Palestine

<sup>32</sup> AIFC Astana, Kazakhstan, Angola, Dubai, Paraguay, Trinidad and Tobago.

**Unexpected expenses:** Some regulators have established mechanisms to mitigate the risk of being unable to cover unexpected expenses.

**For example:**

- In **Luxembourg**, the CSSF is entirely funded by the financial sector. If the costs are not covered by the collected fees for a financial year, the CSSF can ask for taxes to be adapted for budgetary reasons.
- Further, other jurisdictions (**New Zealand, China, Australia**) have noted that extra funding can be made available in exceptional circumstances where a shortfall arises (e.g., by use of cash reserves, submitting a supplementary budget to the government or diverting resources from other areas).

**Reserves:** Surpluses of revenues over expenses in a given year typically generate a reserve fund for the regulator. Reserves are important for regulators as they can use them in the case of contingencies, such as a decrease of income, unexpected expenses or a significant cost increase. Reserves are important to ensure regulators have sufficient funding to meet their regulatory and operational needs in the future.

**For example:**

- In **Kuwait**, the CMA has access to financial reserves to ensure its financial stability in the long term and to mitigate the systemic risks that may occur in securities activities.

**Access to reserves:** In certain cases, regulators may be subject to certain limitations when they need to access their reserves, or they may not have access to their surpluses of revenues over expenses. Such practices may deprive those regulators from being able to access a source of funding for their basic operational needs in case of a decrease of their revenues, unexpected expenses or a significant cost increase.

#### **Adequate legal protection (KQ 4)**

The majority of jurisdictions<sup>33</sup> have stated that they have the statutory framework to provide the head and members of the governing body of the regulator, as well as its staff, adequate legal protection for the *bona fide* discharge of their regulatory and administrative functions.

Some jurisdictions also provide their staff, head and governing board members with some level of statutory immunity, from civil or penal action in respect of *bona fide* decisions when performing their functions. These legal protections typically cover decisions made in good faith by the individuals when performing their functions, without negligence and in accordance with the applicable statutory framework. They would also typically cover the legal and protection costs of the individuals that are challenged in the civil and penal court, provided that an act or

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<sup>33</sup> KQ4: Except Panama and France.

decision was taken within the course of their functions and in good faith. This legal protection can take different forms.

**For example:**

- In **Luxembourg**, protection for CSSF staff against lawsuits for actions taken and omissions made during their service is given by the fact that only its governing board, the CSSF Board, representing the CSSF is responsible for these actions. These bodies represent the regulator before the court. Similarly, in **France**, protection for AMF staff for actions taken and omissions made when exercising their functions is provided by the fact that only its Board (“College” - AMF governing Board) is representing the AMF and can be held responsible for these actions.
- In the **UK**, the statutory framework provides that both the FCA and any person who is, or is acting as, a member, officer, or member of staff of the FCA is not liable in damages for anything done or omitted in the discharge, or purported discharge, of the FCA’s functions. Moreover, the FCA covers the legal costs of defending its staff in legal actions against them in relation to their work as FCA employees. The FCA has the power to require the payment of fees to cover the costs of defending its actions.
- In **Chile**, legal protection is provided to all current and former CMF staff members during the *bona fide* discharge of their duties. The CMF provides defense to its staff in case any lawsuit is filed regarding formal acts, actions and omissions produced in the performance of their duties, as long as these acts, actions or omissions do not implicate the cessation in the duties of the commissioner or employee.
- It is worth noting that in **Kuwait**, all decisions and opinions are issued under the CMA, which has an independent legal personality, and legal Principles ensure that a judge would not accept any cases filed against the CMA’s employees, as they would not be considered as the appropriate defendant. In terms of legal protections against legal suits initiated by market participants in the *bona fide* discharge of their functions and powers, Article 27 of Decree Law No. 15 of 1979 concerning the Civil Service provides legal protection to any person who occupies a civil post in a government authority. Therefore, legal immunity for *bona fide* discharge of their regulatory powers is available.
- In **India**, Section 23 of the SEBI Act, 1992 inter-alia provides that no suit, prosecution or other legal proceedings shall lie against the Central Government or SEBI or any of their officers, for anything which is done or intended to be done in good faith under the statute or the rules or regulations made thereunder.

### **Mechanisms to protect independence for head and governing board (KQ 5)**

Under Principle 2, the head and governing board members of the regulator should be subject to mechanisms intended to protect independence, such as procedures for appointment, terms of office, and criteria for removal.

The Review Team noted that the head and governing board members of all jurisdictions are subject to mechanisms intended to protect independence. These mechanisms are typically

included in the statutory framework and include procedures for the appointment and removal of the individuals, term of office, clear eligibility criteria for their appointment and criteria for their removal.

Given the fact that a government body or the state is actively implicated in the appointment of the individuals in most jurisdictions, strong and efficient mechanisms to govern the appointment and removal of the individuals are of great importance to ensure the operational independence of the regulators.

**Eligibility Criteria:** The criteria for appointment of the head and governing board members vary from one jurisdiction to another. Generally speaking, the key eligibility criteria for appointment are sufficiently detailed and would generally include specific criteria such as adequate professional expertise and experience, education, competences in securities market matters, fitness, undisputable integrity and independence.

**Renewability of a term:** While outside the level of detail required under Principle 2, some jurisdictions reported that their statutory framework permits a governing board member and/or its head to be re-elected under certain conditions and for a number of times, while others have no statutory limitations regarding the number of terms for which a head and/or a governing board member could be reappointed.<sup>34</sup>

**Removal criteria and procedures:** The majority of jurisdictions have reported that their statutory framework includes clear and specific criteria and procedures for the removal of the regulator's head and/or governing board members for just cause, irrespective of the term of office. The removal criteria would generally include serious reasons, such as absenteeism or inactivity, incapacity to discharge their duties, serious misconduct, criminal offence or breach of their obligations, declaration of bankruptcy or if they are otherwise found unfit or unable to discharge their functions as a member. Individuals can typically be removed by a government body, a legal body or a resolution of the parliament, or by the regulator's governing board in the case of the head. Any proposal of removal must be accompanied by grounds of removal. In some jurisdictions, the head of the regulator or governing body could be removed by giving a period of notice, but without the statute specifying the criteria for removal. Such broad powers of removal are not consistent with the underlying principle, even if the powers have not been used.

**Ongoing accountability (KQ 6a):** Another key factor under Principle 2 is the importance of ongoing accountability, i.e., the regulator should be publicly accountable in the use of its powers and resources to ensure that the regulator maintains its integrity and credibility.

All participating jurisdictions have reported that they are subject to different kinds of accountability requirements on an ongoing basis to the relevant government body or the legislature, or both, under statutory provisions for the use of their powers and resources (monetary and non-monetary). Such accountability typically ensures that the regulator maintains its integrity and credibility.

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<sup>34</sup> KQ5: Liechtenstein, Angola, West African Monetary Union (WAMU).



**Annual Report:** Many participating jurisdictions noted that they must prepare and submit to a government body or the legislature, or both, an annual report, or other periodic reports or records. The annual report typically includes an overview of the regulator's functioning, governance, activities, proceedings, performance with respect to its objectives, operations, financing, use of its resources and regulatory and supervisory activities for the previous year. The annual report may include the regulator's annual financial statements. Further, it often includes the regulator's strategic plan or activity program for the following year(s).

**Accountability hearings:** Many participating jurisdictions reported that they must appear before a parliamentary committee for general accountability hearings on an ongoing basis. Such hearings permit the regulator's use of its powers and resources to be scrutinized, as well as to publicly respond to any requests for information on its work from members of parliament.

**Transparency of the accountability system (KQ 6b):** With reference to the system of accountability for the regulator's use of its powers and resources, the regulator is required to be transparent in its way of operating and use of resources and to make public its actions that affect users of the market and regulated entities, excluding confidential or commercially sensitive information.

All jurisdictions reported that they are required under statutory provisions to be transparent in their way of operating and use of resources, to make public their actions that affect market participants and regulated entities, and their receipt and use of funds is subject to review or audit.

**Operations and use of resources:** In several jurisdictions, it is a statutory obligation to make the annual report public. Most jurisdictions will typically include their financial statements, financial highlights detailing their sources of income and expenses or provide their financial statements as a separate report to the annual report. Such information provides transparency on how the regulator operates and uses its resources.

**Audit and review (KQ 6c):** Within the context of the regulator's accountability in the use of its powers and resources, the regulator's receipt and use of funds should be subject to review or audit. All participating jurisdictions have reported that their receipt and use of funds is subject to an audit by a government auditor or body at least annually.

**Audit by an external qualified auditor:** The majority of jurisdictions have reported that the accounts of the regulator are subject to an audit by an external qualified auditor at least annually. Such audits may typically be conducted by a comptroller general, a national audit office or a court of auditors that report to the parliament or a ministerial authority. The qualified auditor may be appointed by the regulator's governing board or a government entity with a specific term that may be or not renewable. The governing board of the regulator may also request the auditor to carry out specific verifications with respect to the regulator's use of funds.

**Written reasons for material decisions (KQ 7a):** Under Principle 2, there should be a system permitting judicial review of final decisions of the regulator. More specifically, there should be means for natural or legal persons adversely affected by a regulator's decisions or exercise of administrative authority ultimately to seek review in court.

The regulator should provide written reasons for its material decisions. The regulator need not be required by the legislation to give written reasons, provided that it has formal written procedures as to when it will do so.

The vast majority of participating jurisdictions<sup>35</sup> have stated that the regulator is required by statutory provisions to provide written reasons for all material decisions made under their acts, including taking regulatory and supervisory measures, licensing, authorizing and taking disciplinary and enforcement actions.

**Reasons, legal grounds and considerations:** Several jurisdictions reported that they are typically required to state the underlying legal grounds or considerations on which the authority has based its assessment.

**For example:**

- In **Panama**, the SMV must support all its decisions and administrative acts, by means of the respective duly motivated resolutions, justifying the reasons for its decisions and guaranteeing all legal principles, including due process of law.

In several jurisdictions, the failure to provide written reasons may give the right to the affected person to file an appeal against the decision taken.

**For example:**

- In **Spain**, the CNMV must provide written reasons in fact and in law justifying its administrative decisions. Failure of the CNMV to do so gives the affected party the right to file an appeal with the courts against the decision taken.
- It is worth noting that, in **Luxembourg**, the CSSF has stated that the requirement to provide reasons is not imposed when reasons of external security or when the indication of the reasons in the decision risks to compromise the respect for the privacy of the private life of another person.

### **Sufficient procedural protections (KQ 7b)**

Principle 2 requires that regulator's decision-making process for material decisions should include sufficient procedural protections to be meaningful. All participating jurisdictions reported that their decision-making process includes sufficient procedural protections to be meaningful.

**For example:**

- In **Dubai**, under the Regulatory Law, all material DFSA decisions that may adversely affect a person must comply with a decision-making procedure set out in the law. Among other things, the affected person is given full details of the proposed action and

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<sup>35</sup> KQ7a: Except Chile.

all the reasons for the action and material relied upon. The person is then given the opportunity to make representations before a final decision is made.

**Right to be heard:** Several jurisdictions reported that the persons affected by a material decision of the regulator have the right to be heard and can appeal the decision to a judicial authority or an official body that is deemed to be independent within a certain delay of notification. When there is a hearing, the affected person is typically invited to attend the hearing with their legal representatives. Moreover, the regulator's written decisions may typically include, as required under statutory requirements, instructions relating to the right to appeal.

**Administrative sanctions:** In most jurisdictions, affected persons must be notified in advance of administrative sanction proceedings. The affected persons can typically be heard and submit representations before the sanction is resolved. The affected person also has the right of judicial appeal.

**Representations by the affected person (KQ 7c):** Under Principle 2, the persons affected by a material decision of the regulator should be permitted to make representations prior to such a decision being taken in appropriate cases. All of the participating jurisdictions have stated that a person affected by a material decision of the regulator (e.g., administrative sanctions, enforcement actions, disciplinary actions) must be notified beforehand and can submit representations, in writing or in person, or both, and any supporting documents to the regulator before the decision is taken. As such, the regulatory framework will typically require that the regulator provide notice in writing to the affected person in advance of their rights to produce further representations before a certain deadline.

**Independent review process (KQ 7d):** Under Principle 2, the material decisions taken by the regulator should be subject to a sufficient, independent review process, ultimately including judicial review.

The vast majority of participating jurisdictions<sup>36</sup> reported that their material decisions (e.g., licensing, authorizing, sanctions and enforcement) made under their act and regulations are subject to a sufficient and independent review process, including judicial review of the final decision. The review process can either be done by a judicial authority or an official body that is deemed to be independent from the regulator.

**Independent review.** Some jurisdictions have stated that their statutory framework provides that certain regulator's decisions made under its act are subject to a review by an independent adjudicative body established by law, such as a financial services tribunal, or judicial authorities.

**For example:**

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<sup>36</sup> KQ7d: Except Fiji and Palestine.

- In **India**, the Securities Appellate Tribunal (SAT) has been established and any person aggrieved by the order of SEBI may appeal before SAT. Further, any person aggrieved by an order of SAT may appeal before the Supreme Court of India.
- In the **Isle of Man**, the decision taken by an independent adjudicative body following a review of a regulator's decision can further appeal to judicial authorities.
- In **Italy**, the acts and regulations adopted by the regulator can also be reviewed by judicial authorities.

**Confidentiality and commercially sensitive information protection (KQ 8):** Under Principle 2, where accountability is through the government or some other external agency, the confidential and commercially sensitive nature of information in possession of the regulator must be respected. Safeguards should be in place to protect such information from inappropriate use or disclosure.

Where accountability through a government or another external agency exists, the majority of participating jurisdictions<sup>37</sup> reported that statutory requirements set out how commercially sensitive and confidential information is protected, including information that could be provided to a government body or other external party, which may include judicial courts, an external comptroller or auditor, or a state authority in another jurisdiction. Such statutory requirements provide the appropriate safeguards to prevent the inappropriate use or disclosure of sensitive and confidential information to a government body or an external party.

**Confidentiality requirements.** In the case of accountability through a government or another external agency, several participating jurisdictions, reported they are subject to strict confidentiality statutory requirements or restrictions, which apply to commercially sensitive information when provided to a government body and/ or external party and aim at preventing inappropriate onward disclosure or use of such information. Such a requirement typically provides they can only transmit confidential and commercially sensitive information to a government body or an external party only under specified and limited circumstances.

### 5.2.3 Gaps in Implementation

#### OPERATIONAL INDEPENDENCE FROM POLITICAL INTERFERENCE (KQ1a, 1b):

The ISIM Review found a few cases where a government or a ministerial body has the powers to make decisions related to certain day-to-day operations of a regulator. The existence of such powers is not consistent with Principle 2. Such cases are noted below.

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<sup>37</sup> KQ8: The following participating jurisdictions responded Not Applicable to KQ8: Bahamas, Japan FSA, Japan MAFF, Japan METI, West African Monetary Union (WAMU), Mauritius, Kazakhstan, Czech Republic, Liechtenstein, Luxembourg. The reason for responding Not Applicable varied among jurisdictions. For example, in Japan, the FSA, MAFF, and METI did not delegate their accountability to other agencies. Some jurisdictions also had overarching laws that prohibit disclosure of confidential information.

**Palestine** does not appear to have the ability to operate on a day-to-day basis without external political interference.<sup>38</sup>

In addition to being independent from political interference, under Principle 2, it is also essential for jurisdictions to have the ability to operate on a day-to-day basis **without interference from commercial and other sector interests**. **Palestine** does not appear to have this ability.<sup>39</sup>

**Decisions appealing:** In **Singapore** and for some regulators in **Japan**, appeals from certain day-to-day decisions can be made to the relevant Minister, resulting in specific day-to-day regulatory decisions ultimately being made by the relevant Minister.

**Powers to direct the regulator:** In **Hong Kong**,<sup>40</sup> **Japan**, **Australia**, **UK** and **India**,<sup>41</sup> a government body or a Minister has statutory powers to direct the Regulator about how they perform functions. Even if the government body or Minister does not, in practice, get involved in the day-to-day operations of the regulator or the powers are rarely used, such statutory powers are not fully in line with the underlying intention of Principle 2.

#### **PROCESS OF CONSULTATION WITH, OR APPROVAL BY, A GOVERNMENT BODY ESTABLISHED BY LAW (KQ2)**

**Consultation process established by law:**<sup>42</sup> **Palestine** does not appear to have a consultation process established by law or other statutes in cases where a consultation with or approval by a government minister or other authority is required for certain regulatory policy matters under their remit.

#### **STABLE AND CONTINUOUS SOURCE OF FUNDING (KQ3)**

**Insufficient funding:** **Argentina**, **Trinidad and Tobago**, **Uruguay** and **Brazil** have stated that they do not have sufficient funding to meet their regulatory and operational needs or are concerned their funding will be sufficient in the future. In **Argentina**, the CNV<sup>43</sup> has declared

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<sup>38</sup> KQ1a

<sup>39</sup> KQ1b: Except Palestine.

<sup>40</sup> For Hong Kong, as per section 11 of the Securities and Futures Ordinance (Cap. 571), the powers to direct the regulator may only be exercised by the Chief Executive after consultation with the SFC Chief Executive Officer and if it is considered necessary in the public interest. This can be viewed as a tool of last resort to implement necessary remedial measures in a critical situation from a financial stability perspective. This reserve power has never been invoked.

<sup>41</sup> For India, as per section 16 of the SEBI Act, 1992, SEBI is bound by the directions of the Central Government in writing on questions of policy, and not on matters with regards to supervisory or other functions. Further, the decision of the Central Government whether a question is one of policy or not is final.

<sup>42</sup> KQ2a

<sup>43</sup> CNV Argentina has reported that, although the CNV continues to have difficulties in attracting and retaining qualified personnel, as well as in investing in technological development, in recent years a great

that the funding of the CNV is not extensive enough to meet its operational needs, such as to attract and retain qualified personnel, and for the development of appropriate technology. In **New Zealand** and **China**, funding pressures due to factors such as an expanding remit or growth of the market raise concerns about the adequacy of future funding levels. For **Uruguay**, the SSF made a diagnosis of its structure and proposed some organizational modifications with an increase in personnel in 2014; however, staffing has decreased since then, notwithstanding some functional reorganization. Since March 2015, the Executive Branch, through the Planning and Budget Office (OPP), has ordered budget restrictions. This has affected the replacement and contracting of new personnel and the capacity to keep the infrastructure and software that supports regulation and supervision in an optimal functioning.

**Funding uncertainty.** In **Brazil**, the CVM's funding depends on the annual approved budget, which is often reduced any time at the discretion of the Ministry of the Economy. This annual budget process to which the CVM is subject to makes planning for medium- and long-term priorities subject to uncertainties. In **Chile**, the CMF acknowledged that the funding resources provided have been sufficient thus far. However, there are concerns about whether the funding will be sufficient to meet the CMF's future regulatory and operational needs.

#### **ADEQUATE LEGAL PROTECTION (KQ 4)**

##### **Protections from legal liability:**

- In **Panama** and **France**, it does not appear that the regulator, the head, and members of the governing body of the regulator, as well as its staff, are accorded adequate legal protection for the bona fide discharge of their governmental, regulatory and administrative functions and powers.
- In **France**, there is no specific legal protection for the AMF Staff, besides the protection that stems from the French Civil Code, which is not different from any other private legal person in this jurisdiction.
- In **Panama**, the SMV's staff (including former staff) do not have qualified immunity from personal liability for actions taken in good faith within the scope of the regulator's authority. In fact, all the staff of the Superintendence of the Securities Market are subject to criminal and civil investigation for faults committed during their work.
- In **Italy**, CONSOB has adopted an internal resolution for dealing with the reimbursement of legal expenses afforded by their staff sued by third parties in connection with the performance of their functions in the event a final verdict exonerates them from liability. An employee may request that Consob provide monetary advances on such reimbursement but only at the conclusion of each level of the lawsuit and provided that the total absence of his/her liability is ascertained. The ISIM Review found that such practices may raise

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effort has been made to improve the working conditions of personnel, as well as in the development of an enhanced monitoring system that allows the CNV to improve its powers of supervision and control of the market. CNV is also currently working jointly with the Inter-American Development Bank (IBD) on different projects related to the development of the entity's regulatory and technological capacities. This is also relevant under Principle 3 KQ3.

some concerns since monetary advances for the reimbursement are only granted ex post, i.e., that staff would be required to bear their own legal costs in defending themselves, at least until the favourable conclusion of each level of the lawsuit.

## **MECHANISMS TO PROTECT INDEPENDENCE FOR HEAD AND GOVERNING BOARD (KQ 5)**

Under Principle 2, the head and governing board members of the regulator should be subject to mechanisms intended to protect independence, such as procedures for appointment; terms of office; and criteria for removal.

The following **more specific gaps in implementation** on this issue have been identified:

- **No term of office: Japan and Mexico** stated that the regulator's head and/or governing board members were appointed with no stipulated term of office. In Japan, however, even if there is no stipulated term of office, the Cabinet adopts a policy that the changes in positions of all public officials will be determined by taking into account, among others, prevention of potentially harmful effects associated with long-term employment in the same positions.<sup>44</sup> For Mexico, the Ministry of Finance is the officer in charge of the appointment of the head of the regulator. The term of office is part of the mechanisms that help protect the independence of the regulator. If there are no elaborate, clear and efficient criteria for the removal of the head and governing board, the lack of a term of office may be detrimental to the regulator in the case a single board member or the head ceases to meet the stipulated criteria.
- **Ministers or other government officials on boards:** As set out in the report, regulators need to carefully consider the composition of their boards if a board contains Ministers or other government officials without having the necessary legal and institutional safeguards in place to ensure the independence of the regulator and to avoid conflicts of interest it may lead to a public perception that there may be political interference in operational matters.

## **ONGOING ACCOUNTABILITY (KQ 6a)**

Another key factor under Principle 2 is the importance of ongoing accountability, i.e., the regulator should be publicly accountable in the use of its powers and resources to ensure that the regulator maintains its integrity and credibility.

## **TRANSPARENCY OF THE ACCOUNTABILITY SYSTEM (KQ 6b)**

With reference to the system of accountability for the regulator's use of its powers and resources, the regulator is required to be transparent in its way of operating and use of resources and to make public its actions that affect users of the market and regulated entities, excluding confidential or commercially sensitive information.

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<sup>44</sup> Japan has a clear written policy stating that long-term employment is potentially harmful and must be taken into account (<https://www.cas.go.jp/jp/gaiyou/jimu/jinjiyoku/files/000094910.pdf> (In Japanese only)).

The ISIM Review found that the regulator in **Fiji** does not publish information about enforcement action taken or does so only in limited cases, therefore not complying with this principle which requires the regulator to make public their actions that affect market participants and regulated entities.

#### **INDEPENDENT REVIEW PROCESS (KQ 7d)**

Under Principle 2, the material decisions taken by the regulator must be subject to a sufficient, independent review process, ultimately including judicial review.

**Fiji** and **Palestine** have reported that their material decisions (e.g., licensing, authorizing, sanctions and enforcement) made under their act and regulations are not subject under their statutory framework to a sufficient and independent review process, including judicial review of the final decision.

### **5.3. Principle 3: The Regulator should have adequate powers, proper resources, and the capacity to perform its functions and exercise its powers.**

#### ***IOSCO Methodology***

Under Principle 3, the regulator should have adequate powers, resources and capacity to perform its functions and exercise its powers, both in regular and emergency situations, and should be consistent with the size, complexity, and type of the markets that regulator oversees its need to perform essential regulatory functions effectively. To achieve this, regulator is required to have adequate financial and non-financial resources.

This includes powers of licensing, supervision, inspection, investigation, and enforcement. It also includes the capacity and resources to attract and retain appropriately trained, qualified, and skilled staff to perform its functions and exercise its powers, while being able to provide ongoing training to its staff.

Under Principle 3, appropriate governance must also be demonstrated through the ability of the regulator to formulate its strategic direction and deliver its mandate. This could include, but is not limited to, governance practices for developing priorities and responsive strategies.

The regulator should also play an active role in promoting the education of investors.

#### **5.3.1. Implementation Overview**

The basic premise of Principle 3 is for the regulator to be able to clearly demonstrate that it has adequate powers, proper resources (including adequate funding), and the capacity to perform its functions and exercise its powers, both in regular and in emergency situations. The powers and resources of the regulator should be consistent with the size, complexity, and type of the markets that it oversees and its need to meet the functions contained in these Principles.



Such powers include, more specifically, powers of licensing, supervision, inspection, investigation, and enforcement; as well as the capacity and resources to attract and retain appropriately trained, qualified, and skilled staff to perform its functions and exercise its powers, while being able to provide ongoing training to its staff. The regulator should play an active role in the education of investors.

The ISIM Review found that, overall, a high level of implementation by participating member jurisdictions has been observed for Principle 3. Generally, participants have demonstrated that they have adequate powers, resources and capacity to perform their functions and exercise their powers. However, a few gaps have been identified by the Review Team in terms of sufficient powers, funding and staff retention strategies. These gaps, as well as some identified good practices have been described below.

### 5.3.2. Findings

#### Regulatory powers (KQ1)

The ISIM Review for Principle 3 found that the vast majority of participating jurisdictions have a comprehensive statutory framework that provides the relevant statutory powers and authorities to fulfill their mission and regulatory functions under their remit.

All participating jurisdictions but one<sup>45</sup> reported that they have adequate powers to perform their regulatory functions by having a clear definition of such powers. Clear definitions of powers were mostly observed in primary securities and/or derivatives law, as well as subordinated law.

#### Funding (KQ2)

In accordance with Principle 3, it is important for the regulator to ensure that it has adequate funding to permit it to fulfil its responsibilities, taking into account the size, complexity and types of functions subject to its regulation, supervision or oversight.

The following are a few examples to demonstrate this point:

#### Consideration of market conditions, market size, and market activities:

- **Liechtenstein FMA's** supervisory levy system is linked to the number of supervised entities. Consequently, increasing numbers of supervised entities leads to increased funding, which in turn allows the FMA to expand resources adequately and in step with market development. However, a decrease in the number of supervised entities needs to be cushioned by a contribution from the State of Liechtenstein, which accounts for a maximum of 21 % of the FMA annual budget. This funding structure ensures the ability to fulfil its obligations also under market conditions with negative growth rates.
- **Spain** is entirely funded by the financial sector. Moreover, its funding also consists of assets and securities making up its initial capital and the returns for this capital, and annual surplus

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<sup>45</sup> KQ1: Except Palestine.

that can be used to cover losses incurred in the previous years and create reserves. This demonstrates the regulator's capacity to easily use its annual surplus or reserves to cover its expenses for years where its revenues have decreased for reasons related to market activities. Such a practice is beneficial as it provides sufficient funding for the regulator to fulfil its responsibilities notwithstanding the market activities.

#### **Budget management:**

- **Portugal:** In order to ensure its funding is adequate, the CMVM has recently created an internal committee, the CMVM Budget Implementation Committee, which is in charge of different tasks, such as to monitor the budgetary implementation indicators and having discussions on different matters that can affect the CMVM's budget and financial results (e.g., forecast information and projections of results and management balances for the end of the year, main items of expenditure and revenue, recent evolution in IT projects and human resources).
- The **UK FCA** publicly consults each year about proposed changes to its fees policy. This consultation is related to the FCA annual business plan that includes, among other things, the budget to enable the FCA to recruit, retain and train sufficient numbers of skilled supervisory staff. The consultation also provides for changes to the fees where there are changes in the scope of the supervisory work undertaken by the FCA, thus ensuring that it can always have adequate funding to fulfil its responsibilities, taking into account the possible growth of those responsibilities over time.
- **Dubai FSA:** It is stipulated by DIFC Law that the DFSA has an independent budget, and the Government shall allocate to the DFSA the necessary funds for exercising its duties and powers independently from the other DIFC bodies. Under the DIFC Law and the Regulatory Law, the DFSA is permitted to carry on its functions free from interference and to exercise its powers and perform its functions in an independent manner. Funding is assessed on the basis of estimates of income and expenditures prepared by the DFSA and submitted to the DIFC President for approval. The DIFC President also approves an investment policy for the investment of any DFSA surplus funds.

The ISIM Review found that most participating jurisdictions<sup>46</sup> have adequate funding and resources to perform their functions and fulfil their responsibilities. Participating jurisdictions have identified sources of funding that vary from one jurisdiction to the next, which is to be expected.

Some of the sources of funding identified include:

- budget allocation from government;
- allocation from the central bank;
- fees or levies imposed on regulated entities;
- administrative fines;

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<sup>46</sup> KQ2a: Except Palestine, Panama, Trinidad and Tobago, Uruguay, Brazil, Argentina and Slovenia. Concerns were also identified about the adequacy of future funding in both China and New Zealand.

- income from investments of reserves; or
- a combination of these funding sources.

However, some regulators have faced difficulties in funding to meet existing and future regulatory functions, for various reasons, including:

- an expanding remit, austerity programs introduced by the federal government
- a new conduct regime being introduced
- rapid market growth or special expenses
- longer-term challenges in the areas of human resources, IT and training.

In terms of budget allocation, the ISIM Review found that most participating jurisdictions<sup>47</sup> are able to affect the operational allocation of resources once funded. However, the participating jurisdictions appear to have different levels of flexibility in managing their budgets.

Some jurisdictions stated that they have flexibility as to how they allocate resources once funded by using risk-based analysis and budget flexibility as stipulated in the law. While other jurisdictions have less flexibility because of the government and in certain cases need approval for surplus and unexpected expenses. Furthermore, this lack of flexibility has also been observed due to government expectations on the regulator's mandate. In addition, some jurisdictions have identified their own initiatives, aiming to increase flexibility such as legislation amendments and agreement with Treasury to cover costs.

In general, the ISIM Review found that all regulators have dedicated time and resources to plan and manage their budget so that adequate funding could permit them to fulfil their responsibilities.

### **Professional Staff (KQ3)**

The majority of jurisdictions across the four IOSCO regions<sup>48</sup> reported that available resources allow them to attract and retain experienced and skilled staff. That said, in some cases, participating jurisdictions have noted that they still face some challenges in attracting and retaining experienced staff.

To maintain professional staff, the following obstacles were identified by some participating jurisdictions preventing them from carrying out their regulatory mandates include: 1) funding; 2) non-competitive salary scale; and 3) dependence on government decisions.

The ISIM Review found that a few participating jurisdictions have identified issues regarding hiring and retaining skilled staff due to a lack of resources.

For example, in **Chile**, due to the structure of the CMF's budget, there could be challenges in attracting and retaining staff for certain positions as well as international training. Regarding

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<sup>47</sup> KQ2b: Except Palestine, and Trinidad and Tobago. N.B.: Portugal replied "N/A".

<sup>48</sup> KQ3: Except: Palestine, Greece, West African Monetary Union (WAMU), Brazil, Chile, Bahamas, Argentina, Slovenia, Egypt, and Spain.

international training, it is a challenge because specialized training needs are generally not available domestically.

Moreover, some participating jurisdictions have highlighted that the current salary scale is proving difficult to attract and retain staff. Many participating jurisdictions noted that potential employees are attracted to better salaries offered by industry and other government bodies.

For example, a few participating jurisdictions, including **Argentina**, have stated that funds received from the government's budget are insufficient to attract and retain qualified personnel and develop appropriate technology<sup>49</sup>. In **Bahamas**, difficulties in retaining experienced and skilled staff at the non-management level exist due to salary differences between the regulator and the private sector. For **Egypt**, the Egyptian law sets a maximum income limit for government employees through a specific equation linking the maximum income with the minimum paid, which results in a huge salary difference between the regulator and the private sector.

Many jurisdictions have stated that dependence on government decisions about salary and the number of employees are the main hurdles to attracting and retaining professional staff.

For example:

- In **Slovenia**, the Agency is not in a position to decide freely on new positions or on salary levels. The salary system does not allow for a competitive payment and, as a result, it is difficult to hire highly qualified personnel. This rigidity prevents the Agency from paying a premium to attract and retain highly qualified employees irrespective of their official grading.
- **Brazil** requires authorization from the Minister of the Economy to hire new staff which has affected its recruitment efforts. The decrease in the number of staff mainly stems from the authorization to fill vacant positions, including those left vacant due to retirement.
- In **Mexico**, the salary scale structure depends on authorization by the central government, due to the budgetary process provided by the Mexican legislative framework, which makes it difficult to attract and retain experienced and skilled staff. The Mexico CNBV is a decentralized administrative body of the Ministry of Finance (SHCP), and its budget depends on the authorization of its SHCP, governing body and the salary structure corresponds to the Ministry of Public Administration and the SHCP.
- **Spain** requires authorization from the government to hire new staff or to increase the salaries of the current staff, which makes it difficult to comply with new supervisory functions and to retain and attract skilled staff.

To successfully maintain professional staff as well as to ensure sufficient expertise, the following are examples of **programs** that many regulators have implemented:

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<sup>49</sup> Please refer to Principle 2 KQ3 (Footnote 43)

- Staff rotation;
- Secondments to and from industry, or to and from other agencies;
- Training and other professional development programmes;
- Clear job description, delegation, assessment and rewarding;
- Work-life balance;
- Succession planning;
- Job security in the civil service;
- Flexibility of working arrangements (i.e., remote working, flexible working hours);
- Other intangible benefits.

Some regulators have also initiated more **specific strategies**, including:

- Benchmarking of staff salaries against the private sector;
- Strategies that use a broad range of monetary and non-cash rewards to incentivize and recognize strong performance;
- Scholarships and continuing professional development for professionals (Masters and Postgraduate courses, study leave);
- In-house seminars on technical issues, also on a remote basis;
- Institution's talent development policy;
- Tax benefits;
- Other benefits such as health insurance for staff and their families, full health insurance, various bonuses, tuition subsidies for offspring, continued education for staff, motherhood benefits;

#### **Adequate Training (KQ4)**

The vast majority of participating jurisdictions<sup>50</sup> have stated that they ensure that their staff receive adequate ongoing training. In this respect, they typically offer, on an ongoing basis, a wide range of in-house and external relevant training sessions and courses that are overseen by the regulator's human resources division.

The **collective training strategies** which are implemented across all regions are:

- in-house, external or a combination of both trainings;
- seminars and workshops;
- staff rotations and/or secondment opportunities as part of training strategies;
- discussions mentoring programs;
- annual talent reviews;
- individual capability planning;
- setting up of training academies or compulsory training modules that needed to be completed upon joining the regulator;
- continuing professional development based on staff requirements.

Each participating jurisdiction has its own schemes to provide continuing education training programs.

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<sup>50</sup> KQ4: Except Brazil and Slovenia.

The following are examples of some practices identified during the ISIM Review that might be helpful for all jurisdictions:

- **Liechtenstein** and **Kuwait CMA** have internal process to regularly identify each employee's needs in training and education for their development or future career paths.
- **Belgium FSMA** has a training program for each employee based on its objectives for the year. A specific team of Learning and Development provides to the employees a broad scope of internal and external training. Some thematic seminars are organized to keep the FSMA employees up to date with changes in law or market practices.
- **Gibraltar FSC** has a Learning & Development Officer who provides staff with adequate training and a Learning Management System with a library of e-learning.
- **Luxembourg** has initial and ongoing training to ensure the adequacy at all times of its staff's expertise with the speed of evolution of markets and financial products, as well as with the work methods and techniques of the supervised entities.
- The professional development program in the **Czech Republic**, encourages employees to expand their professional skills by setting developmental goals in the process of employee assessment carried out twice a year. This step ensures that professional development is included in the appraisal interview with their managers as a formal outcome is required. In order to meet all developmental goals, the human resources division provides employees with a catalogue of internal courses as well as international courses that are available to employees. Furthermore, employees are entitled to seek out courses and trainings (or conferences) that suit their current needs. Training costs (including tuition and all related travel expenses) are covered by the Czech National Bank (CNB).
- The **UK FCA** maintains People Capability Plans that look at short and medium-term capability needs in the organization. The FCA Academy offers high-quality structured learning and a program of events which keeps the FCA employees up to date with financial markets and changes in the financial services and regulatory landscapes. Furthermore, the FCA runs a program of strategic secondments across the UK, Europe and internationally that allows its employees to support the FCA's international agenda, work on key policy issues, and develop skill sets and careers. FCA senior leaders also benefitted from a leadership program, run in partnership with Oxford Saïd Business School.
- **Dubai FSA** has an active Learning & Development Program in place with a wide range of study programs (both internal courses and outsourced ones). Feedback is collected after training programs and the quality of courses is monitored. Moreover, all DFSA employees are subject to an annual Development Review, which aims at identifying future development of skill sets and knowledge requirements as appropriate to the individual's responsibilities.
- **Singapore MAS** introduced a digital skills curriculum, ACT (Analytics-Driven, Customer-Centric, Tech-Enabled) to ensure greater data and digital awareness and skillsets. Courses in the three areas (organized by pathways) are sponsored for all staff. A foundational data analytics course is also embedded as a mandatory program for fresh graduate hires.

In terms of training scope or topics, most regulators cover both soft and technical skills, including domestic and international programs, from foreign regulators as well as international organizations (i.e., IOSCO, FSB, IMF, BIS, ESMA). Such training sessions and courses are generally oriented through new regulatory developments in relation to the work and the mission of the regulator, as well as other matters such as accounting, leadership, and technology. Capacity building activities organized by IOSCO such as IOSCO Seminar Training Program

(STP), IOSCO/PIFS-Harvard Law School Global Policy Development Seminar and IOSCO Technical Assistance Program are good sources of training for regulators' staff.

In addition, and as briefly touched on above, some emerging markets in the IARC region have reported their funding restrictions could prevent them from providing more advanced training to take into account the evolving nature of securities markets and the skills needed to regulate and supervise these markets.

For example, **Brazil** has encountered significant restrictions on technical staff training and cannot implement its capacity training plan due to a series of budget constraints in the last few years. Given the budget restrictions and prioritizations, it is only possible for the CVM to offer management and leadership training and data science.

### **Policies and Governance (KQ5)**

In accordance with Principle 3, when assessing the regulator's governance, it is important to go beyond the framework of rules and practices by which the regulator ensures accountability, fairness, and transparency. A regulator's governance also needs to go into the ability of the regulator to formulate its strategic direction and deliver its mandate. This could include, but is not limited to, governance practices for developing priorities and responsive strategies.

The ISIM Review found that most participating jurisdictions have policies and governance practices to perform their functions and exercise their powers effectively. For example, in some jurisdictions, governance frameworks can be found within executive committees and/or consultative committees.

Various mechanisms are in place to ensure accountability, fairness, and transparency. The internal governance policies and guidelines are mostly documented and undertaken, including internal audit functions, regulatory compliance, human resource management and payroll, general administration, confidentiality and privacy data protection, and IT.

Apart from internal processes and guidelines, other mechanisms that have been implemented among participating jurisdictions include: the publication of policies, guidelines opinions, annual statements for priorities of the year, audit system, review program, delegation framework, and internal committees.

With regard to audit and review mechanisms, most participating jurisdictions have internal audit systems or continuous review programs to check if functions and powers are being properly exercised. For example, many participating jurisdictions have codes of ethics and *ad hoc* monitoring mechanisms aimed at avoiding conflicts of interests, including the appointment of a third party that is responsible for verifying compliance with such codes.

Other participating jurisdictions maintain a Board Charter which is reviewed on an annual basis and sets out the authority, responsibilities, membership, and operation of the Board. The Charter is to be read in conjunction with the Act. Further to the Board Charter, the Committees also maintain Terms of Reference which are also reviewed on an annual basis.

For other governance practices, the majority of participating jurisdictions appear to have a

delegation framework to ensure approvals are only delegated to appropriately senior staff.

### **Investor protection (KQ6)**

The importance of investor protection and investor education in securities regulation cannot be over-emphasized in that it may enhance investors' understanding of the role of the regulator and provide investors with the tools to assess the risks associated with particular investments and to protect themselves against fraud (and other abuses). Investor education and financial literacy programs can also be useful tools for securities regulators in supporting their regulation and supervision.

The ISIM Review clearly observed that the most common tool used by regulators is to provide information on their websites, either a specific section on their website and/or operate a separate website that is dedicated to investor protection and education. Such websites typically provide investors with basic financial information to help them understand financial products, assess their financial situations, and make appropriate and informed decisions, provide lists of persons and entities that can offer financial products, information on investment frauds and the rights and recourse of the fraud victims in the jurisdiction.

The following examples of good investor education and protection practices cover a variety of policies and strategies:

- In **Portugal**, the National Council of Financial Supervisors, which include the CMVM, launched in 2011 the Portuguese National Plan for Financial Education in order to increase the likelihood of more informed financial decisions, improve the level of financial knowledge of the population, and enhance consumers' understanding of financial concepts, products and risks. This plan follows the High-Level Principles on National Strategies for Financial Education issued by the OECD International Network for Financial Education.
- In **Greece**, a specialized unit of the Hellenic Capital Market Commission (HCMC), the "Department of Citizen Information" receives and processes complaints from investors regarding possible violations of Securities Legislation. This is the main task of the Department of Citizen Information. Apart from that Department, the HCMC has established a Citizen Information Office, which provides information to the public on issues relating to the HCMC and advises citizens on the procedures to be followed in their dealings with the HCMC (information on the procedure of complaints' handling is also included). More recently, the HCMC was asked to participate as a public authority to the Ministry of Finance's initiative for the development of a national strategy on financial literacy in Greece. This initiative aims at assessing the level of financial literacy in the population, identify financial education needs of various groups, coordinate future initiatives of various authorities and entities and develop a national financial education policy. This initiative is implemented by the OECD in co-operation with the European Commission. Furthermore, HCMC started its own initiative for financial literacy - the first initiative was in relation to the judges of the administrative courts when dealing with capital markets issues. It is now planning more initiatives, including workshops for students as well as investors.
- In **Brazil**, the CVM has a dedicated investor education and protection department. The CVM also has partnered with the OECD to establish the OECD/CVM Centre on Financial



Education and Literacy in Latin American and the Caribbean. The Centre is a hub for the LAC Regional Network on Financial Education.

- In **Mauritius**, the law provides for setting up of the Financial Services Fund (FSF) and the fund to promote the education of consumers of financial services, including with a recent focus on Fintech. The initiatives have been held in this respect, which include an Information Kiosk for consumers of financial services, information campaigns through various media channels (Radio, television, print media, billboards, social media), Creative Art Competition (short videos and cartoon strips), the quiz and essay competition for secondary schools, videos that are broadcast on national TV during peak times to explain crowdfunding, peer to peer, inter alia, financial literacy in the printed press, competitions targeted at young people with Fintech theme, implementing a dedicated website for Financial literacy, awareness session with SME's and the public at large. and regular consumer outreach sessions.
- In **India**, SEBI has launched a programme called 'Securities Market Trainers (SMARTs)', under which appropriately qualified/experienced individuals/organizations conduct investor awareness programs, free of charge, for the participants. This program has enhanced SEBI's investor education activities by complementing the related activities of SEBI-recognized investor associations and Market Infrastructure Institutions. Further, SEBI and the Market Infrastructure Institutions and Intermediaries have issued Investor Charters to promote transparency, enhance awareness, trust and confidence among the investors about the securities market. All the investor charters have been made available on the websites of SEBI and respective entities.
- In the **Czech Republic**, free manuals for teachers and workbooks for primary and secondary students are provided. Also, seminars for teachers, financial education in the regions in partnership with selected universities and lectures for senior citizens are organized.
- In **Australia**, programs are in place to support teachers to deliver financial literacy classes in classrooms.
- In **Belgium**, the FSMA's Brussels office is also the home of the WikifinLab, the Belgian centre for financial education. The WikifinLab fulfils the mission of contributing to financial education that has been entrusted to the FSMA by law. It was opened by the Belgian Queen in 2021; it offers elementary and secondary school pupils an educational and interactive experience on money matters and management. The entirely digital experience is unique in the world. The participant follows an innovative numeric path with interactive gaming and where explications are given in real time based on the interactions between the student and the objects displayed. FSMA staff members are invited to become occasional guides and to teach and entertain a group of pupils at the WikifinLab.

Other examples of tools and practices used by participating jurisdictions with respect to investor education and investor protection are as follows:

- a dedicated department, team, or area in charge of financial education;
- special offices within the regulator to protect and educate investors;
- a subsidiary to be a dedicated educational organization;

- financial capability programs with other government agencies and businesses, tertiary providers and schools;
- mobile applications for investors (developed by regulators);
- participation in media discussions;
- newspaper articles;
- advertising campaigns;
- having authorized individuals who conduct financial education;
- investor awareness campaigns;
- outreach activities to consumer and local schools.

### 5.3.3. Gaps in Implementation

#### REGULATORY POWERS (KQ1)

- **Palestine:** the Palestine Capital Market Authority (PCMA) appears to have authority toward the stock market, membership firms, listed companies, custodies, investment funds and licensed individuals.

#### FUNDING (KQ2)

The following jurisdictions have been identified as having inadequate funding:

- **Panama** reported that its funding was not adequate since there are many needs such as better technological systems, more technical staff, as well as more training.
- **Trinidad and Tobago** identified that its funding was not adequate, as the budget was allocated less than requested amount over the years. TTSEC is in the process of revising its current fee structure to ensure cost recovery and funding for all regulatory activities.
- **Brazil** identified that as CVM has received reductions in its budget and while resources have allowed CVM to maintain its day-to-day operations, it lacks sufficient resources, as well as control over the allocation of its budget.
- **Argentina** noted that funds are not extensive enough to attract and retain qualified personnel, and the development of appropriate technology.<sup>51</sup>
- **Palestine:** PCMA determines its budget based on the estimation of its revenues from the sectors under its supervision, so that it measures quarterly the deviation from the budget and justifies that deviation to the Budget Committee.
- Some jurisdictions noted that there were various pressure points in terms of funding. Two jurisdictions, which are **China** and **New Zealand**, identified that they recently had funding pressures, due, for example, to an expanding remit, rapid market growth or special expenses.

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<sup>51</sup> Please refer to Principle 2 KQ3 (Footnote 43)

- The **Uruguay SSF** has a budget that is assigned by the Board of the Central Bank of Uruguay (BCU), the funding for the cost of regulation of the financial system comes from a fee that is charged to the regulated institutions according to law. The fee is stated as a percentage either of their assets or their earnings from commissions and it is paid on a monthly basis to the BCU, but it is not directly assigned to the SSF. In 2014, the SSF made a diagnosis of its structure and proposed some organizational modifications with an increase in personnel but, staffing has decreased since then, notwithstanding some functional reorganization. Since March 2015, the Executive Branch through the Planning and Budget Office (OPP) has ordered budget restrictions. This has affected the replacement and contracting of new personnel and the capacity to keep the infrastructure and software that supports regulation and supervision in an optimal functioning.

### **PROFESSIONAL STAFF (KQ3)**

The following gaps have been identified in relation to retaining and maintaining professional staff.

- **Brazil** identified the CVM requires authorization from the Minister of the Economy to hire new staff. This requirement is the main factor identified by the CVM that has affected its recruitment efforts. For example, as of 2017 the CVM had 521 staff compared to 566 in 2015. The decrease mainly stems from the fact that the CVM has not been authorized to fill vacant positions, including those left vacant due to retirement. In order to enhance the CVM's effectiveness in discharging its mandate, consideration should be given for CVM to be able to independently hire new staff.
- **Argentina:** The CNV has highlighted that funds received from the government's budget are insufficient to attract and retain qualified personnel and develop appropriate technology. The CNV should continue to raise these concerns to the government, including conducting benchmarking studies to substantiate their request for additional resources.<sup>52</sup>
- In **Greece**, the HCMC cannot take any initiatives for the recruitment of new staff as it follows the procedure applicable for the staff recruitment in the public sector. Moreover, the salaries of HCMC staff were reduced due to the financial crisis in Greece, which is the same as the salaries of public sector staff in general.
- In **Slovenia**, the Securities Market Agency (SMA) indicated that the resources are not sufficient to perform the Agency's tasks easily and effectively as stipulated by law. They highlighted various limitations, including reduction of fees collected from sharp reduction of market participants, more mandates to implement EU law as well as ESMA activities, uncompetitive payment system to acquire highly skilled professionals, dependent on government for fee structure, new employment, and salary levels. In this regard, the Agency has been trying to be exempted from the public services salaries system, and to achieve the same status as the Bank of Slovenia.

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<sup>52</sup> CNV Argentina has reported that, as of the beginning of 2022, the efforts made by the board of directors resulted in an appreciable improvement in the salary levels of the CNV staff.

- **Palestine**, PCMA determines its expected revenues from its operations; meanwhile budget deficit is covered by Palestinian government provisions.

#### **ADEQUATE TRAINING (KQ4)**

- In **Brazil**, given the budget restrictions and prioritization efforts, it is only possible for the CVM to offer management and leadership training and MBAs focused on data science. To enhance the skills of staff more broadly across the board, the CVM could consider tapping on IOSCO capacity building program, as well as webinars/online workshops that are offered by other international organizations and regulators.

### **5.4. Principle 4: The Regulator should adopt clear and consistent regulatory processes.**

#### ***IOSCO Methodology***

The Methodology for Principle 4 states that clear, consistent, transparent procedures and processes are part of fundamental fairness and of a framework for developing regulatory decisions and for undertaking regulatory actions that assure accountability.

IOSCO's Methodology also states that transparency policies must, however, balance the rights of individuals to confidentiality, and regulators' enforcement and surveillance needs, with the objective of fair, equitable and open regulatory processes.

Principle 4 further states that, in exercising its powers and discharging its functions, the regulator should adopt processes which are:

- consistently applied, comprehensible, transparent to the public, and fair and equitable.

The Principle further states that, in the formulation of policy, the regulator should:

- have a process for consulting with the public including those who may be affected by the policy;
- publicly disclose its policies in important operational areas;
- observe standards of procedural fairness;
- have regard to the cost of compliance with the regulation.

Many regulators have authority to publish reports on the outcome of investigations or inquiries, particularly where publication would provide useful guidance to market participants and their advisers. Any publication of a report must be consistent with the rights of an individual to a fair hearing and the protection of personal data - factors that will often preclude publicity when a matter is still the subject of investigation.

#### **5.4.1. Implementation Overview**

The basic premise of Principle 4 is to ascertain that the regulator not only has clear, consistent, transparent and fair procedures and processes as part of a framework for developing regulatory decisions and for undertaking regulatory actions that assure accountability, but also that it has a process for consulting with the public including those who may be affected by the policy; publicly discloses its policies in important operational areas; observes standards of procedural fairness; and has regard to the cost of compliance with the regulation.

Principle 4 can raise certain implementation challenges for jurisdictions. For example, in terms of procedural rules and regulations, it is important to be able to demonstrate whether there are specific laws, rules or procedures that govern the administrative structure and whether they are clear, accessible and transparent.

It is also important to be able to demonstrate whether there is a public consultation process, i.e., whether all rules and regulations are available to the public, including rulemaking procedures.

Finally, it is equally important to be able to explain whether and how these procedural rules are consistently applied, whether they are fair and equitable and known to the public, i.e., whether rules and regulatory policies or decisions are publicly disclosed and explained.

The ISIM Review has found that, overall, a high level of compliance has been observed regarding the implementation of Principle 4. Most of the participants have demonstrated that they have clear and equitable procedures, consult with the public, publicly disclose their policies, have regards for cost of compliance and observe standards of procedural fairness, transparency, and confidentiality. However, some gaps have been noted in terms of clear procedures, and procedural fairness and confidentiality standards. These gaps, as well as some good practices, have been further described below.

#### **5.4.2. Findings**

##### **Clear and Equitable Procedures (KQ 1-2)**

One of the key requirements of Principle 4 is that the regulator must demonstrate that it is subject to reasonable procedural rules and regulations. All participating jurisdictions except one<sup>53</sup> have specific laws that govern their administrative structures in a clear and comprehensible manner.

Based on IOSCO's Methodology, for an effective consultation process, it is essential to have formal processes for public consultation to be followed with identified specific timeframes and method of consultation. As such, it is important for regulators to have a process for consulting with the public, or a section of the public, including those who may be affected by a rule or policy, for example, by publishing proposed rules for public comment, circulating exposure drafts or using advisory committees or informal contacts. The majority of participating jurisdictions<sup>54</sup> were observed as having such mandatory processes.

The IOSCO Methodology also requires that regulators publicly disclose and explain their rules and regulatory policies, not including enforcement and surveillance policies, in important operational areas, such as through interpretations of regulatory actions, setting of standards, or issuance of decisions stating the reasons for regulatory actions. They do so, for example, via

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<sup>53</sup> KQ1: Except Palestine.

<sup>54</sup> KQ2a: All participating jurisdictions except Argentina, Palestine, Fiji and West African Monetary Union (WAMU).

their respective websites and/or their official public bulletins and social media platforms or in other public ways.

In addition to disclosing press releases, policy statements, rules and guidelines on their websites, several jurisdictions make use of industry briefings and focus group meetings to explain policies and practices, as well as any changes to relevant rules and policies. Some jurisdictions have additional tools such as consultative committees, ad-hoc consultations, special working groups discussion. These tools help gather wider inputs from key stakeholders. The vast majority of participating jurisdictions<sup>55</sup> fulfill this requirement to publish their administrative processes on their respective websites, thereby demonstrating transparency to the public.

As seen above, while not all participating jurisdictions fulfilled the requirement to publicly disclose and explain their rules and regulatory policies in important operational areas, it bears noting that all participating jurisdictions<sup>56</sup> publicly disclose changes and reasons for changes in rules or policies and make all their rules and regulations available to the public.

In terms of the requirement for regulators to make rulemaking procedures readily available to the public, the majority of participating jurisdictions<sup>57</sup> met this requirement.

The following are a few examples of how certain participating jurisdictions demonstrated that they have a formal process for public consultation:

- In **Argentina**, the CNV's relevant laws and regulations, as well as General Resolutions and Particular Actions, including the summary, underlying order and grounds for its decisions, are available on its website. These resources are accessible in Spanish, with some also provided in English. This promotes transparency of regulatory actions, not just for domestic participants, but also foreign market participants interested in the Argentinean securities market. Furthermore, although not mandatory, the CNV conducts dialogues with market participants as a matter of good practice to ensure changes in regulations are applied in a coordinated manner. The CNV also regularly conducts public consultations with market players on proposed standards.
- In **Türkiye**, procedural rules regarding CMB's activities are regulated by the CMB in the relevant communiques. These rules have to be detailed, clear, consistent and reasonable. Reports prepared on investigations are not made public. The CMB only publishes a short summary of its decisions on its website and these summaries are consistent with the rights of individuals, including confidentiality and data protection. All CMB decisions are subject to judicial review, and those who are affected by these decisions can request their annulment in administrative courts.
- In addition to disclosing press releases, policy statements, rules and guidelines on its website, the SCB in **Bahamas** makes use of industry briefings and focus group meetings to explain policies and practices, as well as any changes to relevant rules and policies.

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<sup>55</sup> KQ2b: Except Fiji.

<sup>56</sup> KQ2c, KQ2e:

<sup>57</sup> KQ2f: Except Fiji and Palestine.

While in **Chile**, the CMF periodically publishes on its website administrative acts that establish criteria of interest for regulated markets.<sup>58</sup> In **Ontario, Quebec and British Columbia**, the OSC, the BCSC and the AMF each have a statutorily mandated process for consultation with the public that applies to its rules, policies and annual statement of priorities. These participating jurisdictions have also established a number of consultative advisory committees and groups to provide input on important securities regulation issues and industry trends.

### *Costs of compliance (KQ 2d)*

An effective consultation process may be responsive to the need to consider the impact of regulation and to have regard to the costs of compliance with regulation. The regulator should generally be able to assess the use of its resources.

The majority of participating jurisdictions<sup>59</sup> self-assessed themselves that they had regard to the costs of compliance with regulation and have specific legal or formal provisions that require them to have regard to the costs of compliance with their respective laws.

Some jurisdictions are required by government guidelines to prepare a regulatory impact assessment, including assessment of costs and benefits, for all policy projects which may result in regulation, others prepared and published a regulatory impact statement for significant policy issues others were required by legislation to consider the costs of proposals and implementation.

Other jurisdictions are not obliged to carry out a formal or detailed cost/benefit analysis, but stated that they evaluate or take into account the costs and benefits as part of the consultation process, for example, that consultation responses or advisory committees were likely to raise the costs of compliance with a proposal.

In practice, there are different levels of expectations among regulators, some have formal processes with full analysis, while some only consider cost and impact for essential rules and regulations.

It is important to note that regulators are not required, under this principle, to conduct a specific cost/benefit analysis in order to be found to have regard for the cost of compliance when framing regulatory policy.

The following are a few examples of practices put in place by certain participating jurisdictions:

- In **EU jurisdictions**, financial legislation originates largely from EU law (EU directives implemented in national law or directly applicable EU regulations). The EU Commission applies cost impact analysis before proposing any new EU law. The European

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<sup>58</sup> [http://www.cmfchile.cl/institucional/inc/dictamenes\\_consulta.php](http://www.cmfchile.cl/institucional/inc/dictamenes_consulta.php)

<sup>59</sup> KQ2d: Except WAMU, Bahamas and Argentina.

Supervisory Authorities (ESMA in particular) that prepare technical implementing rules also apply cost-benefit analysis and take into account the proportionality Principle.

- In **Brazil**, the CVM takes into account the costs of compliance, as the Economic Freedom Law requires the undertaking of regulatory impact analyses when proposing new rules. Furthermore, in 2019, the CVM updated its internal procedures for rulemaking to introduce criteria for the prioritization of regulatory impact analyses.
- In **Australia** and **New Zealand**, regulatory impact statements are required to be published for policy proposals which may result in regulation.
- In **China, Thailand, New Zealand** and **Australia**, a feedback statement or other public statement is published setting out comments received on a consultation and the regulator's response.
- In **France**, six consultative commissions have been created to assist the FR AMF Board to address topics of different natures (Retail Investors, Markets and Exchanges, Clearing, Custody and Securities Settlement, Individual and Collective Asset Management, Disclosures and Corporate Finance, and a recently established Climate and Sustainable Finance Commission.) This gives its members representing the different sectors concerned by the proposed modification an opportunity to express their views and provide AMF Board with their opinion.

### Procedural fairness (KQ 3)

The majority of jurisdictions<sup>60</sup> have rules in place to ensure persons dealing with the regulator were provided with procedural fairness, including the right to appeal, the ability to have decisions expressly made in writing, and the right to hearings. These elements encourage fair and equitable regulatory processes. These generally include a combination of procedural requirements set out in relevant legislation and internal policies, procedures, manuals and complaints procedures. These procedures were typically specified in requirements in the relevant law of the regulator or in some cases in legislation about decision-making procedures that applied generally to all government agencies. In other cases, jurisdictions had internal processes designed to ensure procedural fairness was provided.

The vast majority of participating jurisdictions except one<sup>61</sup> had requirements in their jurisdiction for the regulator to provide reasons in writing for the decisions that affect the rights or interests of others. Many others provided written reasons as a matter of practice (even if not formally required by laws). It bears noting that the IOSCO Methodology does not require that the regulator be required by legislation to provide reasons, provided that it has written procedures as to when it will do so.

In terms of ensuring that all material decisions made by the regulatory are subject to review, the vast majority of participating jurisdictions<sup>62</sup> assessed that this is the case in their respective jurisdiction. However, while the material decisions of those participating jurisdictions are

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<sup>60</sup> KQ3a: Except Palestine and WAMU.

<sup>61</sup> KQ3b: Except Palestine.

<sup>62</sup> KQ3c: Except Fiji and Palestine.



subject to review, in the case of two participating jurisdictions<sup>63</sup>, those decisions are not subject to judicial review where they adversely affect legal or natural persons.

Good examples of effective procedural rules and mechanisms in discharging regulatory functions are the following:

- having rules in place for procedural fairness;
- giving reasons for regulatory decisions that affect others;
- all material decisions are subject to review; and
- judicial review available for adversely affected persons.

All jurisdictions made public the general criteria for granting, denying or revoking a licence<sup>64</sup>.

### **Transparency and Confidentiality (KQ 4)**

The IOSCO Methodology states that transparency practices, such as publication of reports on the outcome of investigations or inquiries, where permitted, should be consistent with the rights of an individual to a fair hearing and the protection of personal data, factors that will often preclude publicity when a matter is still the subject of investigation.

All jurisdictions are subject to laws restricting the publication of confidential information, with some exceptions mentioned below. In relation to investigation reports, most noted that the restrictions against disclosing confidential information applied to information in such reports.

A number of regulators cited policies of not commenting on investigations and other actions until a formal decision had been made and/or the period for an appeal has expired. In addition, when disclosing decisions, a number of jurisdictions alluded in their responses to protecting information about trade secrets and privacy.

All but one jurisdiction<sup>65</sup> have a framework to ensure that the rights of individuals, particularly on confidentiality and the protection of personal data, are respected before reports on investigations are made public. Many regulators also have within their legislation, provisions to protect information related to their respective investigative procedures. In most jurisdictions, all personal and/or sensitive data are also restricted from being made publicly available.

### **Consistent Application (KQ 5)**

As mentioned previously, under Principle 4, it is important for jurisdictions to be able to explain whether and how their procedural rules are consistently applied, whether they are fair and equitable and whether they are known to the public, i.e., whether or not the rules and regulatory policies or decisions are publicly disclosed and explained.

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<sup>63</sup> KQ3d: Slovenia and WAMU.

<sup>64</sup> KQ3e

<sup>65</sup> KQ4: Except Fiji.

All participating jurisdictions<sup>66</sup> demonstrated that the exercise of their powers and discharge of their its functions are consistently applied.

- In **Czech Republic**, the CNB's supervisory unit discloses its approaches in official information documents and provides information about generalized findings from its work in supervisory benchmarks and methodological and interpretative documents. The CNB also publishes and regularly updates an overview of applicable decrees, measures of a general nature and CNB financial market related opinions on its website in the "Supervision and Regulation" section. Further, the CNB communicates with market participants and the general public via published opinions and answers to questions related to financial market regulation.
- **Italy's** Consob issues internal instructions to staff regarding the performance of specific activities, such as a manual on calculating the amount of administrative pecuniary fines to be proposed in case of violations of securities laws, a manual on procedures for on-site inspections where all the procedures to be followed by Consob's inspectors are detailed, a procedure for the investigation of market abuses, a manual on the sanctioning proceeding, procedures for information flows in connection with new legislative initiatives, and a procedure for handling investors complaints.
- In **Luxembourg**, the functioning of each CSSF department is set out in an internal procedures manual that describes all the tasks to be performed by CSSF staff, acts as a guide to carry out such tasks, allows to standardize, and ensure coherence in the prudential approach adopted.
- In **United Kingdom**, during enforcement and authorization, the FCA has to follow specified procedural rules and regulations, which are published online, including in the following documents: Our Mission; Our Approach to Supervision; Our Approach to Competition; Our Approach to Consumers; Our Approach to Enforcement; Our Approach to Authorization.

### 5.4.3. Gaps in Implementation

Although not widespread, some shortcomings in the implementation of Principle 4 were observed, in particular regarding:

- Absence of guidance provided to the regulated population/the public as to how the participating jurisdiction interprets its authority;
- Absence of public disclosure of policies in important operational areas. such as failure to provide any guidance to the regulated population or to the public as to how the regulator's authority is interpreted, as well as failure to publicly disclose policies in important operational areas.

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<sup>66</sup> KQ5

Generally speaking, guidance to market participants on regulatory requirements should be provided regularly, and not on a case-by-case basis. Otherwise, there is a significant risk of inconsistent interpretation of the provisions of the relevant securities legislation.

Furthermore, jurisdictions must ensure that their review procedures are transparent. Failure to have transparent procedures may lead to a lack of public and market confidence in the jurisdiction's authority and perceived independence.

**Gaps in implementation** have been mainly observed with regard to

#### **CLEAR PROCEDURES FOR PUBLIC CONSULTATION (KQ 2)**

- During the review of **Fiji** and **Palestine**, certain gaps in implementation were observed, including the lack of a process for publishing of proposed rules for public comment, etc. (KQ2a). While it appears that rules and policy changes go through a consultation process in **Fiji**, the consultations do not appear to be published but instead provided only to select stakeholders who may be affected. The lack of requirement for public consultation, including making its rulemaking procedures readily available to the public (KQ2f), is considered to be a gap in implementation.
- In **Fiji**, in addition, information about regulatory action is not published or is published only in limited cases, which is a gap in terms of transparency of processes (KQ2b).
- While in practice it appears that the **WAMU** does inform interested parties in writing of any decisions made by it, there does not seem to be a legal requirement in place that is known to the public to ensure procedural fairness (KQ3).

#### **CONFIDENTIALITY (KQ 4)**

- In **Fiji**, while restrictions on publication of confidential information apply to information in investigation reports, the law requires investigation reports to be sent to the Minister, who then has discretion to publish the report. Such a broad discretion to publish could result in non-compliance with this principle.

### **5.5. Principle 5: The staff of the Regulator should observe the highest professional standards, including appropriate standards of confidentiality**

#### ***IOSCO Methodology***

This Principle refers to the integrity and the means for achieving and demonstrating the integrity of the regulator and its staff.

The Principle states that the staff of the regulator should observe the highest professional standards and be required to follow clear guidance on matters of conduct including:

- The avoidance of conflicts of interest
- Restrictions on the holding or trading in securities subject to the jurisdiction of the regulator and/or requirements to disclose financial affairs or interests
- Appropriate use of information obtained in the course of the exercise of powers and the discharge of duties

- Observance of confidentiality and privacy provisions and the protection of personal data
- Observance by staff of procedural fairness standards in the performance of their functions

The Principle also states that there should be processes to investigate and resolve allegations of violations of the above standards and legal or administrative sanctions for failing to adhere to these standards.

### **5.5.1. Implementation Overview**

The basic premise of Principle 5 is to ascertain whether the staff of the regulator are required to observe the highest professional standards and to follow clear guidance on matters of conduct including: the avoidance of conflicts of interest (including the conditions under which staff may trade in securities); the appropriate use of information obtained in the course of the exercise of powers and the discharge of duties; the proper observance of confidentiality and privacy provisions and the protection of personal data; the observance of procedural fairness standards; and, any failure to meet standards of professional integrity is subject to sanctions.

The ISIM Review has found that compliance with Principle 5 was generally very high. All of the participating jurisdictions in the ISIM review have legislative requirements or a Code of Conduct setting out professional standards for staff relating to preventing conflicts of interest and preventing the misuse or disclosure of confidential information. Further, most<sup>67</sup> of the participating jurisdictions reviewed had processes for investigating and enforcing breaches of the standards. However, some gaps have been identified which could constitute a potential conflict of interest with respect to trading, observance of confidentiality and privacy, procedural fairness and investigation of violations of these standards. These gaps, as well as some good practices, have been further described below.

### **5.5.2. Findings**

#### **Avoidance of conflicts of interest (KQ 1a)**

Under Principle 5, participating jurisdictions must demonstrate that they have a clear code of conduct that includes written guidance related to the code of conduct, the avoidance of conflicts of interests, any restrictions for staff on the holding or trading in securities and/or requirements to disclose financial interests.

The ISIM Review found that all participating jurisdictions have in place adequate measures to ensure avoidance of conflicts of interest for their staff.<sup>68</sup> While some jurisdictions relied on generally applicable public sector legislation or codes of conduct or ethics, many of them had internal guidance which helped ensure that conflicts of interest for staff were minimized. These conditions of employment, which included mandatory disclosures and cooling-off period after resignation, were made clear in employees' employment contracts and codes of conduct.

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<sup>67</sup> Except WAMU and AIFC Astana.

<sup>68</sup> KQ1a

The following are some examples of ways in which certain participating jurisdictions ensure the avoidance of conflicts of interest:

- In **Argentina**, there is a two-pronged approach whereby the CNV is subject to the Federal Law on Public Ethics, which provides guidelines to all civil servants in avoiding conflicts of interest, as well as an internal code of conduct with specific provisions on the avoidance of conflicts of interest.
- **France AMF** staff are subject to national law and internal rules with regards to conflicts of interest - rules that apply in regard the conflict of interests stem from national law, which states that it is forbidden for an individual exercising a mission of general interest to take, receive, directly or not, any interest within a firm or relative to an operation in which he was, in full or only partially, in charge of its surveillance, administration, liquidation, or payment. There is a 3-year period during which every new staff member is forbidden to interact (supervision, control, etc.) with its previous employer. In the same way, a staff member cannot leave the AMF for an entity which he or she supervised or controlled in the last 3 years. AMF internal rules also state that members of the AMF staff exercise their duties with dignity, respect, integrity, and remain aware to prevent, or put an end to, any situation of conflict of interest.
- The **UK FCA** publishes a Conflict of Interests Policy which outlines the different kinds of conflicts of interests or perceived conflicts of interests, including personal relationships, family members, and financial relationships, as well as a procedure for disclosing conflicts of interest. The FCA's conflicts of interest policies generally include the following key elements: a duty to avoid conflicts of interest; a duty to declare any actual conflicts of interest or potential conflicts of interest; where a conflict has been disclosed, the staff member is excluded from handling such matters; consequences for breaching of policy – e.g., that it may result in disciplinary action or dismissal.

Some of the above-mentioned measures also often apply to board members and some participating jurisdictions have in place board-specific strict policies to directly mitigate conflicts of interest among board members.

The following are a few examples:

- In the **Czech Republic**, membership of the CNB board shall be incompatible with any activity which might cause any conflict of interest between the performance of this activity and membership of the CNB board.
- In **Greece**, HCMC board members are prohibited from participating directly or indirectly in any action or conduct which relates to areas of HCMC's remit of regulation and supervision. In case of infringement of the relevant provision, without prejudice to any disciplinary or criminal measure, the Minister of Finance may revoke the appointment of the board member.
- The **France** Board members are also subject to the rules, that also stem from the financial and monetary code and from the law on independent administrative authorities requiring

each member to disclose any interest he or she has, within 3 years before nomination, in any social, economic and financial activity, and of any mandate relative to a legal person.

**Leaving the Authority:** Most participating jurisdictions seem to require a cooling-off period after resigning from the organization.

For example:

- **AIFC Astana** has in place cooling-off provisions for Executive Body member and staff, which consist of 3 months restriction for employment at the entity regulated by the Astana Financial Services Authority (AFSA) unless given express consent of the AFSA.
- Similarly, **China** and **India** have restrictions in place for staff who resigned from working with businesses they supervised for 1-3 years. **France** has a 3 year- cooling-off period upon termination of employment. If a staff member leaves the AMF, they have to go through a screening process to check whether they have been in a control, supervision or decision-making situation during the last 3 years.

### **Restrictions on holding of securities and trading (KQ 1b)**

The ISIM Review found that all but two participating jurisdictions<sup>69</sup> have measures in place regarding restrictions on holding of securities and trading. These measures range from complete prohibition to restrictions for the holding and trading of securities by employees. Some jurisdictions prohibited short term transactions. Many jurisdictions require disclosure of interests in securities upon employment and then notification of any further trading in securities.

For example:

- In the **Dominican Republic**, the SIMV's Code of Ethics contains provisions regarding the holding or trading of securities, including the use of privileged and confidential information, proper disclosure, and acting in accordance with ethics standards.
- In **North Macedonia**, according to the Code of Conduct, the President, Commissioners and employees, may not possess shares or manage legal entities under the Commission supervision or to which the SEC granted a license. They are obliged to inform the commission about their portfolio of securities and inform about acquisition or disposal of securities within 5 days.

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<sup>69</sup> KQ1b: Except WAMU and Panama.

- In **Liechtenstein**, the purchase or addition of securities during the term of the employment contract or the executive body function in legal entities supervised by the FMA is generally prohibited for persons working for the FMA. Other types of acquisition are subject to disclosure. All disclosure declarations are subject to review and approval by the Disclosure Board.
- In **Luxembourg**, CSSF's Code of Conduct distinguishes between different categories of private financial transactions by CSSF staff members: private transactions allowed without notification, prohibited private transactions, private financial transactions with preliminary notification to the Executive Board and other private financial transactions which are subject to preliminary authorization by the CSSF.
- In **Angola**, CMC employees may not, directly, or indirectly, carry out any transactions on financial instruments, except in the following cases: if the operations are for public funds or retirement savings funds; if the Board of Directors, in writing, authorizes it.
- In the **United Kingdom**, employees are not allowed to invest in FCA-regulated firms. FCA employees are also not permitted to invest in securities for non-regulated companies on a short-term, speculative basis. Permission will normally not be granted to sell any securities or related investments if the securities have been held for less than 6 months. Similarly, for **Brazil**, securities must be held for at least 6 months unless there is a reason for trading them. In this case, trading must be approved by the Board of Commissioners.
- **Quebec AMF**: in addition to ethical Principles and rules of conduct prescribed by the Code of Ethics (ss. 21.1-21.8), which contains specific rules that may apply to the purchase or sale of securities, on January 11, 2017, the AMF added provisions pertaining to securities transactions conducted by staff members to its Code of Ethics and Professional Conduct.
- In **India**, according to the SEBI (Employees' Service) Regulations, 2001, employees of SEBI are not permitted to make any direct or indirect investments in equity and equity related securities, except units of Mutual Funds, non-convertible bonds and non-convertible debentures, and in rights issues in respect of the shares already held by them before joining the services. This also applies to investments made by spouse, dependent children, dependent parents and dependent parents-in-law of the employee. Employees are also prohibited from speculating in securities, shares or commodities of any description.

### **Appropriate use of information & Confidentiality and privacy provisions (KQ 1c, d)**

Under Principle 5, participating jurisdictions must also demonstrate that their staff are required to observe requirements pertaining to the appropriate use of information obtained in the course of the exercise of powers and the discharge of duties as well as the observance of confidentiality and privacy provisions and the protection of personal data.

A combination of measures including legal and internal policies to ensure appropriate use of information and safeguarding of confidentiality and privacy provisions clearly communicated to and acknowledged by staff is desirable.

This ISIM Review found that all participating jurisdictions have in place requirements prohibiting the misuse of information by staff.<sup>70</sup> In general, strict safeguards apply to prevent inappropriate use or disclosure of commercially sensitive information.

Furthermore, all participating jurisdiction has in place requirements pertaining to the observance of confidentiality and privacy provisions and the protection of confidential or personal data. Generally speaking, these requirements were typically contained in professional secrecy laws applying generally to public sector officials, in the specific legislation governing the regulator, or in the organization's internal rules and Code of Conduct, or a combination of these measures.

The following are examples of measures that can be put in place to respect these requirements:

- Binding professional secrecy laws: all members of staff and management, internal bodies, members, employees and individuals who provide any service, directly or indirectly, permanently or occasionally, among others.
- Official secrecy laws, which prohibit staff from unauthorized disclosure of information obtained in the course of their work.
- Professional secrecy obligations for many participating jurisdictions extend to after the termination of employment.
- Laws that stipulate that employees should ensure the proper use of information obtained in the course of their activities, and refrain from exploiting information that comes to their knowledge by virtue of the functions performed and prohibits misuse of information.
- Laws that prohibit officers, and employees or agents from disclosing confidential information, without the consent of the person to whom the confidential information relates. Such laws set out further minimum standards relating to the handling of confidential information including that staff must comply with internal policies for dealing with confidential information, make sure that such information is provided to other staff only if they have a legitimate need to know the information and ensure that unauthorized access is not given to the confidential information.
- Additional restrictions on information use (e.g., putting in place an information management policy, hiring a data protection officer, etc.).

The following are a few additional examples of measures put in place by specific participating jurisdictions to meet the above-mentioned requirements:

- In the **Czech Republic**, the CNB does not hand over confidential and/or commercially sensitive information to the government or any other external agency.
- **Gibraltar** has an appointed Data Protection Officer (DPO) who is responsible for overseeing questions in relations to the GFSC's privacy policy. The DPO will communicate the decision of whether or not the GFSC will accede to any information request in mind with a person's legal rights.

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<sup>70</sup> KQ1c



- **Trinidad and Tobago's** Code of Conduct states that information accessed, or confidential information gained shall not be divulged to persons outside the Commission including family members, friends or other staff members who do not need the information in the normal course of their duties. Employees are required to sign a Confidentiality Undertaking with the Commission and comply with the provisions of the law. Employees have an obligation to ensure that any data and information (electronic or otherwise) which come into their possession by virtue of employment or role within the Commission, must be held in the strictest confidence and are to be inaccessible to unauthorized persons. The obligation not to disclose confidential information continues after termination of employment.
- **FSC Guernsey** has demonstrated good practices for appropriate use of information & confidentiality, including an Acceptable Usage Policy regarding Commission information that all staff are required to read and sign.

### **Procedural fairness in the performance of their duties (KQ1e)**

All but one participating jurisdiction<sup>71</sup> have reported that their staff are required to observe requirements or a "Code of Conduct" or other written guidance pertaining to observance of procedural fairness standards in performance of their functions. Some jurisdictions have specific provisions that can ensure its fairness standards. Some have been identified in their own legislation, or in general Acts applicable to public sector agencies, or under common law in the performance of their duties.

Although the legislative requirements have been set out, it is beneficial to provide additional guidance in staff handbooks or other internal procedures. These could warrant consistency of approach, aiming for procedural fairness. Individual staff are therefore required to comply with those procedures when carrying out regulatory functions.

To achieve procedural fairness standard of staff, some regulators apply other mechanisms such as legal proceedings when non-compliance and application of core values:

Examples of jurisdictions that have such specific provisions are:

- **Italy:** Article 19 of the Consob Regulation no. 13859 of December 4, 2002 ("Consob Regulation on Staff") obliges employees to behave with diligence and fairness.
- **Luxembourg:** Article 14(1) of the CSSF Law, identifies that prior to taking up their duties within the CSSF, all staff members have to declare upon oath "...to fulfil [their] duties with integrity, thoroughness, and impartiality...". Staff must exercise the functions solely in the public interest and comply with the internal procedures, guidelines, and staff documents.
- **Portugal:** The Portuguese Constitution, CRP, and the Administrative Procedure Code CPA, define the fundamental Principles in carrying out administrative activity.
- **Dubai:** Under the Regulatory Law and other legislation administered by the DFSA, regulatory decisions are subject to procedural fairness requirements and processes.

<sup>71</sup> KQ1e: Except Palestine.

- **India:** In accordance with the SEBI (Employees' Service) Regulations, 2001, at the time of joining SEBI, employees have to declare upon oath to be faithful, true and execute and perform the duties with the best of skill and ability. Employees shall maintain strictest secrecy and not communicate any information to any person who is not legally entitled thereto. All employees are required to conduct themselves with utmost courtesy, integrity, discipline and fairness while discharging their duties.

### Processes to investigate and resolve violations (KQ 2a)

All but one participating jurisdiction<sup>72</sup> have processes for the investigation and resolution of breaches of standards. Investigation processes vary among participating jurisdictions. Typically, these involve complaints being investigated by a senior staff member (e.g., who was not involved in an operational area) or a small ethics team or committee.

A number of participating jurisdictions identified that processes to investigate and resolve allegations of violations of standards include appropriate levels of escalation (e.g., for a hearing and/or referral to criminal prosecution in the case of certain offences). In most cases, there is an internal audit or compliance department that investigates allegations. However, some jurisdictions relegate this function to the HR department.

While many participating jurisdictions have specific investigation processes in place when an allegation of violations has occurred as well as procedures and roles of internal audits, the following is an example of how one participating jurisdiction, the **Québec AMF**, handles such allegation of violations:

A staff member must co-operate with the President and CEO and the Ethics and Professional Conduct Committee on any matter related to ethics and professional conduct when asked to do so. (Section 26 of the Code of Ethics)

- A staff member must diligently **report any compliance violation** that he or she is aware of. Further to a report by a staff member through the ethics line, members of the **Ethics and Professional Conduct Committee** convene to analyze the matter in order to find the best solution for the AMF under the circumstances. Committee members may meet with persons in connection with the report for their version of the facts.
- After examining the entire matter, the committee will make recommendations to the CEO so that a decision can be issued regarding any penalty against the alleged perpetrator (art. 33 of the Code).
- Policy on the disclosure of wrongdoings is administered by **AMF Internal Audit** (adopted on May 1, 2017). Any AMF staff member can, at all times, disclose information that shows that a wrongdoing has been committed or is about to be committed in relation to the AMF. The AMF encourages all employees to promptly and diligently disclose wrongdoings.

<sup>72</sup> KQ2a: Except WAMU.

- Given that the disclosure of a wrongdoing identifies a person as an alleged perpetrator, the **confidentiality of the person's identity is protected** while an audit is under way and the person is offered the opportunity to give his or her version of the facts.
- The alleged **perpetrator must be able to respond** to the allegations against him or her during a meeting or by any other means of communication. Where a meeting is held, the alleged perpetrator may be accompanied by a person of his or her choice. Where appropriate, the CEO may consult any internal or external expert for assistance in their functions. Any person who takes part in an audit must handle all the information they have access to in a confidential manner.

### **Legal/administrative sanctions for failing to adhere to the required standards (KQ 2b)**

All participating jurisdictions have sanctions that could be imposed for breaches of standards, which represented a **full range** of possible administrative sanctions to criminal sanctions.

Sanctions include **administrative and disciplinary actions**, such as;

- warning / oral or written reprimand
- reduction in salary
- deferment / stoppage of increments
- pecuniary sanction / fine
- demotion
- transfer to another job / re-assignment of duties
- loss of holidays
- suspension [with/without remuneration:
- disqualification from the civil service
- dismissal

In the most serious cases (i.e., breach of professional secrecy obligation or insider trading provisions), there could be **criminal prosecution** resulting in;

- fines
- imprisonment

A number of jurisdictions pointed out that certain conduct may be **criminal** (e.g. entering into transactions creating a serious conflict of interest, misusing information, or breaching secrecy obligations) and could be referred to criminal authorities.

For example:

- In **Italy**, if the investigation outcome indicates possible criminal violations, the administrative internal procedure is suspended, and the case is reported to the public prosecutor.
- In **Israel**, breaches of these standards entailing criminal offenses are criminally enforceable. Independent of criminal prosecution, an ISA employee suspected of a disciplinary offence of inappropriate behavior, unfair behavior or crime involving moral turpitude of the Civil Service Discipline Law, can face civil charges in the Disciplinary Court established under the law.

- Violations of the duty of integrity in **Chile** are criminally and administratively investigated. Criminal prosecution is carried out by the Public Prosecutors Office, while administrative action is carried out by the Comptroller General of the Republic and the President of the CMF for the institution's own purposes.

### 5.5.3. Gaps in Implementation

#### RESTRICTIONS ON HOLDING OF SECURITIES AND TRADING (KQ 1b)

- In **Panama, Palestine** and **WAMU** there seems to be no requirement for employees to disclose financial affairs or interests.

#### OBSERVANCE OF CONFIDENTIALITY AND PRIVACY PROVISIONS AND THE PROTECTION OF PERSONAL DATA (KQ 1d)

- In **Trinidad and Tobago**, by virtue of section 14 of the Act, the Minister does not have access to confidential information obtained by the Commission in investigations etc. However, he or she can request the Minutes of meetings of the Board of Commissioners under section 17 of the Act but not to the actual documents submitted at those meetings. The fact that the Minister of Finance and the Economy is entitled, upon request, to have access to the minutes of the SEC or a committee thereof, and to receive from the SEC a copy of any of those minutes raises some concern pertaining to confidentiality.

#### PROCEDURAL FAIRNESS IN THE PERFORMANCE OF THEIR DUTIES (KQ 1e)

- In **Palestine**, there is no guideline for staff to ensure that they are fair and equitable in the delivery of their duties.

#### PROCESSES TO INVESTIGATE AND RESOLVE VIOLATIONS (KQ 2a, 2b)

- **WAMU** does not have any written investigation procedure concerning violations committed by staff. (KQ2 a)
- In **AIFC Astana**, there are no specific provisions in AIFC acts regarding processes to investigate and resolve allegations of violations of the standards yet. (KQ2 a)

## 6. CONCLUSION AND RECOMMENDATIONS

The ISIM on Regulator Principles (P1 - 5) reviewed the self-assessments submitted by 55 member jurisdictions covering a mix of developed and emerging jurisdictions across all the regions. The review was mainly aimed at getting a global overview of the status of implementation of these IOSCO Principles. Overall, the implementation of Principles 1-5 is found to be generally high across most of the jurisdictions, but some gaps were identified as described below.

## ***Recommendations***

In light of the gaps and corresponding recommendations, there can be a case for participating jurisdictions to consider approaching IOSCO for seeking, as necessary: (a) Support letter from IOSCO for endorsing the need for legislative reforms; and /or (b) capacity building/ technical assistance for implementing regulatory reforms.

### **Principle 1**

- **Palestine** should consider clearly defining and objectively setting out, preferably in law, its responsibilities, powers and authority, including their enforceability. (KQ 1a)
- For more effective oversight, **Palestine**, and **North Macedonia** should consider clear and transparent provisions and guidelines for the interpretation of their own authority. Providing guidance to stakeholders, including the public, on how a jurisdiction interprets its authority, is important because it provides clarity and certainty to the market. For consistency and transparency purposes, jurisdictions are encouraged to publish specific guidelines or decisions on how they interpret their authority. It is important for jurisdictions to publicly disclose their specific policies in important operational areas as this provides clarity and certainty to market participants. The interpretation of authority should also be subject to adequate review. (KQ 1b) and c))

### **Principle 2**

**Decision-making powers by a government of ministerial body (KQ1a):**

- **Ability to operate on a day-to-day basis without external political interference:** **Palestine** does not appear to have this ability. The government of the jurisdiction should consider putting regulatory measures into place to avoid the potential for such political interferences in the regulator's day-to-day operations or that could give rise to the perception of potential political interference.
- **Approval relating to operational activities: Italy, Gibraltar, Thailand, Japan, China and Australia** have reported that some decisions granting an authorization or licensing to certain types of market participants must be taken, under statutory provisions, by a government or ministerial body. The Government of these participating organizations should consider the continued appropriateness of the extent of the powers assigned to the Minister to ensure sufficient independence of those participating jurisdictions. Particular attention should be paid to the role of the government or ministerial body in relation to granting authorizations or licensing to certain types of market participants and decisions relating to licensing of exchanges, trading venues or clearing and settlement facilities.
- **Measures to prevent commercial and sectoral interference:** the ISIM Review found that **Palestine** does not appear to have the ability to operate on a day-to-day basis without interference from commercial and other sector interests. In order to prohibit any interferences from commercial and other sectoral interests and to ensure the impartiality and independence of their staff, head and governing board members from the political system and market participants, Palestine should consider implementing specific measures in their policies and internal rules, such as: prohibiting by statutory provisions the head,

governing board members and staff from exercising any professional or consulting activity; prohibiting the head and governing board members from being represented in industry bodies, or proposed, appointed or designated by the industry or by associations; establishing ethical standards of conduct to prevent conflicts of interest and other duties and obligations, etc. (KQ1b)

- **Powers to direct regulators: Hong Kong, Japan, Australia, UK and India** have reported statutory powers of the government to direct the regulator about policies, priorities or performance of functions<sup>73</sup>. Even if the government body does not, in practice, get involved in the day-to-day operations of the regulator, such statutory powers are not fully in line with underlying premise of Principle 2 (KQ1a). The governments of those regulators should consider the appropriateness of retaining such a power in light of the political systems in their jurisdictions.
- **Ministers or other government officials on boards:** As set out in the report, regulators need to carefully consider the composition of their boards if a board contains Ministers or other government officials without having the necessary legal and institutional safeguards in place to ensure the independence of the regulator and to avoid conflicts of interest it may lead to a public perception that there may be political interference in operational matters.
- **Decisions appealing:** In **Singapore** and for **some regulators in Japan**, appeals on certain day-to-day decisions could be made by a government or ministerial body, resulting in day-to-day regulatory decisions ultimately being made by the government. In Singapore and Japan, the regulator takes the view that the appeals process is sufficiently independent and accords procedural fairness both to the appellant and the regulator. That said, the Government of these participating organizations should consider the continued appropriateness of such appeals on day-to-day decisions to ensure sufficient independence of those participating jurisdictions.
- **Insufficient funding: Argentina CNV**<sup>74</sup> and **Trinidad and Tobago** have declared that they do not have sufficient funding to meet their regulatory and operational needs or are concerned their funding will be sufficient in the future.<sup>75</sup> They should consider carrying out further analysis regarding their specific funding needs and exploring ways to increase this funding. Formalizing their funding process towards a stable funding model will ensure that they are able to meet their operational needs, such as to attract and retain qualified personnel, and for the development of appropriate technology, including maintaining their independence from the Government. (KQ3)
- **Funding uncertainty.** In **Brazil**, the CVM's funding depends on the annual approved budget, which is often reduced any time at the discretion of the Ministry of the Economy. This annual budget process to which the CVM is subject to makes planning for medium-

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<sup>73</sup> For India, SEBI is bound by the directions given by the Central Government in writing on questions of policy only.

<sup>74</sup> Please refer to Principle 2 KQ3 (Footnote 43)

<sup>75</sup> CNV Argentina has reported that, as of the beginning of 2022, the efforts made by the board of directors resulted in an appreciable improvement in the salary levels of the CNV staff.

and long-term priorities subject to uncertainties. The CVM should consider exploring ways to secure the stability of the CVM's funding to enable it to better meet its regulatory and operational needs and limit, where possible, its dependence on the Government. In **Chile**, the CMF acknowledged that the funding resources provided have been sufficient thus far. However, there are concerns on whether the funding will be sufficient to meet the CMF's future regulatory and operational needs. **China, Uruguay and New Zealand** should ensure that they have adequate funding considering the growth of markets in **China** and the expansion of the regulator's remit in **New Zealand**.

- **Protections from legal liability:** **France** does not appear to have any protection from legal liability for the Board or staff in relation to acts made in good faith in the performance of any function, or in exercise or purported exercise of any power. (KQ4)
- **Qualified immunity:** In **Panama**, SMV's staff (including former staff) do not have qualified immunity from personal liability for actions taken in good faith within the scope of the regulator's authority. In fact, all the staff of the Superintendence of the Securities Market are subject to criminal and civil investigation for faults committed during their work. The SMV should consider providing to staff such immunity from personal liability for such actions.
- **Reimbursement of legal expenses:** In **Italy**, CONSOB should consider reassessing its internal resolution for dealing with the reimbursement of legal expenses afforded by their staff sued by third parties in connection with the performance of their functions in the event a final verdict exonerates them from liability or where an employee requests Consob to provide monetary advances on such reimbursement at the conclusion of each level of the lawsuit and provided that the total absence of their liability can be ascertained. The ISIM Review found that such practices may raise some concerns since both the reimbursement and the monetary advances are only granted *ex post*, i.e., that the staff would be required in any case to bear their own legal costs in defending themselves, at least until the favorable conclusion of each level of the lawsuit. The ISIM Review found that such practices may raise some concerns in the case where a regulator would wait after the conclusion of each level of the lawsuit – in case no responsibility is ascertained - to reimburse the staff's legal fees when the staff had presumably taken *bona fide* decisions or actions in connection with the performance of their duties. Staff would be required to bear their own legal costs in defending themselves until finally exonerated. As legal cost may be quite expensive, it is questionable if staff are sufficiently protected in such case.
- **No term of office:** **Japan** and **Mexico** should consider prescribing a stipulated term of office for their head and governing board in their statutory framework. The term of office is part of the mechanisms that helps protect the independence of the regulator. If there are no elaborate, clear and efficient criteria for the removal of the head and governing board, the lack of a term of office may be detrimental to the regulator in the case a single board member or the head ceases to meet the stipulated criteria. (KQ5)
- **Publication of information about enforcement action and review processes.** **Fiji** should consider changing its processes to publish information about enforcement actions. **Fiji** and **Palestine** should also consider establishing an independent review process so that appeals can be made against decisions of the regulator.

### Principle 3

- **Palestine** should consider adopting powers of licensing, supervision, inspection, investigation and enforcement. (KQ1)
- **Panama, Trinidad and Tobago, Brazil, Argentina, Uruguay, and Palestine** should consider adopting measures to ensure adequate funding to exercise its powers and responsibilities. (KQ2)
- **China and New Zealand** should ensure that they have adequate funding to perform regulatory functions. (KQ2)
- **Brazil, Argentina,<sup>76</sup> Greece, Slovenia, Spain, and Palestine** should adopt measures to ensure capacity and resources to attract and retain appropriately trained, qualified, and skilled staff to perform its functions. (KQ3)
- **Brazil** should ensure that its staff receives adequate and ongoing training. (KQ4)

### Principle 4

- While in practice it appears that the **WAMU** does inform interested parties in writing of any decisions made by it, there should be a legal requirement in place that is known to the public to ensure procedural fairness (KQ3).
- **Palestine** should have a process for public consultation, including those who may be affected by a rule or policy.
- **Fiji** should consider publishing consultations, in addition to providing proposals to select stakeholders for comment (KQ2a). It should also ensure that information about its rulemaking procedures is publicly available (KQ2f). It should also consider publishing information about regulatory action (KQ2b). Finally, it should consider whether the broad discretion of the Minister to publish investigation reports should be subject to further safeguards.

### Principle 5

- **Panama, Palestine and WAMU** should consider adopting clear guidance on requirements for officers, employees and agents to disclose material conflicts of interest, including declarations of financial interest (KQ 1b).
- **Trinidad and Tobago** should consider putting in place a formal arrangement or an MoU setting forth the exact duties and responsibilities, including an appropriate confidentiality regime for the representative of the MoFE regarding what concerns his/her roles at the Ministry and as a TTSEC Commissioner (as per wording from Aug 2016 Country Review). (KQ 1d)

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<sup>76</sup> Please refer to Principle 2 KQ3 (Footnote 43)



- **Palestine** should have procedural fairness standards and guidelines for staff to perform their duties. (KQ 1e)
- **WAMU** and **AIFC Astana** should consider adopting a formal investigation procedure concerning violations committed by staff. (KQ 2a)

## **ANNEXURE 1 – Assessment Methodology and Questionnaire**

[https://www.iosco.org/library/pubdocs/pdf/ISIM\\_Review\\_P1-5 - Assessment Methodology and Questionnaire.pdf](https://www.iosco.org/library/pubdocs/pdf/ISIM_Review_P1-5_-_Assessment_Methodology_and_Questionnaire.pdf)

## **ANNEXURE 2– LIST OF PARTICIPATING JURISDICTIONS**

1. AIFC Astana (Astana Financial Services Authority)
2. Angola (Comissão do Mercado de Capitais)
3. Argentina (Comisión Nacional de Valores)
4. Australia (Australian Securities and Investments Commission)
5. Bahamas (Securities Commission of The Bahamas)
6. Belgium (Financial Services and Markets Authority)
7. Brazil (Comissão de Valores Mobiliários)
8. Canada – British Columbia (British Columbia Securities Commission)
9. Canada – Ontario (Ontario Securities Commission)
10. Canada – Quebec (Autorité des marchés financiers)
11. Chile (Comisión para el Mercado Financiero)
12. China (China Securities Regulatory Commission)
13. Czech Republic (Czech National Bank)
14. Dominican Republic (Superintendencia del Mercado de Valores)
15. Dubai (Dubai Financial Services Authority)
16. Egypt (Financial Regulatory Authority)
17. El Salvador (Superintendencia del Sistema Financiero)
18. Fiji (Reserve Bank of Fiji)
19. France (Autorité des marchés financiers)
20. Germany (Bundesanstalt für Finanzdienstleistungsaufsicht)
21. Gibraltar (Gibraltar Financial Services Commission)
22. Greece (Hellenic Capital Market Commission)
23. Guernsey (Guernsey Financial Services Commission)
24. Hong Kong (Securities and Futures Commission)
25. India (Securities and Exchange Board of India)
26. Ireland (Central Bank of Ireland)
27. Isle of Man (Isle of Man Financial Services Authority)
28. Israel (Israel Securities Authority)
29. Italy (Commissione Nazionale per le Società e la Borsa)
30. Japan (Financial Services Agency)
31. Japan (Ministry of Agriculture, Forestry and Fisheries)
32. Japan (Ministry of Economy, Trade and Industry)
33. Kazakhstan (Agency of the Republic of Kazakhstan for Regulation and Development of Financial Market)
34. Kuwait (Capital Markets Authority)
35. Liechtenstein (Financial Market Authority)
36. Luxembourg (Commission de Surveillance du Secteur Financier)
37. Mauritius (Financial Services Commission)
38. Mexico (Comisión Nacional Bancaria y de Valores)
39. New Zealand (Financial Markets Authority)
40. North Macedonia (Securities and Exchange Commission of the Republic of North Macedonia)
41. Palestine (Palestine Capital Market Authority)
42. Panama (Superintendencia del Mercado de Valores)
43. Paraguay (Comisión Nacional de Valores)
44. Portugal (Comissão do Mercado de Valores Mobiliários)
45. Qatar (Qatar Financial Markets Authority)
46. Saudi Arabia (Capital Market Authority)

47. Singapore (Monetary Authority of Singapore)
48. Slovenia (Securities Market Agency/Agencija Za Trg Vrednostnih Papirjev)
49. Spain (Comisión Nacional del Mercado de Valores)
50. Thailand (Securities and Exchange Commission)
51. Trinidad and Tobago (Trinidad and Tobago Securities and Exchange Commission)
52. Türkiye (Capital Markets Board)
53. United Kingdom (Financial Conduct Authority)
54. Uruguay (Banco Central del Uruguay)
55. West African Monetary Union (Conseil régional de l'épargne publique et des marchés financiers)