

**Collective Investment Vehicles, Pension Funds and
Investment Company Complexes - Update****I. Introduction**

1. In 2021, the IESBA issued an exposure draft, [Proposed Revisions to the Definitions of Listed Entity and Public Interest Entity in the Code](#) (PIE ED), to address concerns by regulators and other stakeholders regarding the inconsistent interpretation and application of the PIE definition in the Code globally. The PIE ED contained proposed mandatory PIE categories, which included collective investment vehicles (CIVs) and entities that provide post-employment benefits (PEBs).
2. After reflecting on stakeholders' feedback on the PIE ED regarding the wide diversity in structure, governance and size of such arrangements, the IESBA removed CIVs and PEBs from the mandatory PIE categories on the grounds that including them would impose a disproportionate burden on local regulators and national standard setters to refine those CIV and PEB categories. However, with the concurrence of the Public Interest Oversight Board (PIOB), the IESBA committed to undertaking a holistic review of CIVs, PEBs and investment company complexes (ICCs)¹ from an auditor independence perspective, given longstanding questions regarding the application of the "related entity" concept in the Code to such investment vehicles or structures.
3. At its December 2023 meeting, the IESBA approved [Terms of Reference](#) for the Project Team to explore independence matters relevant to audits of CIVs, Pension Funds and ICCs (collectively referred to as Investment Schemes).
4. The Terms of Reference set out the following objectives for the Project Team:
 - (a) Review CIVs and pension fund arrangements and their relationships with trustees, managers and advisors to gain a comprehensive understanding of these arrangements to ensure that the independence provisions and the application of the "related entity" definition in the *International Independence Standards* in Part 4A of the Code remain fit for purpose;
 - (b) Review investment company complexes and consider whether the Code should be enhanced to address these structures, such as establishing new terms and definitions, and clarifying which entities or arrangements within such a complex should be considered as related entities of an audit client; and
 - (c) Develop a report and recommendations to the IESBA.

II. Research methodology

5. To explore potential gaps in the Code pertaining to independence threats for auditors of Investment Schemes, a mixed-method research approach has been adopted. This involves interviews with industry experts, auditors, and regulatory professionals to gather insights into current practices and challenges. Additionally, desktop research is being conducted to review existing standards and regulations pertaining to auditor independence in the context of Investment Scheme audits. Through

¹ A term adopted by the [U.S. Securities and Exchange Commission](#) (SEC) to address independence and related rules relevant to mutual funds, hedge funds, private equity funds, and similar investment instruments that are registered in the United States.

this combined methodology, a comprehensive understanding of potential gaps in the Code may be developed, facilitating informed recommendations to the Board for further action.

6. Since December 2023, the Project Team has dedicated its efforts to examining CIVs and ICCs. Additional insights regarding pension funds will be presented at the IESBA's June 2024 meeting for consideration and discussion.
7. To date, the Project Team has conducted desktop research predominantly on Australia, South Africa and the United States to better understand CIVs and their relationships with trustees, managers and advisors. To supplement the desktop research, the Project Team met with relevant experts to obtain their insights and to understand different perspectives. Refer to Table 1 of [Appendix 1](#) for the list of stakeholders the Project Team engaged with in Q1 of 2024.
8. As part of the desktop research, the Project Team also gained insight into the context and complexities surrounding the SEC regulations regarding ICCs.
9. The Project Team has undertaken a preliminary assessment of whether the definitions of audit client and related entity in the Code apply consistently to Traditional Corporate Structures and CIVs.

Relevant Pronouncements

Audit Client and Related Entities

10. When determining the scope of the independence provisions in Part 4A, the starting point is the definition of an “audit client.”² Paragraph R400.27 of the Code³ sets out what an audit client consists of for the purposes of Part 4A of the Code. Once this is established, the criteria by which the related entities are assessed would depend on whether the client is a publicly traded entity.
11. An audit client will always include related entities over which the client has direct or indirect control, i.e., its subsidiaries (blue circles in Diagram 1 below). However, if an audit client is a “publicly traded entity,”⁴ it includes all of its related entities, i.e. its parent, an entity that has significant influence over the client, subsidiaries, an entity that the client or its subsidiary has significant influence over, and sister entities (orange circle in Diagram 1).⁵ Additionally, if the audit team knows, or has reason to

² The Glossary to the Code defines “audit client” as “*an entity in respect of which a firm conducts an audit engagement.*” The definition also includes that if the client is a publicly traded entity, audit client will always include its related entities whereas if the client is not a publicly traded entity, audit client includes those related entities over which the client has direct or indirect control. This is consistent with paragraph R400.27 of the Code.

³ References to the Code in this Agenda Paper are to the 2024 version of the Code, being the extant Code plus revisions which become effective by the end of 2024.

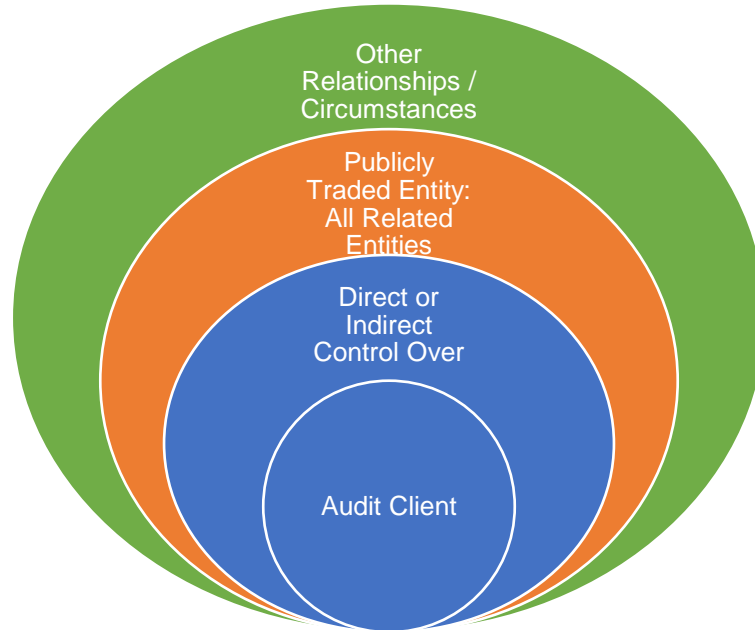
⁴ In accordance with paragraphs R400.22 and R400.23 of the Code.

⁵ The Glossary to the Code defines “related entity” as an entity that has any of the following relationships with the client:

- (a) An entity that has direct or indirect control over the client if the client is material to such entity;
- (b) An entity with a direct financial interest in the client if that entity has significant influence over the client and the interest in the client is material to such entity;
- (c) An entity over which the client has direct or indirect control;
- (d) An entity in which the client, or an entity related to the client under (c) above, has a direct financial interest that gives it significant influence over such entity and the interest is material to the client and its related entity in (c); and

believe, that a relationship or circumstance involving any other related entity of the client is relevant to evaluating the firm's independence, that entity must be included when identifying, evaluating and addressing threats to independence (green circle in Diagram 1).

Diagram 1: Audit client and related entities per paragraph R400.27



12. As an audit is a type of attestation assurance engagement the Project Team considered the conceptual applicability of the definition of “assurance client” in the Code, which is *“the responsible party and also, in an attestation engagement, the party taking responsibility for the subject matter information (who might be the same as the responsible party).”*
13. The above definition of “assurance client” is intrinsically linked to the *International Framework for Assurance Engagements* which sets out the “Three Party Relationship” for assurance engagements as consisting of the responsible party, the practitioner, and the intended users, and there can also be separate roles for measurer or evaluator and/or engaging party:⁶
 - Responsible party who is responsible for the “underlying subject matter” (e.g., an entity’s financial position, financial performance, and cash flows).
 - Practitioner being the audit/assurance practitioner.
 - Intended users, such as investors or regulators.
 - Measurer or evaluator is responsible for the “subject matter information” (e.g. financial statements) by applying criteria (e.g. IFRS) to the “underlying subject matter.” The responsible party might also be the measurer or evaluator.

(e) An entity which is under common control with the client (a “sister entity”) if the sister entity and the client are both material to the entity that controls both the client and sister entity.

⁶ Refer to paragraphs 27-38 of the *International Handbook for Assurance Engagements* and page 63 of [IAASB-2022-Handbook-Volume-3](#).

- Engaging party enters into the terms of engagement with the practitioner and can also be the same as the responsible party.
14. The Code⁷ requires that a firm conducting an assurance engagement must maintain independence from the assurance client. This encompasses situations where the responsible party engages a third party to compile the subject matter information with the understanding that the third party assumes responsibility for it. In such instances, both the responsible party and the third-party entity overseeing the subject matter information are considered assurance clients.
 15. Thus, when considering whether the definitions of “audit client” and “related entities” in the Code, and the related provisions, apply consistently to both CIVs and Traditional Corporate Structures, it is relevant to assess whether the relationships that CIVs have with third parties, such as trustees, managers and advisors, result in those third parties assuming responsibility for the underlying subject matter and/or the subject matter information.
 16. Although the Terms of Reference do not contemplate revision of the definition of the term “audit client,” the Project Team will continue to explore the concepts underlying the definition of “assurance client” to inform its recommendations to the Board related to Investment Schemes.

Management Responsibility and Self-Review Threats

17. When assessing CIVs and their relationships with trustees, managers and advisors, the Project Team has been cognizant of the application of the Code’s independence requirements relating to management responsibility and self-review threats, and whether they apply consistently to both the CIVs and Traditional Corporate Structures. This is particularly relevant if, for example, any of these parties within these arrangements undertake activities that would be considered management responsibilities relating to the CIV or if services provided by the CIV’s auditor to these parties might create a self-review threat to the auditor’s independence.
18. Explanation of management responsibilities is established in International Standard on Auditing (ISA) 200,⁸ which states that the “*financial statements subject to audit are those of the entity, prepared by management of the entity with oversight from those charged with governance*” (paragraph 4). ISA 200 defines “management” as the person(s) with executive responsibility for the conduct of an entity’s operations. Paragraph 13(j) of ISA 200 sets out the responsibilities of management and, where appropriate, those charged with governance (TCWG), that are fundamental to the conduct of an audit in accordance with the ISAs. Laws and regulations may establish further responsibilities for management and TCWG in relation to financial reporting.
19. Furthermore, the Code prohibits a firm or network firm from assuming management responsibility for an audit client (paragraph R400.20). Management responsibilities involve controlling, leading and directing an entity (paragraph 400.20 A1), including activities such as authorizing transactions, controlling or managing bank accounts or investments, or taking responsibility for financial statements.⁹

⁷ Paragraphs R900.11 – 900.11 A3

⁸ ISA 200, *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with International Standards on Auditing*

⁹ Refer to paragraph 400.20 A3 for a broader list of such activities.

20. In addition to considering management responsibilities when assessing auditor independence, before providing a non-assurance service (NAS) to an audit client, the firm or network firm must determine if the provision of that service might create a threat to independence – for example, a self-review threat arising from a risk that the results of the service might affect the accounting records/financial statements being audited.

III. PRELIMINARY OBSERVATIONS

Pronouncements

21. The Project Team’s information gathering highlighted differences between a Traditional Corporate Structure and CIV structure. Under a Traditional Corporate Structure, the responsibilities of management sit within the parameters of the “audit client” definition included in the Code. However, CIVs typically involve one or more third parties performing functions that may be considered management responsibilities (e.g., investment advisor, management company).
22. These individuals or entities may not be captured when applying the definitions of “audit client” and “related parties” in the Code. This might, therefore, impact the adequacy of an auditor’s identification of independence threats when auditing CIVs. For example, if the firm or network firm that audits the CIV has close business relationships with or provides NAS to those third parties and does not regard such third parties as parties to which the Code applies, threats to auditor independence that might be created by those relationships or services might not be identified, evaluated and addressed.
23. [Appendix 3](#) sets out a Traditional Corporate Structure for a client that is not a publicly traded entity, showing that the “audit client” consists of the client *and* the entities that the client controls. The activities that would be considered management responsibilities are assumed by the audit client.
24. [Appendix 4](#) sets out a Simplified Generic Structure for a CIV based on the Project Team’s preliminary research. This highlights the possibility that activities considered management responsibilities could be undertaken by the CIV Oversight Body or CIV Manager. It also demonstrates that these entities might also assume the roles of the responsible party, assessor, or engaging party as outlined in the *International Framework for Assurance Engagements*.

Collective Investment Vehicles

25. [Appendix 2](#) provides a high-level overview of the characteristics of certain regulated CIVs in Australia, South Africa and the United States and relationships with parties such as trustees, managers and advisors, based on the Project Team’s preliminary research to date.
26. The overview in [Appendix 2](#) highlights some similarities in the jurisdictional structures. However, there are important differences between the governance and oversight functions. For example, the Responsible Entity of an Australian Managed Investment Scheme (MIS) manages the day-to-day operations of the MIS and also has an oversight function, whereas a US Investment Company has its own Board of directors or trustees which has an oversight function, and the Investment Adviser manages the day-to-day operations.
27. The Project Team has also identified the following common characteristics for CIVs:

Common Characteristics
Entities are typically regulated, with the exception of private equity funds and certain hedge funds (hedge funds are regulated in some jurisdictions, depending on the circumstances).
Investments are generally open to the public, whereas private equity funds are only available to high-net-worth individuals to invest directly in.
CIVs enable a number of investors to pool their assets with a view to sharing profits or income from the purchase, holding, management or disposal of assets.
Investments are generally invested and managed by a third-party advisor or investment manager in accordance with an underlying foundational document or agreement.

United States (US) – Investment Companies and Investment Company Complexes

28. Certain CIVs in the US are “investment companies” as defined in the *Investment Company Act of 1940*. US Investment Companies, despite the name, can be companies or trusts, and can be classified as mutual funds/open-end company, closed-end funds, unit investment trusts, and exchange traded funds.¹⁰ Unless specifically excluded, Investment Companies must register with, and are regulated by, the SEC and subject to the SEC rules, including those on ICCs.
29. The IESBA Benchmarking Initiative [Phase 1 Report – Comparison of IESBA and US SEC/PCAOB Independence Frameworks](#) (IESBA Benchmarking Report) includes the following table which compares “related entities” in the Code to “affiliates”¹¹ under the SEC rules. Whilst “related entities” and “affiliates” are predominantly similar, the SEC rules specifically include ICCs as an additional part of the affiliate definition. The SEC rules also define “investment company complexes”¹² and the entities within an ICC that are considered “affiliates” of the audit client, whereas the Code does not include specific provisions for ICCs.¹³

Code – Related Entities	SEC – Affiliates
(a) An entity that has direct or indirect control over the client if the client is material to such entity;	(i) An entity that has control over the entity under audit, or over which the entity under audit has control, including the entity under audit's parents and subsidiaries;
(b) An entity with a direct financial interest in the client if that entity has significant influence over the client and the interest in the client is material to such entity;	(iv) An entity that has significant influence over the audit client, unless the audit client is not material to the entity; or

¹⁰ [SEC.gov | Investment Company Registration and Regulation Package](#) and [Mutual Funds and ETFs | A Guide for Investors](#)

¹¹ SEC Rule 2-01 of the Commission's Regulations S-X, 17 C.F.R § 210.2-01(f)(4)

¹² SEC Rule 2-01 of the Commission's Regulations S-X, 17 C.F.R § 210.2-01(f)(14)

¹³ Paragraph 61 of the IESBA Benchmarking Report.

Code – Related Entities	SEC – Affiliates
(c) An entity over which the client has direct or indirect control;	See point (i)
(d) An entity in which the client, or an entity related to the client under (c) above, has a direct financial interest that gives it significant influence over such entity and the interest is material to the client and its related entity in (c); and	(iii) An entity over which the audit client has significant influence, unless the entity is not material to the audit client;
(e) An entity which is under common control with the client (a “sister entity”) if the sister entity and the client are both material to the entity that controls both the client and sister entity.	(ii) An entity that is under common control with the entity under audit, including the entity under audit’s parents and subsidiaries, when the entity and the entity under audit are each material to the controlling entity;
	(v) Each entity in the investment company complex as determined in paragraph (f)(14) of this section when the entity under audit is an investment company or investment adviser or sponsor, as those terms are defined in paragraphs (f)(14)(ii), (iii), and (iv) of this section.

30. The SEC rules specify what makes up an ICC and each entity that is an affiliate (of which the auditor must be independent) when the entity under audit is an Investment Company or Investment Adviser or sponsor as defined within the rules. These rules always require the auditor to be independent of the Investment Adviser, irrespective of whether the entity under audit is the Investment Company or the Investment Adviser.

IV. NEXT STEPS

31. As discussed at the December 2023 IESBA meeting, the Terms of Reference do not anticipate the Project Team revisiting the PIE definition, which includes the mandatory PIE categories. Nevertheless, the Project Team will persist in collecting data from various jurisdictions to determine the conditions under which Investment Schemes might be classified as PIEs, aiming to pinpoint shared characteristics.
32. The Project Team will continue to explore the “Three Party Relationship” in the *International Framework for Assurance Engagements* to determine whether conceptual elements may be included in the Code or relevant guidance materials.
33. In Q2 of 2024, the Project Team plans to extend its desktop research to other jurisdictions and continue to engage with relevant stakeholders (Table 2 of [Appendix 1](#)), the results of which will be presented at the June 2024 IESBA meeting. Additionally, the Project Team will organize online

workshops with relevant stakeholders to explore matters such as regulation covering independence or potential gaps in the independence standards and regulations unique to their jurisdictions. The Project Team will also discuss the project and seek feedback at the IESBA-National Standard Setters (NSS) meeting in New York in May 2024.

34. The Project Team plans to present its recommendations for the Board's consideration during the second half of 2024.

Appendix 1

Table 1: List of Stakeholders Engaged in Q1 2024

Abbrev.	Respondent	Region
AICPA	American Institute of Certified Public Accountants (ICC and Employee Benefit Plan Audit Quality Center experts)	North America
APESB	Accounting Professional & Ethical Standards Board (Australia)	Asia Pacific
EY	Ernst & Young Global Limited	Global
GT	Grant Thornton International Limited (United States)	North America
IAASB	International Auditing and Assurance Standards Board	Global
IRBA	Independent Regulatory Board for Auditors	Middle East and Africa
PwC	PricewaterhouseCoopers International Limited	Global

Table 2: List of Potential Stakeholders

Abbrev.	Respondent	Region
AE	Accountancy Europe	Europe
AFRC	Hong Kong Accounting and Financial Reporting Council	Asia Pacific
ASIC	Australian Securities & Investments Commission	Asia Pacific
AUASB	Auditing and Assurance Standards Board, Australia	Asia Pacific
DTTL	Deloitte Touche Tohmatsu Limited	Global
FoF	Forum of Firms	Global
FSCA	Financial Sector Conduct Authority (South Africa)	Middle East and Africa
ICAN	The Institute of Chartered Accountants of Nigeria	Middle East and Africa
IFIAR	International Forum of Independent Audit Regulators	Global
KEPFIC	Kenya Pension Fund Investment Consortium	Middle East and Africa
KPMG	KPMG Limited (Australia)	Asia Pacific
NSS	National Standard Setters	Global

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Abbrev.	Respondent	Region
SEC	United States Securities and Exchange Commission	North America
UKFRC	United Kingdom Financial Reporting Council	Europe

Appendix 2

Table 3: Overview of Certain CIVs in Australia, South Africa and the US

	Australia	South Africa	United States
CIV	Managed Investment Scheme (MIS) ¹⁴ which is effectively a trust ¹⁵	Association of Collective Investment Scheme ¹⁶	Investment Company which can be a company or a trust
Industry Regulator	Australian Securities & Investments Commission (ASIC)	Financial Sector Conduct Authority (FSCA)	SEC
CIV Oversight Body	Board of Directors of the Responsible Entity for the MIS or in certain circumstances a compliance committee is required ¹⁷	Executive committee of the Association	The Investment Company's Board of Directors or Trustees
CIV Manager	Responsible Entity which operates the MIS ¹⁸	Registered as a manager by FSCA or is an authorized agent ¹⁹	Investment Adviser, which is usually a separate entity, registered with the SEC ²⁰
Custodian	The Responsible Entity must hold the MIS assets on trust; however, it can appoint an agent (i.e. custodian) to hold scheme property as a delegated function. ²¹	Appointed by the manager ²² and is a registered public company, company or institution incorporated under a special act, institution or branch of a foreign institution entitled to	Custodian holds assets separately to protect investors' interests ²⁴

¹⁴ Must be registered with ASIC if more than 20 members or promoted by someone in the business of promoting MISs (certain MIS are exempt from registration, for e.g. if all wholesale clients) – [How to register a managed investment scheme | ASIC](#).

¹⁵ Australia introduced a new type of investment company called a corporate collective investment vehicle (CCIV) which can be registered from 1 July 2022 – [Corporate collective investment vehicles | ASIC](#). CCIVs are not addressed in this Agenda paper; however, the Project Team will consider these structures in Q2 2024.

¹⁶ An association of persons carrying on the business of a collective investment scheme may apply to the registrar for an association license.

¹⁷ If less than half of the directors of the responsible entity are external/independent – paragraph RG132.26 [Regulatory Guide RG 132 Funds management: Compliance and oversight \(asic.gov.au\)](#)

¹⁸ [How to register a managed investment scheme | ASIC](#)

¹⁹ Paragraph 5 of [Collective Investment Schemes Control Act 45 of 2002](#)

²⁰ [SEC.gov | Investment Company Registration and Regulation Package](#)

²¹ Paragraphs RG 133.12 to RG 133.14 of [Regulatory Guide RG 133 Funds management and custodial services: Holding assets \(asic.gov.au\)](#)

²² Paragraph 68(1) of [Collective Investment Schemes Control Act 45 of 2002](#)

²⁴ [SEC.gov | Investor Bulletin: Custody of Your Investment Assets](#)

	Australia	South Africa	United States
		carry on business of a bank under the Bank Act, institution which is registered as an insurer ²³	
Investors	Unit holders	Unit holders	Shareholders or unit holders
CIV Auditor	Auditor independence requirements stipulated by APES 110 ²⁵ and Divisions 3, 4 and 5 of Part 2M.4 and Section 307C of the Corporations Act 2001 , including that the “audited body” for a MIS includes the Responsible Entity and its directors.	General auditor independence stipulated by the IRBA Code (Revised 2018) ²⁶ and paragraph 73(2) of the Collective Investment Schemes Control Act 45 of 2002	Auditor independence requirements include the SEC rules on ICCs (discussed above in paragraphs 28-30)

[Appendix 5](#) provides an explanation of the generic terms used in the above table.

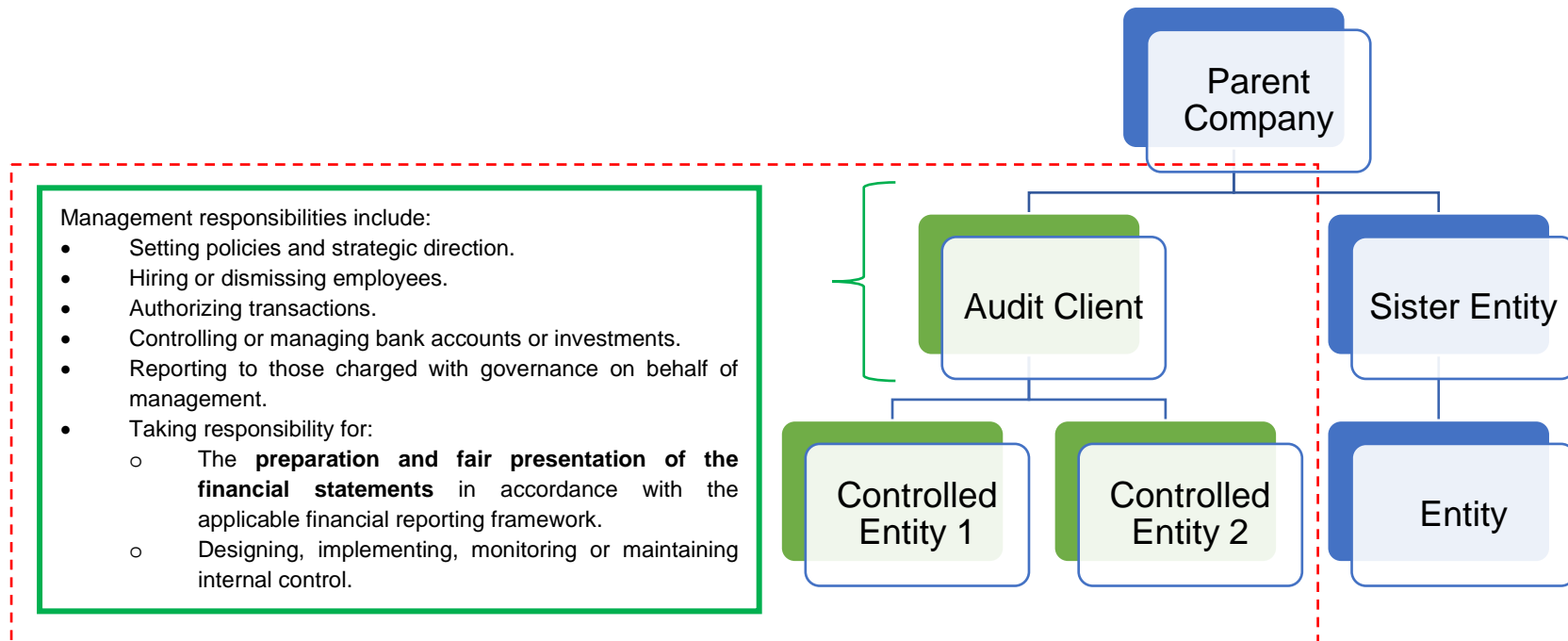
²³ Paragraph 69(1) of [Collective Investment Schemes Control Act 45 of 2002](#)

²⁵ APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* which is based on the Code.

²⁶ IRBA Code *IRBA Code of Professional Conduct for Registered Auditors* which is based on the Code.

Appendix 3

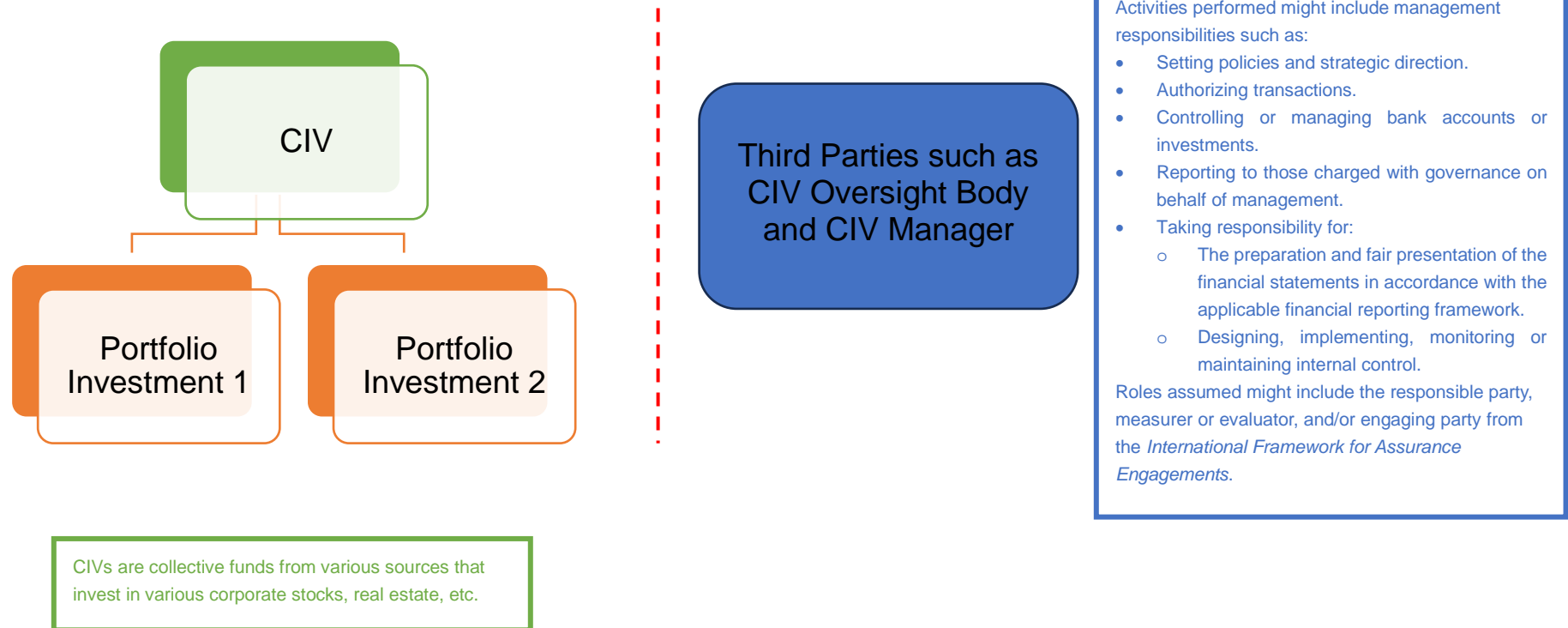
Traditional Corporate Structure²⁷



²⁷ This structure represents a client that is not a publicly traded entity.

Appendix 4

Collective Investment Vehicles (CIVs) – Simplified Generic Structure



Refer to [Appendix 5](#) for a description of terms

Appendix 5

Description of Terms

Terms	Description
CIV	<p>A vehicle, including a company or trust, where:</p> <ul style="list-style-type: none"> Members of the public are invited or permitted to invest money or other assets in a portfolio, resulting in a participatory interest in that portfolio through shares, units or any other form of participatory interest; and Investors share the risks and the benefits of investment in proportion to their participatory interest in a portfolio or any other basis determined in terms of a foundational document or agreement. <p>Types of CIVs include Mutual Funds, Exchange-Traded Funds, Close-End Funds, Unit Investment Funds, Hedge Funds and Private Equity Funds.</p>
CIV Manager	<p>An individual or entity that manages a CIV's investments in various portfolios, and is responsible for the day-to-day operations of the CIV. Some of the responsibilities of the CIV Manager might include:</p> <ul style="list-style-type: none"> Organizing, managing and controlling the CIV Maintaining accounting records of the CIV, including the preparation and fair presentation of the financial statements in accordance with the applicable financial reporting framework Designing, implementing, monitoring or maintaining internal controls
CIV Oversight Body	<p>Directors, trustees or another oversight body, such as a compliance committee, responsible for the oversight of the management and control of a CIV. The role of the oversight body might include ensuring that the investors' interests are protected and that the funds are managed in accordance with an underlying foundational document or agreement. The oversight body is not responsible for the day-to-day operations of the CIV.</p>
Custodian	<p>Responsible for safeguarding or holding CIV assets on trust; responsibilities might also include issuing and redeeming shares or units and processing such transactions.</p>
Investors	<p>Individuals of the public or entities that purchase an interest in the CIV either via shares or units in a trust.</p>