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Program and Senior Director
International Ethics Standards Board for Accountants
529 Fifth Avenue, 6th Floor
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The United States of America

Dear Sir,

IESBA Consultation Paper: Collective Investment Vehicles and Pension Funds – Auditor Independence

The Hong Kong Institute of Certified Public Accountants (HKICPA) is the only statutory body in Hong Kong that sets auditing and assurance standards, ethical standards, financial reporting standards as well as sustainability disclosure standards in Hong Kong. We welcome the opportunity to provide our comments on the captioned IESBA Consultation Paper (CP). The HKICPA appreciates the IESBA's work in this area and the time and effort dedicated to outreach activities and gathering information across various jurisdictions.

Although the Code's definition of related entity does not capture all relevant parties that need to be included in the auditor's independence assessment when auditing collective investment vehicles (CIVs) or pension funds, we consider that the fundamental principles and conceptual framework in Part 1 of the Code provide a path for auditors to consider facts and circumstances that may present threats to independence when they audit an Investment Scheme.

If the IESBA is to address the independence considerations concerning Connected Parties of Investment Schemes, we have identified several potential approaches. These include (i) expanding the auditor's independence requirements to cover Connected Parties of entities that do not have a conventional corporate structure; (ii) developing a separate section within the Code specifically for independence requirements for Investment Schemes; or (iii) developing targeted application materials within the Code or non-authoritative materials tailored to Investment Schemes or other industries. However, we note that each approach has its merits and limitations, which are detailed in our responses in the attachment for your consideration.

Our responses to the specific questions are included in the attachment. We trust that our comments are of assistance to you. If you have any questions regarding the matters raised above, please contact Selene Ho, Deputy Director of the Standard Setting Department (selene@hkicpa.org.hk).

Yours faithfully,

Cecilia Kwei
Director, Standard Setting Department

Question 1

Does the Code’s definition of related entity capture all relevant parties that need to be included in the auditor’s independence assessment when auditing CIVs/pension funds? Please provide reasons for your response.

In Hong Kong, CIVs carry a similar meaning to collective investment schemes (CIS). A CIS is broadly defined in the [Securities and Futures Ordinance](#) to mean investment products of a collective nature. Mutual funds, unit trusts, Mandatory Provident Fund (MPF) schemes and public open-ended fund companies are examples of CIS in Hong Kong. For a CIS in Hong Kong, usually both the trustee (for unit trusts and MPF schemes)/ custodian (for fund companies) and the management company are parties to the constitutive documents with the trustee/ custodian responsible for the custodial and oversight activities of the CIS, while the management company is responsible for the investment of the assets of the CIS. Therefore, in Appendix 1 of the Consultation Paper (CP), one of the references in Table 2 which identifies the trustee as the “Investment Advisor appointed by Board of Trustees” is not applicable in Hong Kong.

In Hong Kong, the trustee/custodian and management company of a CIS are not captured by the definition of a related entity. However, the fundamental principles and conceptual framework in Part 1 of the Code provide a path for auditors to consider facts and circumstances that may present threats to independence when they audit an Investment Scheme (paragraphs 26 to 27 of the CP). Accordingly, one could consider that the principle-based approach of the Code addresses the auditor’s independence assessment regarding **all** relevant parties of CIVs/pension funds. Furthermore, CIS in Hong Kong is subject to the regulatory framework of the Securities and Futures Commission (SFC), covering auditor’s independence with respect to the trustee/custodian and management company (see our responses to Question 6). Consequently, some of our stakeholders consider that any enhancements to auditor’s independence should not result in additional administrative or compliance burden for CIS.

If the IESBA is to address the independence considerations concerning Connected Parties, several options could be considered. However, we note that each option has its merits and limitations.

One option is to expand the independence requirements to cover Connected Parties of entities that do not have a conventional corporate structure, for example, entities that do not employ their own staff but instead rely on Connected Parties to provide functions or services that management or employees would provide in a conventional corporate structure, such as decision-making and operational responsibilities. This would ensure that the auditor’s independence assessment for Investment Schemes is comprehensively addressed. However, this approach may result in unintended consequences, such as inadvertently scoping in entities outside the CIVs/pension funds industry that do not have a typical corporate governance structure.

An alternative option is to develop a separate section specifically for independence requirements related to Investment Schemes, given the public interest issues and risks

associated with these schemes. This approach would confine the relevant independence requirements for Connected Parties to CIVs/pension funds. However, it may set a precedent, as the Code should be principle-based and applicable to a wide range of circumstances, rather than being tailored to specific criteria or characteristics of a particular sector or industry. Moreover, due to the jurisdictional differences in Investment Schemes, it might be challenging to develop a definition of Connected Parties without local interpretation (see discussion below and our responses to Question 2).

Likewise, there may be other industries exhibiting similar characteristics to Investment Schemes, where the concept of a Connected Party applies but with different structures and circumstances. If the Code were to include independence requirements specific to Investment Schemes, numerous other industry-specific scenarios could also warrant consideration in both global and jurisdictional contexts.

As noted in the CP, there are jurisdictional differences in legal structures of CIVs/pension funds. A similar discussion is noted in the IESBA's previous project to revise the definitions of listed entity and public interest entity (PIE) in the Code, which noted that if post-employment benefit plans were scoped in as PIEs, necessary refinement would need to take place as part of the local adoption and implementation process.¹ This implies an inherent lack of a universal definition for CIVs and pension funds. At a global level, these differences may complicate the establishment of principle-based independence requirements to Connected Parties. This highlights the need for jurisdiction-specific criteria, as a one-size-fits-all approach may not be suitable given the diversity of structures and regulations in different jurisdictions. This is supported by the Project Team's research findings that some jurisdictions have enacted laws, regulations or standards that include certain Connected Parties as part of the audit client, while others require auditors to be independent of certain Connected Parties (Section V of the CP).

Therefore, another option for the IESBA is to promote a practical and consistent application of the fundamental principles and conceptual framework in assessing auditor's independence in a wide range of scenarios. This could be achieved by developing targeted application materials within the Code or non-authoritative materials tailored to CIVs/pension funds or other industries. While this approach may not root out the potential inconsistencies in the independence assessment for audits of Investment Schemes, it represents a pragmatic solution given the jurisdictional differences and the limitations of the other options discussed above.

In summary, we believe that any approach taken by the IESBA should ensure that the Code remains robust, clear and relevant in addressing auditor independence.

Question 2

Do you believe the criteria set out above are appropriate and sufficient to capture Connected Parties that should be considered in relation to the assessment of auditor independence with respect to the audit of a CIV/pension fund? Please provide reasons for your response.

¹ See paragraph 90 of the IESBA [Basis for Conclusions](#): Revisions to the Definitions of Listed Entity and PIE in the Code

We generally agree with the criteria for a Connected Party set out in paragraph 35 of the CP regarding the audit of a CIV/pension fund, which is in line with section 5 of the Hong Kong [SFC Code on Unit Trusts and Mutual Funds](#) (UT Code) that auditors must be independent of the management company and trustee/custodian and, in case of a mutual fund corporation, the directors (see our responses to Question 6).

However, any definition established by the Code will apply to all jurisdictions that adopt the IESBA Code. Given the jurisdictional differences, any definition of Connected Parties in the context of Investment Schemes might require local interpretation.

Question 3

Where there are such Connected Parties, do you believe the application of the conceptual framework in Section 120 of the Code is sufficiently clear as to how to identify, evaluate, and address threats to independence resulting from interests, relationships, or circumstances between the auditor of the CIV/pension fund and the Connected Parties?

If not, do you believe the application of the conceptual framework in the Code as applicable to Connected Parties associated with Investment Schemes warrants additional clarification?

Please provide reasons for your response.

We believe that Section 120 of the Code is clear as to the identification, evaluation and responses to threats to independence across a range of circumstances, including those relating to the audit of CIVs/pension funds as well as their Connected Parties. However, we encourage the IESBA to ensure consistent application given jurisdictional differences. Please refer to our response to Question 1 regarding the merits and limitations of various options to address auditor independence concerning Connected Parties of CIVs/pension funds.

Question 4

Do you believe that the conceptual framework in Section 120 of the Code is consistently applied in practice with respect to the assessment of auditor independence in relation to Connected Parties when auditing a CIV/pension fund? Please provide reasons for your response.

We have no comments on this question, but we would like to highlight the following circumstances in Hong Kong:

- The SFC requires auditors of CIS maintain independence from both the management company and the trustee/custodian. Although the SFC has not explicitly provided detailed guidance (see our responses to Question 6), this requirement helps address the potential independence gap concerning auditors and Connected Parties.
- The Accounting and Financial Reporting Council (AFRC) regulates auditors, including their compliance with the ethical requirements of the Code during audit engagements. The SFC oversees Hong Kong's securities and futures markets, including authorizing investment



products and licensing and supervising intermediaries engaged in regulated activities. Under a Memorandum of Understanding established in 2021, the SFC and AFRC enhance their regulatory oversight through case referrals, joint investigations, information sharing etc. Based on publicly available information, we are not aware of any instances or investigations by the AFRC or SFC that indicate inconsistent application of the Code's conceptual framework in assessing auditor independence in relation to Connected Parties during audits of CIVs/pension funds.

Question 5

Are there certain interests, relationships, or circumstances between the auditor of a CIV/pension fund and its Connected Parties that should be addressed? Please provide reasons for your response.

We have no comments regarding this question.

Question 6

Does your jurisdiction have requirements or guidance specific to audits of CIVs/pension funds from an auditor independence perspective? If yes, are those requirements included in audit-specific or CIV-specific regulation? Please provide details.

In Hong Kong, section 5 of the UT Code stipulates that auditors must be independent of the management company, the trustee/custodian, and, in the case of a mutual fund corporation, the directors (paragraph 5.16). This requirement is specific to unit trusts and mutual funds authorized by the SFC. However, the SFC Code does not provide further guidance on the extent and scope of such auditor's independence requirements. As a result, auditors of CIS are required to exercise their professional judgment to ensure their independence in accordance with the SFC Code.