Hong Kong Institute of
Certified Public Accountants
香港會計師公會

Revisions to the Definitions of Listed Entity and Public Interest Entity in the Code

Chapter A, *Code of Ethics for Professional Accountants*, HKICPA

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This Q&As should be read in conjunction with the Institute's *Revisions to the Definitions of Listed Entity and Public Interest Entity in the Code* ("PIE Provisions"), its Basis for Conclusions, and other regulations, standards or guidance published and issued by the HKICPA.

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Question 1. Definition of a public interest entity

Paragraph R400.22 of the PIE Provisions specifies that there are four mandatory categories of public interest entity ("PIE"):

(a) A publicly traded entity ("PTE");

(b) An entity one of whose main functions is to take deposits from the public;

(c) An entity one of whose main functions is to provide insurance to the public; or

(d) An entity specified as such by law, regulation or professional standards to meet the purpose described in paragraph 400.15.

Paragraph 400.23 A3 further specifies that the following entities are PIEs:

- For the purpose of R400.22(b), licensed banks, as defined under the Banking Ordinance ("BO") except where there is no statutory requirement for audit to be performed;
- For the purpose of R400.22(c), authorized insurers, as defined under the Insurance Ordinance ("IO") except for (i) captive insurers; (ii) special purpose insurers; and (iii) insurers where there is no statutory requirement for audit to be performed;
- For the purpose of R400.22(d), Mandatory Provident Fund Schemes, as registered under the Mandatory Provident Fund Schemes Ordinance; and
- For the purpose of R400.22(d), Occupational Retirement Schemes, as registered under the Occupational Retirement Schemes Ordinance and are exempted under section 5 of the Mandatory Provident Fund Schemes Ordinance ("MPF-exempted ORSO registered

schemes") with total assets exceeding HK$100 million by reference to the most recent set of audited financial statements.

There is no equivalent of paragraph 400.23 A3 in the PIE Provisions issued by the International Ethics Standards Board for Accountants ("IESBA"). Does this mean there is a difference in how the definition of a PIE would be applied under the HKICPA *Code of Ethics for Professional Accountants* ("Code") compared to the *International Code of Ethics for Professional Accountants (including International Independence Standards)* ("IESBA Code")?

Answer:

In developing the revised PIE definition, the IESBA recognized that it cannot provide refined specifications of the mandatory categories that would be globally applicable. Instead, the IESBA determined to allow the relevant local bodies to more precisely define which entities should be included as PIEs under each of the three mandatory categories under paragraph R400.22(a)–(c), and to include additional entities as PIEs in their jurisdictions under paragraph R400.22(d). If the local body simply adopts the list of mandatory categories in paragraph R400.22 without due assessment, the local PIE definition may inadvertently scope in entities that do not have significant public interest in their financial condition.[1]

Consequently, the Institute's Ethics Committee has refined the definition of a PIE in paragraph R400.22(b), (c) and (d) by introducing a locally developed paragraph 400.23 A3, taking into account the unique facts and circumstances of Hong Kong. These local modifications to the PIE definition were the outcome of a rigorous process involving extensive consultations and thoughtful deliberation. The Basis for Conclusions summarizes the consideration of the Ethics Committee in reaching the conclusions in the PIE Provisions issued by the Institute.

Accordingly, the PIE definition in paragraph R400.22 should be read in conjunction with paragraph 400.23 A3. For instance, the PIE definition of R400.22(b) with regards to deposit-taking companies is refined through 400.23 A3, which are licensed banks defined under the BO except where there is no statutory requirement for audit to be performed. Under this definition, restricted licensed banks and deposit-taking companies licensed under the BO, as well as licensed banks where there is no statutory requirement for audit to be performed, are not PIEs in Chapter A of the Code.

[1] Question 11, Staff Questions & Answers, Revisions to the Definitions of Listed Entity and the Public Interest Entity of the Code (IESBA, (updated) September 2024)

Question 2. Publicly Traded Entities

The PIE Provisions introduce a new compulsory PIE category for publicly traded entities ("PTE"), which replaces "listed entity" in the extant Code. What are the implications of this change for entities that are now regarded as PIE, rather than "listed entity"?

Before the PIE Provisions	After the PIE Provisions
Listed Entity (definition) An entity whose shares, stock or debt are quoted or listed on a recognized stock exchange, or are marketed under the regulations of a recognized stock exchange or other equivalent body.	**Publicly traded entity** (definition) An entity that issues financial instruments that are transferrable and traded through a publicly accessible market mechanism, including through listing on a stock exchange. *A listed entity as defined by relevant securities law or regulation is an example of a publicly traded entity.*

Answer:

The PIE Provisions replaces the definition of "listed entity" with a newly defined term, PTE. PTE is one of the mandatory categories of entities included in the revised PIE definition (see Question 1 above).

PTE encapsulates the term listed entity as an example defined by relevant securities law or regulation (rather than a standalone definition). On this basis a listed entity as defined by relevant securities law or regulation in the jurisdiction will continue to meet the definition of a PTE, provided the other criteria of the definition are met and subject to any refinements to this category by relevant local bodies (e.g., making reference to specific public markets for trading securities).[2,3]

The term PTE is intended to scope in more entities. It covers not only shares, stock or debt (as currently referred to in the extant definition of "listed entity") but also other types of instruments such as bonds, warrants and hybrid securities.[4] It also encompasses those on second-tier markets or over-the-counter[5] ("OTC") trading platforms.

Under the PTE definition, if an entity is trading its financial instruments via a platform that is available to the ***public***, including second-tier markets or OTC trading platform, that entity should be scoped in as a PTE irrespective of whether the entity is a private company or public sector entity. For instance, a private company or public sector entity issuing bonds or other debt instruments that is traded on a local stock exchange or via the OTC market, and if the product is available to the

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2 The Institute's PIE Provisions issued on 15 July 2024 did not introduce any local amendments or modifications to the definition of a PTE, keeping it consistent with the definition in the IESBA Code.

3 Paragraph 25, *Proposed Narrow Scope Amendments to the International Standards on Quality Management (ISQMs); International Standards on Auditing (ISAs); and International Standard on Review Engagements (ISRE) 2400 (Revised), Engagements to Review Historical Financial Statement as a Result of the Revisions to the Definitions of Listed Entity and Public Interest Entity (PIE) in the IESBA Code* (International Auditing and Assurance Standards Board ("IAASB"), January 2024)

4 Question 5, Staff Questions & Answers, Revisions to the Definitions of Listed Entity and the Public Interest Entity of the Code (IESBA, (updated) September 2024)

5 According to the Report of the Steering Committee on Bond Market Development in Hong Kong (August 2022) published by the HKSAR Government, over 95% of the bond trading in Hong Kong during 2021 was conducted OTC. In addition, a factsheet on Hong Kong's financial services published by the HKSAR Government in 2020 pointed out that there is an active OTC market in Hong Kong which is mainly operated and used by professional investors and trades swaps, forwards and options in relation to equities, interest rates and currencies.

public, the private company or public sector entity would be scoped in as a PTE for the purposes of the Code unless otherwise excluded as part of the local refinement of the PTE category.

In determining whether an entity is a PIE, it is not relevant how the financial instrument it issues is priced so long as it is transferrable and traded through a publicly accessible market mechanism. For example, a private company issuing and trading warrants or hybrid securities that are traded on recognized exchanges with pricing tied to the share price of a third-party listed entity is a PIE under the revised definition. This scenario, covered by the first example in the table below, exemplifies a situation where the revised PIE definition would lead to an entity being classified as a PIE while it does not meet the PIE criteria under the extant definition.

The table below includes examples on how replacing the definition of "listed entity" with PTE would impact entities:[6]

Impact on Entities	Description	Example
The change would result in the entity being scoped in	Entities issuing and trading financial instruments other than shares, stock or debt as currently specified in the extant definition of "listed entity."	Entities issuing and trading other types of instruments such as warrants or hybrid securities.
	Entities trading financial instruments in less regulated markets.	Entities trading on second-tier markets or OTC trading platforms.
The change would result in the entity being scoped out	Entities trading through a market mechanism that is not publicly accessible or when there is no facilitated trading platform such as an auction-based exchange or electronic exchange.	Privately negotiated agreements (with or without the assistance of a broker).

The IESBA has developed a Q&A publication ("IESBA Q&A") which supports the implementation of the revised PIE definition. Questions 4 to 10 of the IESBA Q&A discuss the definition of PTE and how to apply it in practice.

Professional Investors Regime in Hong Kong

In Hong Kong, the term "Professional Investors" ("PI") is defined under the Securities and Futures Ordinance ("SFO") and is divided into two groups. The first group comprises institutional professional investors specified by the SFO, while the second group includes individuals, corporations, trust corporations, and partnerships whose wealth meets certain thresholds.[7]

For the second group, PIs are defined based on wealth criteria. Individuals and corporations must have a minimum portfolio of HK$8 million, while corporations must have total assets of at least HK$40 million.[8]

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6 Paragraph 26, *Proposed Narrow Scope Amendments to the ISQMs; ISAs; and ISRE 2400 (Revised) as a Result of the Revisions to the Definitions of Listed Entity and PIE in the IESBA Code* (IAASB, January 2024)

7 Professional Investors, Investor and Financial Education Council

8 Qualification of professional investors, Investor and Financial Education Council

In Hong Kong, Special Purpose Acquisition Companies ("SPACs") listed on the Main Board of the Stock Exchange of Hong Kong ("SEHK") under Chapter 18B of the Listing Rules, as well as debt securities listed under Chapter 37 of the Main Board Listing Rules, are offered exclusively to PIs. These products are accessible to all types of PIs. There are no restrictions that would limit the subscription of a specific product solely to institutional PIs or a subclass of PIs. Accordingly, SPACs and the mentioned listed debt securities are considered being traded through a publicly accessible market mechanism within the new and revised PIE definition because they are open to all investor categories without any exclusions. Although a wealth criterion is applied for individual investors to quality as PIs for subscribing to these products, this does not diminish the public availability of these products to all types of investors in the market.

In implementing the new and revised PIE definition, it is the responsibility of auditors to understand the characteristics of shares, debts, derivatives and other financial instruments issued by their audit clients, including the relevant trading mechanism, in order to determine whether an audit client meets the new and revised PIE definition.

Question 3. Determining the PIE status of a MPF-exempted ORSO registered scheme

Paragraph 400.23 A3 specifies that for the purposes of R400.22(d), PIEs include MPF-exempted ORSO registered schemes with total assets exceeding HK$100 million by reference to the most recent set of audited financial statements.

Will the PIE status of a MPF-exempted ORSO registered scheme change every year if its total assets fluctuate slightly around HK$100 million from year to year? For example, a scheme was a PIE in the previous year's audit based on its total assets of HK$102 million in the audited financial statements two years ago, but its assets fell to HK$99 million in the financial statements audited last year which mean that the scheme might not necessarily be a PIE for the current year's audit.

Answer:

It is recommended that a firm *continues* to treat a MPF-exempted ORSO scheme as a PIE if its total assets in the most recent audited financial statements fell *just below* HK$100 million for the first time. Rather than immediately changing the scheme's status from a PIE to a non-PIE, a firm is advised to observe for a longer period to determine whether the scheme's total assets would be consistently below HK$100 million before making such a change. This will save the firm's effort to prepare for the transition of the PIE status of an audit every year. Firms are also encouraged to develop policies to address such scenarios for consistent application across schemes.

It is important to note that once an entity is determined as a PIE, for example in accordance with the firm's policy, then all the provisions of the Code relevant to PIEs are applicable, including the revised non-assurance services (Section 600) and fees provisions (Section 410) in Part 4A, Chapter A of the Code. Similarly, the transparency requirement in paragraph R400.20 assumes that all the independence requirements for PIEs have been applied to the audit of the financial statements of such an entity.[9]

[9] Question 19, Staff Questions & Answers, Revisions to the Definitions of Listed Entity and the Public Interest Entity of the Code (IESBA, (updated) September 2024)

Question 4. Entities that are highly interconnected with a PIE

Some entities that are categorized as PIEs under paragraph R400.22 and 400.23 A3 of the Code may be closely connected with the activities or operations of their subsidiaries or investee companies. In such cases, would those subsidiaries or investee companies also be categorized as mandatory PIEs under Chapter A of the Code?

Answer:

Entities engaging in business activities that have a significant interconnection with a PIE is not a determining factor or criterion in paragraph 400.14 of the PIE Provisions of the Code to categorize them as PIEs. Therefore, whether a subsidiary or investee company is a PIE should not be solely based on the PIE status of its parent or investor entity, but rather on its own facts and characteristics.

Under paragraph 400.24 A1 of the Code, a firm is encouraged to determine whether to treat other entities as PIE for the purposes of Part 4A, Chapter A of the Code. When making this determination, the firm might consider factors outlined in paragraph 400.14 and 400.24 A1:

PIE determining factor in 400.14	PIE determining factor in 400.24 A1
Factors to consider in evaluating the extent of public interest in the financial condition of an entity include: • The nature of the business or activities, such as taking on financial obligations to the public as part of the entity's primary business. • Whether the entity is subject to regulatory supervision designed to provide confidence that the entity will meet its financial obligations. • Size of the entity. • The importance of the entity to the sector in which it operates including how easily replaceable it is in the event of financial failure. • Number and nature of stakeholders including investors, customers, creditors and employees. • The potential systemic impact on other sectors and the economy as a whole in the event of financial failure of the entity.	• Whether the entity is likely to become a public interest entity in the near future. • Whether in similar circumstances, a predecessor firm has applied independence requirements for public interest entities to the entity. • Whether in similar circumstances, the firm has applied independence requirements for public interest entities to other entities. • Whether the entity has been specified as not being a public interest entity by law, regulation or professional standards. • Whether the entity or other stakeholders requested the firm to apply independence requirements for public interest entities to the entity and, if so, whether there are any reasons for not meeting this request. • The entity's corporate governance arrangements, for example, whether those charged with governance are distinct from the owners or management.

Question 3 of the IESBA Q&A explains how to assess each of the factors in paragraph 400.14 to determine if an entity's financial condition has significant public interest that makes it a PIE at the firm level. These factors should be considered holistically, rather than in isolation.

In addition, according to Question 19 of the IESBA Q&A, if a firm determines to treat an entity as a PIE in accordance with paragraph 400.24 A1, then all the provisions of the Code relevant to PIEs

are applicable, including the revised non-assurance services ("NAS") and fees provisions. Paragraph R600.26 and 600.26 A1 in Chapter A of the Code include requirements and guidance that deal with a NAS provided to an audit client that later becomes a PIE.

For a PIE audit client, once the firm determines that a NAS might create a self-review threat (by applying paragraph R600.15, Chapter A of the Code), the NAS would be prohibited (paragraph R600.17, Chapter A of the Code).[10] Similarly, the transparency requirement in paragraph R400.25 assumes that all the independence requirements for PIEs have been applied to the audit of the financial statements of such an entity.

Question 5. Local maintenance of the PIE definition

Will the Institute make further local amendments to the PIE definition?

Answer:

Considering the wide range of possible PIE categories and the limitations posed by time constraints, the HKICPA Ethics Committee has decided to adopt a two-phase approach in refining the PIE definition at the local standard-setting level:

- Phase 1 focused on refining the IESBA's mandatory PIE categories in a local context. This has resulted in the PIE Provisions published on 15 July 2024, which refined the definition of a PIE in paragraph R400.22(b), (c) and (d) by introducing a locally developed paragraph 400.23 A3, taking into account the unique facts and circumstances of Hong Kong.

- Phase 2 encompasses further research on any potential additional PIE categories. The research of Phase 2 may lead to another round of public consultation to include other categories of entities to the local definition of PIE in Chapter A of the Code.

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[10] The Staff Questions & Answers issued by the IESBA in January 2022 and July 2022 provide illustrations and examples on the application of the fees and revised NAS provisions of the Code, including those that are applicable to PIE audit clients.