

WIRTSCHAFTSPRÜFERKAMMER . Postfach 30 18 82 . 10746 Berlin

Mr. Ken Siong  
Senior Technical Director  
International Ethics Standards Board  
for Accountants  
529 Fifth Avenue, 6<sup>th</sup> Floor  
New York  
NY 10017, USA

Wirtschaftsprüferhaus  
Rauchstraße 26  
10787 Berlin

Phone +49 30 726161-0  
Fax +49 30 726161-212  
Email kontakt@wpk.de

Submitted electronically through the IESBA website

April 30, 2021  
Contact: +49 30 726161-0

## IESBA Exposure Draft: Proposed Revisions to the Definitions of Listed Entity and Public Interest Entity in the Code

Dear Ken

Dear Ladies and Gentlemen

The Wirtschaftsprüferkammer (WPK) is pleased to take this opportunity to comment on the above-mentioned Exposure Draft (ED). We would like to highlight some general issues first and provide you with our specific responses to selected questions of the ED subsequently.

### General Comments

We support IESBA's project to readdress the definitions of listed entity and public interest entity (PIE) and we appreciate that IESBA has been engaging closely with the IAASB on this project. Our main interest has been in the alignment of the definitions and concepts of PIEs / listed entities in the Code and in the ISAs and we therefore urge the two SSBs to further follow a **consistent approach** to avoid potential confusion to the profession.

We agree with IESBA that it cannot develop a single definition of PIE at a global level that can consistently be applied by all jurisdictions without further modification. Insofar the three-step-approach taken by IESBA (role of Code, role of local bodies, role of firms) is understandable - at least for countries which do not have a definition of PIE of their own.

On the contrary, jurisdictions which already have a robust legal definition of PIE and link sophisticated professional and technical requirements to this definition must be able to rely on their own definition. Accordingly, IESBA cannot create definitions of PIE or impose obligations to audit firms or local bodies in this context that overrule national regulation. What constitutes a PIE is decided by national regulation/law, which would take precedence over the IESBA proposals concerned (cf. questions 3 and 7). We believe R400.15 and 400.15 A1 to be drafted in this sense. **However, an unmistakable clarification is required that the definition of 'PIE' is ultimately based on national professional law/regulation, if available.**

We also consider the newly imposed mandatory obligation in R400.16 for audit firms to determine whether to **treat additional entities as PIE as critical**. This treatment would also have an impact on the conduct, cost and reporting of the audit (and might also cause questions regarding the oversight of the audit). Therefore, this consideration should be based on a voluntary agreement between the firm and the entity (please see question 9).

In addition, **we are not in favour of the disclosure requirement** in R400.17. We think that a disclosure to explain that the audit client was treated as a PIE in the auditor's report would create confusion as well as create an expectation gap for stakeholders as to that the entity would have met all the requirements of a PIE.

As a final remark, we would also encourage IESBA to take further into consideration the tremendous impact of the current **COVID-19 pandemic** on the profession and kindly request IESBA to **extend the implementation periods of upcoming changes to the Code**. In this regard, we appreciate IESBA's proposal of an effective date of December 15, 2024 (cf. question 14). Nevertheless, the outcome of the present project might have a significant impact on the finalised projects **NAS** and **Fees**. We would encourage IESBA to readdress any matters of its already finalized projects NAS and Fees that might arise from the present ED.

## Specific Comments

### ***Overarching Objective***

*1. Do you support the overarching objective set out in proposed paragraphs 400.8 and 400.9 as the objective for defining entities as PIEs for which the audits are subject to additional requirements under the Code?*

We support the overarching objective set out in proposed paragraphs 400.8 and 400.9 as the objective for defining entities as PIEs for which the audits are subject to additional requirements under the Code.

*2. Do you agree with the proposed list of factors set out in paragraph 400.8 for determining the level of public interest in an entity? Accepting that this is a non-exhaustive list, are there key factors which you believe should be added?*

We agree with the proposed list of factors and do not see the need for including additional factors in the proposed list.

### ***Approach to Revising the PIE Definition***

*3. Do you support the broad approach adopted by the IESBA in developing its proposals for the PIE definition, including:*

- Replacing the extant PIE definition with a list of high-level categories of PIEs?*
- Refinement of the IESBA definition by the relevant local bodies as part of the adoption and implementation process?*

Setting up a single definition of PIE that could be universally adopted at a global level would in our view not be possible.

Accordingly, as far as countries are concerned, which **do not have** a professional definition of PIE of their own, we agree with the IESBA approach taken both with regard to replacing the extant PIE definition with a list of high-level categories as well as to refining the IESBA definition by the relevant local bodies as part of the adoption and implementation process.

Regarding jurisdictions which do have a robust definition, we **do not agree** with IESBA (please also see question 7). Jurisdictions, such as the European Union, which already have a robust legal definition of PIE, link sophisticated professional and technical requirements to this

definition. IESBA cannot create definitions of PIE or impose obligations to audit firms or local bodies in this context that overrule national regulation. Accordingly, existent local definitions in such jurisdictions must be the single basis.

We believe R400.15 and 400.15 A1 to be drafted in this sense. Nevertheless, R400.15 ('A firm shall have **regard** to law or regulation which provides more explicit definitions of the **categories** noted in R400.14 (a) to (e)') leaves room for interpretation, as it is not explicit enough: What does 'regard to law and regulation' mean - do law and regulation overrule IESBA? Why shall firms only regard law and regulation that contain more explicit 'definition **of the categories**' – what if law and regulation have more, less or modified categories? Shall firms then ask the local bodies in 400.15 A1?

An unmistakable clarification is required that the definition of 'PIE' is ultimately based on national professional law/regulation, if available.

### **PIE Definition**

*4. Do you support the proposals for the new term “publicly traded entity” as set out in subparagraph R400.14(a) and the Glossary, replacing the term “listed entity”? Please provide explanatory comments on the definition and its description in this ED.*

We would like to point out that the term “publicly traded entity” also covers companies traded in **secondary markets**. The Explanatory Memorandum expressis verbis underpins IESBA’s intention to scope in more entities in this regard (page 11, no 38). On the contrary, EU legislation covers listed entities, but does not include companies traded on secondary markets (cf. Directive 2006/43/EC, Art. 2 (13) in conjunction with the definition of ‘regulated market’ in Directive 2004/39/EC Art. 4 No 1 (14)). The German Commercial Code (§§ 264d, 319a HGB) refers to “capital market-oriented companies” which do not include companies traded on secondary markets either.

Furthermore, we would like to emphasize that any replacement must not lead to inconsistencies between the Code and the IAASB standards.

*5. Do you agree with the proposals for the remaining PIE categories set out in subparagraphs R400.14 (b) to (f)?*

We basically agree with the proposals in subparagraphs R400.14 (b) and (c), but also refer to questions 3 and 7.

We do **not agree** with the inclusion of **(d)** and **(e)** into the definition of PIE. Due to the large number of entities providing post-employment benefits or acting as collective investment vehicles, we think that their inclusion into the definition of PIE would jeopardize IESBA's intention to focus on specific and selected entities.

*6. Please provide your views on whether, bearing in mind the overarching objective, entities raising funds through less conventional forms of capital raising such as an initial coin offering (ICO) should be captured as a further PIE category in the IESBA Code. Please provide your views on how these could be defined for the purposes of the Code recognizing that local bodies would be expected to further refine the definition as appropriate.*

We consider entities that raise capital through less conventional forms to be included in the definition of PIE in the intermediate-term, when development and regulation has become more transparent.

### **Role of Local Bodies**

*7. Do you support proposed paragraph 400.15 A1 which explains the high-level nature of the list of PIE categories and the role of the relevant local bodies?*

Our interpretation of paragraph 400.15 A1 in conjunction **with R400.15** is that European law appropriately takes precedence over R400.14. Insofar, there is no room for local bodies to refine this definition in the EU / in countries that do already have a robust legal definition of PIE.

*8. Please provide any feedback to the IESBA's proposed outreach and education support to relevant local bodies. In particular, what content and perspectives do you believe would be helpful from outreach and education perspectives?*

We agree that the development of an appropriate outreach and education program might be helpful, particularly for member bodies in emerging markets. In this context, it will be crucial for IESBA to diligently take the respective national peculiarities into consideration.

### ***Role of Firms***

*9. Do you support the proposal to introduce a requirement for firms to determine if any additional entities should be treated as PIEs?*

We do *not* support the proposal to introduce a mandatory requirement for firms to determine if any additional entities should be treated as PIEs.

Stakeholders are basically free to structure their contractual relationships. They can agree on additional requirements beyond the statutory requirements according to which the company's audit shall be conducted. The terms of the auditor engagement, for example, or the company's constitutional documents might stipulate for additional requirements for the audit. This is purely a matter for the contractual parties and should not have a place in the Code.

Furthermore, the outcome of the assessment whether to treat any additional entities as PIEs must be clear in advance. We are concerned that an entity considered as a PIE by one firm might not be regarded as a PIE by another firm. In other words, the IESBA proposal might lead to a considerable degree of legal uncertainties and might also cause difficulties for the regulatory oversight body.

*10. Please provide any comments to the proposed list of factors for consideration by firms in paragraph 400.16 A1.*

Please see above (question 9).

### ***Transparency Requirement for Firms***

*11. Do you support the proposal for firms to disclose if they treated an audit client as a PIE?*

*and*

*12. Please share any views on possible mechanisms (including whether the auditor's report is an appropriate mechanism) to achieve such disclosure, including the advantages and disadvantages of each. Also see question 15(c) below.*

A disclosure (in the auditor's report) does only make sense, if the differences in treating an audit client as a PIE as opposed to the treatment as Non-PIE are made understandable for the recipient of the auditor's report. We believe this might require further explanations to an already comprehensive auditor's report.

Additionally, the definition of PIE in the Code and in the IAASB standards must be aligned. Otherwise – in case of different definitions - ‚public disclosure‘ of treating an audit client as a PIE might be misleading as it may be not clear whether this treatment refers to the ethical treatment (‚Code‘) or to the conduct of and reporting about the audit as well (‚ISA‘).

Furthermore, ISA 701 currently already stipulates for specific reporting requirements (‚key audit matters‘) regarding listed entities. The EU Audit Regulation (537/2014/EU) in Article 10 also imposes additional reporting requirements on audits of PIEs.

Overall, we think that a disclosure to explain that the audit client was treated as a PIE in the auditor's report would create confusion as well as an expectation gap for stakeholders as to that the entity would have met all the requirements of a PIE.

### **Other Matters**

*13. For the purposes of this project, do you support the IESBA's conclusions not to:*

- (a) Review extant paragraph R400.20 with respect to extending the definition of "audit client" for listed entities to all PIEs and to review the issue through a separate future workstream?*
- (b) Propose any amendments to Part 4B of the Code?*

We agree with (a) and (b).

*14. Do you support the proposed effective date of December 15, 2024?*

We agree (cf. our introductory remarks).

**Matters for IAASB consideration**

15. To assist the IAASB in its deliberations, please provide your views on the following:

(a) Do you support the overarching objective set out in proposed paragraphs 400.8 and 400.9 for use by both the IESBA and IAASB in establishing differential requirements for certain entities (i.e., to introduce requirements that apply only to audits of financial statements of these entities)? Please also provide your views on how this might be approached in relation to the ISAs and ISQMs.

No comment.

(b) The proposed case-by-case approach for determining whether differential requirements already established within the IAASB Standards should be applied only to listed entities or might be more broadly applied to other categories of PIEs.

No comment.

(c) Considering IESBA's proposals relating to transparency as addressed by questions 11 and 12 above, and the further work to be undertaken as part of the IAASB's Auditor Reporting PIR, do you believe it would be appropriate to disclose within the auditor's report that the firm has treated an entity as a PIE? If so, how might this be approached in the auditor's report?

Please see our answer to questions 11 and 12.

---

We hope that our comments are helpful. If you have any questions relating to our comments in this letter, we should be pleased to discuss matters further with you.

Kind regards



Dr. Reiner Veidt  
Chief Executive Officer



WP Heiko Spang  
Head of Auditing and Accounting