RG 97 INDUSTRY WORKING GROUP

FEES AND COSTS DISCLOSURE

QUESTIONS & ANSWERS

(BASED ON REGULATORY GUIDE 97 ISSUED IN SEPTEMBER 2020)

May 2021

MATERIALITY

Guidance on determining whether updated information in a PDS is materially adverse

A PDS must be up to date at the time it is given: s1012J of the *Corporations Act 2001* (Cth) (**Corporations Act**).

Whether the update to the PDS is via website or through a reissue or supplementary PDS depends on whether the updated fees and costs information is materially adverse (see ASIC Corporations (Updated Product Disclosure Statements) Instrument 2016/1055. Materially adverse information is information that if it were included or omitted from a PDS, would render the PDS defective within the meaning of s 1021B of the Corporations Act. This includes when a PDS contains a misleading or deceptive statement that is or would be materially adverse from the point of a view of a reasonable person considering whether to invest in the relevant fund.

To determine whether the updated fees and costs information is materially adverse, the responsible entity/trustee should focus on the difference between the fees and costs currently disclosed in the PDS and the fees and costs that would be disclosed in an updated PDS.

Whether the updated fees and costs information is materially adverse must be considered in the context of and all of the relevant circumstances of the specific fund and the specific fees and costs information that is being updated.

The Industry Working Group suggests that a "10 and 10" rule can provide **guidance** as to whether updated fees and costs information is materially adverse. This does not mean that increases of less (or more) than these amounts would automatically be considered immaterial (or material). **Trustees and responsible entities must make their own assessment.** It is also important to note that the "10 and 10" rule is a suggestion of the Industry Working Group only and is not contained in the Corporations Act or RG 97.

For superannuation products:

- 10 basis points (absolute increase): where the total of investment fees and costs, administration fees and costs and transaction costs (**Total Fees and Costs**) increases by 10 basis points or more – for example an increase in the Total Fees and Costs from 0.50% per annum to 0.60% per annum; or
- 10% (relative increase): where there is a 10% or more increase in the Total Fees and Costs – for example, an increase in the Total Fees and Costs from 0.50% per annum to 0.55% per annum.

For managed investment products:

- 10 basis points (absolute increase): where the total of management fees and costs, performance fees and transaction costs (**Total Fees and Costs**) increases by 10 basis points or more – for example, an increase in the Total Fees and Costs from 0.50% per annum to 0.60% per annum; or
- 10% (relative increase): where there is a 10% or more increase in the Total Fees and Costs – for example an increase in the Total Fees and Costs from 0.50% per annum to 0.55% per annum.

For further information on updating PDSs, including relevant factors to take into account when determining whether fees and costs information in a PDSs needs to be updated, see section I of RG 97.

Responsible entities and trustees could also apply the "10 and 10" rule in the context of making reasonable estimates when determining whether a step would result in a material change to an estimate amount – see RG 97.393.

APPLICATION OF COSTS MET FROM RESERVES

Q1. Where do Trustees have to disclose expenses paid from reserves?

Trustees must disclose expense payments from reserves in PDSs, member exit statements and Member Annual statements, to the extent that expenses from reserves relating to a type of fee or cost exceed amounts credited to reserves for that type of fee or cost (RG97.39 (a)).

Q2. At what level must the expenses payments from reserves be disclosed? Product or investment option?

The RG97 guidelines state expenses paid from reserves can be disclosed at the product level or the investment option level in Product Disclosure Statements (RG 97.103). Periodic statement expenses paid from reserves are to be included in the 'fees and costs deducted from your investment' (RG 97.136).

Q3. What is the requirement to break up into fee types?

The guidelines require that expenses paid from reserves are broken up into 3 separate categories as required, i.e. administration, investment and transaction costs (RG 97.103). The definitions of these costs are the same as in Schedule 10 in the Corporations law.

Q4. How are tax deduction benefits on fund expenses, either rebated to members or not, to be disclosed?

All tax items, be it tax rebates paid to members or tax deductions/benefits at the fund level on expenses, are excluded from the amounts credited to reserves relating to a particular type of fee or cost. In short, tax amounts credited to a reserve ***cannot*** be used to offset expenses paid from reserves. Fees charged to members ***must be disclosed*** on a gross of tax basis (RG. 97.417)

Q5. How are insurance fees charged to members and insurance operating costs treated for reserves?

Insurance fees charged to members and insurance operating costs are excluded from the calculation of costs paid from reserves relating to administration, investment and transaction costs (RG 97. 105).

Q6. What is the treatment of any tax rebate paid to members on Insurance premiums or any tax benefit from the deductibility of insurance premiums?

As with question 5, insurance tax rebates and benefits are excluded from any calculation of the costs met from reserves, in the same way that tax deductions on fund expenses credited to a reserve ***cannot*** be used to offset expenses paid from reserves (RG 97. 105).

Q7. What accounting basis should be used?

No specific guidance has been provided in the regulations. The Industry Working Group's assumption is that all funds are applying Australian Accounting Standards in their operations and therefore an accruals approach is an appropriate basis.

Other comment:

Trustees are able and encouraged to make additional disclosures about any costs met from reserves disclosure. This will enhance transparency and comparability of fee structures across the industry.

IDPS & IDPS-LIKE PRODUCTS

What changes have been made in relation to superannuation platforms, IDPSs and IDPS-like schemes (Platforms) under the new RG 97 regime?

There has been no change to the requirement that fees and costs of accessible financial products made available through a Platform are not required to be disclosed in the PDS (or IDPS Guide) or in the periodic statement of the Platform. Accessible financial products accessed through the Platform are not considered to be interposed vehicles for the purposes of fees and costs disclosure under the platform test.

Platform operators must comply with the PDS or IDPS Guide requirements for their type of product.

There is revised guidance in RG 97 in section F (RG 97.253-RG97.277) on additional disclosure for Platforms.

To ensure PDSs or IDPS Guides are not misleading, ASIC expects operators to include a prominent statement within either the “investment fees and costs” line item or “management fees and costs” line item (as applicable) in the Fees and Costs Summary in the manner described in in RG 97.258.

ASIC expects operators to also include prominent statements after the Example of Annual Fees and Costs in the manner described in RG 97.259.

As before, ASIC also states that operators can help ensure that a PDS (or IDPS Guide) for a Platform is not misleading by including an Example of Annual Fees and Costs that shows the combined effect of the fees and costs of the Platform and the fees and costs for an accessible financial product in the manner described in RG 97.260.

ASIC has also set out its expectations around periodic statements for Platforms (including annual investor statements for IDPSs) and states that it expects operators, if it is reasonably practicable, to demonstrate the effect of the additional fees and costs in the manner set out in RG 97.268 – RG 97.269 and RG 97.271.

ASIC plans to issue a consultation paper with the aim of establishing a standardised approach to fees and costs disclosure for platforms, however due to COVID-19 this has been deferred until further notice. ASIC will continue to develop its proposal on fees and costs disclosure for platforms.

INTERPOSED VEHICLES

The summary below is meant to be a practical guide to applying the 'Assets Test' and/or 'PDS Test' so the industry can work towards some consistency in application and achieve greater comparability of fees and costs disclosure. It is necessarily generic in nature, and whilst it will apply in many situations it should not be substituted for a detailed analysis (particularly for unlisted assets) of each of the investments of the fund using the detailed guidance provided by ASIC in RG 97.323-RG 97.337.

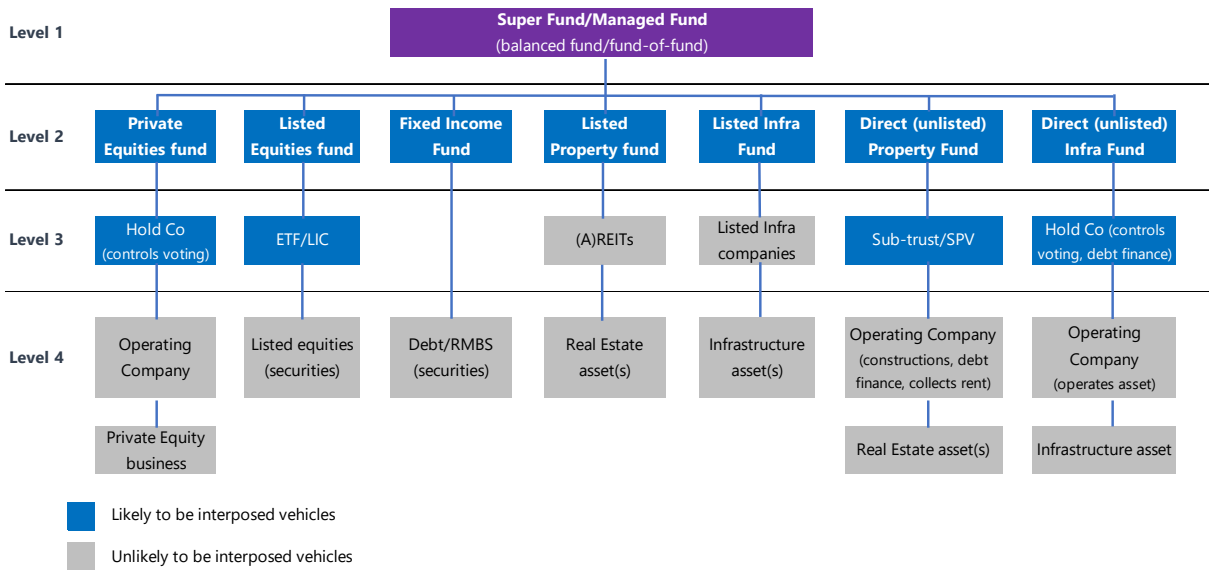
Examples of entities that would likely be interposed vehicles under the Assets Test are:

- life insurance companies;
- listed investment companies;
- unlisted managed funds;
- exchange-traded funds;
- pooled superannuation trusts;
- private equity funds; and
- hedge funds.

Examples of entities that would likely not be interposed vehicles under the assets test are:

- ASX listed companies, such as BHP Billiton Ltd, Brambles Ltd, Woolworths Ltd and Woodside Petroleum;
- debt securities
- listed infrastructure companies; and
- REITs.

To take the following example for a **balanced managed fund or balanced investment option** in a super product:



In this example:

Type of entity	Treatment of the investment under the Assets Test	Treatment under the PDS Test (only applies if the investment does not meet the Assets Test)
Private Equities (PE) fund *See structure examples in Appendix 1.*	The Assets Test is generally applicable as an entity would have more than 70% of its assets invested in securities or other financial products [RG 97.325]. The exemption from the control test is generally not applicable, as the definition of control in s50AA(3)(b) of the Corporations Act does not include control that a person has, under a legal obligation, to exercise for the benefit of others. In the case of a PE fund trustee, they will be obliged to act in the best interest of members of that fund. Note that operating entities are not captured by the Assets Test [see RG 97.326]. The Level 2 and Level 3 entities would be interposed vehicles, but not the Level 4 investments.	If the Assets Test is not met, PE funds are still caught by the PDS Test. PE Funds will be interposed vehicles if they are regarded by retail clients as the means of gaining exposure to other investments, rather than the end investment itself. A retail client would think they are getting exposure to a business in which the PE Fund or entity invests, so the 1st Limb of the PDS test would be satisfied.

Listed Equities fund/ mandate[1]	For a Listed Equities fund, the Level 2 and Level 3 entities would be interposed vehicles, but not the Level 4 investments (more than 70% of the assets by value are invested in securities or other financial products – [see RG97.326(a)]). Level 3 entities might include ETFs or LICs but not (A)REITs. For a Listed Equities mandate, the Level 3 entities would be interposed vehicles, but not the Level 4 investment. Level 3 entities might include ETFs or LICs but not (A)REITs.	As the Assets Test is met, there is no requirement to apply the PDS Test.
Fixed Income Fund/ mandate	For a Fixed Income Fund, the Level 2 entity would be an interposed vehicle (more than 70% of the assets by value are invested in securities or other financial products – [see RG97.326(a)]) but not the Level 4 investments in debt instruments.	As the Assets Test is met, there is no requirement to apply the PDS Test.

[1] Mandates are not of themselves interposed vehicles. However, certain investments held within a mandate may be interposed vehicles. For example, where a mandate requires the investment manager to invest in Australian equities and the investment manager determines to implement the mandate by investing the portfolio in a series of unlisted equities funds, the unlisted equities funds will be interposed entities.

Listed Property Fund (A)REITs / Listed Infrastructure Fund/ mandate	The entity will not meet the assets test as it will not have 70% of its assets by value invested in securities or other financial products. This is because as per RG 97.326(b) financial products that are reasonably regarded as a means by which the entity invests in real property or an infrastructure entity are excluded. ASIC has determined that the PDS test would be more appropriate for establishing whether the entity was the end investment or the means by which the super fund or managed investment scheme gained exposure to the end investment (i.e. the real property or infrastructure asset).	For a Listed Property or Listed Infrastructure Fund, the Level 2 entity is an interposed vehicle. For the Level 3 entities: • none are interposed vehicles if they are disclosed as being held in an equities portfolio and will therefore be considered to be the end investment rather than the means by which the benefit of the investment is obtained [see Note at RG 97.333 and Example 9 in Appendix 1 at p101]. • (A)REITs or infrastructure funds can be interposed vehicles if the member disclosure treats them as being held as part of a property or infrastructure asset class (i.e. the (A)REIT is the means by which the benefit of the investment is obtained rather than the end investment). • However, if the listed REITs or infrastructure funds are disclosed as a (sub)-asset class in their own right with specific investment characteristics, then they are not interposed vehicles and no look-through is required (as the REIT or infrastructure fund is the end investment) [see RG 97.333-335]. The 1st and 2nd limbs of the PDS test do not apply. • In any case, even if the 1st and 2nd limbs of the PDS test are not satisfied and the (A)REITs are not considered interposed vehicles, the 3rd Limb of the PDS test may also conclude that the (A)REITs/ listed infrastructure securities are not interposed vehicles as they may satisfy the requirements of RG 97.337 (b). This will require careful analysis of the member disclosure.

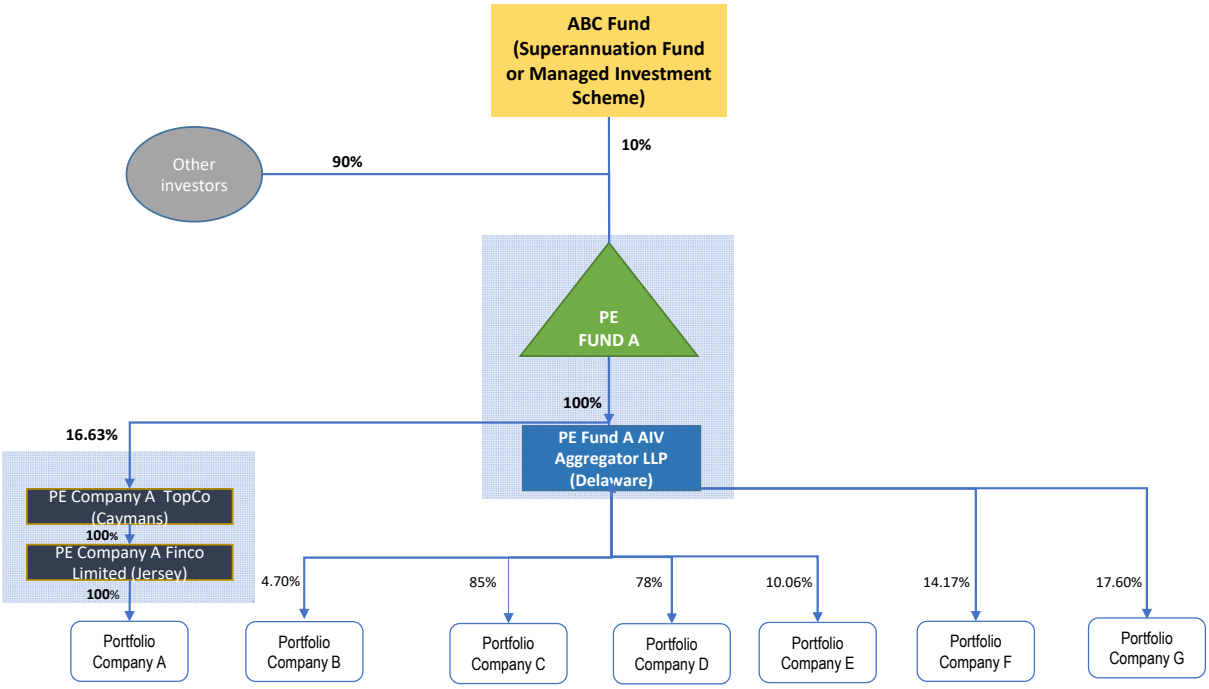
Direct Property/ Infrastructure Fund *See structure examples in Appendix 2.*	None of the entities will be interposed vehicles as securities and financial products that are reasonably regarded as the means by which the entity invests in real property or an infrastructure entity are excluded from the calculation of whether an entity has more than 70% of its assets by value invested in securities or other financial products [see RG97.326(b), Example 10 in Appendix 1 at page 102].	For a Direct Property or Direct Infrastructure Fund, the Level 2 entity is an interposed vehicle. For Level 3 and 4 entities: i. If the investment is seen, based on the PDS, as being an investment in a property or infrastructure asset, then any entities above the asset (e.g. SPV, trust, Hold Co) would be considered the means to gain the exposure, and therefore interposed vehicles – Level 3 entities (and potentially the Level 4 operating entity but not the Level 4 investment) are interposed vehicles. The 1st limb of the PDS test is met [see RG97.333]. ii. If the first limb of the PDS test is not met, you must apply the 2nd limb of the PDS test. An entity will meet the 2nd limb of the PDS test if the PDS reference to "property", "real estate" or "land" (or similar terms) - in the description of the product or investment option or as one of the assets of the product or investment option - is more than a mere reference to an entity that invests in real property, land or certain types of physical infrastructure (see cl101B(6)(a) – (k) of Schedule 10[2] for exceptions) [see RG97.335(a)] AND a retail client could reasonably believe the product is intended for people predominantly intending to benefit from increases in the value of, or returns from, real property or land (other than certain types of physical infrastructure, see cl 101B(6)) [see RG97.335(b)] e.g. when the property or

[2] In this clause, infrastructure entity means an entity that provides a return to its shareholder or members mainly from owning or operating any of the following: airports, electricity generation, transmission or distribution facilities, gas transmission or distribution facilities, hospital, ports, railways, roads, sewerage facilities, telecommunication facilities, water supply facilities or other physical infrastructure.

		infrastructure investment forms part of a balanced fund the entities are not interposed. iii. If the entity does not meet the 2nd limb of the PDS test, you must apply the 3rd limb of the PDS test. If the entity invests the majority of its assets in certain types of physical infrastructure, that entity is NOT an interposed vehicle under the 3rd limb of the PDS Test (see cl101B(6)(a) – (k) of Schedule 10[2] for exceptions) – so the Level 4 entities are not interposed entities for infrastructure investments [see RG97.337(a)]. NOTE: property operating entities are generally considered interposed vehicles however under RG 97.356(b) property operating costs are excluded from the disclosure requirements. Borrowing costs are also not disclosable.

Appendix 1: private equity interposed vehicle examples

Example 1: Private Equity Fund Investment



Interpretation:

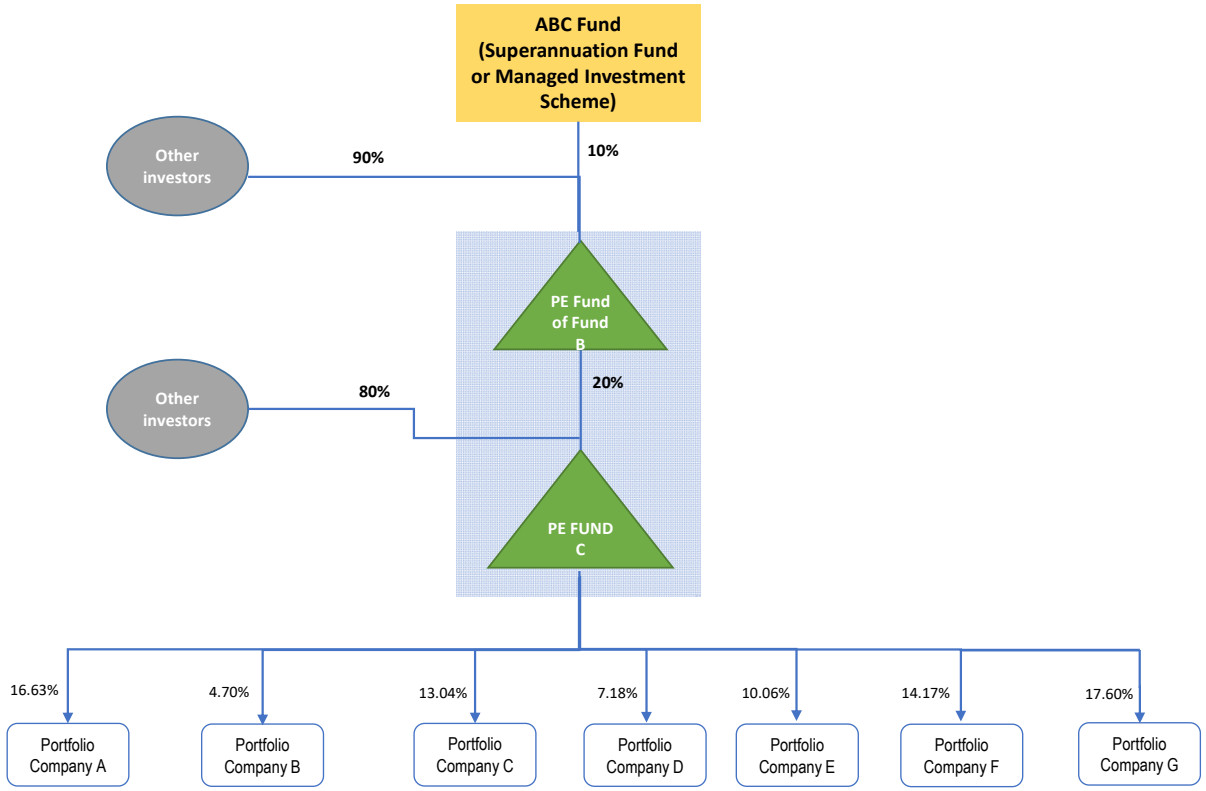
Disclose the relevant proportion of all relevant fees and costs incurred by the blue-shaded vehicles.

The ABC Fund would capture the following RG 97 fees and costs from its investment in PE Fund A:

- 10% of Fees & Costs incurred within PE Fund A
- 10% x 100% of Fees & Costs within PE Fund A AIV Aggregator LLP
- 10% x 16.63% x 100% of Fees & Costs within PE Company A TopCo,
- 10% x 16.63% x 100% of Fees & Costs within PE Company A Finco Limited.

Borrowing costs do not need to be disclosed under RG97, however may be requested so that ABC Fund can monitor these costs.

Example 2: Private Equity Fund-of-Fund Investment



Interpretation:

Disclose the relevant proportion of all relevant fees and costs incurred by the blue-shaded vehicles.

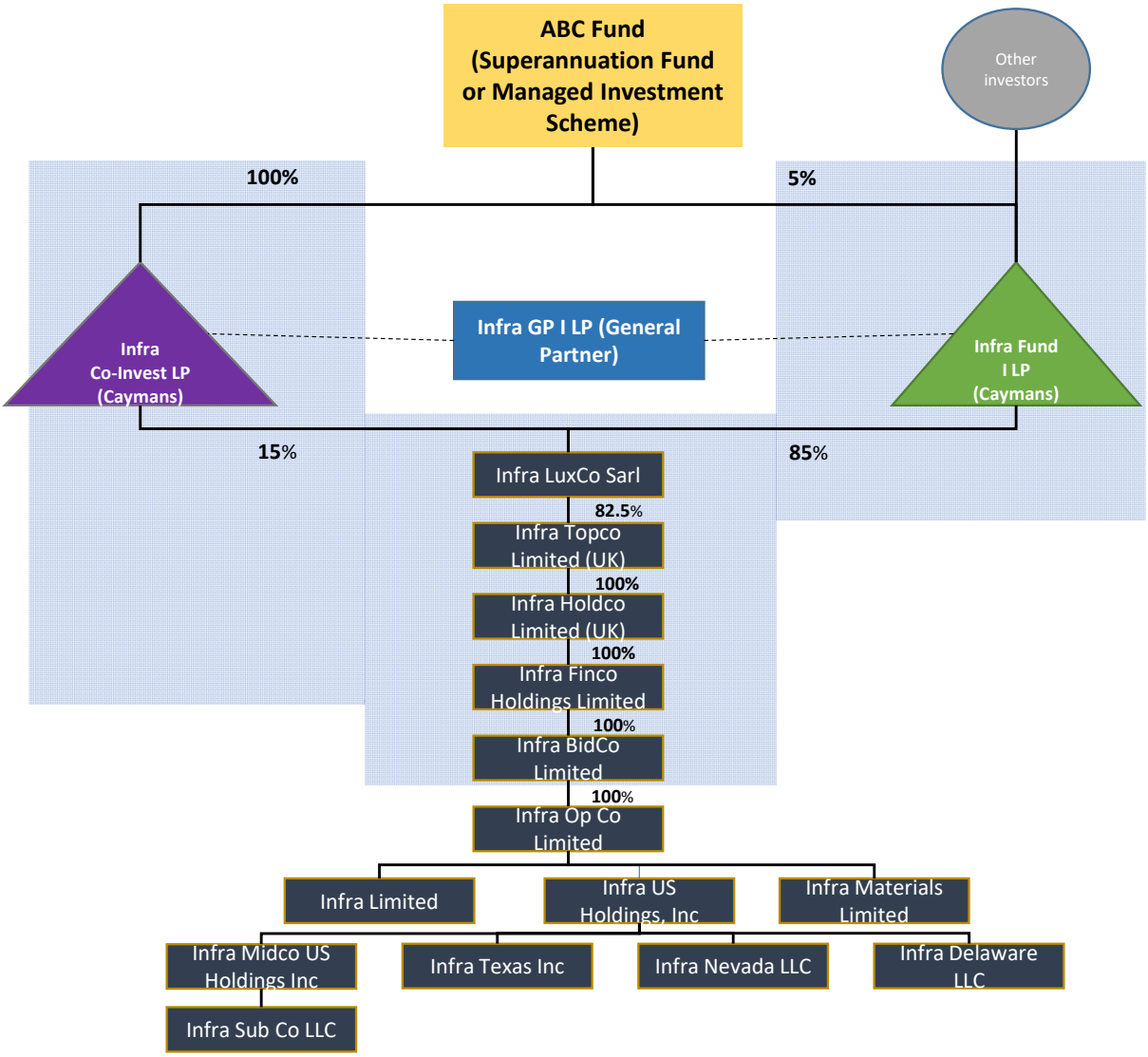
The ABC Fund would capture the following RG 97 fees and costs from its investment in PE Fund of Fund B:

- 10% of Fees & Costs incurred within PE Fund of Fund B
- 10% x 20% of Fees & Costs within PE Fund C

Borrowing costs do not need to be disclosed under RG97, however may be requested so that ABC Fund can monitor these costs.

Appendix 2: direct property and infrastructure interposed vehicle examples

Example 3: Infrastructure Fund & Co-Investment



Interpretation:

Disclose the relevant proportion of all relevant fees and costs incurred by the blue-shaded vehicles.

The ABC Fund would capture the following RG 97 fees and costs from its investment in Infra Co-Invest LP:

- 100% of Fees & Costs incurred within Infra Co-Invest LP
- 100% x 15% of Fees & Costs within Infra LuxCo Sarl
- 100% x 15% x 82.5% of Fees & Costs within Infra Topco Limited, Infra Holdco Limited, Infra Finco Holdings Limited and Infra BidCo Limited

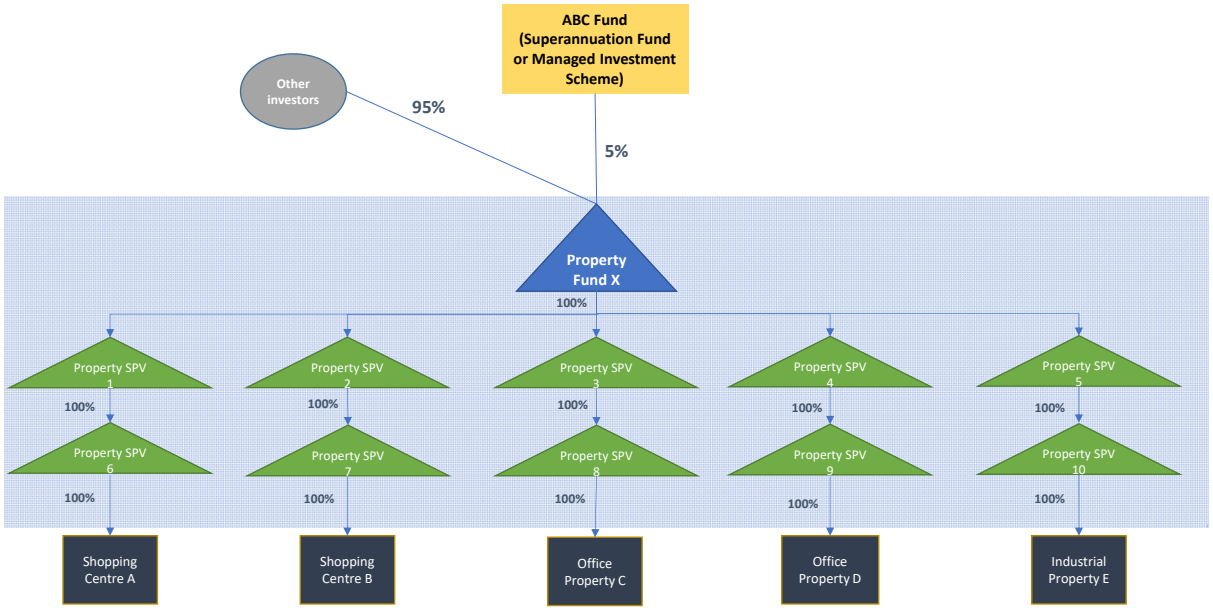
And the following RG 97 fees and costs from its investment in Infra Fund 1 LP:

- 5% of Fees & Costs incurred within Infra Fund 1 LP
- 5% x 85% of Fees & Costs within Infra LuxCo Sarl

- 5% x 85% x 82.5% of Fees & Costs within Infra Topco Limited, Infra Holdco Limited, Infra Finco Holdings Limited and Infra BidCo Limited

Borrowing costs do not need to be disclosed under RG97, however may be requested so that ABC Fund can monitor these costs.

Example 4: Unlisted Property Fund



Interpretation:

Disclose the relevant proportion of all relevant fees and costs incurred by the blue-shaded vehicles.

The ABC Fund would capture the following RG 97 fees and costs from its investment in Property Fund X:

- 5% of Fees & Costs incurred within Property Fund X
- 5% x 100% of Fees & Costs within all of the Property SPV entities (1-10 inclusive)

The following costs do not need to be disclosed under RG 97, however may be requested so that ABC Fund can monitor these costs:

- Property Operating Costs
- Borrowing Costs