STAFF PAPER

June 2022

IFRS® Interpretations Committee meeting

Project	Negative Low Emission Vehicle Credits (IAS 37)	
Paper topic	Comment letters	
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Introduction

1. This paper reproduces comment letters on the IFRS Interpretations Committee's tentative agenda decision 'Negative Low Emission Vehicle Credits (IAS 37)' published in February 2022.

Comments on IFRIC Tentative AD “Negative low emission vehicle credits”
Cristian E. Munarriz
Public Accountant
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17 February 2022

Dear IFRIC members,

I appreciate the opportunity to comment on IFRIC Tentative AD “Negative low emission vehicle credits”.

I generally support the analysis and conclusions about the fact pattern submitted in the request as they are outlined on the tentative agenda decision, except regarding the issues mentioned in the following pages. I also support the tentative decision to not add a standard-setting project to the work plan for the reasons mentioned in the tentative agenda decision.

All opinions and points of view outlined in this document are my own and they do not necessarily represent the views of any company, employer, organisation or committee.

If you have any questions, please contact me at cristian_munarriz@yahoo.com.ar.

Yours faithfully,

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COMMENTS ABOUT TENTATIVE AGENDA DECISION "NEGATIVE LOW EMISSION VEHICLE CREDITS"

I have concerns regarding the following text of the tentative agenda decision, especifically the underlined parts:

If the entity fails to eliminate its negative credits in one or other of those two ways, the government can impose sanctions on the entity, for example restrict the entity's access to the market.

I think the nature of the sanctions that the entity may receive is not clear in the tentative agenda decision. For example, it is not stated if the sanctions involve outflow of cash or other economic resources.

I think anyone reading the tentative agenda decision may (incorrectly) think that if accepting sanctions is a realistic alternative, then a liability would not exist even if the sanction involves outflow of cash or other economic resources.

The Committee concluded that an entity that has produced or imported vehicles with average fuel emissions higher than the government target has a legal obligation that meets the definition of a liability in IAS 37, unless accepting the sanctions that the government can impose is a realistic alternative to eliminating negative credits for that entity.

I think that even if accepting the sanctions is a realistic alternative, a liability might exist if the sanction involves outflow of cash or other economic resources (even if it may be not recorded on immateriality grounds). I am not sure if all sanctions meet this criteria. For example, regarding the potential sanctions mentioned in the fact patterns of the submission, the loss of tax benefits or exemptions, in my view, may be considered as an outflow of economic resources (according to paragraph 4.4. of Conceptual Framework, an economic resource is a right that has the potential to produce economic benefits) because tax benefits are rights that has the potential to produce economic benefits (i.e. paying lower taxes).

On the other hand, I think the concept of having no realistic alternative to settling the obligation (IAS 37, paragraph 17) is directly related to this paragraph in the Conceptual Framework, which is useful for interpretation of the concept in IAS 37:

4.34 The factors used to assess whether an entity has the practical ability to avoid transferring an economic resource may depend on the nature of the entity's duty or responsibility. For example, in some cases, an entity may have no practical ability to avoid a transfer if any action that it could take to avoid the transfer would have economic consequences significantly more adverse than the transfer itself. However, neither an intention to make a transfer, nor a high likelihood of a transfer, is sufficient reason for concluding that the entity has no practical ability to avoid a transfer.

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I think that it is clear that accepting sanctions in the submitted fact pattern would have "economic consequences significantly more adverse" than the outflow of cash itself. Therefore I think that the exception is not met in this case. I recommend adding a reference to paragraph 4.34 of Conceptual Framework as relevant to interpret the "no realistic alternative" concept.

I recommend amending the underlined text as follows:
(…) unless accepting the sanctions that the government can impose is a realistic alternative to eliminating negative credits for that entity and such sanction does not involve the transfer of cash or other economic resources. Following paragraph 4.34 of Conceptual Framework, accepting sanctions would not be a realistic alternative if it would have economic consequences significantly more adverse than the settlement of the liability itself.

The measures that create the obligation and give the government the authority to impose sanctions derive from an operation of law. Hence, the obligation is a legal obligation and the sanctions the government can impose are the means by which settlement can be enforced by law. The requirement that 'settlement of the obligation can be enforced by law' is met, unless accepting sanctions for non-settlement is a realistic alternative for an entity.

Refer to the comments about the last paragraph. I recommend amending the underlined text as follows:

(…) unless accepting sanctions for non-settlement is a realistic alternative for an entity and such sanction does not involve the transfer of cash or other economic resources. Following paragraph 4.34 of Conceptual Framework, accepting sanctions would not be a realistic alternative if it would have economic consequences significantly more adverse than the settlement of the liability itself.

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Subject: Comments on Tentative Agenda Decision and comment letters: Negative Low Emission Vehicle Credits

1) I welcome the opportunity provided for sending comments on Tentative Agenda Decision and comment letters: Negative Low Emission Vehicle Credits

2) My view considering fact pattern

The Committee concluded that an entity that has produced or imported vehicles with average fuel emissions higher than the government target has a legal obligation that meets the definition of a liability in IAS 37, unless accepting the sanctions that the government can impose is a realistic alternative to eliminating negative credits for that entity.

Comments

- It is clear that if emission norms are not met there is a legal obligation. The Company is required to accrue the provision in the year of origination as per best estimate.
- Eliminating negative credits by government is in line with government waiving the penalty or obligation, the Company is required reverse the provision when it is certain that obligation will be waived & no outflow of economic resources will be there for entity

Request for bringing this clarity in the conclusion.

Also, clarity is required on timing of accounting is it at the time of purchase of vehicle or at reporting date end.

Further clarification is required on disclosure of provision accrued in books whether as part of non-purchase price as this is not directly attributable to purchase or manufacture of inventory

I concur that views stated above are my individual opinion and not of any organization where I am working or not of any committee or organization I am connected with.

Regards

Sounder Rajan

M No 237299

8 April 2022

Bruce Mackenzie
Chair
IFRS Interpretations Committee
Columbus Building
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Canary Wharf
London E14 4HD
United Kingdom

Dear Bruce,

RE: Tentative agenda decision – Negative Low Emission Vehicle Credits

We are responding to your invitation to comment on the tentative agenda decision (TAD) – Negative Low Emission Vehicle Credits, published in February 2022, on behalf of PricewaterhouseCoopers.

Following consultation with members of the PricewaterhouseCoopers network of firms, this response summarises the views of member firms who commented on the TAD. 'PricewaterhouseCoopers' refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.

We understand that the Committee's aim is to demonstrate the IAS 37 obligation recognition principles through application to the fact pattern in the submission. Although we do not necessarily disagree with the outcome of the TAD, we are concerned that the technical analysis in this TAD can be interpreted as placing emphasis on the form of the legislation rather than the substance of the legislation ('a legalistic approach'), which could result in scenarios that are economically equivalent being accounted for differently – in other words, opposing accounting conclusions, depending on differences in wording in the legislation, that ultimately have the same economic effect.

We recommend that the Committee update the agenda decision to clearly explain how this fact pattern is consistent with the application principles in IFRIC 21, IFRIC 6 and IAS 37 Illustrative examples 6 and 11A–11B. In particular, we are concerned that legislation giving rise to levies under IFRIC 21 might not have been interpreted in this legalistic way in the past and that this agenda decision might therefore require further analysis of levies already being accounted for under IFRIC 21.

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For illustrative purposes, we have analysed, in Appendix A, the possible impact of a legalistic approach on a number of scenarios with similar legislative objectives.

In addition, we suggest that the following points are considered before finalising the words in the agenda decision:

- The Committee has concluded that, in the fact pattern provided, the obligation is derived from a legal requirement. In the absence of a detailed analysis of a fact pattern in which the obligation is derived from a constructive obligation, we are concerned that this agenda decision will be applied more broadly than intended, and that it might introduce a risk of misinterpretation. This is of particular concern in the current environment, in which many entities are making public statements with respect to environmental and social commitments (for example, net zero commitments, where there is judgement about whether the statement made by entities might constitute 'a sufficiently specific current statement' or whether the future actions proposed to meet the commitments are more akin to an executory contract). Consequently, we suggest that the Committee remove any discussion of constructive obligations from the final agenda decision, given the broad impacts of such considerations which have not been fully analysed by the Committee.

- The TAD could be interpreted to imply that the existence of positive credits for an entity would give rise to an asset (*"the resources are the positive credits the entity will receive for the next year …"*). We understand that this technical analysis was not the focus of the TAD. We note that there is mixed practice when accounting for positive credits under the various carbon offset allowance programmes, and so we suggest clarifying this position by explicitly stating in the final agenda decision that the accounting by the holder of positive credits was not considered by the Committee.

- The description of the relevant sanctions in the TAD fact pattern are not clearly defined (*"the government can impose sanctions on the entity, for example restrict the entity's access to the market"*). In the original submission, we observe that the sanctions described are vague (for example the government not granting licences for new vehicle types, slowing down imports, etc). It would be helpful if the agenda decision was clearer on the specific assumptions related to the proposed sanctions that support a legal obligation.

If you have any questions in relation to this letter, please do not hesitate to contact Henry Daubeney (henry.daubeney@pwc.com) or Gary Berchowitz (gary.x.berchowitz@pwc.com).

Yours sincerely,

Henry Daubeney
Partner, Global Chief Accountant and Head of Reporting
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Appendix A – Examples

Consideration for the Committee: We anticipate that, in the absence of further clarification, the application of the TAD could result in different accounting conclusions driven by the form of the legal requirements rather than their substance, as demonstrated in these examples. We ask the Committee to further clarify how the fact pattern in the TAD is different from the existing guidance in IFRIC 21, IFRIC 6 and IAS 37 Illustrative examples 6 and 11A–11B.

These examples are for illustrative purposes, to demonstrate the possible contradicting interpretations between the existing guidance and the TAD. The conclusions do not necessarily reflect PwC's view, which would be dependent on an assessment of the full facts and circumstances.

Example 1:

Fact pattern: *Under new legislation, an entity is required to fit smoke filters to its kitchens by 1 January 2023.*

Question: Should the entity recognise a liability to fit the smoke filters before 1 January 2023?

Assessment under guidance in IAS 37 Illustrative examples: Before 1 January 2023, there is no obligating event, since the obligation does not arise until 1 January 2023. No provision is recognised for the costs of fitting the smoke filter. Even on 1 January 2023 and beyond, if the smoke filters have not yet been fitted (the obligating event), the entity does not have a present obligation to fit the smoke filter, but it might have an obligation for fines/penalties starting from that date.

Amended fact pattern: *Under new legislation, any entity that operated as a restaurant during 2021 is required to fit smoke filters to its kitchen by 1 January 2023, and fines/penalties will be levied from 1 January 2023 for non-compliance.*

Possible assessment under the TAD: We understand that the logic in the TAD would imply that the obligating event that gives rise to a present obligation is the operation as a restaurant during 2021. Therefore, if an entity operated as a restaurant during 2021, the obligating event has taken place, and so a provision should be recognised in 2021.

Example 2:

Fact pattern: *Legislation imposes a levy to be paid on 1 June 2022 by an entity that both (a) operated as a financial institution during 2021 and (b) continues to operate as a financial institution in 2022. The levy is calculated as a percentage of revenues recognised in 2021.*

Question: Should the entity recognise a liability as of 31 December 2021?

Assessment under IFRIC 21: The obligating event that gives rise to a liability to pay a levy is both operating as a financial institution in 2021 and the decision to operate as a financial institution in 2022. The mere fact that an entity has operated as a financial institution in the past does not provide certainty that it will continue to do so in the future. The entity can avoid

payment of the levy by discontinuing its financial services activities on 31 December 2021. Therefore, the liability arises in 2022, once the entity has triggered a requirement to pay by continuing to operate as a financial institution (para 9 of IFRIC 21).

Possible assessment under the TAD: Operating as a financial institution in 2021 gives rise to an obligation for the entity, considering that ceasing operations in December 2021 is not an economically realistic alternative course of action* at 31 December 2021. Consequently, an obligation arises progressively throughout 2021, based on the logic in the TAD.

*Applying a similar logic to that in the TAD's fact pattern, whereby accepting sanctions was not considered a realistic alternative to eliminating negative credits.

Example 3:

Amendment to the fact pattern in the TAD: Assuming that the fact pattern analysed in the TAD is modified as follows:

The legislation requires entities to compare the average fuel emissions of vehicles produced or imported from 1 January 2023 to 30 June 2024 to a specified target. If the average fuel emissions of the vehicles produced or imported during that period exceed the target, a levy is paid; and, if they are below the target, no levy is paid. The payment will be triggered only based on the calculation of the average emissions of all vehicles produced/imported during the period from 1 January 2023 to 30 June 2024 compared to the target.

Technical analysis: Following IFRIC 21 and IAS 37 Illustrative example 11B, entities will not have a legal obligation at the 31 December 2023 year end. Before 30 June 2024, no obligation exists independently of the entity's future actions – the entity could avoid paying the levy, for example by importing or producing more vehicles that lower the average emissions, even if the average exceeds the target at certain times within the period. For example, between 1 January 2023 and 31 December 2023, vehicles with emissions higher than the target might be produced/imported and, in the period from 1 January 2024 to 30 June 2024, vehicles with emissions lower than the target are produced / imported such that no payment is triggered at 30 June 2024.

Despite the substance of the legislation being similar to that in the TAD, the form of the legislation could drive a different outcome, depending on which accounting guidance is applied.

International Organization of Securities Commissions
Organisation internationale des commissions de valeurs
Organização Internacional das Comissões de Valores
Organización Internacional de Comisiones de Valores
المنظمة الدولية لهيئات الأوراق المالية

8 April 2022

Mr. Bruce Mackenzie
Chair of the IFRS Interpretations Committee
Columbus Building
7 Westferry Circus
Canary Wharf
London E14 4HD
United Kingdom

Our Ref: 2022/O/C1/IFRIC/MS/32

RE: Tentative Agenda Decision: Negative Low Emission Vehicle Credits

Dear Mr. Mackenzie, BI•IC

The International Organization of Securities Commissions ("IOSCO") Committee on Issuer Accounting, Auditing and Disclosure ("Committee 1") thanks you for the opportunity to provide our comments on the IFRS Interpretations Committee ("IFRS IC") tentative agenda decision, *Negative Low Emission Vehicle Credits* ("TAD").

IOSCO is committed to promoting the integrity of the international markets through promotion of high-quality accounting standards, including rigorous application and enforcement. Members of Committee 1 ("members" or "we") seek to further IOSCO's mission through thoughtful consideration of accounting and disclosure concerns and pursuit of improved transparency of global financial reporting. The comments we have provided herein reflect the general consensus among the members of Committee 1 and are not intended to include all of the comments that might be provided by individual securities regulator members on behalf of their respective jurisdictions.

Pollutant Pricing Mechanisms ("PPMs"), like the one described in the IFRS IC submission, are becoming more prevalent in many jurisdictions as countries and entities focus on reducing carbon emissions. We support the IFRS IC's objective to reduce the diversity in practice and provide an analysis for certain types of PPMs that entities may use going forward.

Members note that while a majority of IFRS IC members agreed with the conclusion, several IFRS IC members did not. Many Committee 1 members believe that this may be attributed to the fact that there is insufficient information contained in the submission to explicitly conclude that either a legal or constructive obligation exists. Furthermore, due to the limited information provided in the submission, it is unclear whether or how it differs from part (a) of Illustrative Example 6 (Legal requirement to fit smoke filters) of IAS 37, IFRIC 6 Liabilities arising from Participating in a Specific Market—Waste

Electrical and Electronic Equipment and Example 2 in IFRIC 21 Levies. The submission is unclear in the minds of some members as to whether a legal obligation exists. Likewise, the submission does not indicate that management has taken steps that would give rise to a constructive obligation. Therefore, we recommend the IFRS IC amend the TAD to remove the conclusion that a legal obligation exists in the fact pattern described in the submission and instead provide a framework that begins with an assessment for a specific fact pattern as to whether a legal obligation exists and if so, what the obligating event is. A revised TAD would then go on to explain that if a legal obligation does not exist, the entity would then need to evaluate whether management has made representations that give rise to a constructive obligation (e.g., if management of an entity has made a sufficiently specific current statement that it plans to purchase positive credits or has established a past practice of purchasing credits[1]).

Members believe this approach is important to highlight that the determination of whether a legal obligation or a constructive obligation exists are two separate and distinct evaluations. While PPMs may be similar across jurisdictions, subtle differences in the program can have an impact on the accounting conclusions.

Members also expressed concerns that the measurement of the liability has not been addressed in the TAD. IAS 37.14 states:

> *A provision shall be recognised when:*
> *(a) an entity has a present obligation (legal or constructive) as a result of a past event;*
> *(b) it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation; and*
> *(c) a reliable estimate can be made of the amount of the obligation.*

As a consequence, even if a legal or constructive obligation exists (criterion (a)), a provision might not be recognized because one of the other criteria is not met, including the ability to make a reliable estimate. Given the alternatives available in the submission to address the negative credits (e.g., purchase credits or generate additional credits in the future period), it is unclear how an entity would measure a provision. One approach could be to measure the negative credits based on the current purchase price in the open market. However, since IAS 37's measurement is based on how management intends to settle the obligation, if management's plan is to generate positive credits, use of existing market prices would seem inconsistent with management's intended method of settlement. We, therefore, believe the IFRS IC should include in the TAD how an entity would approach measurement of the obligation after it has determined that a present obligation exists.

Members agree with the IFRS IC's conclusion that the IFRS Accounting Standards provide a sufficient basis for evaluating the question submitted in circumstances where the totality of the arrangement is

[1] IAS 37.10

known. However, we would like to highlight that the PPM in question raises other accounting and financial reporting questions that may need to be considered including:

- While the submission focused on the existence of a liability arising from negative credits, we believe the IFRS IC should expand the TAD to highlight the considerations for recognizing an asset when positive credits are generated/produced.
- The TAD evaluates whether a liability should be recognized, the credit journal entry, but it does not address where the offsetting debit journal entry should be made – should it be made to inventory (and then to cost of goods sold) or recognized immediately in the statement of profit or loss as a "new energy vehicle" credit expense.
- The TAD only discusses the year-end reporting considerations for entities with calendar year ends. We believe the agenda decision should evaluate reporting considerations for those entities whose fiscal year ends are not aligned with the calendar year end. In addition, we strongly recommend the TAD should also evaluate interim-reporting considerations because many producers of passenger vehicles are subject to interim reporting requirements.[2]

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We appreciate your thoughtful consideration of the views provided in this letter.

If you have any questions or need additional information, please do not hesitate to contact Cameron McInnis, Chair of the Accounting Subcommittee of Committee 1 at +1 416-593-3675 or myself. In case of any written communication, please mark a copy to me.

Yours sincerely,

Makoto Sonoda

Chair
Committee on Issuer, Accounting, Audit and Disclosure
International Organization of Securities Commissions

[2] For example, if an entity had a negative balance at the half-year reporting date but expected to generate enough positive credits by the end of the year, would they recognize a liability at that interim date?

(NBAA)

THE NATIONAL BOARD OF ACCOUNTANTS AND AUDITORS

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Date: 10th April, 2022

Chief Executive Officer,
IFRS Foundation
Columbus Building
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London E14 4HD

Dear Sir/Madam

RE: TENTATIVE AGENDA DECISSION: NEGATIVE LOW EMISSION VEHICLE CREDITS

Refer to the heading above.

NBAA support the conclusion reached by the IFRS Interpretation Committee on the request which asked whether, particular measures to encourage reductions in vehicle carbon emissions give rise to obligations that meet the definition of a liability in IAS 37. The request considered the position of an entity that has produced or imported vehicles with average fuel emissions higher than the government target, and asked whether such an entity has a present obligation that meets the definition of a liability in IAS 37.

However, paragraph 4.4 (b) of the conceptual framework defines a liability as a present obligation of the entity arising from past events, the settlement of which is expected to result in an outflow from the entity of resources embodying economic benefits.

Furthermore, paragraph 4.17 of the conceptual framework further explains that settlement of a present obligation usually involves the entity giving up resources embodying economic benefits in order to satisfy the claim of the other party. Settlement of a present obligation may occur in a number of ways, for example, by payment of cash; transfer of other assets; provision of services; replacement of that obligation with another obligation; or conversion of the obligation to equity, or be extinguished by other means, such as a creditor waiving or forfeiting its rights.

Therefore, we are of the view that, in both ways as prescribed by the legislation intended to eliminate above average negative credits of an entity, we still think that there is a present obligation that necessitate an outflow of an economic resources as the legislation requires the entity to purchase positive credit from another entity which will basically involve an outflow of resources.

On the other hand, if the entity opts eliminating above average negative credits through producing or importing more low emission vehicles, still this will involve an outflow of some economic resources.

Also, the request described that, if the entity fails to eliminate its negative credits in one or other of those two ways, the government can impose sanctions of restricting the entity's access to the market, of which we basically believe that loosing access to the market will as well indicate losing of resources an entity would have obtained had it has access to that particular market.

Considering above identified situations and circumstances, we are of the view that there is a liability, only that recognition of liability will depend on the level of certainty of timing and amount with respect to that specific present obligation.

If you require any clarification on our comments, please contact the undersigned.

Thank you in advance for your cooperation.

Yours sincerely,

CPA Angyelile V. Tende
For: EXECUTIVE DIRECTOR

ICAEW
REPRESENTATION 34/22

TENTATIVE AGENDA DECISION: NEGATIVE LOW EMISSION VEHICLE CREDITS

Issued 12 April 2022

ICAEW welcomes the opportunity to comment on the Tentative Agenda Decision: Negative Low Emission Vehicle Credits published by IASB on 10 February 2022, a copy of which is available from this link.

For questions on this response please contact our Financial Reporting Faculty at frf@icaew.com quoting REP 34/22.

This response of 12 April 2022 has been prepared by the ICAEW Financial Reporting Faculty. Recognised internationally as a leading authority on corporate reporting, the faculty, through its Financial Reporting Committee, is responsible for formulating ICAEW policy on financial and non-financial reporting issues and makes submissions to standard setters and other external bodies on behalf of ICAEW. The faculty provides an extensive range of services to its members including providing practical assistance with common corporate reporting problems.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 157,800 chartered accountant members in over 147 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

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KEY POINTS

1. ICAEW welcomes the opportunity to comment on the IFRS Interpretation Committee's tentative agenda decision regarding negative low emission vehicle credits.

2. We believe that as the government introduces additional incentives, levies and penalties with the intention of encouraging a low carbon economy, the accounting framework to be applied must be robust and clear in order to result in consistent application of the principles to different fact patterns. In this context, we have a concern that this tentative agenda decision for the fact pattern considered, potentially creates ambiguity as to when a liability might exist. In particular, it appears to be a shift from the practice established by IFRIC 21 *Levies* for when a liability should be recognised.

3. Our understanding of the Interpretation Committee's rationale from the explanation provided in the tentative agenda decision is that the obligating event that may give rise to a liability is the production or import of vehicles with average fuel emissions higher than the government target. An entity that incurred such an obligation would be required to deliver positive credits to the government. However, if an entity failed to deliver such positive credits, the government could impose sanctions on the entity but that those sanctions would not lead to an outflow of economic benefits. This obligation:

    a. is a legal one, if accepting government sanctions is not a realistic alternative;
    b. is a constructive one, if accepting government sanctions is realistic but action has been taken to create valid expectations in other parties that the negative credits generated will be eliminated; or
    c. does not exist, if accepting government sanctions is realistic and valid expectations to eliminate the negative credits have not been created.

    If the final scenario is applicable, then an entity would not recognise a liability and should effectively ignore the economic consequences of accumulating negative low emission vehicle credits.

4. As described in IFRIC 21, paragraph 8, the obligating event that gives rise to a liability to pay a levy is the activity that triggers the payment of the levy, as identified by the legislation. Within the tentative agenda decision, the obligating event is described as the production or import of vehicles with average fuel emissions higher than the government target. However, this action does not necessarily trigger a payment (or outflow of resources), as identified by the legislation, because this outflow of resources can be avoided by accepting sanctions in the future. We observe that in applying IFRIC 21 an entity would not consider whether avoiding an outflow of resources by exiting a market is realistic.

5. In the specific fact pattern considered in the tentative agenda decision, the law cannot enforce settlement of the obligation, even if the trigger event for the remedies set out in the legislation has happened. The law may ultimately impose sanctions (if remedies are not made), but these sanctions do not result in direct financial penalties. Therefore, we question the presence of a legal obligation under these circumstances.

6. IFRIC 21 describes an example whereby the obligating event is triggered by the generation of revenue in a current period, but the liability is calculated based on revenue generated in a prior period (paragraph 8). In this example the generation of revenue in the previous period is necessary, but not sufficient, to create a present obligation. The facts and circumstances considered as part of this tentative agenda decision are not dissimilar and it may be argued on this basis that the import/production of high emission vehicles is necessary, but not sufficient, to create a present obligation because the law cannot enforce settlement nor

impose sanctions at the point the high emission vehicles are imported or produced. While we appreciate that IFRIC 21 covers a different fact pattern to that covered within the tentative agenda decision, we believe there are strong parallels between the two and the distinction is very delicate. Therefore, the apparent tension between the 'trigger point' for recognising an obligation under IFRIC 21 and this tentative agenda decision causes us some concern that we believe needs addressing, if only through more precise use of language in the tentative agenda decision.

7. We believe this tentative decision also contradicts paragraph 19 in IAS 37 *Provisions, Contingent Liabilities and Contingent Assets,* which states that when an entity can avoid the future expenditure by its future actions, for example by changing its method of operation, it has no present obligation for that future expenditure and no provision is recognised. In this case, changing its method of operation could be exiting the market. Again, there is no requirement to assess whether or not this action is realistic.

8. In addition:

    a. The tentative agenda decision does not explain that the government sanctions themselves would not result in direct financial penalties on the entity. This factor was included in paragraph 10 of staff paper 4 for the November 2021 Interpretations Committee meeting. This factor seems to be critical to the conclusion in the tentative agenda decision and should be included in the agenda decision itself.
    b. We were unable to identify an explanation of how an entity might test whether accepting the sanction is or is not realistic. We would welcome further guidance to help those that need to make such an assessment, as, according to the tentative agenda decision, this appears to be a fundamental factor in identifying the presence of a legal obligation.
    c. We note that in this fact pattern the entity can settle its obligation by generating positive credits itself in the next year – for example by switching its activity to lower emissions vehicles. This raises questions as to whether and why the obligation exists independently of the entity's future actions and also whether an obligation might exist at an interim period end that falls within the legal measurement period. We think a final agenda decision should address these matters.
    d. If accepting government sanctions is deemed a realistic option for an entity, and therefore a provision is not recognised in respect of the negative credits accumulated, the tentative agenda decision does not describe any considerations that an entity should have towards other economic consequences of accepting these sanctions, such as impairment of inventory or other assets. We feel that the tentative agenda decision should highlight a need to consider any wider consequences.

9. In summary, while we do not necessarily disagree with the tentative conclusion we think the final agenda decision should more clearly identify the relevant differences between the fact pattern in question and the similar IFRIC 21 fact patterns referred to above (as well as Illustrative Example 6 to IAS 37 'Legal requirement to fit smoke filters' and IFRIC 6, as referred to in the tentative agenda decision), and explain why these lead to different outcomes. We are concerned that as drafted the tentative agenda decision may create more confusion than clarity.

هيئة السوق المالية
Capital Market Authority

IFRS Interpretations Committee
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11 Apr. 2022

Dear Sirs,

Tentative Agenda Decision – Negative Low Emission Vehicle Credits

We are pleased to respond to the IFRS Interpretations Committee's (the "IFRIC") Tentative Agenda Decision ("TAD") on Negative Low Emission Vehicle Credits on behalf of the Capital Market Authority (the "CMA").

The CMA's functions are to regulate and develop the Saudi Arabian Capital Market by issuing required rules and regulations for implementing the provisions of Capital Market Law. The basic objectives are to create an appropriate investment environment, boost confidence, and reinforce transparency and disclosure standards in all listed companies, and moreover to protect the investors and dealers from illegal acts in the market.

Executive Summary

We have some concerns about possible discrepancies between the facts in the TAD compared to the facts in the submission. Assuming it was the IFRIC's intent to address the facts in the submission we have further concerns about the technical accounting analysis and conclusions given the requirements and principles of IAS 37 and IFRIC 21.

The summary of the request in the TAD doesn't seem to sufficiently address the critical fact that the entity is able to exit the market without having to deliver any positive credits, or suffer any fines, despite already having generated negative credits. The facts as stated in the TAD imply that once negative credits have been generated, all roads lead to some kind of enforceable outflow of economic benefits, but this was not the case in the original submission.

Our technical accounting comments in this letter are based on the submission as drafted. In our opinion, no obligating event exists to satisfy legal requirements if settlement cannot be enforced based on events that have occurred by the reporting date. We believe that the generation of negative credits is necessary but not sufficient to create a legal obligation because this event alone does not create an obligation to settle, given that the entity can exit the market (among other courses of action) and avoid settling. The legally enforceable obligation to settle is the definition of "no realistic alternative" in IAS 37 para 17(a) and the trigger for recognition of a legal liability (subject to the other conditions in IAS 37 para 14 also being met). We have further concerns with the notion that an entity might have a constructive obligation to meet the future legal requirement to settle because this concept was dismissed by the IFRIC in drafting IFRIC 21 (see paras BC15-BC16).

We are concerned that this TAD may not be consistent with the requirements of IAS 37 because we believe that this is a legal obligation that has not yet met the recognition requirements in IAS 37 para 17(a). Consequently, we

recommend that the IFRIC adds a project to its work plan rather than addressing this issue in an Agenda Decision so that any potential inconsistencies can be fully explored and a broader consultation process can take place. More consultation and explanation might be necessary to avoid confusion in the market that might arise from this interpretation. We are concerned that this TAD might serve to increase diversity in the application of IAS 37 more generally, and open the door to the recording of provisions for future operating costs and general provisions that entities are not ultimately obligated to settle.

Accuracy in Summarising the Fact Pattern

The submission noted a number of alternative courses of action available to the entity, such as exiting the market, which have not been included in the TAD. Furthermore, the submission stated that non-compliance would not result in a financial penalty, although it could lead the government to curtail the entity's operations. As a consequence, it is not clear to us whether the IFRIC's conclusions address all of the facts from the submission. The facts set out in the TAD imply that once negative credits have been generated, all roads lead to some form of enforceable outflow of economic benefits. However, the submission stated that the entity could exit the market (among other actions) and avoid paying anything despite having generated past negative credits. In our opinion this fact is critical to the analysis and, for the reasons set out in the other sections of this letter (especially IFRIC 21 paras 9 & BC15-BC19), results in no obligating event having arisen.

As we explained above in the executive summary, our technical accounting comments in this letter are based on the facts in the submission that include an ability to exit the market (or take other actions) without making any settlement for the past negative credits generated. For the sake of brevity, we have referred elsewhere in this letter only to exiting the market, but the same logic would apply to other available actions that would avoid settlement (e.g. negotiating future plans with the government).

Requirements of IAS 37

It appears to us that the requirements of IAS 37 are abundantly clear in paragraph 17(a) relating to legal obligations; if settlement cannot yet be enforced, there is no obligating event. The circumstances described in the submission indicate that any obligation that might exist derives from government, so logically it must be a legal obligation and not a constructive obligation (see IAS 37 para 10 definitions). Furthermore, the submission states that, rather than purchasing credits in the market, the entity can simply exit the market to avoid settlement. In this case there is no settlement; nothing is paid to the government or anyone else in compensation for the fact that the entity generated a negative credits position. Whether or not IFRIC members believe that such a course of action is realistic is irrelevant; the standard defines "no realistic alternative" in paragraph 17(a) with respect to legal obligations as being strictly when settlement can be enforced. As "no realistic alternative" is defined in the standard with respect to legal obligations, it is not possible to form subjective views as to what is or isn't realistic in the context of this fact pattern. The IFRIC tries to argue in the TAD that the enforceable settlement criterion is somehow met, but does not explain how this can possibly be the case when the entity is able to exit the market and pay nothing.

Having concluded that this is a potential legal obligation, it is not clear to us how a constructive obligation could nonetheless also exist. We are not sure how the potential imposition of sanctions arising from non-compliance with legal requirements could give rise to a constructive obligation. Any sanction arising as a result of the operation of law, must be a legal obligation based on the definitions in IAS 37 para 10, and not a constructive obligation.

Even if some other constructive obligation argument were to be advanced that is more consistent with the definition of a constructive obligation in the standard, the IFRIC has already concluded in IFRIC 21 that it is not possible to have a constructive obligation to meet a legal requirement. See the IFRIC 21 section of our letter below for further explanation of this point.

We are concerned that the TAD seems to deviate from the specific requirements and definitions set out in paragraphs 10 & 17 of IAS 37.

Comparison to IFRIC 21

As an interpretation of IAS 37 relevant to a particular type of legal obligations, we would have thought that IFRIC 21 contains many pieces of relevant guidance that would be helpful in analysing this fact pattern. In particular, paragraph 8 of IFRIC 21 discusses a fact pattern where an entity pays a levy if it generates any revenues in a particular period, but the amount is calculated based on the quantum of revenues generated in the prior year. The Interpretation states that the generation of revenues in the earlier period is necessary but not sufficient to create an obligating event, so no liability is recorded at the end of the earlier year. Paragraphs BC12 & BC13 expand further on the principle that, while there can be only one obligating event, many events may be required to occur before an entity is required to make a payment. An obligation only arises once *all* conditions necessary to force settlement have arisen. In other words, the final event necessary to create enforceable settlement is the obligating event. In the fact pattern in the submission, it is clear that the generation of negative credits is necessary to create an obligation, but it is equally clear that it is not sufficient. In both the submission and the scenario described in IFRIC 21 para 8, the entity can avoid settlement by exiting the market.

In developing IFRIC 21, the IFRIC also considered the concept of constructive obligations and concluded in paragraphs 9 & BC15-BC19 that it is not possible to have a constructive obligation to meet a future legal obligation, even if avoiding the future obligation involves taking unrealistic action. In rejecting the constructive obligation argument, the IFRIC stated,

"That if this rationale were applied, many types of future expenditure within the scope of IAS 37 would be recognised as liabilities. Indeed, in many cases, entities have no realistic alternative but to pay expenditures to be incurred in the future."

The IFRIC also noted that:

"There is no constructive obligation to pay a levy that relates to the future conduct of the business, even if:
(a) it is economically unrealistic for the entity to avoid the levy if it has the intention of continuing in business;
(b) there is a legal requirement to incur the levy if the entity does continue in business;
(c) it would be necessary for an entity to take unrealistic action to avoid paying the levy, such as to sell, or stop operating, property, plant and equipment;
(d) the entity made a statement of intent (and has the ability) to operate in the future period(s); or
(e) the entity has a legal, regulatory or contractual requirement to operate in the future period(s)."

Given that levies are legal obligations and IAS 37 only discusses two types of obligations, legal and constructive, we do not understand why the guidance on obligating events in IFRIC 21 would not be directly applicable to the fact pattern in the submission, which is also a legal obligation.

The fact pattern in the submission strikes us as a classic example of the "necessary but not sufficient" concept explained in IFRIC 21. Despite having generated a negative credits position in a particular year, the entity can avoid any legal obligations imposed by government by exiting the market. Even if such a course of action is wholly impractical, improbable, or impossible, IFRIC 21 clarifies that no obligation exists until the entity triggers the legal requirement to settle.

Conclusion

The IFRIC should clarify the facts addressed in the TAD, and the extent to which these are intended to reflect the fact pattern set out in the submission. Based on the fact pattern in the submission we do not see how an obligation can be triggered simply by the generation of negative credits. Although we agree that the potential obligation is legal, still, no obligating event arises until settlement can be enforced per IAS 37 para 17(a). Furthermore, we believe that the "necessary but not sufficient" concept in IFRIC 21 applies to this fact pattern which further clarifies that the generation of negative credits alone does not create an obligating event. Finally, we note the IFRIC's prior conclusions in IFRIC 21 that it is not possible to have a constructive obligation to meet a future legal obligation, even if avoiding the future obligation involves taking unrealistic action, and for this reason arguments based on the constructive obligation guidance should be disregarded.

Should the IFRIC continue to believe that its analysis is correct despite the arguments set out above, we recommend adding a project to the IFRIC's work plan rather than dealing with this issue through an Agenda Decision. If the IFRIC believes that IAS 37 para 17(a) and IFRIC 21 paras 8-9 are not the relevant guidance to apply in this case, we recommend more consultation and deliberation with constituents before publishing any guidance. We believe that progressing with this Agenda Decision might create broader confusion as to how IAS 37 should be applied, and increase diversity in practice. In particular, the notion that a legal obligation can arise prior to an enforceable duty to settle, opens the door to recording provisions for future operating costs and general provisions that an entity might not ever have any intention to settle.

****

Should you have any questions relating to this letter, please contact Sami Alshorafa (+966 11 490 6111, sami.alshorafa@cma.org.sa) or Simon Whitehead (+966 11 490 6762, simon.whitehead@cma.org.sa).

Yours faithfully,

Sami Alshorafa
General Director, Financial Statements & Auditors Division
Capital Market Authority
King Fahad Road
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Kingdom of Saudi Arabia

April 11, 2022

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United Kingdom

Dear Ms. Joan Brown and members of IFRS Interpretation Committee,

Re : Tentative Agenda Decisions – Negative Low Emission Vehicle Credits

We welcome the opportunity to provide our comments on the Tentative Agenda Decision - “Negative Low Emission Vehicle Credits” (hereinafter referred to as "TAD").

1. We agree with the conclusion in the TAD of the IFRS Interpretation Committee basically as far as it assumes that the issue is within the definition of a liability in the current IAS 37.

2. However we have following concerns with respects to the TAD.
   (a) Giving rise to an unintended consequence
   (b) Not enough as interpretations and understanding of the current entire IAS 37
   (c) Accounting for a positive low emission vehicle credits
   (d) Relationship with the definition of a liability in revised Conceptual Framework

   We propose that the IFRS Interpretation Committee should address them. Please refer to the below for the detail.

(a) Giving rise to an unintended consequence

3. We realized that the issued TAD deleted the wording “*recognise and*” in the second sentence from the end from TAD showed in appendix A of the AP 2 of the February IFRS Interpretation Committee meeting. In short, the issued TAD showed the wording “*measure*” only instead of .the wording “*recognise and measure*” in appendix A of the AP 2.

4. This change trail is inconsistent with the sentence "*The request asked only whether the government measures give rise to obligations that meet the definition of a liability in IAS 37*" showed in the second sentence from the end of the TAD. This could lead to be understood and interpreted as meeting recognition requirements in paragraph 14 of the IAS 37 and give rise to an unintended consequence for this fact pattern. IAS 37 clearly distinguish the obligations that meet the definition of a liability from the obligations that meet the recognition requirements of the liability.

5. Therefore we propose the IFRS Interpretation Committee should amend the TAD as follow if it would decide to publish the TAD except for the case described in (b) below.

> *The request asked only whether the government measures give rise to obligations that meet the definition of a liability in IAS 37. The Committee noted that, having identified such an obligation, an entity would apply other requirements in IAS 37 to determine how to recognise, measure and disclose the liability. The Committee did not discuss those other requirements.*

(b) Not enough as interpretations and understanding of the current entire IAS 37

6. We believe that this kind of emission credits scheme is very important and might be taken in other market. The following fact pattern also can affect the recognition, measurement and disclosure requirements of IAS 37.
   (i) The fact which the entity's future action may generate positive credits to offset the negative balance
   (ii) The fact which the government can impose sanctions on the entity (i.e. the possibility the government do not impose sanctions)

7. Therefore we propose the IFRS Interpretation Committee should develop the IFRIC Interpretation to support the various stakeholders. We believe that developing the IFRIC Interpretation helps to promote more consistent application than the TAD. And also it helps to compare with IFRIC 21 "*Levies*" and IFRIC 6 "*Liabilities arising from Participating in a Specific Market—Waste Electrical and Electronic Equipment*". Nevertheless, if the IFRS Interpretation Committee decide to publish the TAD as an alternative for the IFRIC Interpretation, TAD should show how the entity apply the current IAS37 requirements to the fact pattern in (i) and (ii) above, as well as including described in (c).

(c) Accounting for a positive low emission vehicle credits

8. The TAD explains in the Committee's conclusions as following.

> - *an entity can settle its obligation either by purchasing positive credits from another entity or by generating positive credits itself in the next year and using those positive credits to eliminate the negative balance. In either case, settlement involves an outflow from the entity of resources embodying economic benefits. In the first case, the resource is cash; in the second case, the resources are the positive credits the entity will receive for the next year and surrender to eliminate its current negative balance. The entity could otherwise have used those self-generated positive credits for other purposes—for example, to sell to other entities with negative credits.*

9. We believe that this explanation indicate the important interpretation point beyond the scope of the current IAS 37 and give rise to the next question. That is to say, another important interpretation point is the subsequent accounting on the recognised liability regardless of which is either opportunity cost or surrender approach. If the entity settle the recognised liability by using generated positive credits itself in next year, how does the entity account for? Is it simply reversal of provisions? We believe that this is very important interpretation point that might lead to whether the intangible assets or other assets are recognised. From another point of view, whether the entity should recognise them in the case of the positive credits position in current year under its scheme.

10. Therefore we propose the IFRS Interpretation Committee should address this important interpretation point above in either the IFRIC Interpretation as first priority or TAD as second choice.

(d) Relationship with the definition of a liability in revised Conceptual Framework

11. The IASB reviewed the Provisions project's prospects for progress and concluded that efficient progress is possible in 2022 February board meeting. Therefore, the IASB decided to keep the project on its work plan. One of objectives of the Provisions project is to align the IAS 37 liability definition and requirements for identifying liabilities with the liability definition and supporting concepts in the IASB's Conceptual Framework for Financial Reporting.

12. Considering the IASB's Provisions project move on efficient progress, we believe that the IASB or IFRS Interpretation Committee also should consider in advance this submission on the base of the definition of a liability in revised Conceptual Framework to avoid subsequent confusion (for

example, in the same manner as the agenda decision “Deposits relating to taxes other than income tax” issued in January 2019).

We hope our comments will contribute to the forthcoming deliberations in the meeting of IFRS Interpretation Committee. Please feel free to contact us if you have any questions with respect to this letter.

Yours sincerely,

Masahiro Hoshino

Deloitte.

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11 April 2021

Bruce Mackenzie
Chair
IFRS Interpretations Committee
Columbus Building
7 Westferry Circus
Canary Wharf
London
United Kingdom

Dear Mr Mackenzie

Tentative agenda decision – Negative Low Emission Vehicle Credits

Deloitte Touche Tohmatsu Limited is pleased to respond to the IFRS Interpretations Committee's publication in the February 2022 IFRIC Update of the tentative agenda decision (TAD) not to take onto the Committee's agenda the request for clarification on whether particular measures to encourage reductions in vehicle carbon emissions give rise to obligations that meet the definition of a liability in IAS 37.

We agree with the IFRS Interpretations Committee's decision not to add this item onto its agenda.

We agree that an entity subject to the scheme described in the TAD that has produced or imported vehicles with average fuel emissions higher than the government target has a legal obligation that meets the definition of a liability in IAS 37, if it has no realistic alternative to settling that obligation.

However, we are concerned with the indication in the TAD that "an entity does not have a legal obligation that meets the definition of a liability in IAS 37, because accepting sanctions is a realistic alternative for that entity, meaning that the obligation cannot be enforced by law". The fact pattern presented in the TAD is insufficiently clear on the nature of the sanctions to conclude whether accepting the sanctions means that the obligation cannot be enforced by law. Further, the term "sanction" can have different meaning in different jurisdictions and, depending on facts and circumstances, sanctions may represent an alternative means of imposing a penalty upon an entity as part of the enforcement of the law. Accordingly, we believe that the TAD should avoid implying that an obligation cannot be enforced by law whenever accepting sanctions is a realistic alternative for an entity. Instead, we suggest that the TAD should highlight that if accepting sanctions represents a realistic alternative, an entity would consider whether this realistic alternative indicates that the obligation cannot be enforced by law, such that the entity does not have a legal obligation (in which case, as indicated in the TAD, the entity would assess whether it has a constructive obligation), or whether accepting the sanctions represents a lower cost of settling the entity's existing legal obligation, such that the alternative affects the measurement of the legal obligation.

We note that the Committee's conclusion indicates that "the activity that may give rise to an obligation…is the production or import of vehicles" and that when "an entity has produced or imported vehicles with average fuel emissions higher than the government target by *the end of the reporting period*, that

Deloitte.

obligation has arisen from past events"[emphasis added] whereas the fact pattern refers to the fact that the government's measures are based on the calendar year. These sentences may be read to indicate that the entity would recognise the provision, if any, over time rather than at a point in time. We do not believe that the fact pattern presented is sufficiently detailed to allow such a conclusion to be reached. Accordingly, we suggest that the reference to "end of the reporting period" should be changed to "end of the calendar year" and that a separate sentence be added to indicate that the entity would assess whether the obligation arises progressively or at a point in time considering the specific terms of the scheme.

If you have any questions concerning our comments, please contact Veronica Poole in London at +44 (0) 20 7007 0884.

Yours sincerely

Veronica Poole
Global IFRS and Corporate Reporting Leader

mazars

Mr Bruce Mackenzie

IFRS Interpretations Committee Chair

Columbus Building,
7 Westferry Circus, Canary Wharf
London E14 4HD
United Kingdom

La Défense, 11 April 2022

Tentative Agenda Decision – Negative Low Emission Vehicle Credits (IAS 37 Provisions, Contingent Liabilities and Contingent Assets)

Dear Bruce,

MAZARS is pleased to comment on the above mentioned IFRS Interpretations Committee Tentative Agenda Decision, published in the February 2022 *IFRIC Update*.

We agree with the Committee's conclusion that the principles and requirements in IFRS Accounting Standards provide an adequate basis for an entity to determine whether, in the fact pattern described in the request, an entity has an obligation that meets the definition of a liability in IAS 37.

In addition, we agree with the key steps followed by the Committee when conducting its analysis:

- The obligation to eliminate negative credits arises from the fact that an entity has produced or imported vehicles with average fuel emissions higher than the target. As a result, it has arisen from past events and it exists independently of the entity's future actions.
- The government's right to impose sanctions derives from an operation of law, and the sanctions the government can impose are the means by which settlement can be enforced by law. As a result, the obligation is a legal obligation.
- The settlement of the obligation by the entity involves an outflow of resources embodying economic benefits, either when:
  - purchasing positive credits from another entity (cash outflow),
  - or generating positive credits itself in the next year (by producing or importing more low emission vehicles). As the entity could otherwise have used those self-generated positive credits for other purposes – for example, to sell to other entities with negative credits – it constitutes an outflow of resources for the entity.
- If accepting sanctions for non-settlement of the obligation is a realistic alternative for an entity, then, eliminating negative credits is not an obligating event. In this context, the entity could have a constructive obligation, if it has taken an action that has created valid expectations in other parties that it will eliminate negative credits.

While we acknowledge that the request was only about whether an entity with a negative credit balance has a legal or constructive obligation according to IAS 37, we believe that the Committee should also provide guidance on the measurement of the liability if it wants to avoid diversity in practice.

Indeed, we believe that IAS 37 does not provide clear guidance on how to apply the principles in paragraphs 36 and 37 to the fact pattern, in cases where the entity intends to settle the obligation by generating positive credits.

Applicable paragraphs of IAS 37:

IAS 37.36: "*The amount recognised as a provision shall be the best estimate of the expenditure required to settle the present obligation at the end of the reporting period.*"

IAS 37.37: "*The best estimate of the expenditure required to settle the present obligation is the amount that an entity would rationally pay to settle the obligation at the end of the reporting period or to transfer it to a third party at that time. It will often be impossible or prohibitively expensive to settle or transfer an obligation at the end of the reporting period. However, the estimate of the amount that an entity would rationally pay to settle or transfer the obligation gives the best estimate of the expenditure required to settle the present obligation at the end of the reporting period.*"

Applying paragraph 36, entities usually measure provisions on the basis of the expected costs to be incurred for settling the obligation. Should an entity intend to settle the obligation by generating positive credits in the following year, it would generally assess the cost of generating those positive credits. The thing is that the expenditures required to generate positive credits do not necessarily represent an outflow of resources for the entity, or these expenditures are not directly related to the generation of the positive credits and would have been incurred independently from the obligation.

For instance, an entity could generate positive credits by:

- Investing in its production facilities to develop the production of low emission vehicles,
- Directing advertising expenses to increase the sales of low emission vehicles, or
- Offer rebates for the purchase of low emission vehicles, while keeping a positive margin.

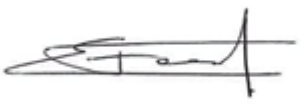
In that situation, measuring the expected costs of generating positive credits could be very judgmental.

Another approach, on the basis of paragraph 37, could be to consider that a third party would probably accept to settle the entity's obligation if it obtains no less than the market value of the positive credits it would have to buy (or give up selling) to settle the obligation on behalf of the entity.

Considering the possible diversity in practice in the measurement of the liability, we truly believe it necessary that the Committee provides additional guidance in that respect.

Should you have any questions regarding our comments on the tentative agenda decisions, please do not hesitate to contact Edouard Fossat (+33 1 49 97 65 92).

Yours faithfully,



Michel Barbet-Massin

Edouard Fossat

Financial Reporting Advisory

April 11, 2022

International Accounting Standards Board
IFRS Interpretations Committee
Columbus Building
7 Westferry Circus
Canary Wharf
London E14 4HD
United Kingdom

Dear Committee Members:

Consejo Mexicano de Normas de Información Financiera (CINIF), the accounting standard setting body in Mexico, welcomes the opportunity to submit its comments on the Tentative Agenda Decision (TAD) reached by the IFRS Interpretations Committee (the Committee) in its meetings in February 2022. That TAD deals with the issue of Negative Low Emission Vehicle Credits.

Set forth below you will find our comments on the conclusions reached in the TAD.

Overall comments

We agree with the conclusion reached by the Committee in the TAD that the principles and requirements in IFRS provide an adequate basis for a reseller to determine whether—in the fact pattern described in the request—an entity has an obligation that meets the definition of a liability in IAS 37, *Provisions, Contingent Liabilities and Contingent Assets*. Consequently, we agree with the decision not to add a standard-setting project to the work plan of the IASB.

Specific comments

Our local outreach indicated unanimous agreement that in the situation described, the guidance in IAS 37 is sufficient.

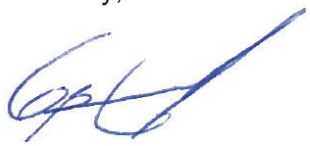
We agree that unless accepting the non financial sanctions that the government can impose is a realistic alternative to eliminating negative credits, the entity has a legal obligation under IAS 37. The determination as to whether the entity accepting the sanctions that the government can impose is a realistic alternative will depend on the particular circumstances of each entity and the nature of the sanctions that could be imposed. The example mentioned on the TAD related to restricting the entity's access to the market clearly may not be a realistic alternative in many circumstances. Nevertheless, there could be other forms of sanctions, including monetary penalties, that could well be a realistic alternative.

On the other hand, we also agree that even if the entity does not have a legal obligation that meets the definition of a liability in IAS 37, because accepting sanctions is a realistic alternative for that entity, such

an entity nevertheless could have a constructive obligation that meets the definition of a liability in IAS 37 if the entity has taken an actions that have created valid expectations in other parties that it will eliminate negative credits generated from its past production or import activities. Once again, this will depend on the particular circumstances of each entity.

Should you require additional information on our comments listed above, please contact William A. Biese at (52) 55-5433-3070 or me at (52) 55-5403-8309 or by e-mail at wbiese@cinif.org.mx or egarcia@cinif.org.mx, respectively.

Sincerely,



C.P.C. Elsa Beatriz García Bojorges
President of the Mexican Financial Reporting Standards Board
Consejo Mexicano de Normas de Información Financiera (CINIF)

Cc: Mr. Tadeu Cendon

12 April 2022

Mr Bruce Mackenzie
Chair of the IFRS Interpretations Committee
IFRS Foundation
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United Kingdom

Submitted to: www.ifrs.org

Copy to: Nili Shah, Executive Technical Director, IASB (via email)

Dear Bruce

IFRS Interpretations Committee tentative agenda decision *Negative Low Emission Vehicle Credits*

Thank you for the opportunity to comment on the tentative agenda decision *Negative Low Emission Vehicle Credits*.

We support the tentative agenda decision that 'negative credits' arising from the emission reduction programme described in the decision result in an obligation that meets the definition of a liability under IAS 37 *Provisions, Contingent Liabilities and Contingent Assets*. Having considered the tentative agenda decision in the New Zealand context, we consider that the tentative agenda decision will support appropriate outcomes when applying the definition of a liability in IAS 37 to the specific circumstances described in the request.

We acknowledge that the tentative agenda decision focuses on a specific emission reduction programme, and that it focuses only on meeting the definition of a liability – rather than on the measurement of such liabilities or on assets arising from emission reduction schemes. However, discussion with our Technical Reference Group highlighted that the measurement of liabilities relating to emission reduction programmes can be challenging, and that there is need for a broader standard-setting project on accounting for matters relating to emission trading schemes, as there is currently limited guidance in IFRS Standards on such matters.

We note that in 2021, the IASB's Request for Information (RFI) *Third Agenda Consultation* included a possible project on pollutant pricing mechanisms, which includes accounting for participation in emission trading schemes. Consistent with our submission on that RFI, we re-emphasise the importance of commencing a standard-setting project on this topic – including addressing matters related to emission trading rights, as well as the related obligations.

If you have any queries or require clarification of any matters in this letter, please contact Gali Slyuzberg (gali.slyuzberg@xrb.govt.nz) or me.

Yours sincerely

Carolyn Cordery
Chair – New Zealand Accounting Standards Board

Buenos Aires, Argentina, April 8, 2022

IFRS Foundation
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London E14 4HD
United Kingdom

REF: IFRS IC Tentative Agenda Decisions reached in the February 1, 2022 meeting

Dear Board Members,

The "Group of Latin American Standards Setters"[1] (GLASS) appreciates the opportunity to comment on the Tentative Agenda Decisions (TAD) reached by the IFRS IC during its meeting on February 01, 2022, which included the following topic:

- **Negative Low Emission Vehicle Credits (IAS 37)**

This response summarizes the points of view of the members of the different countries that comprise GLASS, pursuant to the following due process.

Due process

The discussions regarding the Tentative Agenda Decision (TAD) of IFRS IC were held within a specified Permanent Technical Commission (PTC) created in December 2020. All GLASS country-members had the opportunity to appoint at least one member to participate in this PTC. Each standard setter represented in GLASS has undertaken different tasks in their respective countries (e.g., surveys, internal working groups). All results were summarized, and this summary was the platform for GLASS discussion process.

GLASS discussed the different points of view included in the summary through emails exchanged among its members. In those emails GLASS developed a final document on the basis of the consensual responses and the technical points of view of its members. Finally, the GLASS document was submitted to and approved by the GLASS Board.

Comments:

GLASS agrees that, in the situation described, the essential aspect is that an entity does not have a liability pursuant to IAS 37, when there exists a "realistic" alternative of accepting a non financial sanction (such as leaving a market) without having to acquire positive credits in any of its alternative forms (purchase in the market or own generation). Otherwise, there will be an obligation, which can be either legal or constructive, that constitutes a liability in accordance with IFRS.

IAS 37 contains sufficient references and concepts to analyze the requirements that obligations must meet to be recognized as liabilities, both for their recognition and for their measurement, an aspect that is not contemplated in the consultation on which the Commission issued its TAD.

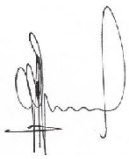
GLASS also agrees that it is not necessary for the topic to be included as an agenda item for the IASB and that it is appropriate to specify through the Agenda Decision (AD) procedure a response on the reasoning to be used, and therefore the description of the proper application of the accounting treatment that should be given to the subject.

[1] The overall objective of the Group of Latin American Accounting Standard Setters (GLASS) is to present technical contributions with respect to all Exposure Drafts, Requests for Information and Discussion Papers issued by the IASB and Tentative Agenda Decisions issued by the IFRS IC. Therefore, GLASS aims to have a single regional voice before the IASB. GLASS is constituted by: Argentina (Chairman), Bolivia, Brazil (Vice Chairman), Chile (Board), Colombia (Board), Costa Rica (Board), Dominican Republic, Ecuador, Guatemala, Honduras, Mexico (Board), Panama, Paraguay, Peru (Board), Uruguay (Board) and Venezuela (Board).

Contact

If you have any questions about our comments, please contact glenif@glenif.org.

Sincerely yours,



Jorge José Gil
Chairman
Group of Latin American Accounting Standard Setters (GLASS)

MASB MALAYSIAN ACCOUNTING STANDARDS BOARD
LEMBAGA PIAWAIAN PERAKAUNAN MALAYSIA

12 April 2022

Mr. Bruce Mackenzie
Chair
IFRS Interpretations Committee
Columbus Building
7 Westferry Circus
Canary Wharf
London E14 4HD
United Kingdom

Dear Mr. Mackenzie,

IFRS Interpretations Committee Tentative Agenda Decision

The Malaysian Accounting Standards Board (MASB) welcomes the opportunity to provide comment on the Tentative Agenda Decision—Negative Low Emission Vehicle Credits (IAS 37 *Provisions, Contingent Liabilities and Contingent Assets*).

We agree with the IFRS Interpretations Committee's reasons set out in the Tentative Agenda Decision for not adding a standard-setting project to its work plan based on the specific fact pattern described in the Tentative Agenda Decision.

If you need further clarification or have any queries regarding this letter, please contact the undersigned by email at beeleng@masb.org.my or at +603 2273 3100.

Thank you.

Yours sincerely,

TAN BEE LENG
Executive Director

Unit 13A-1, Menara MBMR, No. 1, Jalan Syed Putra, 58000 Kuala Lumpur
Tel : (603) 2273-3100 Fax: (603) 2273-9400 Email : masb@masb.org.my Website : www.masb.org.my

Date: April 12, 2022

Mr. Bruce Mackenzie,
Chair, IFRS Interpretations Committee,
IFRS Foundation
Columbus Building,
7 Westferry Circus, Canary Wharf,
London E14 4HD,
United Kingdom

Dear Bruce,

Subject: Comments of the Institute of Chartered Accountants of India on Tentative Agenda Decision (TAD) issued by IFRS Interpretations Committee (IFRS IC) on Negative Low Emission Vehicle Credits

The Accounting Standards Board (ASB) of the Institute of Chartered Accountants of India (the ICAI) welcomes the opportunity to comment on above referred Tentative Agenda Decision of IFRS Interpretations Committee.

In this regard, we agree with the analysis in the tentative agenda decision that an entity that has produced or imported vehicles with average fuel emissions higher than the government target has a legal obligation that meets the definition of a liability in IAS 37, unless accepting the sanctions that the government can impose is a realistic alternative to eliminating negative credits for that entity. However, we are of the view that Agenda decision should clarify that whether sanctions that may be imposed by the Government are "realistic alternative" or not based on the facts of the given case. We understand that the conclusion can vary based on different fact patterns but a clear guidance in the given facts will provide greater clarity as to how to exercise judgement involved in assessment that whether the given alternative is realistic or unrealistic. Accordingly, it is suggested that language of the Agenda Decision may be revised in this regard.

With kind regards,

CA. Pramod Jain
Chairman,
Accounting Standards Board
Institute of Chartered Accountants of India

COMISSÃO DE VALORES MOBILIÁRIOS
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Rua Cincinato Braga, 340/2º, 3º e 4º Andares, Bela Vista, São Paulo/ SP – CEP: 01333-010 – Brasil - Tel.: (11) 2146-2000
SCN Q.02 – Bl. A – Ed. Corporate Financial Center, S.404/4º Andar, Brasília/DF – CEP: 70712-900 – Brasil -Tel.: (61) 3327-2030/2031
www.cvm.gov.br

Mr. Bruce Mackenzie,
Chair of the IFRS Interpretations Committee

7 Westferry Circus
Canary Wharf
London E14 4HD
United Kingdom

12 April 2022

REF: Tentative Agenda Decision: Negative Low Emission Vehicle Credits

The Office of the Chief Accountant of the Securities and Exchange Commission of Brazil – CVM welcomes the opportunity to respond to the Tentative Agenda Decision: Negative Low Emission Vehicle Credits.

We are a division of the national securities regulator engaged in the study, development, interpretation and guidance of accounting standards for Brazilian listed companies and investment funds. By the endorsement of CVM, the accounting standards issued by the Brazilian Accounting Pronouncements Committee – CPC become mandatory for listed companies. In relation to investment funds, the accounting standards issued by CVM are mostly aligned with IFRS standards.

One of the legal mandates of CVM is to stimulate savings and their application in securities through the efficient and regular functioning of capital markets. We are convinced that a good quality set of accounting standards encourages permanent investment in shares of publicly held companies and investment funds.

The detailed responses are included bellow, if you have any questions about our comments, please do not hesitate to contact us at snormas@cvm.gov.br.

Yours sincerely,
Paulo Roberto Gonçalves Ferreira
Chief Accountant and Auditor

COMISSÃO DE VALORES MOBILIÁRIOS
Rua Sete de Setembro, 111/2-5º e 23-34º Andares, Centro, Rio de Janeiro/RJ – CEP: 20050-901 – Brasil - Tel.: (21) 3554-8686
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www.cvm.gov.br

General Comments

We welcome the IFRS Interpretations Committee efforts to address issues related to ESG. We acknowledge the growing importance of ESG information to investors, governments and the general public, what ultimately led to the creation of the ISSB.

Specifically in relation to the TAD, in our opinion the fact pattern presented is not clear enough to allow a proper conclusion on the existence of a legal or constructive obligation under IAS 37.

The submission mentions that under program to reduce vehicle carbon emissions, entities are required to produce or import vehicles whose average emission is lower than the government target. If the entity produces or import vehicles whose average emissions is lower than the target, the entity receives positive credit. On the other hand, if the entity produces or imports vehicles whose emissions is higher than the government target, the entity receives negative credits and is required to eliminate those negative credits either by purchasing positive credits from another entity or by generating positive credits itself in the next year.

The submission mentions that if the entity fails to eliminate its negative credit the government can impose sanctions, such as restrict the entity's access to the market. The fact pattern is not assertive on such restriction. In fact, one may conclude that it is a case of government's discretion to apply or not the sanction. Additionally, there are no further details on the impact of eventual sanctions on the entity nor if management has made a currently explicit statement that it plans to purchase credit or has established a past practice of purchasing credits in order to avoid the government's sanctions. Therefore, for the concrete case, in our view, it is not possible to reach a reasonable conclusion on whether there is a legal or constructive obligation, as defined in IAS 37.

We suggest the IFRS IC revise the TAD to remove the conclusion that a legal obligation exists according to the fact pattern presented. We think the IFRS IC should highlight the facts and circunstamces relevant to the analysis on how to reach a conclusion whether a liability exists under IAS 37.

It is important to note that low carbon emissions programs may have innumerous and very distinct characteristics worldwide. For this reason, we understand that a TAD for a submission that has insufficient information may not achieve its intended objective. Instead, we suggest

the IFRS IC redraft the TAD to provide more guidance on the assessment of the existence of legal or constructive obligations based on the requirements of IAS 37. This approach would avoid reaching a conclusion in a fact pattern where some relevant information is missing.

Finally, it is important to note that if the proposal is issued as it is, many other relevant questions about the fact pattern submitted will remain unanswered. For example, it is still not clear how to account for positive credits received or generated under the program and how to measure them. Another question deals with the offsetting debit entry journal when a liability is recognized (credit entry journal). For this reason, we understand the IFRS IC should consider developing a broader project on accounting for low carbon emissions programs.

IFRS Foundation

Columbus Building, 7 West ferry Circus

Canary Wharf, London E14 4HD

United Kingdom

12 April 2022

Dear Sir/Madam,

Chartered Accountants Academy (CAA) and Training and Advisory Services (TAS) Submission – commentary on Tentative Agenda Decision and comment letters: Negative Low Emission Vehicle Credits.

In response to your request for comments on Tentative Agenda Decision and comment letters: Negative Low Emission Vehicle Credits, attached is the comment letter prepared by Chartered Accountants Academy and Training & Advisory Services. The comment letter is a result of deliberations of members of CAA and TAS which comprises chartered accountants who have experience in auditing, IFRS specialists, and academics.

We are grateful for the opportunity to provide our comments on this project.

Please do not hesitate to contact us should you wish to discuss any of our comments.

Nyasha Chakuma
Project Director

Webster Sigauke
Project Director

Project team : Gamuchirai Mahachi
: Allen Mazhaume
: Felicity Thandiwe

Our comments are as follows:

The opening of Tentative Agenda Decision on: Negative Low Emission Vehicle Credits is an opportunity for all IFRS adopters to clear the hurdles on whether particular measures to encourage reductions in vehicle carbon emissions give rise to obligations that meet the definition of a liability in IAS 37

Tentative Agenda Decision

The Committee received a request asking whether particular measures to encourage reductions in vehicle carbon emissions give rise to obligations that meet the definition of a liability in IAS 37.

The fact pattern to the request were as follows:

The request described government measures that apply to entities that produce or import passenger vehicles for sale in a specified market. Under the measures, entities receive positive credits if in a calendar year they have produced or imported vehicles whose average fuel emissions are lower than a government target, and negative credits if in that year they have produced or imported vehicles whose average fuel emissions are higher than the target.

The measures require an entity that receives negative credits for one year to eliminate those negative credits, either by purchasing positive credits from another entity or by generating positive credits itself in the next year (by producing or importing more low emission vehicles) and using those positive credits to eliminate the negative balance. If the entity fails to eliminate its negative credits in one or other of those two ways, the government can impose sanctions on the entity, for example restrict the entity's access to the market.

The request considered the position of an entity that has produced or imported vehicles with average fuel emissions higher than the government target and asked whether such an entity has a present obligation that meets the definition of a liability in IAS 37.

Conclusion

The Committee concluded that an entity that has produced or imported vehicles with average fuel emissions higher than the government target has a legal obligation that meets the definition of a liability in IAS 37, unless accepting the sanctions that the government can impose is a realistic alternative to eliminating negative credits for that entity. The Committee's reasoning was that:

the activity that may give rise to an obligation to eliminate negative credits is the production or import of vehicles. To the extent that an entity has produced or imported vehicles with average fuel emissions higher than the government target by the end of the reporting period, that obligation has arisen from past events.

the measures that create the obligation and give the government the authority to impose sanctions derive from an operation of law. Hence, the obligation is a legal obligation and the sanctions the government can impose are the means by which settlement can be enforced by law. The requirement that 'settlement of the obligation can be enforced by law' is met, unless accepting sanctions for non-settlement is a realistic alternative for an entity.

an entity can settle its obligation either by purchasing positive credits from another entity or by generating positive credits itself in the next year and using those positive credits to eliminate the negative balance. In either case, settlement involves an outflow from the entity of resources embodying economic benefits. In the first case, the resource is cash; in the second case, the resources are the positive credits the entity will receive for the next year and surrender to eliminate its current negative balance. The entity could otherwise have used those self-generated positive credits for other purposes—for example, to sell to other entities with negative credits.

the obligation arises from past events and exists independently of the entity's future actions (the future conduct of its business). Under the measures, the only action required to trigger an obligation is the production or import of vehicles with average fuel emissions higher than the government target, and this action has already occurred. The entity's future actions will determine only the means by which the entity settles its present obligation—whether it

purchases credits from another entity or generates positive credits itself by producing or importing more low emission vehicles. The fact pattern described in the request differs from the fact pattern in other examples that illustrate or interpret the application of paragraph 19 of IAS 37 and for which the conclusion is that no present obligation exists—for example, part (a) of Illustrative Example 6 (Legal requirement to fit smoke filters), IFRIC 6 Liabilities arising from Participating in a Specific Market—Waste Electrical and Electronic Equipment and Example 2 in IFRIC 21 Levies. In all these other examples, the entity has not yet taken the actions necessary to trigger an obligation under the applicable legislation.

Our responses to the decision are as below:

We agree with the committee's thinking pattern and decision because of the following:

1. The conceptual framework defines a liability as a present obligation of the entity to transfer an economic resource as a result of past events. (Conceptual Framework paragraph 4.26)

   For a liability to exist, three criteria must all be satisfied:

   (a) the entity has an obligation

   (b) the obligation is to transfer an economic resource

   (c) the obligation is a present obligation that exists as a result of past events. (Conceptual Framework paragraph 4.27)

   In the fact pattern above, the three criteria for meeting the definition of a liability are met as follows:

   (a) the entity has an obligation

   - an entity that has produced or imported vehicles with average fuel emissions higher than the government target.
   - The scenario is not clear on whether the government mandate is a legal or best practice requirement.
   - If the government measures are legal, the entity has a legal obligation that meets the definition of a liability

- If the government measures are best practice requirements, constructive obligation by the entity has to be proven.
- IAS 37 paragraph 10 defines a constructive obligation as an obligation that derives from an entity's actions where:

  (a) by an established pattern of past practice, published policies or a sufficiently specific current statement, the entity has indicated to other parties that it will accept certain responsibilities; and

  (b) as a result, the entity has created a valid expectation on the part of those other parties that it will discharge those responsibilities.
- Depending on an entity taking action that creates valid expectations in other parties a constructive obligation that meets the definition of liability as may exist which is in line with the conclusion by the IFRS Interpretations Committee.

(b) the obligation is to transfer an economic resource

- entity can settle its obligation either by purchasing positive credits from another entity or by generating positive credits itself in the next year and using those positive credits to eliminate the negative balance.
- In either case, settlement involves an outflow from the entity of resources embodying economic benefits in line with the conclusion by the IFRS Interpretations Committee.

(c) the obligation is a present obligation that exists as a result of past events.

- the obligation arises from past events (production or importation of vehicles with average fuel emissions higher than the government target)

Deutsches Rechnungslegungs Standards Committee e.V.

Accounting Standards Committee of Germany

DRSC

DRSC / ASCG • Joachimsthaler Str. 34 • 10719 Berlin

Bruce Mackenzie
Chair of the IFRS Interpretations Committee
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7 Westferry Circus / Canary Wharf
London E14 4HD

Financial Reporting Technical Committee
Phone: +49 (0)30 206412-12
E-Mail: info@drsc.de

Berlin, 12 April 2022

Dear Bruce,

IFRS IC's tentative agenda decision in its February 2022 meeting

On behalf of the Accounting Standards Committee of Germany (ASCG), I am writing to comment on one of the decisions taken by the IFRS Interpretations Committee (IFRS IC) as published in the February 2022 *IFRIC Update*.

We agree with the tentative agenda decision on IAS 37 (*Negative Low Emission Vehicle Credits*) and the respective conclusions, which we deem an appropriate application of the literature. Notwithstanding our agreement, we would like to raise the following comments.

From our point of view, the application of the considerations of the IFRS IC in the individual fact pattern cannot be conclusively understood without a better understanding of the sanction mechanism. This uncertainty does not only affect the fact pattern submitted but could be relevant for other fact patterns by analogy. It should be clarified to whicht extent the fact pattern described in the request differs from other examples that illustrate or interpret the application of paragraph 19 of IAS 37 and for which the conclusion is that no present obligation exists.

As far as the sanctions only occur if the corresponding activity continues after the reporting date, it may be questionable why an irrevocable obligation should already have arisen through the import or manufacture of vehicles in the reporting period and whether the entity has taken the actions necessary to trigger an obligation under the applicable legislation (i.e. whether the obligation arises from past events and exists independently).

Deutsches Rechnungslegungs Standards Committee e.V.

Accounting Standards Committee of Germany

DRSC

As regards the potential scenario of the entity accepting sanctions, we think that the wording in the IFRIC Update still leaves room for judgement as to whether, and under which specific circumstances, a constructive obligation would or would not exist and what kind of actions would create valid expectations in other parties that it will eliminate negative credits generated from its past production or import activities.

In addition, we acknowledge that the IFRS IC did not touch on the issue of measuring the obligation. Whilst being aware that this was not part of the request, we would have appreciated if the IFRS IC had included the assessment in its discussion to make it more comprehensive, as the entity's future actions will determine the means by which the entity settles its present obligation.

If you would like to discuss our views further, please do not hesitate to contact Jan-Velten Große (grosse@drsc.de) or me.

Yours sincerely,

Sven Morich

Vice President

Ernst & Young Global Limited
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London
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Building a better working world

INVESTOR IN PEOPLE

International Financial Reporting Standards Interpretations Committee
IFRS Foundation
Columbus Building
7 Westferry Circus
Canary Wharf
London
E14 4HD

12 April 2022

Dear IFRS Interpretations Committee members,

Invitation to comment – Tentative Agenda Decision (TAD): Negative Low Emission Vehicle Credits (IAS 37 *Provisions, Contingent Liabilities and Contingent Assets*)

Ernst & Young Global Limited, the central coordinating entity of the global EY organisation, welcomes the opportunity to offer its views on the above tentative agenda decision of the IFRS Interpretations Committee (the Committee) that is published in the February 2022 *IFRIC Update*.

The Committee discussed the question of whether particular measures to encourage reductions in vehicle carbon emissions give rise to obligations that meet the definition of a liability in IAS 37.

We do not agree with the tentative agenda decision. We believe that the TAD should conclude that an entity that has produced or imported vehicles with average fuel emissions higher than the government target does not immediately have a legal obligation that meets the definition of a liability in IAS 37. We observe that, in the fact pattern set out in the submission to the Committee, the entity can avoid any obligation in law to purchase or generate positive credits in a future period by accepting the restrictions on future activities in the form of sanctions that the government can impose or by exiting the market (see next). A requirement to settle an obligation by purchasing or generating positive credits will arise only if the entity decides to operate in a manner that would otherwise be restricted by the sanctions, for example, by applying to launch a new model, expand capacity or seek certain tax exemptions. In the fact pattern presented in the submission to the Committee, the entity can exit the market without the government being able to pursue it for the deficit created by its past sales and imports, i.e., the government has no legally enforceable right at the reporting date. We suggest that the Committee specifies in the fact pattern that an entity can also choose to exit the market without consequences and addresses how it has considered this fact in the analysis.

We agree that even though no legal obligation exists, an entity could, nevertheless, have a constructive obligation that meets the definition of a liability in IAS 37. However, there is no action specified in the fact pattern in the submission to the Committee that would have created such an obligation. We see the fact pattern as containing two triggering events, both

of which must have occurred before there is a past obligation. As a result, the entity has a *potential* obligation to purchase or generate positive credits at the point of incurring negative credits and this becomes an obligating event when the entity creates a valid expectation that it will discharge the obligation or when settlement (in this case, the purchase or generation of positive credits) can be enforced by law. The determination of the degree to which this results from a sufficiently specific public announcement by the entity or (in this fact pattern) the submission of a remedial plan for vehicle production/imports for the subsequent year to generate sufficient positive credits to offset the deficit may require significant judgement.

With respect to the wording of the TAD, we have the following specific comments:

1. We disagree with the statement in the TAD that "the activity that may give rise to an obligation to eliminate negative credits is the production or import of vehicles". In this respect, the TAD seems to be inconsistent with the principles set out in the following guidance:

- Example 3 of IFRIC 21 that clarifies that the fact that the entity is economically compelled to meet the requirements to continue to operate in the future does not result in a present obligation
- Example 11B of IAS 37, which considers a legal requirement to overhaul an aircraft. This example addresses the case where an activity has occurred in the past (flying the aircraft) that triggers a possible future obligation (incurring the cost of overhaul). The example notes that "even a legal requirement to overhaul does not make the costs of overhaul a liability, because no obligation exists to overhaul the aircraft independently of the entity's future actions — the entity could avoid the future expenditure by its future actions, for example, by selling the aircraft". The future cost would instead be accounted for separately according to the relevant requirements of the applicable standard.

The TAD does not explain how the conclusion is reconciled with such guidance. Consistent with such guidance, we believe that, in the current fact pattern, no legal obligation exists. It is not clear why there is a difference between the possibility of 'selling the aircraft' and accepting the restriction on activities through sanctions the government may impose in applying IAS 37 as both are future decisions an entity can make. As such, we believe that, in both cases, economic compulsion should not be considered when determining whether an obligation exists. We believe that, much like the guidance in IFRIC 21, no obligation exists independently of the entity's future actions.

2. We also disagree with the assertion that "the requirement that 'settlement of the obligation can be enforced by law' is met". The submission does not refer to any legal action to enforce the settlement of the negative credits nor any financial penalty that will be imposed by the government. The only consequences are related to the future operation by the entity in the market:

- The entity may potentially be impeded in any and all activities connected with any and all government authorities (e.g., tax exemption applications, capacity expansion approvals, import inspections, etc.).

- The entity is required to submit a remedial plan for vehicle production/imports for the subsequent year to generate sufficient positive credits to offset the deficit for the year.
- The government may disapprove the entity's applications for the launch of any new vehicle models.

The TAD seems to take a wide view of what constitutes settlement of the obligation to make good the deficit in emission credits, in particular, that this extends beyond the generation or purchase of positive credits. However, if a remedial plan is submitted, but ultimately insufficient positive credits are generated or purchased, there is still a shortfall in respect of which only the sanctions noted above can be imposed. Settlement of negative credits is, therefore, not enforceable by law, but the existence of sanctions encourages the entity to incur voluntarily the higher future operating cost of compliance. We believe the TAD should clarify the basis for concluding that the future expenditure to eliminate any balance of negative credits is not considered a future operating loss, for which paragraph 63 of IAS 37 prohibits the recognition of a provision.

As governments and entities seek to address the challenges imposed by climate change and the sustainability agenda, we expect the incidence of examples like the one presented to the Committee to increase significantly. We are concerned that the perceived inconsistency between current accounting practice and the drafting of the TAD may have unintended consequences for other fact patterns where entities face economic compulsion to meet requirements imposed by governmental bodies in order to continue to operate in the future in a specific market. Furthermore, we believe that the TAD would effectively amend the guidance of IAS 37, IFRIC 6 and IFRIC 21 and increase diversity in practice and perhaps require entities to restate positions previously taken in their financial statements. We therefore consider that such a change, if intended, should be implemented through a standard-setting project by the IASB.

Should you wish to discuss the contents of this letter with us, please contact Leo van der Tas at the above address or on +44 [0]20 7951 3152.

Yours faithfully

Ernst & Young Global Limited

12 April, 2022

IFRS Interpretations Committee
Columbus Building
7 Westferry Circus
Canary Wharf
London, E14 4HD
United Kingdom

RE: Tentative Agenda Decision - Negative Low Emission Vehicle Credits

Dear IFRS Interpretations Committee,

We welcome the opportunity to comment upon the Tentative Agenda Decision "Negative Low Emission Vehicle Credits."

These comments are a consensus regarding what we discussed through our team of accounting professors, researchers, and students. We are from Brazilian universities, the Federal University of Santa Catarina, and the University of São Paulo at Ribeirão Preto.

Concerning this specific measure for companies that produce or import vehicles, we agree with the Committee's understanding that recognizing negative low emission credits meets the required IAS 37 definitions of liability unless there is a realistic alternative for the entity to settle this obligation. However, we understand that the IFRS Interpretation Committee could review some missing points to generate a more reliable understanding of when the recognition or non-recognition of negative credits as liabilities is the most reasonable way. Hence, we understand that the Committee should reconsider adding a standard-setting project to the work plan. Accordingly, we exposed the aspects that concern us in the following paragraphs.

First, we understand that the Agenda does not clearly expose the possibility of an entity accepting sanctions imposed by the government but still having a non-realistic alternative to settling the obligation. Thus, when the Agenda posited that the entity "*does not have a legal obligation that meets the definition of a liability in IAS 37, because accepting sanctions is a realistic alternative for that entity, meaning the obligation cannot be enforced by law*", we are concern about how "accepting sanctions" in this context might generate a misinterpretation that omits the fact that sanctions might still be applicable without the settlement of the obligation. For instance, an entity might have a negative low emission vehicle credit that was not eliminated by purchasing from another entity, generating positive credits in the next year, or submitting a remedial plan. According to some jurisdiction, the government might apply sanctions (such as financial sanctions or restrictions on accessing the market), but the entity might still have a non-realistic alternative to settling the obligation. Therefore, entities in each jurisdiction must recognize whether their sanctions might be identified as a "realistic alternative to settling that obligation" before considering the non-recognition of these emissions as liabilities.

Second, we believe that the current Agenda and IAS 37 fail to examine what a company's constructive obligation could mean in this case. Following our consideration, even if a company has a legal obligation, if the entity has a realistic alternative to settling it, it should first consider if they have a constructive obligation before non-recognizing a liability. Therefore, we worry that this consideration might easily lead to misinterpretations because according to IAS 37:10,

> "*A constructive obligation is an obligation that derives from an entity's actions where:*
> *(a) by an established pattern of past practice, published policies or a sufficiently specific current statement, the entity has indicated to other parties that it will accept certain responsibilities; and*
> *(b) as a result, the entity has created a valid expectation on the part of those other parties that it will discharge those responsibilities*."

We understand that IAS 37 does not clarify which type of statement might be considered. Thus, doubts may arise in the current measure about recognizing a liability (or not) when there is a "realistic alternative to the company accepting government sanctions." Moreover, numerous statements are now often used to demonstrate a company's commitment to carbon and sustainability, such as the Agenda 2030 (e.g. the UN Global Compact), the Carbon Disclosure Project, and many sustainability reports such as GRI and Integrated Reporting, for instance. This disregard may result in recognitions that might not be aligned with the Committee's scope.

We developed a figure that summarizes our interpretation of the current Agenda (Appendix A). We hope it can contribute to understanding the Negative Low Emission Vehicle Credits scope.

Summarizing, we restate our concern that, although recognizing negative low emission credits meets the required IAS 37 definitions of liability, IAS 37 and the current agenda may still generate misinterpretations or lack necessary information. Besides, we do not rule out the possibility of IFRS opening a specific agenda to address these issues not specified in the current standards. Indeed, there is plenty of space for IFRS to discuss other situations in the carbon emissions plan.

Once again, we appreciate the IFRS Interpretations Committee for the opportunity of sharing our points on the current Agenda.

Yours sincerely,

Sara Meurer, Ms.
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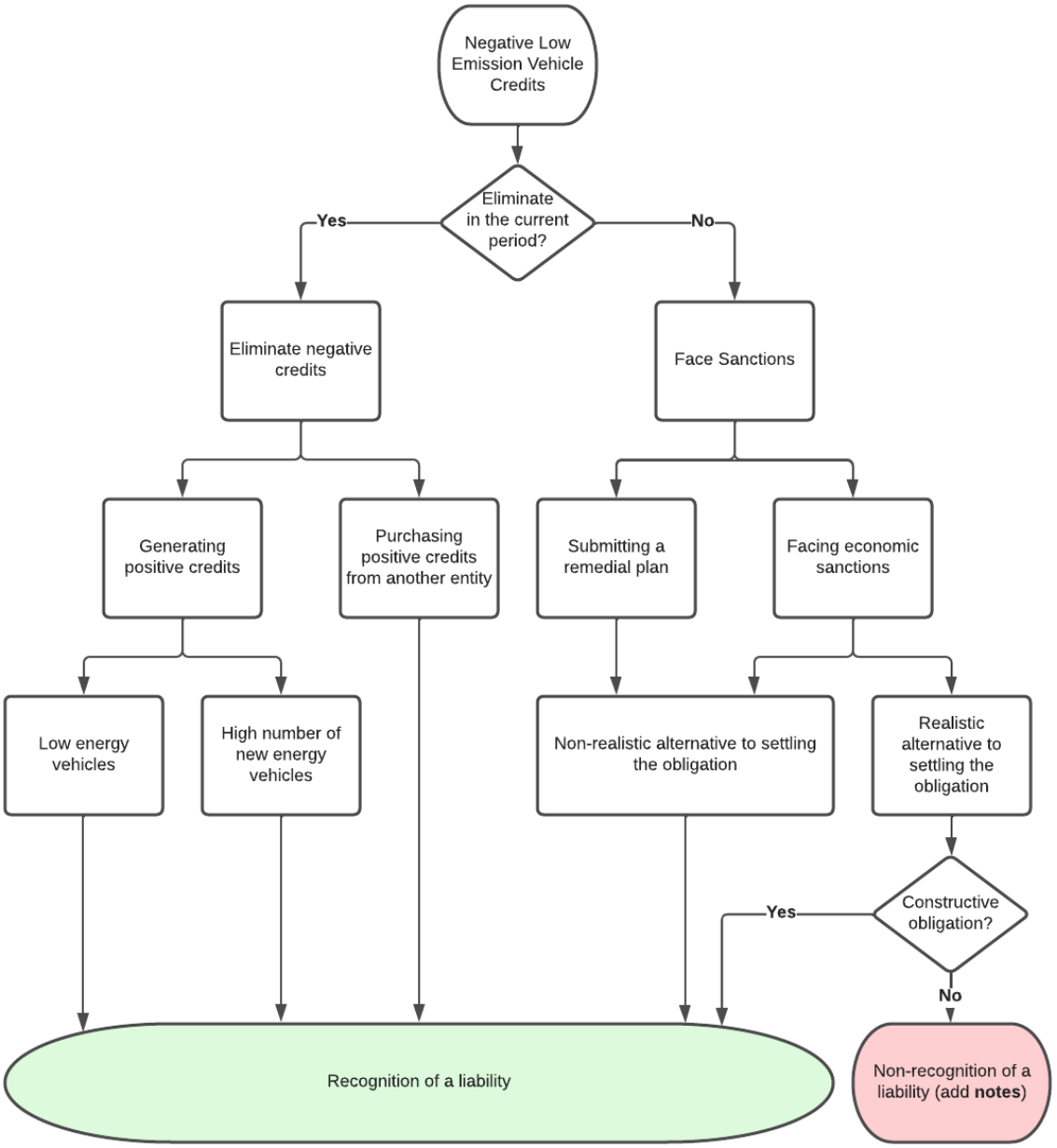
Appendix A



PO Box 1411
Beenleigh QLD 4207
12 April 2022

Mr Bruce Mackenzie
Chair IFRS Interpretations Committee
International Accounting Standards Board
Columbus Building, 7 Westferry Circus
Canary Wharf
London E14 4HD
United Kingdom

Online submission: https://www.ifrs.org/projects/work-plan/negative-low-emission-vehicle-credits-ias-37/

Dear Bruce

Tentative agenda decision - Negative Low Emission Vehicle Credits (IAS 37)

I am pleased to make this submission on the above Tentative Agenda Decision (TAD) relating to Negative Low Emission Vehicle Credits (IAS 37).

I have extensive experience in accounting advice on International Financial Reporting Standards across a wide range of clients, industries and issues in the for-profit, not-for-profit, private and public sectors.

My clients have included listed companies, unlisted and private companies, charitable and not-for-profit organisations, federal, state and local government departments and agencies in the public sector, and government owned corporations (government business enterprises). I also have some commercial, standard setting and academic experience.

Overall

I do not believe that the TAD should be issued until the following issues have been resolved:

- Timing of the obligation
- Comparison to IFRIC 21
- Whether sanctions can establish an obligation
- Comparison of sanctions to economic compulsion

Timing of the obligation

It is not clear as to whether the Committee believes that an obligation is created over time (as vehicles are sold), or only as at the assessment date. This is important for interim reporting before the assessment date, and also for preparers that have a balance date different to the assessment date.

Comparison to IFRIC 21

If an obligation is created as the vehicles are sold, then the Committee will need to explain why it has arrived at this conclusion compared to what appears a contrary conclusion under IFRIC 21. Specifically, it would appear that the vehicle manufacturer can avoid any payment or outflow of resources by ceasing its operations as a vehicle manufacturer before the assessment date, which appears to be similar circumstances to the contrary conclusion of no liability being recognised under IFRIC 21 until the assessment date.

Whether sanctions can establish an obligation

The acceptance or otherwise of sanctions as a cost of doing business may change from year to year. The decision to accept the sanctions (which may be restrictions on future activities) and not to purchase or produce credits compared to the decision to purchase or produce credits to eliminate the (deficiency) may change from year to year based on business plans. Changes to business plans should not affect the determination as to whether there is an obligation, though the changes to business plans may affect the planned cost to fulfill that obligation and consequently the measurement of the obligation.

Comparison of sanctions to economic compulsion

The reference to sanctions and there being 'no realistic alternative' raises the issue of economic compulsion, which is treated inconsistently under IFRSs – i.e. being excluded under the contractually based IAS 32, but included under other standards (for example IAS 19 paragraph 4(c)).

The TAD states that a 'sufficiently specific current statement' relating to the elimination of negative credits from its past activities may give rise to a constructive obligation. Does the Committee believe that this reasoning would apply to company promises on 'net zero' (or 'net zero' path) and where there is an excess of emissions (that will require the purchase of offsets to eliminate) to that promised?

Yours sincerely,

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