

**Sent:** 16 October 2017 11:52  
**To:** IASB <[IASB1@ifrs.org](mailto:IASB1@ifrs.org)>;  
**Subject:** Due Process Complaint

This email is intended to document a breach of the IFRS Foundation Due Process Handbook by the IASB in issuing the amendment to IFRS 9: "Prepayment Features with Negative Compensation". This breach lies not with the revised IFRS 9 text, or the process relating to the amendment with the same name as the document, but rather the inclusion of BC4.252 and BC4.253 within this document.

These paragraphs do not express a basis upon which the IASB reached a conclusion on the issue at hand. Indeed, these paragraphs are totally unrelated to the amendment in which they are included (hence the need for the heading, "Another issue", which immediately precedes these paragraphs). Nor do they, as a matter of fact, express a basis on which the IASB reached a conclusion in the issuance of IFRS 9. Instead, these paragraphs attempt to establish a new IFRS requirement, while sidestepping the standard setting process.

It is important to put this sidestep in context. This amendment to the requirements of IFRS 9 arose from the IASB's failed attempt to push the IFRS Interpretations Committee ("IFRIC") to reject a submission related to modification accounting for financial liabilities, and to dictate the accounting that the IASB wishes to apply in such circumstances.

The IFRIC had already referred this issue to the IASB, and suggested an amendment to IFRS 9. However, the IASB disagreed, and asked the IFRIC to instead issue a rejection notice stating that the accounting required by IFRS 9 was clear.

When the IFRIC issued a draft rejection setting out this information, as requested, it received 14 comment letters - a highly unusual number for an IFRIC rejection. None of these letters supported the proposed rejection notice. Some disagreed that the technical analysis was clear (or, indeed, correct). This view is founded on the fact that the words used for modifications of financial liabilities have not changed since IAS 39, and few - if any - preparers are currently applying those words in the way that the IASB wishes. In such circumstances it is quite challenging to demonstrate that the standard is clear in the way that the IASB/IFRIC proposed. Some commentators disagreed with the economic outcome of applying the draft rejection, noting that it defies common sense. Others noted that this was an important issue that required appropriate due process and an amendment to IFRS 9 to achieve this outcome. Some comment letters suggested all three of these as reasons for not progressing the issue.

When the IFRIC met in June 2017 to discuss the comment letters, there was insufficient support to push through an unpopular and flawed analysis of existing IFRS, and the matter was again referred back to the IASB.

In its July 2017 meeting, the IASB discussed the issue and decided not to follow the Due Process Handbook ("DPH"), but instead to include paragraphs in the Basis for Conclusion of an unrelated amendment, as noted above. Paragraph 3.41 of the DPH would require "Full and fair consultation", as "wide consultation with interested and affected parties enhances the quality of its IFRSs." Unfortunately, however, this was not performed. The draft IFRIC rejection notice published in the IFRIC update passes under the radar of most users, and hence there was no wide consultation with interested and affected parties. Equally, the

minimum safeguards in paragraph 3.43 of the DPH state that it is mandatory that any proposed Standard, amendment to a Standard or proposed Interpretation is exposed for public comment. This amendment to the Basis for Conclusions attempts to introduce an interpretation or amendment to the requirements of IFRS 9 that cannot be clear either from the existing words used (see comments above regarding IAS 39 and existing practice) or that is based on the discussions of the IASB at the time they were drafted, yet there was no exposure draft of these changes.

Even if the IASB were to argue that they believed that the draft IFRIC rejection notice was a form of exposure for comment, which should be dismissed given the relatively small audience that review the IFRIC update compared with Exposure Drafts for amendments to/new Standards issued by the IASB, part (c) of paragraph 3.43 is clearly not met, as there was no apparent consideration of the comments received on the rejection notice.

The non-mandatory "comply or explain" steps, such as holding public hearings and undertaking fieldwork, were also sadly lacking in the IASB's due process avoidance actions.

Having spoken with certain members of the IASB staff on this topic, it has been suggested to me that the Basis for Conclusions has, up until now, been considered 'sacred' - a reflection of the discussion undertaken at the time the particular words in the standard were drafted and why. To desecrate the Basis for Conclusions of IFRS 9 in this manner is an unwelcome development in standard setting by the IASB, and one that needs oversight from the DPOC and the Trustees to ensure that faith in the process is restored.