
Contact(s) **Denise Gomez Soto** dgomez@ifrs.org +44 (0)20 7246 6469

Project **Agenda decision**

Topic **IFRS 3 *Business combinations*—factors affecting the identification of the acquirer (review of tentative agenda decision)**

Introduction

1. The IFRS Interpretations Committee (the Committee) received a request for guidance on the circumstances or factors that are relevant when identifying an acquirer in a business combination under IFRS 3 *Business Combinations*. More specifically, the submission described a fact pattern in which a group spins off its business in an initial public offering (IPO) by incorporating a new entity ('Newco'). Newco will only acquire that part of the group being spun off at the time the IPO occurs.
2. The Committee discussed the issue at its meeting in July 2011 and released a tentative agenda decision not to take the issue on to its agenda.
3. The full staff analysis that was presented at the Interpretations Committee in July 2011 was set out in agenda paper 6A, which can be found on the public website¹.
4. We received six comment letters that are analysed in the following paragraphs.

¹<http://www.ifrs.org/Current+Projects/IFRIC+Projects/Tentative+agenda+decisions+currently+available+for+comment.htm>

This paper has been prepared by the technical staff of the IFRS Foundation for discussion at a public meeting of the IFRS Interpretations Committee.

The views expressed in this paper are those of the staff preparing the paper. They do not purport to represent the views of any individual members of the IFRS Interpretations Committee or the IASB. Comments made in relation to the application of an IFRS do not purport to be acceptable or unacceptable application of that IFRS—only the IFRS Interpretations Committee or the IASB can make such a determination.

Decisions made by the IFRS Interpretations Committee are reported in *IFRIC Update*.

Interpretations are published only after the IFRS Interpretations Committee and the Board have each completed their full due process, including appropriate public consultation and formal voting procedures. The approval of an Interpretation by the Board is reported in *IASB Update*.

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Comment letters analysis***Aspects where there was general agreement among respondents***

5. There was general support among a majority of respondents on the following aspects of the Committee's conclusions:
 - (a) the fact pattern considered (ie Newco's formation conditional on an IPO) is not widespread in practice. However a majority noted that in jurisdictions where the issue arises (eg Australia) there is significant diversity in practice; and
 - (b) the Committee should not take this issue onto its active agenda at this stage. Two respondents observed that the fact pattern analysed should be considered in the broader context of a project on accounting for common control transactions.

Summary of views

6. One respondent fully agreed with the Committee's analysis and conclusion in the tentative agenda decision.
7. Two respondents disagreed with the Committee's decision to deal with this issue through a rejection note and encouraged the Committee to address this issue via an Interpretation or an annual improvement.
8. Three respondents strongly disagreed with the current wording of the Committee's tentative decision but two of them pointed out that:
 - (a) the technical analysis provided by the Committee could be reasonable based on the requirements of the IFRS (Respondent 1); and
 - (b) it is reasonable to conclude that Newco is the acquirer in a business combination when the acquisition is conditional on the IPO because there is a change in control (Respondent 2).
9. One of the respondents who disagreed also observed that the issue raised by the submitter as well as similar fact patterns occur in many jurisdictions and

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diversity in practice has been identified. Another one noted that the Committee should seek additional evidence prior to deciding whether the issue is widespread and whether significant diversity exists.

Areas of disagreement

10. Respondents who disagreed with the Committee's tentative agenda decision gave the following views:
 - (a) **it could lead to misinterpretations**—the agenda decision should not respond to issues in such detail as the decision might be interpreted inappropriately. Readers could interpret the agenda decision as a '*de facto* interpretation' or as a 'directive' to use acquisition accounting for formations conditional on IPOs. Others might think that acquisition accounting should be applied based on the substance (and not the structure) of the transaction (eg by arguing that Newco is only somebody's vehicle and has no substance on its own and is transitory).
 - (b) **it could lead to significant changes in practice**—the Committee's attempt to consider isolated aspects of accounting, such as formations conditional on IPOs, might:
 - (i) result in broad and more prescriptive application than would be appropriate;
 - (ii) lead to significant changes in practice. For example, the Committee's conclusion could result in a change in accounting policy and develop into retrospective application where acquisition accounting is not applied; and
 - (iii) increase the prevalence of those transactions to achieve a desired accounting outcome (for example, so that Newco can apply acquisition accounting).
 - (c) **some of the references used in the tentative agenda decision are not relevant**—the references to 'ultimate control' and 'not transitory' in the

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agenda decision are not relevant to this fact pattern. Those references have greater relevance to the absolute control Entity A has over Newco *before* the IPO and in structures in which another controlling party exists and has either indirect control or an agreement that will provide for actual control.

- (d) **The results of the outreach performed are inconclusive** – the Committee should perform additional outreach with the international accounting firms; provide information about the significance of the markets in the jurisdictions that noted diversity; and obtain a better understanding of whether there are additional factors that should be considered that are creating diversity.

Staff analysis***Remedies for the tentative agenda decision***

11. We have identified some views on how the Committee could address the above concerns based on the comments provided by the respondents:
- (a) **View 1:** Refrain from issuing a rejection note and provide a more in-depth clarification of the issue through an Interpretation or through an annual improvement.
 - (b) **View 2:** Do not modify the wording of the tentative agenda decision but indicate that there is diversity in practice in some jurisdictions.
 - (c) **View 3:** Refrain from providing an analysis of the issue submitted.

View 1—refrain from issuing a rejection note and address the issue via an Interpretation or an annual improvement

12. Proponents of this view thought that further clarification of the tentative agenda decision was needed. They thought that the issue raised in the submission was widespread in certain jurisdictions and they have noted real diversity in practice.
13. Consequently, they thought that the Committee should refrain from issuing a rejection note and, instead, address this issue on a timely basis either by issuing

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a full Interpretation or by proposing an amendment to IFRS 3 through the annual improvements project. Any of these ways to address the issue (Interpretation or amendment) should include appropriate transitional guidance for entities that have previously applied a different accounting treatment.

14. Proponents of this view thought that, when providing further clarification, the Committee could explain how ‘conditionality’ should be regarded in order to identify whether the transaction is a business combination under common control or not. Other issues that may arise in respect of formations similar to that of Newco should also be considered. For example:
- (a) Is the ‘conditionality’ an indicator of the substance of the transaction or a conclusive fact that drives the accounting?
 - (b) In which instances does the structure of a transaction change the accounting outcome?
 - (c) Is there a relationship between the setting up of a conditional formation and the issue of shares to external parties or are the formation and the occurrence of the IPO unrelated events?
 - (d) In what instances should the structure of a transaction change the accounting outcome? In the fact pattern, for example, one could think that ‘Newco’ formations conditional on IPOs are no different from IPOs occurring after the formation of a Newco²

View 2—do not modify the wording of the tentative agenda decision but indicate that there is diversity in practice

15. Proponents of this view were in agreement with the Committee’s technical analysis and conclusions and with the current wording of the tentative agenda decision. They suggested adding a comment that in the jurisdictions where the issue arises (eg Australia), there is significant diversity in practice.

² Refer to Issue 2 in agenda paper 6B (July 2011).

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View 3—refrain from providing an analysis of the issue

16. Proponents of this view thought that the transaction raised by the submitter was too complex to be explained adequately within the confines of an agenda decision. They thought that the Committee should not provide, in an agenda decision, comments or guidance about the application of IFRSs to a submitted fact pattern.
17. In their view, the agenda decision should be restricted to quoting the main excerpts in the IFRS literature that were considered in the analysis of the issue and also to explaining which of the Committee’s agenda criteria were not met.
18. Consequently, those who supported this view would have omitted any detailed analysis of the issue submitted and would have just ‘flagged’ the issue for the Board’s attention if the Board decided to recommence work on its broader ‘common control transactions’ project.
19. If the Board decided not to add this project to its active agenda, proponents of this view would expect the Committee to consider adding ‘Newco formations’ to its agenda and consider issuing a formal Interpretation, which would need to include appropriate transitional guidance.

Our view

20. We disagree with View 1. We observed from the comments received that three out of six respondents agree that the issue is too broad and complex to be addressed by the Committee through an Interpretation or annual improvement. In addition, we learned that the issue submitted is not widespread and that there is only diversity in practice in those few jurisdictions where this issue arises.
21. Consequently, in our view the Committee is not in a position to develop accounting guidance for conditional formations at this stage. We think that the best place for providing clarity in the accounting guidance for conditional formations should be within the ‘common control transactions project’ if the Board decides to recommence work on this project.

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22. We do not agree with the proposals in View 3 that the Committee should refer to those excerpts in existing IFRSs that the Committee considered in the analysis of the fact pattern submitted. The excerpts were:
- (a) **The transfer of cash**—Paragraph B18 of IFRS 3 states that a newly formed entity could be regarded as the acquirer when it transfers cash as consideration in the acquisition.
 - (b) **The existence of control**—Newco’s shareholder’s acquire control of the subsidiaries using the cash raised through the IPO. Paragraph 7 in IFRS 3 defines the acquirer as ‘the entity that obtains control of the acquiree’.
 - (c) **The existence of a different party controlling the subsidiaries after the IPO occurs**—Entity A does not control the subsidiaries after the IPO occurs. Consequently, if the subsidiaries are not ultimately controlled by the same party or parties both before and after the business combination, then the transaction cannot be considered a business combination under common control in accordance with paragraph B1 in IFRS 3.
23. We disagree on quoting relevant paragraphs from IFRSs for the fact pattern submitted because we think it would not be of much help if the Committee does not refer specifically to how those relevant paragraphs would be applied when analysing the fact pattern. In other words, providing quotes of paragraphs in IFRS literature would not tell the reader how the technical guidance in IFRSs links to the analysis of the fact pattern.
24. We partially disagree with View 2 as we think the agenda decision should be re-drafted as we will discuss in the following paragraphs. We agree that the agenda decision should mention that there is significant diversity in practice in the jurisdictions where the issue arises.

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The content of agenda decisions

25. Whether the Committee's tentative agenda decision should include an analysis of the issue is a controversial proposal in our opinion.
26. Some could think that explanations in agenda decisions contribute to the transparency of rejection decisions and, consequently, the Committee should:
 - (a) use explicit and clear references to the relevant provisions in the standards and Interpretations in its agenda decisions where the committee believes the standards provide sufficient guidance;
 - (b) give better indications of acceptable/unacceptable treatments;
 - (c) state where the Committee thinks more than one answer is acceptable;
and
 - (d) give sufficient explanation to understand why the Committee has not been able to reach a consensus.
27. Some respondents could think that agenda decisions lead to 'quasi-interpretations' that are non-authoritative and not subject to the full due process, and that they should be avoided unless there is clear and overwhelming agreement on the right answer.

Possible Committee responses to the comments received regarding the content of agenda decisions

28. On the basis of the views expressed by respondents we think that the Committee should respond to the comments received on the degree of guidance appropriate for agenda decisions, depending on the clarity of the issue submitted. This is discussed in the following paragraphs.

Approach A

29. Where the Committee thinks that the answer to the issue submitted is not clear and involves a reasonable degree of judgement, even if sufficient guidance is present in IFRSs, we think that the Committee should:

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- (a) clearly state that the fact pattern submitted cannot be analysed either through an agenda decision or through an interpretation or through an annual improvement
- (b) refrain from giving the relevant excerpts from the standards, so as not to imply that guidance is being given;
- (c) refrain from explaining the application of specific paragraphs in IFRSs to the fact pattern analysed;
- (d) give the reasons why the agenda criteria were not met; and
- (e) indicate that the transaction would be better analysed within the context of another broader project (if the Board has any plans to address a related project at a later stage).

Approach B

30. Where the answer to a particular issue is reasonably clear and can be drawn from the application of relevant IFRSs without the need for significant judgement, we think that the Committee should:
- (a) quote the relevant paragraphs from IFRSs for the fact pattern submitted;
 - (b) explain how the Committee thinks the relevant paragraphs apply to the fact pattern submitted; and
 - (c) give the reasons why the agenda criteria were not met.

Which approach should be used to analyse the fact pattern submitted?

31. We think that although there is sufficient guidance in IFRSs to address the issue submitted, we think that the application of IFRSs to the fact pattern submitted requires a reasonable level of judgment and therefore could be subject to different interpretations. Consequently, we think that in line with **Approach A**, the Committee could address respondents' concerns by revising the language employed in its tentative agenda decision and by restricting it to the content mentioned in paragraph 29 above.

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32. We think this will be responsive to those respondents who are concerned that the Committee’s agenda decision might have been applied as a *de facto* Interpretation of the issue submitted.
33. We also agree with the recommendation in View 2 to clarify in the tentative agenda decision that, in those jurisdictions where the fact pattern does exist, the Committee has learned that there is significant diversity in practice.
34. Finally, we would propose to add to the agenda decision the Committee’s recommendation for the Board to address the fact pattern described in the submission as part of its project on common control transactions.

Staff recommendation

35. We think that the Committee should:
 - (a) omit any conclusion or analysis of the specific fact pattern;
 - (b) clearly state that the fact pattern submitted cannot be analysed either through an agenda decision, or through an interpretation or through an annual improvement;
 - (c) give the reasons why the agenda criteria were not met; and in line with View 2, also mention that there is significant diversity in practice in the jurisdictions where the issue arises.
 - (d) indicate that the transaction would be better analysed within the context of another broader project (ie the Committee should recommend that the Board addresses the fact pattern described in the submission as part of its project on common control transactions).
36. Our new proposed wording for the agenda decision is shown in Appendix A.

Questions for the Committee – Final agenda decision

1. Does the Committee agree with the Approaches developed by the staff in paragraphs 29 and 30 for responding to the respondents concerns on the content of agenda decisions?

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2. Does the Interpretations Committee agree with our recommendation to make some modifications to the tentative agenda decision as referred to in paragraph 35 to finalise it?

2. Does the Committee have any further comments on the wording for the final agenda decision in Appendix A?

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Appendix A—Agenda decision

A1 We propose the following amendments to the wording of the tentative agenda decision (new text is underlined and deleted text is struck through):

IFRS 3 *Business Combinations*—business combinations involving newly formed entities: factors affecting identification of the acquirer

The Interpretations Committee received a request for guidance on the circumstances or factors that are relevant when identifying an acquirer in a business combination under IFRS 3. More specifically, the submitter described a fact pattern in which a group plans to spin off two of its subsidiaries using a new entity ('Newco'). Newco will acquire these subsidiaries for cash from the parent company (Entity A) only on condition of the occurrence of Newco's initial public offering (IPO). The cash paid by Newco to Entity A to acquire the subsidiaries is raised through the IPO. After the IPO occurs, Entity A loses control of Newco. If the IPO does not take place, Newco will not acquire the subsidiaries.

The Committee observed that ~~paragraph B1 of IFRS 3 defines a business combination under common control as where "...all of the combining entities or businesses are ultimately controlled by the same party or parties both before and after the business combination, and that control is not transitory".~~ The Committee observed that the specific fact pattern described in the submission cannot be a business combination under common control because, after the IPO, Entity A does not control Newco, and the subsidiaries are therefore not ultimately controlled by the same party or parties both before and after the business combination. the accounting for a fact pattern involving the creation of newly formed entity is too complex to be analysed through an agenda decision or to be addressed through an interpretation or through an annual improvement. The Committee determined that the specific fact pattern submitted would be better considered within the context of a broader project on accounting for common control transactions, which the Board is planning to address at a later stage.

The Committee noted that this specific fact pattern is not widespread in many jurisdictions ~~and, but~~ in those jurisdictions where this fact pattern does exist, the Committee has learned that there is significant diversity in practice. ~~does not expect significant diversity in practice.~~

Consequently, the Interpretations Committee ~~decided~~ not to add the issue to its agenda and recommended the Board to address the fact pattern described in the submission as part of its project on common control transactions.



KPMG IFRG Limited
8 Salisbury Square
London EC4Y 8BB
United Kingdom

Tel +44 (0)20 7694 8871
Fax +44 (0)20 7694 8429
mary.tokar@kpmgifrg.com

Mr Wayne Upton
Chairman
IFRS Interpretations Committee
30 Cannon Street
London
EC4M 6XH

Our ref **MT/288**
Contact **Mary Tokar**

11 August 2011

Dear Mr Upton

Tentative agenda decisions: IFRS 3 *Business Combinations* – business combinations involving newly formed entities

We appreciate the opportunity to comment on the IFRS Interpretations Committee's publication in the July 2011 IFRIC Update of the two tentative decisions relating to Newco formations prior to an initial public offering (IPO):

- business combinations under common control; and
- factors affecting identification of the acquirer.

While in both cases we agree with the Committee's decision not to take the issue onto its active agenda at this point, we do not believe that the agenda decisions should respond to the issues at such a level of detail. Further, we are concerned that some of the statements made in the IFRIC Update may be interpreted inappropriately by readers as a directive to follow the specific accounting discussed, especially when coupled with the staff analysis in the public observer notes.

The accounting for business combinations under common control is a complex area because of the wide array of such transactions, either stand-alone or linked with other transactions, that occur in practice. Since in practice the issue of Newco formations is inextricably linked with business combinations under common control, subject to the outcome of the *Agenda Consultation 2011*, we would expect that the Board's project on common control business combinations would address this area as well. Only if the Board decides not to proceed with the common control project would we expect the Committee to consider adding Newco formations to its agenda and issuing a formal interpretation, which would need to include appropriate transitional guidance.

Without a formal project (at the Board or Committee level), any attempts to consider isolated aspects of the accounting are at risk of being applied more prescriptively and more broadly than would be appropriate.



- **Business combinations under common control.** If the wording of the tentative agenda decision is retained, then we believe that it could be read as requiring a Newco to be identified as the acquirer in a business combination under common control. For entities that choose to apply IFRS 3 by analogy in accounting for such business combinations, this means that acquisition accounting would be applied to the acquired businesses. The practical implication is that Newcos could be used as structuring mechanisms to achieve the re-basing of the carrying amounts of assets and liabilities when the same transaction effected without the use of a Newco would not result in such re-basing.

Further, in our view, in transactions in which a Newco controlled by a Group acquires another Group entity, generally the definition of a business combination is not met and therefore the transaction is not considered a business combination under common control. Our basis for this view is set out in Appendix 1 to this letter.

- **Factors affecting identification of the acquirer.** Regarding the wording of the tentative agenda decision, we believe that the IFRIC Update as written could increase the prevalence of conditional Newco formations in IPOs to achieve a desired accounting outcome without a change in economic substance. In many jurisdictions it will not be difficult to insert a conditional Newco into the listing process, if the desired outcome is that Newco can apply acquisition accounting.

Conversely, the decision may result in an undesirable outcome for entities that operate in jurisdictions in which the structure addressed by the Committee is prevalent, who do not believe that they should apply acquisition accounting based on the substance of the transaction. We are aware that at least in Australia this structure is not uncommon, and the decision may be interpreted as providing a clear mandate as to how such transactions should be accounted for.

Accordingly, we believe that the final agenda decisions should refrain from offering any analysis of the accounting.

Appendices 1 and 2 to this letter contain our detailed technical responses to the tentative agenda decisions. We have published guidance on Newco formations and would be happy to discuss our comments in more detail.

Please contact Mary Tokar or Julie Santoro at +44 (0)20 7694 8871 if you wish to discuss any of the issues raised in this letter.

Yours sincerely

KPMG IFRG Limited

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Appendix 1: Business combinations under common control

We agree with the Committee that the fact pattern considered is widespread in practice.

Is there a business combination under common control?

In order for there to be a business combination under common control, first and foremost there must be a business combination. In the fact pattern presented we believe that there is not a business combination.

One of the difficult areas in common control transactions is identifying the acquirer; this is because of the involvement of a controlling shareholder. However, in the fact pattern presented we believe that Business A would be the acquirer based on B18 of IFRS 3: if a new entity is formed to effect a business combination, then one of the combining entities that existed before the business combination is identified as the acquirer. In this example that would be Business A.

Accordingly, since Business A is the acquirer, Newco would be the acquiree in an IFRS 3 analysis. However, since the acquiree is not a business, there is no business combination.

As a general comment, when a Newco controlled by the Parent acquires another subsidiary for cash, we believe that B15-B18 rather than B14 should be considered in identifying the acquirer. This is because in substance the transaction has still been effected through the issue of equity instruments, as the transaction was initiated through the issue of equity instruments when the Newco was created.

Another possibility, which might be inferred but is not stated in the IFRIC Update, is that Business A is a group of entities. In that case there might be a temptation by some to identify one entity within Business A as the acquirer, and the other entities within Business A as the acquirees. However, we believe that such an analysis generally would not be appropriate in accordance with IFRS 3. The following example best explains our reasoning:

- Business A acquires Business B (two independent groups) in a business combination.
- In identifying an acquirer, it would be either Business A *or* Business B; we would not conclude, for example, that part of Business A was the acquirer, with acquisition accounting then applied to both Business B and the remaining parts of Business A.

Similarly, we would not conclude that only part of Business A is the acquirer in the fact pattern described in the IFRIC Update.

Agenda decision wording

As noted in our covering letter, if the wording of the tentative agenda decision is retained, then we believe that it could be read as requiring a Newco to be identified as the acquirer in a business combination under common control. For entities that choose to apply IFRS 3 by analogy in accounting for such business combinations, this means that acquisition accounting would be applied to the acquired businesses. The practical implication is that Newcos could be used as structuring mechanisms to achieve the re-basing of the carrying amounts of assets and liabilities when the same transaction effected without the use of a Newco would not result in such re-basing.

Appendix 2: Factors affecting identification of the acquirer

We agree with the Committee that the fact pattern considered (Newco formation conditional on an IPO) generally is not widespread in practice; however, we are aware that at least in Australia such structures are not uncommon.

Who is the acquirer?

The accounting for Newco formations is complex. At some level we can understand a conclusion that Newco is the acquirer in a business combination when the acquisition is conditional on the IPO, which represents a change in control. However, typically there are many issues that need to be considered in respect of Newco formations. The following are some of the issues that we believe need to be addressed in the specific fact pattern considered by the Committee.

- The IFRIC Update discussion appears to conclude that there is linkage between the set up of the conditional Newco and the issue/sale of shares through the IPO to external parties. However, it also could be argued that there is no such linkage: the creation of the conditional Newco is the preferred structure of the existing owners to allow them to IPO at some point in the future, to which the future shareholders after the IPO have no input; on that basis it could be argued that the two transactions are unrelated.
- Is the conditionality in the fact pattern an indicator of the substance of the transaction or a conclusive fact that drives the accounting?
- If the transfer of the subsidiaries to Newco results in a requirement to apply acquisition accounting to those subsidiaries, then why would the same accounting (a step-up in values) not be available when no Newco is involved, e.g. if the business to be listed is already in a holding group structure? In other words, in what instances should the structure of a transaction change the accounting outcome? This is particularly relevant since a Newco has no substance on its own (i.e. it is somebody's vehicle in any transaction) and could be transitory (e.g. if a downstream merger follows the IPO, such that Newco then ceases to exist).

We acknowledge that these are difficult questions to answer. As emphasised in our covering letter, we believe that this issue is too complex to be dealt with as an agenda decision of the IFRS Interpretations Committee.

Agenda decision wording

As noted in our covering letter, we believe that the IFRIC Update as written could increase the prevalence of conditional Newco formations in IPOs to achieve a desired accounting outcome without a change in economic substance. In many jurisdictions it will not be difficult to insert a conditional Newco into the listing process, if the desired outcome is that Newco can apply acquisition accounting.

Conversely, the decision may result in an undesirable outcome for entities that operate in jurisdictions in which the structure addressed by the Committee is prevalent, who do not believe that they should apply acquisition accounting based on the substance of the transaction. We are aware that at least in Australia this structure is not uncommon, and the decision may be interpreted as providing a clear mandate as to how such transactions should be accounted for.



Australian Government

**Australian Accounting
Standards Board**

Level 7, 600 Bourke Street
MELBOURNE VIC 3000

Postal Address
PO Box 204
Collins Street West VIC 8007
Telephone: (03) 9617 7600
Facsimile: (03) 9617 7608

12 August 2011

Wayne Upton
Chairman
IFRS Interpretations Committee
30 Cannon Street
London EC4M 6XH
UNITED KINGDOM

Dear Wayne

Tentative agenda decisions:

- **IFRS 3 *Business Combinations* – business combinations involving newly formed entities: factors affecting identification of the acquirer (Issue 1); and**
- **IFRS 3 *Business Combinations* – business combinations involving newly formed entities: business combinations under common control (Issue 2)**

We wish to provide comment to the IFRS Interpretations Committee (the “Committee”) on the above tentative agenda decisions (published in the July 2011 IFRIC Update). We are not convinced that the logic for rejecting Issue 1, as published, is appropriate, for the reasons expressed below.

As a general comment, we think that the fact patterns addressed in the tentative agenda decisions are very broad. Accordingly, we are concerned that constituents will view the Committee’s conclusions as a defacto interpretation of the accounting for certain common classes of transactions used in spin-offs. We do not think that this is appropriate as we believe that that the conclusion for Issue 1 is contentious.

Although we acknowledge the Committee’s attempts to limit the conclusions to the specific fact patterns described in the submissions, we are concerned that the views expressed by the Committee, in relation to a *conditional* Initial Public Offering (“IPO”) and an IPO which *might* occur after the transfer of a business, are inconsistent. We think that both circumstances are likely to be considered business combinations under common control and that they would be accounted for as such in practice¹.

We say this because we do not think that the references to “ultimate control” and “not transitory” are relevant to the accounting for the absolute control Entity A has over Newco before and after the transfer of businesses, and before the IPO. We believe those phrases are more relevant to structures in which another controlling party exists and either has indirect control through a chain or has an agreement that will provide for access to actual control. It is also not clear to us how the Newco formed for the business combination could qualify as an acquirer under IFRS 3.

Accordingly, whilst we are supportive of the decision by the Committee not to add these issues to its agenda, we are not convinced by the logic provided for Issue 1.

¹ Accounted for by applying the acquisition method or the pooling method as an accounting policy choice.

If the view of the Committee is to stand for Issue 1, we believe that clarification on how ‘conditionality’ should be regarded in such transactions would be needed to help identify whether the transaction is a business combination under common control or not, and would be needed to distinguish this fact pattern from the tentative agenda decision addressing Issue 2.

We would also like to emphasise that transactions that are the subject of Issue 1 are not uncommon in Australia. However, the views of the Committee under Issue 1 would lead to significant changes in practice, possibly retrospectively, because of the use of the tentative agenda decision. We ask that the Committee re-consider the drafting of the tentative agenda decisions at its September 2011 meeting to address the above concerns.

If you require further information regarding any matters in this letter, please contact me or Nikole Gyles (ngyles@asb.gov.au).

Yours sincerely

A handwritten signature in black ink that reads "K.M. Stevenson". The signature is written in a cursive style with a long, sweeping underline.

Kevin M. Stevenson
Chairman and CEO

Mr Wayne Upton
Chairman
International Financial Reporting Interpretations Committee
30 Cannon Street
London
United Kingdom
EC4M 6XH

Email: ifric@ifrs.org

15 August 2011

Dear Mr Upton,

Tentative agenda decision: IFRS 3: Business Combinations – Business combinations involving newly formed entities: factors affecting identification of the acquirer

Deloitte Touche Tohmatsu Limited is pleased to respond to the IFRS Interpretation Committee's ("the Committee") publication in the July 2011 *IFRIC Update* of the tentative decision not to take onto the IFRIC's agenda requests for Interpretations of IFRS 3, *Business Combinations*, with respect to providing guidance on the circumstances or factors that are relevant when identifying an acquirer in a business combination under IFRS 3 in the context of a situation where a group plans to spin off subsidiaries using a new entity and the acquisition of the subsidiaries by the new entity is conditional upon completion of an initial public offering.

We do not agree with the Committee's decision to deal with this issue, which is widespread in certain jurisdictions (albeit not, as noted in the tentative agenda decision, in many others) and for which we have seen real diversity in practice, through a rejection notice. Whilst we agree that a reasonable analysis of the requirements of IFRS 3 is presented in the tentative agenda decision, there would be significant transitional issues for entities that have previously applied a different treatment. Accordingly, any clarification of the treatment of transactions such as those described in the tentative agenda decision should be carefully considered, including consideration of potential changes in practice that may result and the need for transitional provisions. We believe that a full interpretation or an amendment to IFRS 3 via the Annual Improvements Project would be more suitable for these purposes than an IFRIC rejection notice.

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'V. Poole', written in a cursive style.

Veronica Poole
Global Managing Director
IFRS Technical

International Financial Reporting Standards Interpretations
Committee
30 Cannon Street
London
EC4M 6XH

21 July 2011

Dear IFRS Interpretations Committee members,

Tentative Agenda Decision - IFRS 3 *Business Combinations* - business combinations involving newly formed entities: factors affecting identification of the acquirer

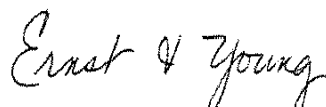
The global organisation of Ernst & Young is pleased to submit its comments on the above Tentative Agenda Decision as published in the July 2011 IFRIC Update.

The IFRS Interpretations Committee was asked for guidance on "the circumstances or factors that are relevant when identifying an acquirer in a business combination under IFRS 3," specifically, a fact pattern involving a Newco and a conditional acquisition upon initial public offering (IPO). We agree with the IFRS Interpretations Committee's technical analysis and the reasons for this conclusion in the Tentative Agenda Decision.

The IFRIC Update included a Tentative Agenda Decision not to add this issue to its Agenda, because this fact pattern is not widespread in many jurisdictions and, where it does exist, the IFRS Interpretations Committee does not expect significant diversity in practice. However, we note that in jurisdictions where this issue arises (e.g., Australia), there is significant diversity in practice.

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

A handwritten signature in cursive script that reads 'Ernst & Young'.



IFRS Interpretations Committee
30 Cannon Street
London EC4M 6XH
United Kingdom

10 August 2011

Subject: IFRS Interpretations Committee tentative agenda decisions, IFRS 3 Business Combinations—business combinations involving newly formed entities: factors affecting identification of the acquirer

Dear Director of Implementation Activities,

Following consultation with members of the PricewaterhouseCoopers network of firms, this response summarises the views of the member firms on the IFRS IC tentative agenda decisions published in the July 2011 IFRIC Update. 'PricewaterhouseCoopers' refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.

We welcome the opportunity to respond to the IFRS IC's tentative agenda decision on the accounting for IFRS 3 Business Combinations—business combinations involving newly formed entities. This tentative agenda decision was published in the July 2011 IFRIC Update.

We agree with the Committee's decision not to add this item to its agenda. However, we would have different reasons for not adding this item to the agenda than those expressed in the tentative decision. Our observation is that the issues raised by the submitter occur in many jurisdictions. There appears to be diverse practice in different jurisdictions on what seem to be similar fact patterns. However, the reasons for this diverse practice may be established market practices, the views of securities regulators and company law, among other possible factors. What appear to be similar fact patterns may also be subtly different.

The tentative decision expresses a view that the specific fact pattern is not a common control transaction. We believe the fact pattern as included in the agenda decision is very condensed and does not allow for thorough analysis of the facts and circumstances that were considered by the IFRIC in reaching their conclusion. IFRIC agenda decisions do not have official standing in the hierarchy of accounting literature but agenda decisions are scrutinised and considered by many in reaching decisions on complex accounting issues.

We believe that the specific fact pattern should be considered in the broader context of a project on accounting for common control transactions. The accounting for a complex topic such as common control transactions should not be dealt with on a piecemeal basis by the IFRS IC. The correct accounting treatment would be best resolved in a larger project by the IASB Board with the appropriate due process.

We therefore recommend the tentative agenda decision should be modified to avoid the appearance of any conclusion on the specific fact pattern. The decision instead could refer to the Board's plans to address the accounting for business combinations under common control at a later stage.

*PricewaterhouseCoopers LLP, 10-18 Union Street, London, SE1 1SZ
T: +44 (0) 20 7583 5000, F: +44 (0) 20 7822 4652, www.pwc.co.uk*

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The Appendix reflects our recommendations and drafting suggestions. We would be pleased to provide more detail if you require.

If you have questions regarding this letter please do not hesitate to contact Mary Dolson (020 7804 2930, Mary.Dolson@uk.pwc.com).

Yours faithfully,

A handwritten signature in black ink, appearing to read "Mary Dolson", is written over the printed name. The signature is fluid and cursive, with a large, stylized "M" and "D".

PriceWaterhouseCoopers LLP



Appendix:

IFRS 3 *Business Combinations*—business combinations involving newly formed entities: factors affecting identification of the acquirer

The Interpretations Committee received a request for guidance on the circumstances or factors that are relevant when identifying an acquirer in a business combination under IFRS 3. More specifically, the submitter described a fact pattern in which a group plans to spin off two of its subsidiaries using a new entity (Newco). Newco will acquire these subsidiaries for cash from the parent company (Entity A) only on condition of the occurrence of Newco's initial public offering (IPO). The cash paid by Newco to Entity A to acquire the subsidiaries is raised through the IPO. After the IPO occurs, Entity A loses control of Newco. If the IPO does not take place, Newco will not acquire the subsidiaries. The Committee observed that paragraph B1 of IFRS 3 defines a business combination under common control as where "...all of the combining entities or businesses are ultimately controlled by the same party or parties both before and after the business combination, and that control is not transitory". The Committee also observed that paragraph B1 in IFRS 3 explicitly excludes business combinations between entities under common control from its scope. ~~The Committee observed that the specific fact pattern described in the submission cannot be a business combination under common control because, after the IPO, Entity A does not control Newco, and the subsidiaries are therefore not ultimately controlled by the same party or parties both before and after the business combination.~~

The Committee observed the accounting for business combinations under common control is too broad to be addressed through an interpretation and that the Board plans to address the accounting for business combinations under common control at a later stage. Consequently, the Committee [decided] not to add this issue to its agenda. ~~The Committee noted that this specific fact pattern is not widespread in many jurisdictions and, where this fact pattern does exist, the Committee does not expect significant diversity in practice. Consequently, the Interpretations Committee [decided] not to add the issue to its agenda.~~

August 22, 2011

(by e-mail to ifric@ifrs.org)

IFRS Interpretations Committee
30 Cannon Street,
London EC4M 6XH
United Kingdom

Dear Sirs,

Re: Tentative agenda decision on IFRS 3 *Business Combinations* – business combinations involving newly formed entities: factors affecting identification of the acquirer

This letter is the response of the staff of the Canadian Accounting Standards Board (AcSB) to the IFRS Interpretations Committee's tentative agenda decision on the on the circumstances or factors that are relevant when identifying an acquirer in a business combination under IFRS 3. This tentative agenda decision was published in the July 2011 IFRIC Update.

The views expressed in this letter take into account comments from individual members of the AcSB staff but do not necessarily represent a common view of the AcSB or its staff. Views of the AcSB are developed only through due process.

We are concerned that the Committee concluded that:

- the issue is not widespread when the national standard-setters in four jurisdictions considered the issue to be prevalent in practice; and

- diversity is not significant when national standard-setters in two out of the four jurisdictions noted that significant divergent interpretations are emerging or exist in practice.

We think that these outreach results are inconclusive and that the Committee should seek additional evidence prior to deciding whether the issue is widespread and whether significant diversity exists. More specifically, we recommend that the Committee should direct staff to:

- perform additional outreach with the international accounting firms;
- provide information about the significance of the markets in the jurisdictions that noted diversity; and
- consult further with the two jurisdictions that reported diversity to explore the alternative view and obtain a better understanding of whether there are additional factors that should be considered that are creating diversity.

If the Committee decides to confirm this tentative agenda decision, we think that the wording of the agenda decision needs to be revised because the Committee should not provide comments or guidance about the application of IFRSs to a fact pattern described by a submitter in an agenda decision:

- The Committee's views about the submitter's fact pattern are not relevant because an interpretation is not being developed.
- The Committee should not attempt to eliminate diversity or change practice in a few jurisdictions through an agenda decision. If members wish to resolve diversity in practice in a few jurisdictions, the Committee should decide to develop an interpretation or recommend that the IASB amend IFRS 3 through a separate amendment or the annual improvements project.

- The Committee should not comment on an extremely narrow fact pattern in an agenda decision because transactions are typically much more complex than indicated in the stated fact pattern. We are concerned that this tentative agenda decision will be applied to a broader range of transactions without consideration of the effect of additional factors.

As a result, we recommend the Committee should, at minimum, remove the following sentence from the tentative agenda decision:

“The Committee observed that the specific fact pattern described in the submission cannot a business combination under common control because, after the IPO, Entity A does not control Newco, and the subsidiaries are therefore not ultimately controlled by the same party or parties both before and after the business combination.”

We recommend that the tentative agenda decision should be restricted to referring to the IFRS literature that the Committee thinks should be considered and explaining which of the agenda criteria were not met.

We would be pleased to provide more detail if you require. If so, please contact me at +1 416 204-3276 (e-mail peter.martin@cica.ca), or Kathryn Ingram, Principal, Accounting Standards at +1 416 204-3475 (e-mail kathryn.ingram@cica.ca).

Yours truly,



Peter Martin, CA
Director,
Accounting Standards