



## STAFF PAPER

March 2019

## IFRS® Interpretations Committee meeting

<b>Project</b>	<b>Liabilities in relation to a joint operator's interest in a joint operation (IFRS 11)</b>		
<b>Paper topic</b>	Agenda decision to finalise		
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## Introduction

1. At its meeting in September 2018, the IFRS Interpretations Committee (Committee) discussed a submission about the recognition of lease liabilities by a joint operator relating to its interest in a joint operation (as defined in IFRS 11 *Joint Arrangements*). In the fact pattern discussed by the Committee:
  - (a) a number of parties establish a joint arrangement by entering into a joint operating agreement (JOA)—the JOA gives the parties joint control of the arrangement. Each of the parties is a joint operator as defined in IFRS 11.
  - (b) the joint arrangement is unincorporated, ie it is not structured through a separate vehicle. Accordingly, applying IFRS 11 the joint arrangement is classified as a joint operation.<sup>1</sup>

<sup>1</sup> Paragraph B16 of IFRS 11 states that 'a joint arrangement that is not structured through a separate vehicle is a joint operation'.

- (c) the JOA sets out the terms upon which the joint operators participate in the activity that is the subject of the arrangement. The JOA (or ancillary agreements signed by the joint operators) outlines among other things:
- (i) the relevant activities of the joint operation.
  - (ii) that one of the joint operators is the operator (lead operator). The lead operator manages the day-to-day activities of the joint operation in accordance with the JOA. The lead operator also enters into contracts with third parties for goods or services to be used in the joint operation.
  - (iii) the work programme, budgets, authorisation for expenditure, procurement and insurance.
  - (iv) the capital and other contributions required of the joint operators.
  - (v) how the joint operators share the assets and liabilities, and revenue and expenses, relating to the joint operation, and the nature of those assets, liabilities, revenue and expenses. The JOA specifies (a) each joint operator's share of the rights and benefits arising from the activities of the joint operation, including its share of any joint assets; and (b) that the joint operators are primarily liable pro-rata to each other, and secondarily jointly and severally liable for all liabilities and costs relating to the joint operation<sup>2</sup>.
- (d) The lead operator enters into a lease, as the sole signatory, for an item of property, plant and equipment to be used as part of the relevant activities of the joint operation throughout the term of the lease. The lead operator has primary responsibility for the liability towards the third-party supplier (lessor) and, in accordance with the JOA, has the right to recover a share of the lease costs from the other joint operators. Depending on the particular clauses in the lease contract or other related agreements, the lessor may

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<sup>2</sup> In this respect, both 'pro-rata' and 'jointly and severally' liable are interpreted as the common law concepts. See Appendix C of [Agenda Paper 3](#) of the Committee's September meeting for further information on these terms.

have recourse against the other joint operators in the event of non-payment by the lead operator.

2. In September 2018 the Committee published a tentative agenda decision. In that tentative agenda decision, the Committee observed that the liabilities a joint operator recognises include those for which it has primary responsibility. The Committee concluded that the requirements in IFRS Standards provide an adequate basis for a joint operator to identify and recognise its liabilities in relation to its interest in a joint operation. Consequently, the Committee tentatively decided not to add this matter to its standard-setting agenda.
3. The purpose of this paper is to:
  - (a) analyse the comments on the tentative agenda decision; and
  - (b) ask the Committee if it agrees with our recommendation to finalise the agenda decision.

### ***Structure of the paper***

4. This paper is structured as follows:
  - (a) Comment letter summary;
  - (b) Staff analysis of the main comments; and
  - (c) Staff recommendation.
5. There are two appendices to this paper:
  - (a) Appendix A—proposed wording of the agenda decision; and
  - (b) Appendix B—analysis of other comments.
6. Agenda Paper 9A for this meeting reproduces the comment letters.

## Comment letter summary

7. We received 19 comment letters on the tentative agenda decision. The comment letters are available on our [website](#) and have been reproduced in Agenda Paper 9A for ease of reference.
8. Nine respondents agree with the Committee’s technical analysis and conclusions—and, in particular, its observation in the tentative agenda decision that the liabilities a lead operator recognises include those for which it has primary responsibility. These include accounting firms, national standard-setters, an oil and gas preparer and an academic body.
9. Some<sup>3</sup> of these respondents nonetheless express concerns about the scope and potential effects of the agenda decision. In particular, they say:
  - (a) finalising the agenda decision
    - (i) would be untimely and disruptive to the implementation of IFRS 16 *Leases*; and
    - (ii) could have wider implications for joint operation accounting.
  - (b) the Committee should further analyse and clarify how a joint operator accounts for its assets as well as its liabilities. Respondents had differing views on how to address this matter. Some respondents suggested addressing it in the tentative agenda decision itself while others suggested additional work in the future, possibly as part of the Post-Implementation Review of IFRS 11 (IFRS 11 PIR).
10. Seven of the respondents who agree with the Committee’s technical conclusions recommend finalising the agenda decision, some with suggested improvements to the wording.

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<sup>3</sup> The term ‘some respondents’ has been used throughout this paper to refer to five respondents or less; the term ‘several respondents’ has been used to refer to more than five respondents.

11. The remaining ten respondents disagree with the Committee’s technical analysis and conclusions. These include oil and gas preparers, a telecommunications preparer, preparer representative bodies, an accounting firm and a national standard-setter.
12. In particular, these respondents say:
  - (a) they disagree with the Committee’s analysis of the applicable requirements in IFRS 11 and IFRS 16; and
  - (b) the accounting outcome does not reflect the economic substance of the arrangement.
13. All ten of these respondents recommend not finalising the tentative agenda decision as worded. In addition to comments about the scope and potential effects of the tentative agenda decision (similar to those outlined in paragraph 9 of this paper), several respondents suggest that:
  - (a) finalising the agenda decision would have wider implications and, thus, the matter is not sufficiently narrow in scope to be addressed by the Committee; or
  - (b) the matter be addressed as part of the IFRS 11 PIR or via narrow-scope standard-setting.

## **Staff analysis of main comments**

### ***Structure of our analysis***

14. Because of the diverse nature of comments, we have separately analysed the main comments that relate to:
  - (a) the Committee’s analysis and conclusions—Issue I (see paragraphs 16–40 of this paper);
  - (b) the scope of the agenda decision—Issue II (see paragraphs 41–48 of this paper); and
  - (c) potential effects of the agenda decision—Issue III (see paragraphs 49–59 of this paper).

15. Appendix B to this paper analyses all other comments.

**Committee's analysis and conclusions (Issue I)**

*Applying the requirements in IFRS 11 and IFRS 16*

*Respondents' Comments*

16. Paragraph B11 of IFRS 16 states:

A contract to receive goods or services may be entered into by a joint arrangement, or on behalf of a joint arrangement, as defined in IFRS 11 *Joint Arrangements*. In this case, the joint arrangement is considered to be the customer in the contract. Accordingly, in assessing whether such a contract contains a lease, an entity shall assess whether the joint arrangement has the right to control the use of an identified asset throughout the period of use.

17. Several respondents disagree with the staff's analysis and conclusion in [Agenda Paper 3](#) of the Committee's September 2018 meeting (September Agenda Paper). That paper outlined our view that the requirements in paragraph B11 of IFRS 16 apply only when assessing whether a contract contains a lease, and have no further effect on the required accounting for the lease or the joint arrangement.<sup>4</sup>

18. These respondents say:

- (a) in the fact pattern described in the submission, applying paragraph B11 of IFRS 16 the joint arrangement is the customer in the contract and not the lead operator. Appendix A to IFRS 16 defines a lessee as 'an entity that obtains the right to use an underlying asset for a period of time in exchange for consideration.' If the joint arrangement obtains the right to control the use of the underlying asset throughout the period of use, it is the joint operation itself that is the lessee. Even though the lead operator enters into the lease contract with the lessor, it does so 'on behalf of' the joint

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<sup>4</sup> Paragraphs 40–44 of the September Agenda Paper.

operation. Applying the requirements in IFRS 16, it is the joint operation, and not the lead operator, that would initially recognise the right-of-use asset and lease liability.

- (b) thereafter, each of the joint operators would apply the requirements in IFRS 11. Paragraph 20 of IFRS 11 requires each joint operator (including the lead operator) to recognise its share of any assets held jointly and its share of any liabilities incurred jointly. Paragraph B18 of IFRS 11 expands on the requirements in paragraph 20 for joint operations in which the joint operators share and operate an asset jointly. Paragraph B18 states that ‘...each joint operator accounts for its share of the joint asset and its agreed share of any liabilities...in accordance with the contractual arrangement’.

The lease liability (being a liability of the joint operation) is incurred jointly and, accordingly, each joint operator would recognise only its agreed share of the lease liability. Some respondents say the lead operator is acting as an agent for the joint operation (and the other joint operators) and, therefore, each joint operator has primary responsibility for its pro-rata share of the lease liability.

19. Some respondents say assessing whether a contract was entered into ‘on behalf of’ the joint operation can be complex. Because IFRS 16 and IFRS 11 do not provide further requirements on this assessment, they say an entity could look to the requirements in IFRS 15 *Revenue from Contracts with Customers* or IFRS 10 *Consolidated Financial Statements* on principal versus agent considerations.
20. Some respondents say if the Board intended paragraph B11 of IFRS 16 to apply only when assessing whether a contract contains a lease, it should amend the paragraph to make this clear.

#### Staff Analysis

21. We continue to think paragraph B11 of IFRS 16 applies only when assessing whether a contract contains a lease, and no amendment to that paragraph is needed. As explained in the September Agenda Paper, this paragraph is included within the section of IFRS 16’s application guidance titled ‘identifying a lease’. That section of

the application guidance supplements the requirements in paragraphs 9–11 of IFRS 16 by specifying requirements to help assess whether a contract contains a lease.

Paragraph B11 explicitly states ‘...in assessing whether such a contract contains a lease...’. Consistent with the use of the words ‘in assessing whether’ in paragraph B11, paragraph BC126 of IFRS 16 explains why the Board included the requirements in paragraph B11 (emphasis added):

...The IASB decided to clarify that an entity should consider the joint arrangement to be the customer *when assessing whether the contract contains a lease applying paragraphs 9–11 of IFRS 16*—ie the parties to the joint arrangement should not each be considered to be a customer. Accordingly, if the parties to the joint arrangement collectively have the right to control the use of an identified asset throughout the period of use through their joint control of the arrangement, the contract contains a lease. In that scenario, it would be inappropriate to conclude that a contract does not contain a lease on the grounds that each of the parties to the joint arrangement either obtains only a portion of the economic benefits from use of the underlying asset or does not unilaterally direct the use of the underlying asset.

22. In the fact pattern described in paragraph 1 of this paper:

- (a) the lead operator has primary responsibility for the lease liability. By having primary responsibility for the lease liability, we think the lead operator is the lessee (as defined in IFRS 16)—ie the party that obtains the right to use an underlying asset (the leased asset) for a period of time in exchange for consideration. From the lessor’s perspective, it has provided the right to use the leased asset to the operator with primary responsibility for the lease liability.
- (b) the JOA then:
  - (i) provides the lead operator with a right to reimbursement from the other joint operators for their share of lease costs; and
  - (ii) creates an obligation for the other joint operators in respect of their share of lease costs. This represents the other joint

operators' obligation to make payments in exchange for obtaining their share of the right-of-use asset held jointly.

23. As explained in the September Agenda Paper, applying IFRS 11 we think each of the joint operators would identify the following obligations in relation to the leased asset used in the joint operation's activities:
- (a) the lead operator has an obligation to pay lessor all lease payments. This obligation arises from the lease contract.
  - (b) the other joint operators:
    - (i) have an obligation to pay the lead operator their pro-rata share of lease costs. This obligation arises from the JOA; and
    - (ii) may have an obligation to pay the lessor on non-payment by the lead operator. This obligation would arise from the lease contract, JOA or other related agreements.

*Alternative view outlined in comment letters*

24. Several respondents said, applying paragraph B11 of IFRS 16, they would consider the joint operation (and not the lead operator) to be the lessee in the contract with the third-party lessor. Although we do not agree with that view, we think the Committee's observation about the liabilities a joint operator recognises would not change applying that view.
25. This is because IFRS 11 requires joint operators to recognise assets and liabilities that arise from all relevant contractual arrangements in accordance with the applicable Standards. Paragraph 20 of IFRS 11 states:

A joint operator shall recognise in relation to its interest in a joint operation:

- (a) its assets, including its share of any assets held jointly;
- (b) its liabilities, including its share of any liabilities incurred jointly;
- (c) its revenue from the sale of its share of the output arising from the joint operation;

(d) its share of the revenue from the sale of the output by the joint operation; and

(e) its expenses, including its share of any expenses incurred jointly.

26. Paragraph 21 of IFRS 11 requires a joint operator to account for the items recognised (applying paragraph 20) in accordance with the Standards applicable to the particular assets, liabilities, revenue and expenses. Specifically in relation to a joint operation not structured through a separate vehicle, paragraph B18 states:

...the parties to a joint arrangement might agree, for example, to share and operate an asset together. In such a case, the contractual arrangement establishes the parties' rights to the asset that is operated jointly, and how output or revenue from the asset and operating costs are shared among the parties. Each joint operator accounts for its share of the joint asset and its agreed share of any liabilities, and recognises its share of the output, revenues and expenses in accordance with the contractual arrangement.

27. Paragraph BC43 of IFRS 11 explains the Board's objectives in developing IFRS 11:

The Board believes that the accounting for joint arrangements should faithfully reflect the rights and obligations that the parties have in respect of the assets and liabilities relating to the arrangement...the economic substance of the arrangements depends on the rights and obligations assumed by the parties when carrying out such activities. It is those rights and obligations that the accounting for joint arrangements should reflect.

28. If the joint operation itself (and not the lead operator) were considered the lessee in the contract with the third-party lessor, the joint operation would initially recognise the right-of-use asset and lease liability. Applying paragraphs 20 and B18 of IFRS 11, each joint operator would then recognise (a) its assets, including its share of assets held jointly and (b) its liabilities, including its share of liabilities incurred jointly. In determining its share, each joint operator would look to the relevant

contractual agreements. The lead operator has primary responsibility for the lease liability arising from the lease contract. The JOA does not extinguish or transfer that primary responsibility; instead it provides the lead operator with a right to reimbursement from the other joint operators for their share of lease costs. Accordingly, the lead operator's 'agreed share' of the lease liability (as described in paragraph B18 of IFRS 11) is all the payments to be made to the lessor.

29. Accordingly, we think the liabilities a joint operator recognises would not change even if, based on the alternative reading of paragraph B11 of IFRS 16, the joint operation itself were considered the lessee in the contract with the lessor.
30. Consequently, we continue to agree with the Committee's conclusion that:
  - (a) determining the liabilities a joint operator recognises requires an assessment of the terms and conditions in all contractual agreements that relate to the joint operation, including consideration of the laws pertaining to those arrangements; and
  - (b) the liabilities a joint operator recognises include those for which it has primary responsibility.
31. Based on our analysis, we recommend no change to the agenda decision in this respect.

*Substance over form (Issue I-B)*

**Respondents' Comments**

32. Several respondents say the Committee's observation in the tentative agenda decision would result in an accounting outcome that reflects only the legal form of the lease contract and is solely dependent on which party signs the lease contract. These respondents say this conclusion could lead to structuring opportunities, and does not reflect the combined economic substance of all the relevant agreements (such as the lease contract, the JOA and any other related agreement).
33. Some respondents say:
  - (a) '...From an economic point of view, the substance of this setup reflects a common understanding that all joint operators in practice share the same

economic risks and benefits regardless of which party has the primary responsibility for an obligation, when this obligation relates to the lease of an identified asset specially entered into for the use in the joint operation...’. [Equinor]

(b) ‘...In assessing whether an item meets the definition of an asset, liability or equity, consideration needs to be given to its underlying substance and economic reality and not merely its legal form...’. [Royal Dutch Shell]

34. Some respondents say the Committee’s observation in the tentative agenda decision means that the incorporation of a joint operation could affect the liabilities a joint operator recognises—in their view, this is not appropriate.

#### Staff Analysis

35. When the Board developed IFRS 11, it considered how best to reflect the substance of joint arrangements. In paragraph BC43 (see paragraph 27 of this paper), the Board explained its view regarding the economic substance of joint arrangements. Paragraph BC43 states ‘...the economic substance of the arrangements depends on the rights and obligations assumed by the parties when carrying out [the joint arrangement’s] activities...’ Accordingly, we think in the Board’s view there is no tension between the substance of a joint arrangement and the rights and obligations assumed by the parties to a joint arrangement—the economic substance is best reflected by reflecting the rights and obligations of each joint operator.
36. Applying IFRS 11 the accounting reflects the contractual rights and obligations having considered all relevant contractual agreements (and applicable laws). The legal structure of the joint operation, the JOA and the lease contract create rights and obligations and are therefore considered in determining the appropriate accounting. However, a joint operator does not reflect any one of these agreements in isolation—it considers all the relevant contractual agreements to determine its rights and obligations, and accounts for them applying the applicable Standards.
37. In the fact pattern described in paragraph 1 of this paper, the lead operator signs the lease contract *and, in doing so, has primary responsibility* for the lease liability—the facts are such that the other relevant contractual agreements (and applicable laws) do

not extinguish or transfer the lead operator’s primary responsibility for the lease liability arising from the lease contract.<sup>5</sup>

38. In reaching its conclusion, the Committee did not consider the lease contract in isolation—rather, it considered all relevant clauses in each of the contractual agreements mentioned in the fact pattern submitted. The agenda decision states:

‘...Identifying the liabilities that a joint operator incurs and those incurred jointly requires an assessment of the terms and conditions in all contractual agreements that relate to the joint operation, including consideration of the laws pertaining to those agreements...’

39. Although in the fact pattern submitted, the JOA creates a right for the lead operator to recover a share of lease costs from the other joint operators, the primary legal obligation to meet the lease liability remains with the lead operator. This is not the same as each joint operator having primary responsibility for only its pro-rata share of the lease liability.
40. Based on our analysis, we recommend no change to the agenda decision in this respect.

### ***Scope of the Agenda Decision (Issue II)***

#### *Respondents’ Comments*

41. The submitter asked only about the recognition of lease liabilities by the lead operator—accordingly, the tentative agenda decision outlines how to identify such liabilities, but discusses not only the lead operator’s accounting but that of any joint operator.
42. Three respondents (Deloitte, GFRC and Mazars) agree with the Committee's decision to address only the accounting for liabilities. Two other respondents (PwC and

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<sup>5</sup> In other circumstances, the combination of all contractual agreements (and applicable laws) might be such that each joint operator has primary responsibility for a pro-rata share of the lease liability, even though only one joint operator has signed the lease contract. If that is the case, then each joint operator (including the lead operator) would recognise only its pro-rata share of the lease liability.

AcSB) suggest that the tentative agenda decision address only the question asked—namely, the lead operator’s accounting for the lease liability.

43. Deloitte suggests that the tentative agenda decision also state (a) the Committee did not discuss the accounting for contractual agreements that may exist between joint operators in respect of a leased asset, and (b) in the fact pattern described in the agenda decision, the lead operator has primary responsibility for the lease liability.
44. Several respondents say addressing only the accounting for liabilities (and not the accounting for assets) could create confusion and result in diversity in practice. For example, the ANC says:

...the agenda decision only deals with the accounting for the obligation but does not address the debit side of the entry. When considering what the accounting should be for the debit side, ANC is concerned that it is also a complex issue that could give rise to diversity in practice. The lack of conclusion of the Committee on the accounting treatment of the assets generated by IFRS 16 concurs to provide the impression that such a clarification may not be straight forward...

*Staff Analysis*

45. The tentative agenda decision is intentionally narrow in scope and addresses the question asked—ie about the recognition of liabilities. Although the analysis in the September Agenda Paper included a discussion of the rights and obligations of the joint operators arising from the various contractual agreements, this was intended only to facilitate the Committee’s discussion. We think it is not necessary to address the rights arising from the contractual agreements to respond to the question asked.
46. We note that the Committee generally does not provide answers to highly-specific fact patterns; it does so only when considered necessary to achieve the objective of supporting a common understanding of particular requirements. If the Committee were to include a discussion about rights, we think this would require the agenda decision to include all the extra specificity in the fact pattern described in paragraph 1 of this paper, and any conclusion reached would then relate to a highly-specific fact pattern. Feedback on the tentative agenda decision has confirmed our understanding

that different joint operations have different contractual agreements. We therefore see little benefit in addressing a highly-specific fact pattern in this instance.

47. That said, we think the Committee should not narrow the scope of the agenda decision further to address only the lead operator’s recognition of liabilities. The Committee’s observation is based on paragraph 20(b) of IFRS 11, which requires a *joint operator* to recognise ‘its liabilities, including its share of any liabilities incurred jointly.’ We therefore think it is appropriate that the agenda decision refers to the recognition of liabilities by any joint operator. Although the fact pattern described in the agenda decision focuses on the lead operator, narrowing the Committee’s observation to refer only to the lead operator could imply that the other joint operators are not required to recognise liabilities for which they have primary responsibility. In our view, paragraph 20(b) of IFRS 11 requires each joint operator to recognise its liabilities, which includes those for which it has primary responsibility.
48. Accordingly, we recommend no change to the agenda decision in this respect.

### ***Potential effects of the agenda decision (Issue III)***

#### *Respondents’ Comments*

49. In the light of the effective date of IFRS 16 (1 January 2019), several respondents say the agenda decision, if finalised, is untimely and disruptive to the implementation of IFRS 16. Some respondents say immediate application of the agenda decision would be unreasonable given the significant volume of work involved in implementing IFRS 16.
50. In addition, several respondents say the tentative agenda decision could have wider implications for joint operation accounting—for example, they say:
- (a) the conclusion reached in the tentative agenda decision might be applied more widely to other liabilities, for example decommissioning and pension liabilities;
  - (b) the accounting outcome could discourage infrastructure sharing between joint operators and/or increase costs by encouraging joint venture arrangements [Orange];

- (c) the tentative agenda decision implies that an unincorporated joint operation, which could be a reporting entity, can never incur liabilities [BP]; and
- (d) the lead operator’s credit rating could be adversely affected by recognising a liability for which a portion, in substance, belongs to the other joint operators [Petronas].

51. Those respondents recommend that the Committee not publish the agenda decision but, instead, that the matter be addressed as part of the IFRS 11 PIR or through an interpretation or amendment. Some respondents say publishing the agenda decision before undertaking the IFRS 11 PIR would be inappropriate because the Board has decided to investigate the complexities arising from IFRS 11 (including its interaction with IFRS 16) as part of that PIR.

*Staff Analysis*

52. The staff and Committee have no control over the timing of submission of questions. Paragraphs 5.14 and 5.15 of the IFRS Foundation’s [Due Process Handbook](#) state:

5.14 The [Board] and the [Committee] are responsible for the maintenance of [IFRS Standards]. Issues could include the identification of divergent practices that have emerged for accounting for particular transactions, cases of doubt about the appropriate accounting treatment for a particular circumstance or concerns expressed by investors about poorly specified disclosure requirements.

5.15 The objectives of the Interpretations Committee are to interpret the application of [IFRS Standards], provide timely guidance on financial reporting issues that are not specifically addressed in the [IFRS Standards] and undertake other tasks at the request of the [Board]...

53. A number of respondents to the 2015 Trustee’s Review of Structure and Effectiveness<sup>6</sup> recommended that the effectiveness and efficiency of the Committee be improved, ie that the Committee become more responsive in dealing with questions

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<sup>6</sup> [Trustees’ Review of Structure and Effectiveness: Feedback Statement on the July 2015 Request for Views.](#)

submitted to it. Accordingly, we think it is important that the Committee respond to this matter in a timely manner.

54. In considering the matter, the Committee tentatively decided not to add it to the standard-setting agenda because it concluded that the requirements in IFRS Standards provide an adequate basis for an entity to determine the appropriate accounting. Based on our analysis in this paper, we continue to agree with the Committee’s tentative conclusion and, on that basis, recommend finalising the agenda decision.<sup>7</sup>
55. Although the agenda decision would not add or change requirements in IFRS Standards, explanatory material in the agenda decision might provide an entity with new information by, for example, linking together relevant information in different parts of IFRS Standards. Considering this new information could result in an entity determining that it needs to change its previous accounting policy. We understand that this might take some time to implement.
56. The Exposure Draft *Accounting Policy Changes—Proposed Amendments to IAS 8* (published in March 2018) outlined in the Basis for Conclusions the Board’s view on the timing of implementing an accounting policy change that results from an agenda decision. It did so as a means of helping entities apply any such change. The Board’s view is that an entity should be entitled to sufficient time to prepare for an accounting policy change that the entity determines is needed as a result of an agenda decision. The Board considered feedback on this matter at its meeting in December 2018 and reconfirmed its view (see [December IASB Update](#)).
57. At that meeting, the Board considered where to document its view, including documenting in the *Due Process Handbook*. In the light of this, as part of its review of the *Due Process Handbook*, the Due Process Oversight Committee (DPOC) decided in January 2019 to propose amending the *Due Process Handbook* to document the Board’s view. We expect the proposed wording in the *Due Process Handbook* to state something like the following:

The process for publishing an agenda decision might often result in explanatory material that provides new information that

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<sup>7</sup> See paragraph 61 of this paper for our recommendation.

was not otherwise available and could not otherwise reasonably have been expected to be obtained. Because of this, an entity might determine that it needs to change an accounting policy as a result of an agenda decision. It is expected that an entity would be entitled to sufficient time to make that determination and implement any change (for example, an entity may need to obtain new information or adapt its systems to implement a change).

58. If the Committee decides to finalise the agenda decision, we think it would be helpful to include wording similar to that in paragraph 57 of this paper in IFRIC<sup>®</sup> Update as a means of helping entities that determine they need to change their previous accounting policy as a result of this agenda decision. We propose including such wording at the start of the ‘agenda decision’ section in IFRIC Update.
59. We also note respondents’ comments on the IFRS 11 PIR. Some respondents to the Board’s 2015 Agenda Consultation recommended adding a project on joint operation accounting to the Board’s work plan. The Board decided to investigate this matter as part of the IFRS 11 PIR.<sup>8</sup> Feedback on the tentative agenda decision confirms that several stakeholders view this as an important matter for the Board to consider as part of that PIR. Accordingly, we recommend reporting this feedback to the Board at a public meeting and would include it in a separate paragraph in IFRIC Update—that paragraph would supplement, but not form part of, the agenda decision.

### **Other comments**

60. Appendix B to this paper summarises other comments received, together with our analysis of those comments. Based on our analysis, we recommend changing the term ‘lead operator’ in the agenda decision to ‘the operator’.

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<sup>8</sup> The Board decided that it would aim to start the PIRs of IFRS 10–12 in 2019 or early 2020.

## Staff recommendation

61. We recommend that:
- (a) the agenda decision is finalised as published in [IFRIC Update](#) in September 2018, with the wording change noted in paragraph 60 of this paper and some editorial changes. Appendix A to this paper sets out the proposed wording of the final agenda decision.
  - (b) IFRIC Update include wording similar to that in paragraph 57 of this paper to address the timing of implementing any change in accounting policy.
  - (c) recommendations from respondents regarding the IFRS 11 PIR be reported to the Board.

### Question for the Committee

Does the Committee agree with our recommendation to:

- (a) finalise the agenda decision set out in Appendix A to this paper?
- (b) include wording similar to that in paragraph 57 of this paper in IFRIC<sup>®</sup> Update?
- (c) report to the Board recommendations from respondents regarding the IFRS 11 PIR?

## Appendix A: Proposed wording of the agenda decision

A1. We propose the following wording for the final agenda decision (new text is underlined and deleted text is struck through).

### **Liabilities in relation to a joint operator's interest in a joint operation (IFRS 11 *Joint Arrangements*)**

The Committee received a request about the recognition of liabilities by a joint operator in relation to its interest in a joint operation (as defined in IFRS 11). In the fact pattern described in the request, the joint operation is not structured through a separate vehicle. One of the joint operators, as the sole signatory, enters into a lease contract with a third-party lessor for an item of property, plant and equipment that will be operated jointly as part of the joint operation's activities. The joint operator that signed the lease contract (hereafter, ~~lead~~ the operator) has the right to recover a share of the lease costs from the other joint operators in accordance with the contractual arrangement to the joint operation.

The request asked about the recognition of liabilities by the ~~lead~~ operator.

In relation to its interest in a joint operation, paragraph 20(b) of IFRS 11 requires a joint operator to recognise its liabilities, including its share of any liabilities incurred jointly. Accordingly, a joint operator identifies and recognises both (a) liabilities it incurs in relation to its interest in the joint operation, and (b) its share of any liabilities incurred jointly with other parties to the joint arrangement.

Identifying the liabilities that a joint operator incurs and those incurred jointly requires an assessment of the terms and conditions in all contractual agreements that relate to the joint operation, including consideration of the laws pertaining to those agreements.

The Committee observed that the liabilities a joint operator recognises include those for which it has primary responsibility.

The Committee highlighted the importance of disclosing information about joint operations that is sufficient for a user of financial statements to understand the activities of the joint operation and a joint operator's interest in that operation. The Committee noted that, applying paragraph 20(a) of IFRS 12 *Disclosure of Interests in Other Entities*, a joint operator is required to disclose information that enables users of its financial statements to evaluate the

nature, extent and financial effects of its interests in a joint operation, including the nature and effects of its contractual relationship with the other investors with joint control of that joint operation.

The Committee concluded that the requirements in ~~existing~~ IFRS Standards provide an adequate basis for the ~~lead~~ operator to identify and recognise its liabilities in relation to its interest in a joint operation. Consequently, the Committee {decided} not to add this matter to its standard-setting agenda.

## Appendix B: Analysis of other comments

B1. The table below outlines other comments, together with our analysis and conclusions.

Comments	Staff analysis and conclusions
<p><i>1. Outreach</i></p> <p>Some respondents disagree with our decision not to perform outreach on the submission. These respondents say outreach would have shown that:</p> <ul style="list-style-type: none"> <li>a. standard industry practice in the oil and gas industry is for each joint operator to report only its share of any lease liability/commitments; and</li> <li>b. in unincorporated joint operations, each joint operator generally finances only its own share of expenditure. Accordingly, it would be odd for the lead operator to show all joint operators' financing in its financial statements.</li> </ul>	<p><i>We recommend no change to the agenda decision in this respect.</i></p> <p>When we perform outreach on submissions to the Committee, the main information we seek is information about practice—typically, whether the transaction/fact pattern submitted is common in some or many jurisdictions or industries and, if so, what is the predominant accounting treatment that entities apply to that transaction/fact pattern. This information is helpful in assessing whether the matter has widespread effect and has, or is expected to have, a material effect on those affected.<sup>9</sup></p> <p>As explained in paragraph 9(a) of the September Agenda Paper, through informal research and feedback from the latest Agenda Consultation in 2015, we were already aware that entities (particularly in the oil and gas industry) enter into unincorporated joint arrangements with related lease contracts that can involve</p>

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<sup>9</sup> Paragraph 5.16 of the IFRS Foundation's *Due Process Handbook*.

<b>Comments</b>	<b>Staff analysis and conclusions</b>
<p>One respondent (Premier Oil) says the Committee ‘did not have sufficient industry representation to properly understand or appreciate how the JOA mechanism works within our joint operations’.</p>	<p>very significant lease payments. As part of our informal research, we reviewed a number of JOAs, including those used by the oil and gas industry as well as the template agreement produced by the Association of International Petroleum Negotiators (AIPN).<sup>10</sup> We also spoke to a number of oil and gas entities about their contracts.</p> <p>Consequently, we were already aware that the fact pattern is widespread and that differing reporting methods could have a material effect on those affected. The responses to the tentative agenda decision have confirmed this understanding.</p> <p>We concluded that, in this circumstance, there were insufficient benefits to performing outreach for the Committee to justify the costs for respondents to the outreach. We expected that the outreach would only have confirmed what we already knew and would have added to the time needed to address the submission. In this respect, we were also aware that the matter submitted was urgent in nature in the light of the effective date of IFRS 16.</p>

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<sup>10</sup> The AIPN is an independent not-for-profit professional membership association that supports international energy negotiators.

Comments	Staff analysis and conclusions
	In addition, we note that the comment letter process ensures that stakeholders have the opportunity to provide the Committee with additional information about contracts, as well as their views on the particular matter.
<p><i>2. Fact pattern considered</i></p> <p>Some respondents say the fact pattern discussed by the Committee does not properly reflect the way operations are conducted in their industry (mainly preparers from the oil and gas industry). For example,</p> <p>a. Total outlines the facts and circumstances it says are common in the oil and gas industry and refers to the template agreement produced by the AIPN as an industry standard for JOAs.<sup>11</sup></p> <p>b. Premier Oil says in the case of its joint operations, as a matter of law, all joint operators are bound to the terms of</p>	<p><i>We recommend no change to the agenda decision in this respect.</i></p> <p>These comments confirm our understanding that the terms and conditions of JOAs can differ significantly from one arrangement to another, even within the same industry. Accordingly, a detailed assessment and understanding of each arrangement is required when determining the appropriate accounting applying IFRS Standards.</p> <p>This is the reason why, in the tentative agenda decision, the Committee:</p> <p>a. did not provide a response to the specific fact pattern submitted. Instead, the tentative agenda decision explains more generally how a joint operator identifies ‘its liabilities’ (paragraph 20 of IFRS 11).</p>

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<sup>11</sup> The template agreement produced by the AIPN has options for each section and clause, which highlights the range of possible arrangements available to entities in the sector.

<b>Comments</b>	<b>Staff analysis and conclusions</b>
<p>the contract entered into by the lead operator as if they had signed the contract.</p> <p>c. Some respondents say, in some circumstances, a lead operator can assign or transfer the lease contract to another joint operator without consent from the lessor.</p> <p>Orange outlines how joint operations are structured in the telecommunications industry and highlights that the tentative agenda decision might also affect that industry.</p>	<p>b. specifically notes that ‘...identifying the liabilities that a joint operator incurs and those incurred jointly requires an assessment of the terms and conditions in all contractual agreements that relate to the joint operation, including consideration of the laws pertaining to those agreements...’</p>
<p><i>3. Analysis in September Agenda Paper regarding subleases</i></p> <p>Several respondents disagree with the staff analysis in the September Agenda Paper regarding the existence of a sublease from the lead operator to the joint operation in the fact pattern submitted. Some respondents say:</p> <p>a. the existence and classification of any sublease is likely to be complex—in some situations, there may simply be a</p>	<p><i>We recommend no change to the agenda decision in this respect.</i></p> <p>The question asked by the submitter, and thus the focus of the tentative agenda decision, is on identifying the liabilities a joint operator recognises. The analysis in the September Agenda Paper included a discussion of the joint operators’ rights and obligations arising from the various contractual agreements. However, this was intended only to facilitate the Committee’s discussion.</p>

<b>Comments</b>	<b>Staff analysis and conclusions</b>
<p>service contract (and not a sublease) between the lead operator and the joint operation; and</p> <p>b. the staff analysis did not properly explain why the sublease was a finance lease.</p> <p>Repsol suggests that the tentative agenda decision state that the assessment of a sublease requires a comprehensive assessment of who controls the use of the identified asset.</p> <p>The GFRC says, at the September 2018 meeting, some Committee members questioned the staff analysis regarding the existence of a sublease. This respondent is concerned that the staff paper creates a public record of that staff analysis, without any documentation of Committee member’s comments.</p>	<p>The analysis included in any Board or Committee agenda paper does not purport to set out acceptable or unacceptable application of IFRS Standards. This is set out in the disclaimer at the beginning of all agenda papers.</p>

<b>Comments</b>	<b>Staff analysis and conclusions</b>
<p><i>4. Other circumstances</i></p> <p>One respondent suggests that the agenda decision discuss other circumstances in which the accounting outcome could be different, for example when all joint operators sign the lease contract and have primary responsibility for a pro-rata share of the liability (as discussed in the September Agenda Paper). This is to prevent inappropriate analogy of the agenda decision to those other circumstances.</p>	<p><i>We recommend no change to the agenda decision in this respect</i></p> <p>The identification of liabilities a joint operator recognises depends on the particular facts and circumstances. This is why the agenda decision sets out more generally how a joint operator identifies ‘its liabilities’, which would also apply to those other circumstances.</p>
<p><i>5. Wording suggestions</i></p> <p>a. Some respondents (preparers from the oil and gas industry) say the term ‘lead operator’ is not used in the industry and could imply that the lead operator has a greater degree of control over the joint operation than is appropriate. The joint operator responsible for day-to-day management of the joint operation (including contracting with third-</p>	<p><i>We recommend changing ‘lead operator’ in the agenda decision to ‘the operator’</i></p> <p>a. The term ‘lead operator’ was used in the tentative agenda decision solely as a means of distinguishing the joint operator that enters into the lease contract from the other joint operators. To avoid the implication noted in the comments, we recommend changing references to ‘lead operator’ in the agenda decision to ‘the operator’. Refer to Appendix A for the proposed wording of the agenda decision.</p> <p>b. As explained in the September Agenda Paper, the Committee’s conclusion that a joint operator recognises liabilities for which it has primary responsibility aligns</p>

Comments	Staff analysis and conclusions
<p>parties) is referred to as the ‘operator’ and the other joint operators are referred to as ‘participants’.</p> <p>b. Some respondents say the meaning of the term ‘primary responsibility’ is not clear and could be interpreted differently by different entities.</p> <p>c. Some respondents say the agenda decision should refer to paragraph B11 of IFRS 16, and explain why it does not relieve the lead operator of its primary obligation.</p>	<p>with requirements in IFRS 9 <i>Financial Instruments</i>. IFRS 9 distinguishes between liabilities for which an entity has primary responsibility and those for which it provides guarantees. This is set out in the derecognition requirements in IFRS 9, which apply to lease liabilities.<sup>12</sup> IFRS 9 did not introduce the term ‘primary responsibility’; it was carried forward from IAS 39 <i>Financial Instruments: Recognition and Measurement</i> (paragraphs AG57 and AG63). We are not aware of any significant difficulties in applying this term in the context of IFRS 9 (or, previously, IAS 39).</p> <p>c. As explained in paragraph 21 of this paper, paragraph B11 of IFRS 16 is not relevant to the identification of liabilities a joint operator recognises. Accordingly, we think it is not necessary (and potentially confusing) to refer to this paragraph in the agenda decision.</p>

<sup>12</sup> Paragraph 2.1(b)(ii) of IFRS 9.

<b>Comments</b>	<b>Staff analysis and conclusions</b>
<p>6. <i>Other comments</i></p> <p>a. One respondent (Petronas) says joint operators (other than the lead operator) do not always have access to contracts entered into by the lead operator and may not have information to make the necessary assessments.</p> <p>b. One respondent (Total) says the conclusions in the tentative agenda decision could increase diversity between entities reporting using IFRS Standards and those reporting using US GAAP.</p>	<p><i>We recommend no change to the agenda decision in this respect.</i></p> <p>We think considering these comments is beyond the scope of the Committee’s considerations on this submission.</p>