

25 November 2019

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

Dear Ms Lloyd

Tentative agenda decision – Definition of a Lease—Shipping Contract (IFRS 16 Leases)

Deloitte Touche Tohmatsu Limited is pleased to respond to the IFRS Interpretations Committee's publication in the September 2019 IFRIC Update of the tentative decision not to take onto the Committee's agenda the request for clarification on whether in the specific fact pattern presented the customer has the right to direct the use of a ship throughout the five-year term of a particular contract.

We agree with the IFRS Interpretations Committee's decision not to add this item onto its agenda for the reasons set out in the tentative agenda decision.

To provide further clarity on the Committee's analysis of the fact pattern described in the request, we suggest the following editorial changes (blacklined)

- To clarify that the statement at the end of item c. in the introductory paragraph is specific to the fact pattern presented and not broadly applicable to all situations involving use of a ship, we suggest the following addition

"In the fact pattern presented, those decision-making rights are relevant because they affect the economic benefits to be derived from use of the ship"

- To support the conclusion that the customer has the right to make all the relevant decisions about how and for what purpose the ship is used that can be made, we suggest to clarify the scope of the decisions the customer has the right to make vs those that are predetermined by adding the following sentences at the end of the fourth paragraph under the header "The right to direct how and for what purpose an asset is used"

"...Within that scope, the customer has the right to make all the relevant decisions about how and for what purpose the ship is used that can be made. In particular, the contract specifies the customer's right to use an identified ship for a five-year period to transport a specific load of a specific type of commodity from three separate points of origin to a common destination point – thus making these aspects of the contract pre-determined. However, the customer has the right to determine the order of voyages throughout the period of use (i.e. to determine from where the ship sails"

for each voyage), which in the circumstances, significantly impacts the economic benefits expected from use of the ship.”

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 blue ink, appearing to read 'V. Poole', with a stylized flourish at the end.

Veronica Poole
Global IFRS Leader

Mrs Sue Lloyd

IFRS Interpretations Committee

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

Paris, 25 November 2019

Tentative Agenda Decisions – IFRIC Update September 2019

Dear Sue,

MAZARS is pleased to comment on the various IFRS Interpretations Committee Tentative Agenda Decisions published in the September 2019 IFRIC Update.

We have gathered all our comments as appendices to this letter, which can be read separately and are meant to be self-explanatory.

We would like to draw your attention to the issue of training costs to fulfil a contract. While we agree that IAS 38, because its scope explicitly includes training costs, leads to expense those costs when incurred, we question the relevance of this outcome when the training costs are specific to a contract with a customer (they are not general training and cannot be useful to contracts with other customers), are essential for the entity to provide the promised goods or services, and are explicitly chargeable to the customer.

In that situation we believe that the 3 criteria for capitalization of costs in IFRS 15.95 are met, and we do not find it relevant to expense them on the basis of an old standard that probably needs to be revisited.

We therefore believe that the Committee should refer this issue to the Board for further analysis.

Should you have any questions regarding our comments on the various tentative agenda decisions, please do not hesitate to contact Michel Barbet-Massin (+33 1 49 97 62 27) or Edouard Fossat (+33 1 49 97 65 92).

Yours faithfully



Michel Barbet-Massin

Financial Reporting Advisory



Edouard Fossat

Appendix 3

Definition of a Lease: Shipping Contract (IFRS 16)

<https://www.ifrs.org/projects/work-plan/definition-of-a-lease-shipping-contract/comment-letters-projects/tad-definition-of-a-lease-shipping-contract/>

We agree with the conclusion reached by the Committee that the contract described in the fact pattern contains a lease, because the customer has the right to direct the use of the ship throughout the 5-year contract.

We identify 2 main messages in the Tentative agenda decision that are useful guidance:

- The reminder that rights limited to operating and/or maintaining the asset do not grant the right to change how and for what purpose the asset is used (paragraph B27) and are not indicative of a right to direct the use of the asset;
- The statement that predetermination in the contract of some relevant decisions about how and for what purpose the asset is used defines the scope of the customer's right of use, and that the assessment of who has the right to direct the use of the asset shall be based on the relevant decisions that are not predetermined.

Nevertheless, we think the Agenda decision could be more useful by being more specific. Indeed, the fact pattern states that the contract relies on a ship that is operated and maintained by the supplier, and that many decisions about how and for what purpose the ship is used are predetermined in the contract.

Therefore, one driver of the conclusion is whether the decisions that are not predetermined and are within the customer's control provide the customer with the right to direct the use of the ship. However, no description of the relevant decisions that are predetermined or that remain under the customer's control is provided in the fact pattern. By describing those relevant decisions, the Committee would add useful guidance on how to conduct the analysis.



ASCG • Zimmerstr. 30 • 10969 Berlin

Sue Lloyd
Chair of the IFRS Interpretations Committee
30 Cannon Street
London EC4M 6XH

United Kingdom

IFRS Technical Committee

Phone: +49 (0)30 206412-12

E-Mail: info@drsc.de

Berlin, 11 November 2019

Dear Sue,

IFRS IC's tentative agenda decisions in its September 2019 meeting

On behalf of the Accounting Standards Committee of Germany (ASCG), I am writing to comment on the tentative agenda decisions taken by the IFRS Interpretations Committee (IFRS IC) and published in the September 2019 *IFRIC Update*.

We fully agree with all **tentative agenda decisions**. However, we suggest that one detail in the reasoning for the tentative agenda decision on IFRS 16 be made more prominent: As the main conclusion (see fourth paragraph) appears to be that the “customer’s right of use” (i.e. the right to direct how and for what purposes an asset is used) mainly depends on whether or not “the customer has the right to make all *relevant* decisions” – which the customer seems to have in this fact pattern –, it should be underlined in this context that “*relevant*” connotes to “*affect[ing] the economic benefits to be derived from the use*”.

In respect of the **final agenda decision on IFRS 15**, we reiterate our concern that we had already addressed upon the ~~respective tentative decision~~, i.e. not addressing the follow-up question of how to account for compensations that exceed the transaction price. We take the view that this question deserves being addressed by the IFRS IC or the IASB, as, in many cases, the answer on this question could affect the answer on the main question.

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

Yours sincerely,

Andreas Barckow

President

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President:
Prof. Dr. Andreas Barckow
Executive Director:
Prof. Dr. Sven Morich

21 November 2019

Ms. Sue Lloyd
Chair of the IFRS Interpretations Committee
International Accounting Standards Board
Columbus Building, 7 Westferry Circus
Canary Wharf, London, E14 4HD
United Kingdom

**Comments on the Tentative Agenda Decision Relating to
Definition of a Lease: Shipping Contract (IFRS 16)**

1. The Accounting Standards Board of Japan (the “ASBJ” or “we”) welcomes the opportunity to comment on the IFRS Interpretation Committee (the “Committee”)’s tentative agenda decision relating to Definition of a Lease: Shipping Contract (IFRS 16), proposed in the September 2019 IFRIC Update.
2. The tentative agenda decision concludes that the contract described in the submission includes a lease based on sub-paragraph c of the fact pattern described below.

“Many, but not all, of the relevant decisions about how and for what purpose the ship is used are predetermined in the contract. The customer has the right to make the remaining relevant decisions about how and for what purpose the ship is used throughout the period of use. Those decision-making rights are relevant because they affect the economic benefits to be derived from use of the ship.”

3. However, we think the tentative agenda decision is unclear as to whether it is intended to:
 - (a) indicate that, when the customer retains some decision-making rights, such decision rights would always be relevant, leading to the conclusion that the contract would always include a lease; or

- (b) indicate that, when the customer determines, based on the facts and circumstances, that those remaining decision-making rights of the customer are relevant, that would lead to the conclusion that such contract would include a lease.
4. If the intent of the tentative agenda decision is (a) in the preceding paragraph, we disagree with the tentative agenda decision. Our views related to the customer's remaining decision-making rights are as follows:
- (a) In some cases, the customer's remaining decision-making rights may be relevant because they affect the economic benefits to be derived from the use of the ship. However, in other cases, the customer's remaining decision-making rights may not be relevant because they do not affect the economic benefits to be derived from the use of the ship.
 - (b) Whether the customer's remaining decision-making rights are relevant depends on the facts and circumstances. The customer is required to determine whether its remaining decision-making rights are relevant based on the facts and circumstances.
 - (c) Whether the contract includes a lease should be considered based on the determination that the customer has made on the relevance of its remaining decision-making rights.
5. If the intent of the tentative agenda decision is (b) in paragraph 3 of this letter, we think the final agenda decision should clarify that the customer is required to determine whether its remaining decision rights are relevant. In other words, the final agenda decision should clarify that, based on the facts and circumstances, there may be cases where the customer concludes that the contract does not include a lease.
6. To make the point in paragraph 5 clear, we propose the following changes to be made to the tentative agenda decision:

(sub-paragraph c of the fact pattern) New text is underlined and deleted text is struck through

“Many, but not all, of the ~~relevant~~ decisions about how and for what purpose the ship is used are predetermined in the contract. The customer has the right to make the remaining ~~relevant~~ decisions about how and for what purpose the ship is used throughout the period of use. The customer has determined, based on the facts and

circumstances, that those remaining decision-making rights it has are relevant because they affect the economic benefits to be derived from use of the ship.”

(the following text should be inserted at the end of the tentative agenda decision)

“The conclusions are reached based on the customer’s determination that the remaining decision rights are relevant. It should be noted that there may be cases where the customer’s remaining decision-making rights are not relevant and, therefore, the contract does not include a lease”.

7. We hope that our comments are helpful for the Committee’s and the IASB’s consideration in the future. If you have any questions, please feel free to contact us.

Yours sincerely,



Atsushi Kogasaka

Chair

Accounting Standards Board of Japan

25 November 2019

Ms. Sue Lloyd
Chair
IFRS Interpretations Committee
Columbus Building
7 Westferry Circus
Canary Wharf
London E14 4HD
United Kingdom

Dear Ms. Lloyd

IFRS Interpretations Committee Tentative Agenda Decisions

The Malaysian Accounting Standards Board (MASB) welcomes the opportunity to provide comments on the following Tentative Agenda Decisions published in IFRIC Update September 2019.

(1) ~~Training Costs to Fulfil a Contract (IFRS 15 *Revenue from Contracts with Customers*)~~

~~There might be circumstances in which training costs are very material to the entity and are directly related to producing a good (e.g. manufacturing customised goods) or providing a particular service (e.g. training centre providing training and certification services).~~

~~In addition, due to the substantial training costs incurred, an entity might consider retaining the staff through a special employment bond (e.g. either the employee pays monetary penalty for leaving the job before the stipulated period of time or the employee is levied certain restrictions to not join a particular company after leaving the job).~~

~~Hence, in these cases, we believe clarity is required as to whether these training costs could be capitalised instead of expensed as it could be argued that the entity has control over expected future economic benefits.~~

(2) Definition of a Lease: Shipping Contract (IFRS 16 *Leases*)

We agree with the conclusion that the fact pattern relates to one ship and the contract denotes that this one ship is used.

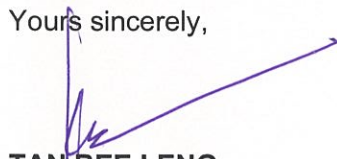
Nevertheless, the conclusion may be different if the contract were to be a fleet of ships whereby the supplier could decide on which ship to provide to the customer. This might not meet the definition of an identified asset and also, the customer might not have the right to obtain substantially all the economic benefits from use of the ships throughout the period of use.

We would also like to take this opportunity to share with the IFRIC factors that might be helpful in determining "how and for what purpose the asset is used", as detailed in the Appendix.

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

Thank you.

Yours sincerely,



TAN BEE LENG
Executive Director

Appendix

Factors that the shipping industry considers in identifying a lease

In applying paragraphs B24 to B31, the industry considers that “relevant decision-making rights” relates to the rights to decide on the subsequent commercial use of the ships, where a customer decides on the following (but not limited to):

- i) Utilisation rate / operating days [according to paragraph B26(b)]
 - Customer decides whether the ship is at any point of time serving a contract or not (i.e. idle or on subsequent charter). It is possible that customer may choose to put the ship on idle for commercial/practical reasons such as ship positioning, acquiring the right rate from client, demand availability, etc.
- ii) Clients - Customer decides the client(s) the ship may subsequently serve.
- iii) Contracting strategy with client: Type/Tenure (i.e. term charter, voyage charter, Contract of Affreightment (COA) or any other form of shipping arrangement).
- iv) Type/mix and volume of cargo [as per paragraph B26 (a)].
- v) Pricing / charter rate with client. The ship owner (supplier) does not control the price/rate of the service provided by the customer to its client.
- vi) Areas of operations (ports, etc.). This includes whether the ship is stationary as storage or on voyage from a location to another. [as per paragraph B26(c)]

The above decisions directly affect the economic benefits from the use of the assets. For a shipping contract, it is common practice that the above rights are maintained throughout the contract tenure.

In applying paragraphs B30 to B31, restrictions or protective rights (other than those already specified) relating to industry requirements or that is generally accepted industry practice (with reasonable commercial feasibility) that may be put forth by ship owners such as follows are not considered as dilution to the rights of use of the asset:

- i) Restrictions on carrying cargo not compatible to the design of the ship.
- ii) Restrictions on serving sanctioned entity(s).
- iii) Restriction from transporting contrabands.
- iv) Restrictions from involving in / be part of / abetting to illegal activities.

The operating and maintaining activities as listed below do not constitute control over the use of in-chartered ships on the basis that the activities are incidental and are not the relevant decisions that directly affect the economic benefit derived from the assets as explained above.:

- i) Manning/crewing (in the case of time charter) and operations of the ships including navigating, pilotage, etc.
- ii) Repair and dry-dockings (this is despite that during dry-dockings, ship owners may determine the yard (i.e. destination) and the duration of the dry-dockings may be beyond the customer’s control as there is no dilution of rights of use of the asset from the overall contract arrangement from these activities).



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

Ms Sue Lloyd,
Chair, IFRS Interpretations Committee,
International Accounting Standards Board
30 Cannon Street
London EC4M 6XH
United Kingdom

Date: November 25, 2019
New Delhi, India

Dear Ms Sue,

Subject: Comments of the Institute of Chartered Accountants of India (the ICAI) on Tentative Agenda Decisions (TADs) issued by IFRS Interpretations Committee

The Accounting Standards Board (ASB) of the Institute of Chartered Accountants of India (the ICAI) welcomes the opportunity to comment on tentative agenda decisions of IFRS Interpretations Committee with last date of November 25, 2019.

Our comments on the following tentative agenda decisions are given in **Annexure A**:

- (1) TAD on Definition of a Lease: Shipping Contract (IFRS 16)
- (2) TAD on Training Costs to Fulfil a Contract (IFRS 15)

With kind regards,

CA. M.P Vijay Kumar
Chairman
Accounting Standards Board
Institute of Chartered Accountants of India



Annexure A

The ICAI Comments on Tentative Agenda Decisions (TADs) issued by IFRS Interpretations Committee

TAD on Definition of a Lease: Shipping Contract (IFRS 16)

We agree with the conclusions in tentative agenda decision with regard to definition of lease in shipping contracts based on given fact pattern. However, it may also be useful to clarify whether this contract has non-lease service element as the ship is maintained and operated by the lessor.



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA
(Established by Act of Parliament No. 15 of 1965)

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Registrar/Chief Executive

JOHN I. EVBODAGHE, MBA, FCA

November 23, 2019

ICAN/SP/R&T/NOV/2019

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

Dear Sir,

**RE: DEFINITION OF A LEASE – SHIPPING CONTRACT (IFRS 16) | INITIAL CONSIDERATION
(AGENDA REF 3)**

The Institute of Chartered Accountants of Nigeria (ICAN) has considered the above Staff Paper and is pleased to submit its comments as follows:

Question 1:

Does the Committee agree with our analysis of the application of IFRS 16 summarised in paragraphs 33–34 of this paper?

We agree with the analysis of the application of IFRS 16 as summarized in Paragraph 33 and 34.

Question 2:

Does the Committee agree with our recommendation not to add this matter to its standard-setting agenda?

We are in agreement with the Committee's recommendation not to add this to its standard-setting agenda. The requirements in IFRS 16 provide an adequate basis for an entity to determine whether the shipping contract described in the submission contains a lease.

Question 3:

Does the Committee have any comments on the proposed wording of the tentative agenda decision set out in Appendix A to this paper?

We do not have any comments on the proposed wording of the tentative agenda decision as set out in Appendix A of the paper.

We thank you for giving our Institute the opportunity to contribute to the work of IFRS Foundation

Yours faithfully,

For: Registrar/Chief Executive



Ben Ukaegbu, PhD, ACA
Deputy Registrar, Technical Services



IKATAN AKUNTAN INDONESIA
(INSTITUTE OF INDONESIA CHARTERED ACCOUNTANTS)

Nomor : 1798/DSAK/IAI/XI/2019

Jakarta, 25 November 2019

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

Ref: Invitation to comment – Tentative Agenda Decision (TAD): Definition of a Lease – Shipping Contract (IFRS 16)

Dear IFRS Interpretations Committee members,

Dewan Standar Akuntansi Keuangan (DSAK) - The Indonesian Financial Accounting Standards Board, as part of Ikatan Akuntan Indonesia (IAI) - the Institute of Indonesia Chartered Accountants, is the national accounting standard-setter in Indonesia.

On behalf of DSAK IAI, I am writing to respond the TAD on Definition of a Lease – Shipping Contract (IFRS 16).

We agree with the Committee's analysis that, based on the fact pattern described, the customer has the right to direct the use of the ship throughout the contract period, and thus the contract contains a lease. We also agree with the Committee's conclusion that the principles and requirements in IFRS 16. Specifically, those in paragraphs B24(a) and B25-B27 provide an adequate basis to determine the accounting treatment for the aforementioned contract. Correspondingly, we agree with the Committee that it is not necessary to include this matter to the Committee's standard-setting agenda.

We hope that our responses could contribute to the Interpretation Committee's future deliberations. Should you have further concerns regarding our responses, please do not hesitate to contact us at dsak@iaiglobal.or.id.

Yours sincerely,

Djohan Pinnarwan

Chairman
The Indonesian Financial Accounting Standards Board
Institute of Indonesia Chartered Accountants

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(NBAA)



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Our Ref: CCD.562/573/01

21st November, 2019

Chief Executive Officer,
IFRS Foundation
Columbus Building
7 West ferry Circus
Canary Wharf
London E14 4HD

Dear Sir/Madam

RE: DEFINITION OF A LEASE: SHIPPING CONTRACT (IFRS 16)

Refer to the heading above.

NBAA support the conclusion reached by the IFRS Interpretation Committee on the request which asked whether the customer has the right to direct the use of a ship throughout the five-year term of a particular contract.

Paragraph 24 to 30 of IFRS 16 together with the related Basis for Conclusion (BC) provides adequate principles and requirements on determining the right to direct the use of asset, thus, these is no need to add this to standard setting agenda.

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

Thank you in advance for your cooperation.

Yours sincerely,

CPA Angyelile V. Tende
For: EXECUTIVE DIRECTOR



Member of International Federation of Accountants (IFAC) & Pan African Federation of Accountants (PAFA)



All communication to be addressed to the Executive Director NBAA

NBAA Dar es Salaam Branch: Mhasibu House, Bibi Titi Mohamed Street,
P. O. Box 5128, Dar Es Salaam, Tanzania Tel: +255 22 2211890-9

Rio de Janeiro, November 25, 2019

CONTRIB 0068/2019

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

Subject: Definition of a Lease: Shipping Contract (IFRS 16)

Reference: Tentative Agenda Decision

Dear Ms Lloyd,

Petrobras welcomes the opportunity to comment on the IFRS Interpretations Committee's Tentative Agenda Decision - Definition of a Lease: Shipping Contract. We believe this is an important opportunity for all parties interested in the future of IFRS and we hope to contribute to the progress of the Board's activities.

We agree that the Committee should not add the matter to its standard-setting agenda. However, our view is not entirely aligned with the Committee's Tentative Agenda Decision, because we do not believe that the fact pattern described in the request provides the type of information that would necessarily lead to the conclusion that the customer has the right to direct the use of the ship throughout the five-year period of use.

The fact pattern described in the request involves assessing the relevance of the remaining decisions under customer's control that were not predetermined in the contract. This is essentially a matter of judgment, which does not require a conclusion from the Committee regarding the sufficiency of the requirements found in IFRS 16.

In fact, we have not been able to identify sufficient information in the fact pattern described in the request that would allow the Committee to conclude that the contract qualifies as a lease. For instance, with the information available, we believe that one could also assert that all relevant decisions about the operation are predetermined in the contract, leading to the conclusion that the contract does not qualify as a lease.

In summary, we believe that this tentative agenda decision would restrict an entity's ability to make judgments when applying IFRS 16.

If you have any questions in relation to the content of this letter, please do not hesitate to contact us (contrib@petrobras.com.br).

Respectfully,

/s/Rodrigo Araujo Alves
Rodrigo Araujo Alves
Chief Accountant and Tax Officer

PO Box 1411
Beenleigh QLD 4207
25 November 2019

Ms Sue Lloyd
Chair IFRS Interpretations Committee
International Accounting Standards Board
Columbus Building, 7 Westferry Circus
Canary Wharf
London E14 4HD
United Kingdom
Online submission: <https://www.ifrs.org/projects/work-plan/definition-of-a-lease-shipping-contract/>

Dear Sue

Tentative agenda decision - Definition of a lease - Shipping Contract

I am pleased to make this submission on the above Tentative Agenda Decision (TAD) relating to Definition of a lease - Shipping Contract.

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

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

I support the Committee's approach in addressing the submission by considering the issue generally rather than the submitted fact pattern, as the fact pattern had unusual conditions such as "predetermined" actual cargo volumes.

I have the following comments on the TAD:

- The TAD refers to "many" relevant decisions. While I agree that some are predetermined, I am not sure that the Committee actually determined that there were "many" relevant decisions predetermined.
- I believe that the first reference to paragraph 24(b) should specifically clarify that it is the Committee's view that the reference to relevant decisions means all relevant decisions. At the moment, it is only an indirect reference.
 - ... Paragraph B24(b) applies only when the relevant decisions about how and for what purpose the asset is used are predetermined.

Subject to addressing the above issues, I support the Committee issuing the updated TAD.

Yours sincerely,

David Hardidge
<https://www.linkedin.com/in/davidhardidge/>

Tentative Agenda Decision—Definition of a Lease: Shipping Contract (IFRS 16)

The IFRS Interpretations Committee (Committee) discussed the following matter and tentatively decided not to add it to its standard-setting agenda. The Committee will reconsider this tentative decision, including the reasons for not adding the matter to its standard-setting agenda, at a future meeting. The Committee invites comments on its tentative agenda decision. All comments will be on the public record and posted on our website unless a responder requests confidentiality and I grant that request. I do not normally grant such requests unless they are supported by good reason, for example, commercial confidence.

Tentative agenda decision

The Committee received a request about whether the customer has the right to direct the use of a ship throughout the five-year term of a particular contract. In the fact pattern described in the request:

There is an identified asset (the ship) applying paragraphs B13–B20 of IFRS 16.

- the customer has the right to obtain substantially all the economic benefits from use of the ship throughout the five-year period of use applying paragraphs B21–B23 of IFRS 16.
- many, but not all, of the relevant decisions about how and for what purpose the ship is used are predetermined in the contract. The customer has the right to make the remaining relevant decisions about how and for what purpose the ship is used throughout the period of use. Those decision-making rights are relevant because they affect the economic benefits to be derived from use of the ship.
- the supplier operates and maintains the ship throughout the period of use.

The right to direct the use of an asset

Paragraph B24 of IFRS 16 specifies when a customer has the right to direct the use of an identified asset throughout the period of use. Paragraph B24(b) applies only when the relevant decisions about how and for what purpose the asset is used are predetermined. The Board noted in paragraph BC121 of IFRS 16 that ‘it would expect decisions about how and for what purpose an asset is used to be predetermined in relatively few cases’.

The Committee observed that, in the fact pattern described in the request, because not all relevant decisions about how and for what purpose the ship is used are predetermined, the customer considers paragraph B24(a) of IFRS 16 in assessing whether it has the right to direct the use of the ship.

The right to direct how and for what purpose an asset is used

Paragraph B24(a) specifies that a customer has the right to direct the use of an identified asset throughout the period of use if it has ‘the right to direct how and for what purpose the asset is used throughout the period of use (as described in paragraphs B25–B30)’.

For the customer to have the right to direct how and for what purpose the asset is used, within the scope of its right of use defined in the contract, the customer must be able to change how and for what purpose the asset is used throughout the period of use (paragraph B25). In assessing whether that is the case, 'an entity considers the decision-making rights that are most relevant to changing how and for what purpose the asset is used throughout the period of use. Decision-making rights are relevant when they affect the economic benefits to be derived from use' (paragraph B25).

Paragraph B26 includes examples of decision-making rights that, depending on the circumstances, grant the right to change how and for what purpose the asset is used. Rights limited to operating or maintaining the asset do not grant the right to change how and for what purpose an asset is used (paragraph B27).

The Committee observed that, in the fact pattern described in the request, the customer has the right to direct how and for what purpose the ship is used throughout the five-year period of use. This is because, within the scope of its right of use defined in the contract, the customer can change how and for what purpose the ship is used. The predetermination in the contract of many of the relevant decisions about how and for what purpose the ship is used defines the scope of the customer's right of use. Within that scope, the customer has the right to make all the relevant decisions about how and for what purpose the ship is used that can be made.

The Committee also observed that, although the operation and maintenance of the ship are essential to its efficient use, the supplier's decisions in this regard do not give it the right to direct how and for what purpose the ship is used.

The Committee concluded that, in the fact pattern described in the request, the customer has the right to direct the use of the ship throughout the five-year period of use and, consequently, the contract contains a lease.

The Committee concluded that the principles and requirements in IFRS 16 provide an adequate basis for an entity to determine its accounting for the contract described in the request. Consequently, the Committee [decided] not to add the matter to its standard-setting agenda.

The deadline for commenting on the proposals is 25 November 2019. The Committee will consider all comments received in writing by that date; agenda papers analysing comments received will include analysis only of comments received by that date.

Response

Although I agree in context of information of the case, but additional information may be needed regard terms of asset's operation

If Additional information are gathered ,I think decision may be improved and modification of IFRS 16 may be suggested , to demonstrate substance over legal form in assessing predetermined terms and its impact on assessment whether lessee has right to direct use of asset ,

Comment and basis of aforementioned opinion based on the followings:-

- Although Par. B25:29 fully describe that decision but the case relate to predetermined terms or negotiation which may if exist with other lessor's operation rights in conjunction with assessing of how and for what purpose the asset will be used , may have resulted in different assessments .
- The predetermined rights should be assessed in light of overall relevant decisions' effect on directing asset's use include predetermined terms and ongoing operations rights. Benefits of lessor derived from those rights and the shrinkage of lessee's right of operating asset through such supplier's right may be resulted in change of where output is produced (Par B.26(c) (i.e destination of ship) . In light of the inquirer facts, it was indicted that supplier's has both operation and maintenance's rights and obligation
- In some circumstances, both events (operation and predetermined decision) will interfere with right of direction of asset's use during the periods of use, consequently if many (not all) decisions of operation are to be made by supplier, Also the certainty of such lessee's substantial economic benefits from right of use should be reassessed
- The inquirer indicted that entity's decision rights are relevant and the significance of the economic benefits was concluded. Since supplier has many operation decisions and predetermined terms are not addressed of protection purpose under Par (b)30 , In such case one may ask "does substantial benefit arise as a compensation of use of asset or net rights and obligations of such unit of account (contract)?"
- I have concerns that If predetermined rights are assessed, in conjunction with supplier's right of operation of asset, this may result in higher uncertainty in assessment of right of use of asset . For ex, some major maintenance and operations' fees with predetermined terms may indirectly result in restricting use of asset by lessee in certain directions , then more considerations will have to be given to significant and substance of the terms with right of operations given to supplier
- Although "substance over form "is considered in specific area of IFRS 16 (sale & lease back), in such situation of predetermined rights (Ref. Par (b) 29) it is not adequately considered . So requesting of more information may result in depth understanding of other foreseeable cases in which substantial decrease in lessee's right of directing use of asset ,when not isolating from other predetermined terms, would have affected defining of asset as a right of use . This may be improved by indicating in Par.29 that substance of the predetermined terms should be adequately considered.
- In some case, depending on type of assets or industry for which asset is used, the predetermined rights in negotiating lease contract represent the most important decision if they relate to future output rather than those decisions taken throughout use of the asset (i.e Trucks and ships 'destinations and geographical area) . Such predetermined decisions may affect ability to produce cash inflows from use (for ex. in future this may restrict

essential benefit resulted from logistic changes of ship's paths) , while same predetermined factors ,for other assets may act only as protection term for lessor

- Accordingly, Board may request additional information for such purpose to deliberate whether revision is necessary to represent specific criteria for those cases
- If the lessor is obtaining benefits other than lease payments' cash flow and lessee will have to surrender some of the benefits of cash flow to lessor in form of operation and maintenance Fees. Par 23 indicates "If a contract requires a customer to pay the supplier or another party a portion of the cash flows derived from use of an asset as consideration, those cash flows paid as consideration shall be considered to be part of the economic benefits that the customer obtains from use of the asset ". By same cemetery, one may ask" are there probable substantial economic benefits exist after considering cash outflows paid for operation's Fees in such industry ?
- Cautions may be necessary to take into account some considerations in some cases, in which risk and benefits of uses are shared between operator lessor, and lessee through predetermined negotiated terms. Unless as specified by Par.(b)30 it was compensation for protective security in the way that those Protective rights typically do not define the scope of the customer's right of use And do not, in isolation, prevent the customer from having the right to direct the use of an asset .

So that I believe that specific information about lessor operating of ship, May not affect the assessment of right of use of asset if there is no other transactions that should be considered to be influencing substance of transaction such as stipulation of predetermine rights determined by lessor while in same time the lessor is the operator.

Accordingly, I believe that board may have to request more information about such cases when lessor's benefits are to be mix of rental's cash flow and other services resulted from either predetermined terms or ongoing terms. In which case more considerations should be given to applying substance over form under specific criteria

Proposed Paragraph (B) 29 after modifications:

In assessing whether a customer has the right to direct the use of an asset, an entity shall consider only rights to make decisions about the use of the asset during the period of use, unless the customer designed the asset (or specific aspects of the asset) as described in paragraph B24(b)(ii). **In conjunction with those decisions prior to, or during period, of use of asset, entity should consider substance of predetermined decisions that affect entity's ability to direct the use of asset** .Consequently, unless the conditions in paragraph B24 (b)(ii) exist, an entity shall not consider decisions that are predetermined before the period of use. For example, if a customer is able only to specify the output of an asset before the period of use, the customer does not have the right to direct the use of that asset. The ability to specify the output in a contract before the period of use, without any other decision-making rights relating to the use of the asset, gives a customer the same rights as any customer that purchases goods or services

Thanks,

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Shipping Contract (IFRS 16) Tentative Agenda Decision

The Committee received a request about whether the customer has the right to direct the use of a ship throughout the five-year term of a particular contract. In the fact pattern described in the request:

Agenda1:the customer has the right to obtain substantially all the economic benefits from use of the ship throughout the five-year period of use applying paragraphs B21?B23 of IFRS 16.

Comments: No, the customer hasn't the right to obtain substantially all the economic benefits.

He has the right to obtain substantially all the economic benefits, if ;

1. It is mentioned in the contract.
2. He has given a portion of benefits to the owner.

Since the customer pays or must have to pay a portion of benefits to the owner so he doesn't obtain all economic benefits.

Agenda2:The customer has the right to make the remaining relevant decisions about how and for what purpose the ship is used throughout the period of use. Those decision-making rights are relevant because they affect the economic benefits to be derived from use of the ship.

Comments: The customer may have the right,if;

1. It is mentioned in contract.
2. When a purpose changes than the contract is cancelled because purpose is the main condition of a contract.

It must be cancelled if it became a matter on economic benefits.

Md. Mazedul Islam