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Chairman

JH/NJ
N° 22

Paris, le 26 avril 2010

IASB

30 Cannon Street

LONDON EC4M 6XH

UNITED KINGDOM

Dear Madam or Sir,

I am writing to comment on the proposals made both in the ED "Measurement of Liabilities in IAS 37" and the Working Draft "Liabilities" (hereafter the "Liabilities project").

The ANC considers that the nature and the extent of the impacts of these proposals on the financial statements have not been fully assessed. The ANC is of the view that the proposals, being a source of increased uncertainty, impair the decision usefulness of the information provided and thus create confusion for the users of financial statements. An illustration of this is the proposed accounting treatment for restructuring costs that will no more capture the economics of these operations and the related management decision in all circumstances.

The ANC has formed this view for the following reasons:

- The ANC is not convinced of the relevance of the information provided to users by recognising systematically in the statement of financial position a "liability" for which there is only a low probability of cash outflows;
- The proposals to use complex statistical techniques to measure a single obligation and to include a profit margin in the measurement of a liability where the entity expects to undertake the service itself provide less relevant and reliable information than the IAS 37 "best estimate" and in any case do not provide decision-useful information about the expected cash outflows of the entity.

Moreover, the ANC has not identified any major difference between the proposed measurement objective, based on market data, and the objective of fair value. The ANC considers that this proposal is a step towards an extension of fair-value, to which the ANC is opposed.

The ANC is also concerned that the difficulty of applying IAS 37 where there is uncertainty about the existence of an obligation, is not appropriately addressed by the replacement of the existing threshold approach by a judgemental approach, notably due to the lack of robustness of the indicators provided by the IASB. The ANC considers that robust indicators are key to ensuring a consistent application of principles-based accounting and thus comparable information for users of financial statements.

The ANC is also opposed to the introduction of new conceptual principles into IFRS through individual standards. If the IASB wishes to change conceptual criteria, it should do it via a wider debate under the Conceptual Framework project.

Although the Board is only inviting comments on the measurement aspects of this project and despite the initial short period of time given, the ANC has decided not to limit its comments to the measurement proposals.

The ANC considers that the due process followed by the IASB on the Liabilities project is not appropriate as it does not give the stakeholders the opportunity to participate in a balanced and transparent debate. The ANC also questions how this due process complies with the IASB objective to produce high-quality accounting standards in the best interest of its stakeholders for the following reasons:

- The fundamental changes made to the original objectives of this project, reinforced by the development of other IASB projects related to recognition and measurement of obligations during the significant five year delay since the initial exposure of the proposals, deserve per se an overall reconsideration of the project;

- In the light of the numerous negative comments received on the original recognition proposals and of the considerable debate the IASB had subsequently regarding these proposals, particularly during its discussions on the existence of an obligation, re-exposure is essential to provide the stakeholders with the opportunity to re-assess the IASB's arguments for not modifying its original views;
- Re-exposing only the measurement proposals prevents the stakeholders from properly expressing their views as recognition and measurement issues are closely related and, as such, cannot be considered in isolation.

As stated above, the ANC considers that the IASB should also completely reconsider the Liabilities project as it provides less decision-useful information to users of financial statements than IAS 37. Indeed, these proposals result in both the recognition of "liabilities" that do not meet the recognition criterion in the existing Framework and in a measurement basis of many liabilities that would not provide predictive information about the cash outflows of the entity.

In respect to the proposals made by the IASB, our main objections are summarised below. The detailed comments are set out in the appendix to this letter:

Concerning the measurement proposals:

- The existing measurement objective of IAS 37, based on the best estimate of the costs to fulfil the obligation, provides more relevant information about the expected cash outflows of the entity than the proposed measurement basis;
  - The proposed expected value technique provides less relevant and reliable information for a single obligation than the IAS 37 "best estimate". Whilst requiring a complex methodology, this proposal is likely to result in an amount that will never reflect the actual cash flows of the entity;

    - The proposal to include a profit margin in the measurement of an obligation when the entity expects to fulfil the obligation by rendering the service itself results in misleading performance information for users based on a hypothetical transaction. In addition, it does not provide decision-useful information about the expected cash outflows of the entity;

- Whilst not challenging the principle of the risk margin, the discussion of what the risk margin is meant to represent and how it is determined is confusing and impedes the assessment of the appropriateness of the proposals.

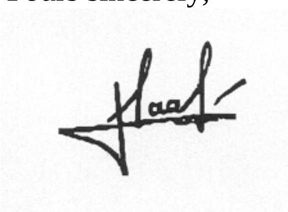
Concerning the other aspects of the project set out in the working draft:

- The unknown consequences of the uncertainties surrounding the scope and the interactions of this project with the other IASB projects prevent constituents from judging its relevance;
- The proposed change from the existing IAS 37 threshold approach to a judgemental approach in situations where there is uncertainty about the existence of an obligation is inappropriate and results in less comparable information in the absence of the robust accompanying indicators;
- The proposed removal of the probability recognition criterion is contrary to the Framework and results in less decision-useful information compared to IAS 37;
- The proposal relating to the recognition of a restructuring does not reflect the economics of the operation and thus provides less decision-useful information than the existing requirements.

Moreover, the ANC believes that this project does not appropriately address the fundamental question on how to provide users of financial statements with decision-useful information about contingent liabilities. In this respect, the ANC considers that the IASB has not put forward convincing arguments for its view that uncertainty about the amount of outflows should be addressed systematically through measurement. The ANC is convinced that this question is part of a wider debate on the definition of a liability, which encompasses both the uncertainties about the existence of an obligation and about its outcomes and that it should be dealt with in the framework project.

If you have any questions concerning our comments, we would be pleased to discuss them.

Yours sincerely,



Jérôme HAAS

Appendix1 – Detailed comments

Due Process

The ANC considers that the due process followed by the IASB on the Liabilities project is not appropriate as it does not give the stakeholders the opportunity to participate in a balanced and transparent debate for the following reasons:

- The initial objectives of the project were to analyse items within the scope of IAS 37 in terms of assets and liabilities as defined in the IASB *Framework* and to align the IAS 37 accounting guidance for restructuring costs with the equivalent accounting guidance in the US. By deciding to align the recognition criteria in IAS 37 with other IFRSs and to "clarify" the measurement of liabilities, which is in reality far beyond a mere clarification (refer to our comments below on the measurement), the IASB changed fundamentally the initial objectives of this project. Such a change, reinforced by the development of other IASB projects related to recognition and measurement of obligations during the significant five year delay since the initial exposure of the proposals deserve per se an overall reconsideration of this project (refer to our comments below on the scope);

- The ANC also notes that many respondents to the original 2005 ED, including the ANC, were strongly opposed to its recognition proposals. On the contrary, the IASB' view was that these proposals were appropriate and that no re-exposure was needed. However, the ANC notes that, in the meantime, the IASB continued to have considerable debate on these proposals, particularly regarding how to address the uncertainty about the existence of a present obligation. Moreover, the ANC also questions the relevance and weight of the various arguments considered in this decision to not re-expose and particularly the impact of the so-called "timing issues" such as the 2011 deadline or the terms of the Board members. The ANC believes that when differences of opinion between the IASB and its constituents are so great, re-exposure is essential to guarantee an appropriate due process that provides stakeholders with the opportunity to re-assess the IASB's arguments for not modifying its original views;
- Re-exposing only the measurement proposals prevents the stakeholders from properly expressing their views as recognition and measurement issues are closely related and as such, should be considered globally and not in isolation.

The ANC considers that the IASB should also completely reconsider the Liabilities project as it provides less decision-useful information to users of financial statements than IAS 37. Indeed, these proposals result in both the recognition of "liabilities" that do not meet the recognition criterion in the existing Framework and in a measurement basis of many liabilities that would not provide predictive information about the cash outflows of the entity.

Our main objections to the Liabilities project's proposals are the following:.

Concerning the measurement proposals:

- **The existing measurement objective of IAS 37, based on the best estimate of the costs to fulfil the obligation, provides more relevant information about the expected cash outflows than the proposed measurement**

The ANC is opposed to the so-called "clarification" of the existing measurement guidance in IAS 37 proposed by the IASB. The ANC considers that the measurement of an obligation should not be based on a "value of the resources" principle nor on a "lowest of" notion.

Instead, the ANC considers that, in line with existing IAS 37 and to provide decision-useful information to users of financial statements, the amount that an entity would rationally pay to be relieved of an obligation should be the expected cash outflows of the entity. Moreover, this amount should reflect management's recurring practice as to the way the liability will be discharged. Thus, this amount is one of the following three amounts:

- the best estimate of the costs to fulfil the obligation,
- the amount that the entity would have to pay to cancel the obligation; and
- the amount that the entity would have to pay to transfer the obligation to a third party.

Where there is no evidence that the entity could transfer or cancel the obligation this amount should be estimate of the costs to fulfil the obligation.

The ANC also disagrees with the view expressed in the ED that the term "rationally" systematically implies a "lowest of" notion as referred to in paragraph 36B. For example, an entity may decide to fulfil an obligation for a higher amount instead of transferring it to a third party for a lower amount so as to avoid any risk that the third party actions may have a negative impact on the entity's image. The ANC considers that it is not possible to define what "an entity's rational behaviour" is based on a quantified criterion such as "the lowest amount" as it would never capture all the facts and circumstances that lead an entity to make what it considers the best business decision.

In light of the above comments, the ANC also considers that where management has no recurring practice to cancel or transfer an obligation, the obligation should be measured at the best estimate of the costs required to fulfil it thus without considering any "lowest of" criterion as referred to in paragraph 36C.

Regarding subsequent measurement, consistently with the views expressed above, the ANC considers that an entity should adjust the carrying amount of a liability at the end of each reporting date to the amount that reflects management recurring practice as to the way the liability will be discharged. This remeasurement should take into account only new information. As such, if there is no change in management recurring practice, the measurement basis used for initial measurement (e.g. best estimate of the costs, or amount to pay to cancel or amount to pay to transfer) should be maintained.

- **The proposed expected cash flow approach provides less relevant and reliable information for a single obligation than the IAS 37 "best estimate". Whilst requiring a complex methodology, this proposal is likely to result in an amount that will never reflect the actual cash flows**

For a single obligation, the ANC is opposed to the use of a probability-weighted technique based on all possible outcomes. This measurement basis does not provide decision-useful information for a single obligation as:

- This technique does not provide relevant information for outcomes that do not fall into a standard distribution. For example, for a single obligation with two dispersed outcomes (for example, 70% of probability to pay CU 100 and 30% of probability to pay zero), this technique results in an amount that will never reflect the actual cash flows;
- This technique requires management to develop complex models involving both the identification of both multiple scenarii of future cash outflows and of the probabilities to be assigned to these scenarii. In most cases, as for litigations, no reliable historical data or comparable information is available and it is questionable whether external experts (such as lawyers in the case of litigations) would be in a position to provide these estimates.

As such, this measurement lacks relevance and decreases the reliability and predictive nature of information provided to users, in addition to implying a very high degree of subjectivity which increases scope for manipulation.

The ANC considers that the IAS 37 most likely outcome provides more relevant information to users to predict the entity's future cash flows. Moreover, the ANC considers that IAS 37 disclosures already provide sufficiently reliable and relevant information to users about the uncertainties surrounding the measurement of a single obligation.

- **The proposal to include a profit margin in the measurement when the entity expects to fulfil the obligation by rendering the service itself results in misleading performance information for users based on a hypothetical transaction. In addition, it does not provide decision-useful information about the expected cash outflows of the entity**

The ANC is opposed to the inclusion of a profit margin in the measurement of a liability when the entity expects to fulfil the obligation by undertaking the service itself, with the objective to measure the obligation at a contractor price. The ANC agrees, in accordance with the 6 dissenting Board members, that this proposal results in misleading performance information for users of the financial statements as it reduces the net profit at the initial recognition of the liability and releases a profit in the period in which the liability is fulfilled and thus without any underlying economic reality.

The ANC considers that, in this case, the IAS 37 most likely outcome, which is based on the best estimate of the costs, provides more reliable and relevant information to users of the financial statements about the entity's expected cash outflows as these cash flows will never include a profit margin.

- **The discussion of what the risk margin is meant to represent and how it is determined is confusing and impedes the assessment of the appropriateness of the proposals**

Without challenging the principle of the risk margin, the ANC notes that the discussion of what the risk margin is supposed to represent and how it should be determined is very confusing. Moreover, the alternative views expressed by certain board members contribute to further obscure the debate as they seem to imply, through the discussion of the diversifiable risk issue, that the risk margin is market-based.

As a result of this lack of clarity, the ANC is not in position to judge the proposals made until the concepts are better explained and detailed guidance is provided on the manner in which the adjustment would be determined in practice.

As regards the more general question of the measurement of non financial liabilities, the ANC takes the opportunity to reiterate its view on credit risk e.g. that when the liability has not arisen from an exchange transaction, the discount rate used in measuring the liability at present value should not include the entity's credit risk (neither for initial nor for subsequent measurement). Please refer to our comment letter dated September 4, 2009, Credit risk in Liabilities measurement.

Concerning the other aspects of the project set out in the working draft:

- **The unknown consequences of the uncertainties surrounding the scope and the interactions of this project with the other IASB projects prevent constituents from judging its relevance**

As mentioned above, since the Liabilities project was launched, the board has taken onto its agenda several other projects addressing the measurement of obligations (revenue recognition, leases and insurance) which are scheduled to be completed after the completion of the Liabilities project.

The interactions between these projects are particularly unclear at this stage of their respective developments. A good illustration of this is that the IASB recognises itself that the decision to use costs as the basis for measuring onerous contracts arising from transaction within the scope of IAS 18 and IFRS 4 may be reversed in the future.

The ANC is concerned by the unknown consequences of these uncertainties as they prevent constituents from judging the range and the relevance of these proposals.

- **The proposed change from the existing threshold approach to a judgemental approach in situations where there is uncertainty about the existence of an obligation is inappropriate and would result in less comparable information in the absence of robust accompanying indicators**

The ANC considers that the proposals for determining if an entity has a present obligation, based on the notions of "unconditional" and "stand ready obligation", are not sufficiently documented and may obscure the understood application of IAS 37 in this area.

The ANC considers that the IASB has not put forward convincing arguments to support the fact that the existing IAS 37 provisions related to the existence of a present obligation are inappropriate. The ANC considers also that the proposal to remove the "threshold approach" of IAS 37.15 [1] used in certain situations to assess the existence of an obligation for the benefit of a judgemental approach should not be addressed through the modification of a standard but in the context of the Framework project.

The ANC also notes that the IASB had extensive debates on this question and concluded that indicators on how to address uncertainty about the existence of a present obligation were to be developed (refer to the Board decisions in July 2007). The ANC notes that the indicators provided in the working draft are not sufficiently robust to ensure a consistent application by entities. As such, the ANC is convinced that this proposal will result in less comparable information, as it can result in different entities judging similar situations differently.

[1] Based on a "more likely than not" criterion

- **The proposed removal of the probability recognition criterion is contrary to the Framework and results in less decision-useful information compared to IAS 37**

The ANC is opposed to the removal of the probability recognition criterion that would result in the recognition of present obligations whose probability of cash outflows is less than 50%:

- The ANC believes it would not enable users to predict the entity's expected cash flows, as these cash outflows are less likely than not to occur;
- The ANC notes that this proposal results in the recognition of "liabilities" that do not meet the recognition criterion of a liability in the Framework[2]. In this regard, the ANC is also opposed to the introduction of new conceptual principles into IFRS through individual standards. If the IASB wishes to change this conceptual criterion, it should do it via a wider debate under the Conceptual Framework project.
- The ANC believes that the current IAS 37 disclosures are adequate in ensuring that users are provided with relevant information to assess the nature and uncertainty surrounding these obligations. More generally, the ANC does not share the IASB's view that the uncertainty about the existence of outflows is better addressed systematically through measurement.

- **The proposal relating to the recognition of a restructuring does not reflect the economics of the operation and thus provides less decision-useful information than the existing requirements**

The ANC considers that a restructuring obligation should be recognised in a manner that reflects the economics of the overall operation. As such, the ANC considers that recognising, as under current standards, a single liability at one point in time provides better information to users on expected cash flows than recognising the various components of a restructuring plan overtime as is proposed. In this respect, the ANC also notes that the IASB has decided to require additional disclosures among which the total costs expected to be incurred. The ANC believes that this decision further illustrates the fact that such information is decision-useful for users and that it puts into question the relevance of the IASB proposals to modify the existing recognition requirements.

Question 1- Overall requirements

Please refer to our above comments.

Question 2 – Obligations fulfilled by undertaking a service

Please refer to our above comments.

Question 3 – Exception for onerous sales and insurance contracts

Please refer to our above comments.

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[2] Refer to Paragraph 91