RÉPUBLIQUE FRANÇAISE

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AUTORITÉ DES NORMES COMPTABLES

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PDC n°31

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**IASB's Request for Information: Post-implementation Review of IFRS 10, IFRS 11 and IFRS 12**

Dear Hans,

I am writing to you on behalf of the Autorité des Normes Comptables (ANC) to express our views on the IASB's Request for Information—Post-implementation Review (PIR) of IFRS 10 *Consolidated Financial Statements*, IFRS 11 *Joint Arrangements* and IFRS 12 *Disclosure of Interests in Other Entities.* Our letter sets out the most important matters that interested stakeholders involved in ANC's due process have identified.

IFRS 10, IFRS 11 and IFRS 12 were issued in May 2011 and formed a new 'consolidation package'. Entities in the European Union have mandatorily applied those IFRS Standards from 2014 onwards—from 2013 onwards for other entities. The IASB undertook the PIR six years after the first application of those IFRS Standards ie lately with regard to the indicative timing for such a review as specified in paragraph 6.48 of the *IFRS Foundation Due Process Handbook*[1]. Over this long timespan, preparers, auditors and users of financial statements got used to these IFRS Standards which are now part of their accounting culture. Those IFRS Standards include principles that require the use of judgement and generally provide an adequate basis for accounting for most transactions. Preparers and auditors have developed their own application guidance to help apply their judgement to specific transactions. ANC has not identified widespread situations in which the three above-mentioned IFRS Standards are difficult to apply. Neither has ANC identified significant divergences in the application guidance developed by its stakeholders. Accordingly, ANC thinks there is little diversity in how entities, in France, apply those three IFRS Standards.

ANC notes that one of a PIR's purposes is to assess whether '*an entity applying the requirements in a Standard produces financial statements that faithfully portray the entity's financial position and performance, and whether this information helps users of financial statements to make informed economic decisions*'[2]. The removal of proportionate consolidation has been one the most important changes introduced by the three IFRS Standards. It has significantly affected the presentation of entities' financial position and performance—IFRS 11 requires an investor to account for its interest in (i) a joint venture using the equity method[3] and (ii) a joint operation in accordance with paragraphs 20–22 of this Standard. Proportionate consolidation was identified as the benchmark accounting treatment applying IAS 31 *Interests in Joint Ventures* and was largely used by French entities. Consequently, ANC would have expected the IASB to have sought feedback on (i) the consequences of removing the proportionate consolidation, and (ii) whether the accounting for joint ventures as specified in by IFRS 11, together with the disclosure requirements for such joint ventures in IFRS 12, had enhanced financial information

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[1] Paragraph 6.48 of the Due Process Handbook states: '…*A post-implementation review normally begins after the new requirements have been applied internationally for two years, which is generally about 30–36 months after the effective date*'.

[2] Paragraph 1 of the Request for Information.

[3] Unless an entity is exempted from applying the equity method as specified in IAS 28 *Investments in Associates and Joint Ventures*.

provided to users. In this respect, all categories of ANC's stakeholders express strong reservations about whether IFRS 11 has resulted in an improvement to financial reporting. This is because:

- entering into a joint venture with a local partner is the only way of establishing and developing businesses in some jurisdictions. Accounting for those developments using the equity method while disclosing more information on interests in those joint ventures fails, in ANC's view, to faithfully portray an entity's geographical expansion and the actual size of its businesses in its financial statements. For example, in the automotive industry, all operations in China are made through joint ventures. Accordingly, the requirements in IFRS 11 result in billions of euros of revenue from the sale of vehicles not being reflected on the revenue line item of the largest car manufacturers in the world. The revenue line item of French real estate developers has also significantly been affected because local councils require real estate projects to be carried out using joint arrangements. In this respect, ANC observes that all its stakeholders––including users of financial statements––think that the use of the equity method instead of proportionate consolidation has weakened the usefulness of the information an investor provides about its joint ventures' financial position and performance. They also think that including more information about joint ventures in the notes to the financial statements is not the appropriate standard-setting response to the loss of useful information arising from the accounting for such entities as required in IFRS 11––in other words, requiring more disclosures cannot make up for unsatisfactory recognition or measurement principles.
- some entities have developed non-GAAP measures that include revenue, expenses, assets and liabilities from their joint ventures on a proportionate basis. They disclose––or used to disclose––that information either within their segment reporting or outside their financial statements. ANC thinks the persistence of non-GAAP measures to circumvent the effects of an accounting standard indicates that the Standard may not provide useful information.
- entities account for joint operations in a manner similar to proportionate consolidation. Nonetheless, few joint arrangements are not structured through a separate vehicle in France. When those arrangements are structured through a separate vehicle, the investor never (or very seldom) has rights to the assets and obligations for the liabilities of the vehicle. ANC and its stakeholders have not identified in France a legal form for the separate vehicule that would give such rights and obligations to the investor. Nor have they identified contractual arrangements that would override the consequences of the vehicle's legal form. Therefore, whenever an investor concludes it has an interest in a joint operation, it does so on the basis of the 'other facts and circumstances' as described in paragraphs B29-B32 of in IFRS 11––in those circumstances, joint operations are necessarily production entities, the output of which is bought by the investors under a take or pay contract. Accordingly, in ANC's view, the scope of joint operations is not properly defined to compensate the consequences of proportionate consolidation's removal on the presentation of an entity's financial performance.
- ANC also notes that, by extending the scope of the equity method to all joint ventures, IFRS 11 has put more pressure on the requirements in IAS 28. This is a rather 'old' IFRS Standard with numerous implementation issues that the IASB is well aware of[4].

ANC also thinks that IFRS 11 had more than accounting implications. By requiring entities to account for many joint arrangements using the equity method, a method that an entity also uses when it has significant influence on an investee, IFRS 11 reflects a binary approach of control, thus ignoring the many ways entities do business and cooperate. ANC thinks this binary approach encourages specific ways of developing business that do not necessarily cater for all jurisdictions' economic needs.

Regarding IFRS 10, ANC thinks that the overarching principle of preparing consolidated financial statements on the basis of control generally works well in practice. ANC is not aware of significant implementation difficulties in relation to IFRS 10. ANC observed that entities take into account their consolidation objectives when negotiating shareholders' agreements––consequently, they waive some governance rights when they do not wish to consolidate an investee, or conversely, negotiate additional governance rights when they wish to consolidate an investee. Accordingly, entities 'take a margin' to buttress their conclusion on control and there are very few situations in which the use of judgement is of such importance that it creates uncertainty about consolidation. As explained above, IFRS 10 is now part of the accounting culture of stakeholders who all agree on the definition of control and how to implement it. ANC has nevertheless some comments that are detailed in its answers to the specific questions included in the Request for Information.

Consistent with the outcome of the first phase of this PIR, the requirements in IFRS 12 have elicited few comments from ANC's stakeholders. Many of those stakeholders think IFRS 12 strikes a right balance in terms of information purpose.

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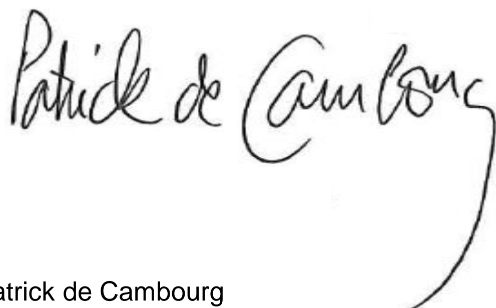
[4] The IASB is currently undertaking research to assess whether application questions with the equity method as set out in IAS 28 can be addressed in consolidated and individual financial statements by identifying and explaining principles in IAS 28.

As a final note, ANC has identified in its reply to Question 10 some topics that are not mentioned in the Request for Information but are, in ANC's view, relevant to this PIR. ANC thinks important to undertake standard-setting with regard to the accounting for put options written on non-controlling interests.

The appendix to this letter sets out our detailed answers to the questions included in the Request for Information.

Should you need any further explanation, please do not hesitate to contact me.

Yours sincerely,



Patrick de Cambourg

# APPENDIX

**Question 1—Your background**

To understand whether groups of stakeholders share similar views, the Board would like to know:
(a) your principal role in relation to financial reporting. Are you a user or a preparer of financial statements, an auditor, a regulator, a standard-setter or an academic? Do you represent a professional accounting body? If you are a user of financial statements, what kind of user are you, for example, are you a buy-side analyst, sell-side analyst, credit rating analyst, creditor or lender, or asset or portfolio manager?
(b) your principal jurisdiction and industry. For example, if you are a user of financial statements, which regions do you follow or invest in? Please state whether your responses to questions 2–10 are unrelated to your principal jurisdiction or industry.

1. Autorité des Normes Comptables (ANC) is the French standard setter. In this letter, ANC sets out the most important matters that interested stakeholders involved in its due process have identified.

2. ANC stakeholders involved in the preparation of this letter include preparers (listed companies applying IFRS as adopted by the European Union), audit firms and regulators in France. The main sectors represented in ANC's working group are banks, insurance, industry and services.

**IFRS 10** ***Consolidated Financial Statements***

**Control—Power over an investee**

| **Power over an investee—Relevant activities** |
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| **Question 2(a)** |
| In your experience:<br>(i) to what extent does applying paragraphs 10–14 and B11–B13 of IFRS 10 enable an investor to identify the relevant activities of an investee?<br>(ii) are there situations in which identifying the relevant activities of an investee poses a challenge, and how frequently do these situations arise? In these situations, what other factors are relevant to identifying the relevant activities? |

**Question 2(a)**

- **Identifying an investee's relevant activities**

3. ANC observes that the identification of an investee's relevant activities does not generally create any particular problem. This is particularly true for all entities whose operating, investing or financing decisions have to be made on a continuous basis over their life.

4. Having said that, identifying the relevant activities of special purpose entities ('SPV') might be challenging, in particular when the SPV's main activities are predetermined. ANC's stakeholders have identified that practical difficulties arise in the following circumstances:
   - for financial institutions when the SPV's (or structured entities) activities are largely pre-determined. As a response to those challenges, financial institutions have developed internal application guidance. This guidance is generally consistent among preparers, shared and agreed with auditors and regulators. Accordingly, there is no significant diversity in how entities identify the relevant activities of such SPVs.
   - for other non-financial institutions entities such as project entities when (i) the key elements affecting the returns are determined during the project's design phase but (ii) operating decisions are still to be made during the project's operational phase. Those circumstances arise, for example, for a pipeline infrastructure-type. In this case, the upstream phase defines the essential characteristics of, and returns derived from, the pipeline. Operational decisions during entity's life are limited to the pipeline's maintenance operations. Those operations could be considered as minor compared to decisions made during the design phase. In those circumstances, it is unclear whether maintenance operations should be considered as the relevant activity or whether the entity's control should be analysed on the basis of its purpose and design alone.

- **Activities that have the greatest influence on the variability of returns**

5. ANC considers that the main source of difficulty is not the identification of an investee's relevant activities itself. This is rather how relevant activities should be prioritized when each investor has the power to direct unilaterally specific activities—in those circumstances, IFRS 10 specifies that the investor who has the power over the activities that most significantly affect the returns of the investee controls that investee.

6. Assessing the relative weight of each relevant activity on the variability of returns may require a quantitative approach. However, such an approach is difficult to implement. In addition, it requires management to apply significant judgement and develop estimations.

7. However, ANC acknowledges that the circumstances in which an investee's relevant activities must be prioritized to identify the controlling investor are not common. Those circumstances arise when:
   - two or more investors have, each, the capacity to make decisions alone on one or more relevant activities—ANC observes that such situations are extremely rare; or
   - one investor has the capacity to make decisions alone on one or more relevant activities but needs the agreement of at least another investor for decisions on other relevant activities—see question 2(b) in this respect. For example, a number of shareholders' agreements provide (i) one 'dominant' shareholder with extensive powers on some relevant activities and (ii) the other shareholder with significant veto rights on another relevant activity. Those veto rights cannot be considered as protective and are a genuine obstacle to the control of the 'dominant' shareholder. In such situations, the 'ranking' of relevant activities might be necessary to assess whether the 'dominant' shareholder has the ability to direct alone the relevant activity that most affects the returns of the entity.

- **Changes occurring over an investee's life**

8. ANC notes that the control analysis can also be complex in circumstances in which the identification of the relevant activities, or of their relative weight, may change during the investee's life.

   - *Sequentiality of relevant activities*

9. For example, some project entities are organised so that each investor has the ability to direct one of the investee's relevant activities but at a different time. In such cases, identifying the activity that has the greatest influence on the returns can be difficult. Additionally, it is unclear as to whether the re-assessment of the controlling party is required when the project's phase changes.

10. This matter may affect some sectors such as:
    - the infrastructure operation sector, with a construction/financing phase of assets followed by the operating phase, usually over a long period of time. During the operating phase, the relevant activities might be the marketing of the services rendered using the infrastructure, its maintenance and its renewal;
    - the pharmaceutical sector with a research and development phase for new drugs followed by a marketing and production phase once the drug is authorized by competent authorities.

11. Application Example 1 in paragraph B13 of IFRS 10 illustrates such situations. This example includes elements to consider in determining which investor is able to direct the relevant activities that most significantly affect the investee's returns, and thus, which investor controls the investee. However, the example does not propose any conclusion. In particular, the example does not specify whether:
    - the assessment of the relative influence of each relevant activity should be made in aggregate over the investee's life, or by phase;
    - this assessment can result in a change of control over the investee's life. Specifically, if the activity of developing and obtaining regulatory approval of the medical product is identified as the predominant activity (because this activity is instrumental in generating any form of return), would a change of control occur once the drug is approved—this is because, from that date onwards, the investor in charge of manufacturing and marketing of the medical product makes all decisions.

   - *Changes in the relative weight of relevant activities*

12. Circumstances in which the relative influence of each relevant activity on the investee's returns changes over time also create complexities. For example, an investee has two investors and operates two businesses that cannot be considered as silos. Each investor has the ability to direct one of the investee's businesses. In the future, one of the businesses is expected to have the most significant impact on the investee's returns. In such example, it may be difficult to know whether:
    - the analysis of each business' relative weight in the investee's returns is made using the data prevailing at a given date or is based on a long-term projection of the investee's activities. For example, assume that (i) the investee operates a mature and predominant business and (ii) this business coexists with a start-up business that is in its investment phase. At a given date, the mature business most significantly affects the investee's returns. However, it might be expected, at that date, that the new business will most significantly affect the investee's returns in the future —if the new business' objectives are achieved.
    - it is possible to identify situations of change in control, without any change in governance or contractual arrangements, ie based solely on a change in the relative weight of the businesses.

13. More generally, ANC is unclear as to whether, it is appropriate, when analysing the relative weight of relevant activities over the long-term, not to change the control analysis if the returns from the main activity become a minority compared to other activities.

| Power over an investee—Rights that give an investor power |
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| **Question 2(b)** |
| In your experience:<br>(i) to what extent does applying paragraphs B26–B33 of IFRS 10 enable an investor to determine if rights are protective rights?<br>(ii) to what extent does applying paragraphs B22–B24 of IFRS 10 enable an investor to determine if rights (including potential voting rights) are, or have ceased to be, substantive? |

**ANC's preliminary comments**

14. ANC observes there is a tendency to contrast protective and substantive rights, although these two types of right apply to analyses pursuing differing objectives:
    - *protective rights* are considered in the analysis of rights held by third parties, to determine whether these rights are an obstacle to the investor's ability to unilaterally direct the investee's relevant activities. Accordingly, protective rights can be substantive rights because the third party does have the ability, and sometimes the opportunity, to exercise them. In ANC's view, IFRS 10 should instead contrast protective rights with 'participatory rights'.
    - *substantive rights* are considered in the analysis of an investor's rights allowing this investor to unilaterally direct the investee's relevant activities. This is particularly the case when (i) the existence of potential voting rights justifies the investor's control over the investee, or (ii) the investor has a contractual right to force decisions, but imposing a decision has a potentially damaging consequence (such as the other investor being able to exercise a put to force the investor to buy its shareholding at a premium price).

15. ANC thinks the analysis of control, or non-control, is generally not neutral—it is based on a presupposition that considers the investee's situation:
    - if the investee is an unleveraged and profitable entity, the presupposition is that any investor is willing to consolidate it, so the demonstration of control will have to be reinforced;
    - conversely, if the investee is a highly-leveraged entity—for example, because it operates an infrastructure project financed by banks—the presumption is that any investor is not willing to consolidate it, so the demonstration of a non-control situation will have to be reinforced.

16. This bias in the analysis is not necessarily consistent with a principle-based standard. However, it has the advantage of:
    - bringing greater certainty to the analyses, and
    - reducing the importance of judgement by encouraging investors, when negotiating clauses of shareholders' agreements, to move away from the dividing line between control and non-control, either by (i) giving up more governance rights (in the case of a desire for non-consolidation) or (ii) conversely, by negotiating more governance rights (in the case of a desire for consolidation).

17. In the light of the advantages described above, ANC concludes this situation is satisfactory.

**Question 2(b)(i)**

18. ANC observes that assessing whether the rights held by other investors are protective may be challenging in a number of situations. For example:
    - the investee operates in a sector subject to specific jurisdictional regulations that limit the investee's governance rights. This is the case in the US where a board of directors largely independent from foreign investors must manage entities operating in the defence sector. In other cases, a foreign investor is only permitted to set up a partnership with a local investor and the foreign investor is not permitted to take a majority share in the investee's equity because local regulations prohibit foreigners from taking control of entities operating in sectors deemed sensitive;
    - the state-owned enterprises (SOE) hold a share in the investee's equity and the jurisdictional regulations give particular rights to those enterprises. Those SOE may be, alone, in a practical situation to prevent the investee from making decisions on relevant activities. This is particularly the case in China where it is not possible to have control over an investee that also has a SOE as investor;
    - the investee is the party to a franchise agreement that imposes a number of constraints on the conduct of the business.

19. In the examples described above, it is difficult to draw the line between (i) 'constraints' that are in some way part of the 'specifications' of the investment in the investee and (ii) rights held by others that can be considered as 'participatory'. In ANC's view, IFRS 10 is unclear on how to assess the regulatory or

contractual environment in which the investor operates. ANC thinks that including application guidance in IFRS 10 on how to consider these constraints into the analysis would improve the consistent application of the Standard.

20. Decisions on the investee's budget are generally considered as central in the control analysis. A veto right on the investee's budget given to another investor will frequently be considered an obstacle to an investor's control on the investee. However, the other investor is not usually allowed to veto the budget in its entirety but only (i) some parts of that budget or (ii) decisions relating to transactions above specified thresholds. There are also circumstances in which the other investor has no specific governance right over the budget but has a significant business relationship with the investee (e.g. customer principal) enabling to *de facto* strongly influence the definition of the budget and the variability of returns.

21. ANC notes that, in those circumstances, the analysis of control requires the use of significant judgement. As a response to those application challenges, some entities in France still apply the thresholds in the initial version of the FASB's EITF Issue n°96-16[5] for the qualification of the rights held by others: if the other investor has a veto right over an investment that represents more than 20% of the fair value of the assets (and no veto for lower investments), the right is considered protective. ANC also notes that these thresholds have been removed from US GAAP literature. Such a quantitative approach may not be relevant for a principle-based standard and may not cater for the wide variety of situations. Accordingly, ANC thinks that it would be inappropriate to introduce quantitative thresholds IFRS 10 to seek greater homogeneity in approaches.

22. In analysing the rights held by others, it is not uncommon for a number of veto rights to be identified as protective rights, but not all of them. In this case, the investor has to determine (i) which of these participatory rights justify a 'denial of its control' over the investee, or (ii) the number of participating rights above which it is considered as being unable to direct the investee's relevant activities alone. ANC observes this assessment leaves considerable room for judgement. It should not though lead to conclude that the existence of a single participating right held by another investor prevents the investor from having control—IFRS 10 specifies that an investor controls an investee when it directs the relevant activities that most significantly affect investee's returns; it follows that another investor that directs the relevant activities that do not mostly significantly affect the investee's returns does not control the investee; the ability to direct a relevant activity, even not mostly affecting the investee's returns, is itself more than a participatory veto right; accordingly, a simple veto right held by another investor on one relevant activity should not prevent the investor from concluding it controls the investee.

23. As a final note, ANC observes that a limited number of situations may require complex analyses and the use of significant judgement. However, entities and their auditors have developed internal guidelines and analytical methodologies to respond to those application complexities. Those guidelines and methodologies are widely accepted and enable reasonable conclusions to be reached. As explained in paragraph 16 above, preparers 'take margins' to secure the conclusion on control.

[5] *Investor's Accounting for an Investee When the Investor Has a Majority of the Voting Interest but the Noncontrolling Shareholder or Shareholders Have Certain Approval or Veto Rights*.

**Question 2(b)(ii)**

24. The question of whether the rights are substantive arises in determining whether rights held by the investor allow it to unilaterally direct the relevant activities. ANC observes that this analysis is often required when control is justified by the existence of potential voting rights, or when the investor has a contractual right to force decisions, but forcing a decision has a potentially damaging consequence (e.g. the other investor has a put option to force the entity to buy its participation at a premium price).

25. ANC observes that assessing whether potential voting rights are substantive might be challenging when the agreements setting out the call options (i) specify an exercise price creating a financial barrier, or (ii) include specific exercise conditions.

26. Assessing whether the exercise price of a call is a barrier to exercise this option requires the use of significant judgement because the mere comparison of the exercise price with the value of the underlying investment is not sufficient to reach a conclusion. This is because:
    - an investor may be willing to pay a high price to obtain the control of an investee (control premium) or to part company with another investor that is considered as 'cumbersome';
    - a change in market conditions should not, in ANC's view, lead to regular changes in the conclusion of control, and thus, lead to deconsolidations/reconsolidations without any genuine transaction occurring. In this respect, IFRS 10 is unclear on the consequences of market variations on the analysis of the substantive nature of potential voting rights—some stakeholders consider that the assessment of control cannot be changed solely because of market variations while others consider that the conclusion should be reassessed in the light to the new prevailing circumstances;
    - when potential voting rights are not permanently exercisable but are subject to exercise windows, it would be inappropriate to conclude that an investor obtains control of the investee when the exercise window opens and then loses control when the window closes (assuming the investor has not exercised the call). In ANC's view, the inclusion of examples in IFRS 10 of how to assess control when potential voting rights are exercisable at specific times would be useful.

**ANC's overall comments on Question 2(b)**

27. Although some situations require significant judgement, ANC considers that the requirements in IFRS 10 generally provide a sufficient basis to assess whether an investor controls an investee, and more particularly whether the investor's rights are substantive and whether the rights held by other parties are protective. Entities have developed practices and internal application guidance that have been approved by auditors and regulators. ANC observes there is generally consistent application of the applicable requirements in IFRS 10 among French entities.

28. ANC also observes there are few 'borderline cases' ie circumstances in which the control analysis is not conclusive. This is because, in practice, shareholders' agreements are negotiated with a certain margin, having in mind the investors' accounting goals:
    - when an investor seeks to control the investee, negotiations aim to limit the rights of the other parties;
    - conversely, when an investor does not want to obtain control, it waives more governance rights than necessary to buttress the conclusion that control does not exist.

29. However, ANC thinks that some additional examples in the IFRS 10 would be useful, in particular to address the following points:
    - cases of vehicles that are largely 'autopiloted' but for which some decisions remain to be made during the operating phase;
    - cases of potential voting rights with exercise windows, depending on whether the window is open or closed at the reporting date (or open at the reporting date but closed when financial statements are authorised for issue);
    - case of potential voting rights, and impact of changes in the fair value of the underlying share to the assessment of control.

| **Power over an investee—Control without a majority of the voting rights** |
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| **Question 2(c)** |
| In your experience:<br>(i) to what extent does applying paragraphs B41–B46 of IFRS 10 to situations in which the other shareholdings are widely dispersed enable an investor that does not hold a majority of the voting rights to make an appropriate assessment of whether it has acquired (or lost) the practical ability to direct an investee's relevant activities?<br>(ii) how frequently does the situation in which an investor needs to make the assessment described in question 2(c)(i) arise?<br>(iii) is the cost of obtaining the information required to make the assessment significant? |

30. In general, ANC thinks that the requirements in paragraphs B41–B46 of IFRS 10 provide a sufficient basis to to assess whether an investor:
    - has obtained control over an investee through an investment that gives it control over less than half of the voting rights, or
    - still has control over an investee after a partial sale of interests although it finally holds less than half of the voting rights, or
    - has lost control over an investee through a partial sale of interest while retaining less than half of the voting rights.

31. ANC observes that the situations in which an investor needs to assess whether it controls an investee without a majority of the voting rights occur rather infrequently. However, when those circumstances arise, they can materially affect the investor's financial statements—because the investee is a listed entity, the size of which is significant in relation to the investor's financial statements. This is notably the case in the following circumstances:
    - case of an initial investment that provides the investor with less than half of the voting rights and the investor aims to make additional investments that, in total, will exceed 50% of the voting rights. In this case, the assessment of control after the completion of the first investment is essential to identify the acquisition date applying IFRS 3 *Business Combinations*—assessing control will determine when the acquisition occurs ie when the investor acquires the first piece of investment or when the investors acquires additional pieces of investment that result in exceeding the 50% voting right threshold);
    - case of a disposal which has the dual objective of maximising cash inflows while retaining control. In this case, the entity will assess the maximum number of shares that it can sell without losing control over the investee;
    - in other transactions, an investor might wish to lose control over the investee while retaining a significant investment and a position as a reference shareholder. In this case, the investor will assess the minimum number of shares that it must sell in order to lose control over the investee.

32. ANC observes that in practice, investors make their assessment of control on the basis of the active participation of public float at general assembly meetings over the past few years:
    - the approach consists of comparing voting rights held by the investor with the total number of voting rights that were exercised. If the investor's holdings is always more than a half of the voting rights that have actually been exercised, the investor concludes that it controls the investee. Conversely, if the voting rights held by the investor represent less than half of the voting rights that have been actually exercised, the investor concludes it does not control the investee;
    - the intermediate situation in which the investor holds more than half of the votes exercised at some meetings and less at others, is very rare in practice because investors take 'margins' that depend on the objective they pursue—ie to consolidate or to not consolidate. However, the floating shareholders' behaviour may vary over time, as well as the dispersion of shareholding, leading to a change in circumstances that may affect control. The 'margin' taken by investors in terms of voting rights ownership is however usually sufficient to avoid a 'yo-yo' effect on control.

33. The approach described in paragraph 32 above is combined with an analysis of the existing contractual documentation between shareholders, as well as the investee's articles of association that may include restrictions on the exercise of control by the main shareholder.

34. In ANC's view, IFRS 10 is unclear on two points:
    - ANC does not know whether the simple fact of having needed the positive vote of a few shareholders to pass decisions prevents the investor from having control or, on the contrary, whether it is possible to have the ability to direct the relevant activities without having obtained the majority of the voting rights actually exercised. In this sense, the application examples in IFRS 10 may not be useful or are sometimes contradictory.
        - Application Example 8 of IFRS 10 is unclear on the decisive factors leading to conclude that the investor does not have control over the investee. Is it because there are three other shareholders with voting rights representing 15% in total and who, therefore, might oppose the decisions made by the investor? Would the conclusion be different if the 65% of voting rights were held entirely by shareholders individually not exceeding 1% of the voting rights? Is the fact that only 35% of the voting rights are held, ie 46.6% of the voting rights generally exercised at a meeting, sufficient to conclude that there is no control, regardless of the shareholding structure? Would the conclusion be the same with 72% or 71% of voting rights exercised? Regarding the dispersion of the shareholding, did the Board mean to consider a lower dispersion in Example 8 (***numerous*** *other shareholders, none individually holding more than 1 per cent of the voting rights*) than in Example 4 (***thousands*** *of shareholders, none individually holding more than 1 per cent of the voting rights*)?
        - ANC understands from Application Example 7 of IFRS 10 that the investor could control the investee depending on additional facts and circumstances. However, if the other eleven shareholders disagree with the investor, its proposal will not pass at shareholders' meetings. ANC considers this situation be more fragile for the investor than in the situation described in Application Example 8.
    - ANC is also unclear on how judgement could be changed in the light of evidence obtained after the acquisition of voting rights:
        - ANC understands from the combination of paragraphs B40–45, B18–B20 and B80–B85 that an investor may be unable to conclude whether it has the practical ability to direct the relevant activities when it acquires an investment, but may subsequently be able to do so based on post-acquisition events demonstrating that the investor had actually been able to direct the relevant activities.
        - If the evidence of control is identified after the acquisition of an investment, it is unclear when exactly control was obtained, and therefore when to start applying the acquisition method in IFRS 3.
        - It is also unclear whether the evidence identified, in particular the fact of having appointed the majority of members of the governing body, results from the investor's power to appoint these directors, or from the other investors' agreement on these appointments. In this respect, the end of Example 8 ('…*regardless of whether the investor has directed the relevant activities because a sufficient number of other shareholders voted in the same way as the investor'.*) leads to the conclusion that the appointment of the majority of the members of the governing body is not sufficient. In this case, assessing whether this appointment is the outcome of the investor's unilateral power is complex.

35. As a final note, ANC draws the IASB's attention to how an investor should consider the case of 'independent directors' when assessing whether it controls an investee. This matter frequently arises in situations in which no investor holds the majority of an investee's voting rights and the investee's governing body includes a number of independent directors. In France, section 8 of the *AFEP-MEDEF corporate governance code* applicable to listed companies defines the role of independent directors in the governing body[6]. ANC seeks clarifications on how the presence of independent directors should be considered when assessing control:
    - should independent directors be considered as a protective 'constraint' on an entity's management fostering good governance practices by acting as a safeguard, and in the interest of, all investors? In this case, such directors may be ignored in the analysis of control.
    - conversely, should independent directors be considered as a 'balancing power' to management and accordingly, be viewed as any other director? When the presence of such directors prevents an investor from having the majority in the governance body, the investor could conclude it has no control on that investee.

[6] Independent directors exist in other jurisdictions (such as in the UK where the *UK Corporate Governance Code* defines the role of such non-executive directors)

36. ANC observes there is diversity in practice in how stakeholders consider independent directors in their analysis of control:
    - some stakeholders consider independent directors as any other director of the board, taking into account their voting rights and thus, their ability to outvote the investor. In other words, those stakeholders make an analysis of different elements to identify whether the main shareholder is able to make decisions on the board independently of the other directors (independent or not). This analysis usually includes:
        i. identifying by whom the independent directors have been proposed and appointed,
        ii. whether there is a nomination committee,
        iii. understanding how the board works,
        iv. identifying by whom the chairman has been proposed and appointed,
        v. whether the chairman has a casting vote,
        vi. understanding how decisions are taken with the different quorums,
        vii. whether there may be deadlock situations and if so, how they are resolved, etc.
    - other stakeholders consider independent directors as a 'management constraint' that acts as a safeguard, and in the interest, of all investors. Independent directors are appointed for their expertise and to give advice based on their competence. Their role is not to contradict decisions made. In the assessment of control, they are considered as having a protective role which, such as protective rights, does not to prevent an investor from having control. Therefore, the majority rules on the board are analysed ignoring the independent directors.
37. ANC thinks that diversity in practice described above should warrant further consideration from the IASB.
38. ANC notes that these considerations also apply to directors representing employees. In some jurisdictions (for example in Germany), the number of employee representatives may represent up to half of the composition of the board of directors.

## Control—The link between power and returns

| **The link between power and returns—Principals and agents** |
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| **Question 3(a)** |
| In your experience:<br>(i) to what extent does applying the factors listed in paragraph B60 of IFRS 10 (and the application guidance in paragraphs B62–B72 of IFRS 10) enable an investor to determine whether a decision maker is a principal or an agent?<br>(ii) are there situations in which it is challenging to identify an agency relationship?<br>If yes, please describe the challenges that arise in these situations.<br>(iii) how frequently do these situations arise? |

39. ANC thinks that situations in which an investor needs to assess whether a decision maker acts as a principal or an agent are common, in particular for financial institutions that are involved in fund management activities and have invested in some of the funds they manage. Similar situations also exist for example in the real estate industry where an entity manages a portfolio of assets, for rental and/or capital appreciation, and third parties invest in that portfolio. In those circumstances, the governance structure is similar to the one of investment funds.

40. ANC thinks that the application guidance in IFRS 10 to assess whether a decision maker acts as an agent or a principal is relevant and works well in practice.

### Application by financial institutions

41. ANC's stakeholders from the banking industry have developed an internal guidance that is consistent with the application guidance in IFRS 10. Given the huge number of funds they manage, they had to develop a systematic approach, mainly based on quantitative thresholds. A qualitative analysis supplements this approach for situations in which the outcome of the quantitative approach is not clearly conclusive.

42. The quantitative criteria used in the analysis are generally:
    - the percentage of investment in the fund, based on the undisclosed thresholds that can be derived from Application Examples 13 and 14 in IFRS 10; and
    - the percentage of the returns obtained by the decision maker through its investment and its compensation as a fund manager.

43. Large financial institutions apply this approach consistently although each entity has defined its own thresholds.

44. Those entities' main concern neither relates to the assessment of control nor to whether they act as an agent or principal—it rather relates to how the conclusion they control an investee affects their financial statements. When financial institutions conclude they control a fund, they recognise the fund's shares on a 100% basis at their fair value. To illustrate this accounting outcome, let's consider the following example: an entity owns a 25%-share in a fund that it manages. The entity's management fees are commensurate with the management services it renders, its business model is to earn revenue from management services and to make a 25% investment in a financial instrument. If the entity concludes it controls the fund, the accounting outcome is (i) a 100% share in the fund, (ii) a liability for 75% of the fund because the fund's shares are puttable, and (iii) no revenue from management services because management services are provided to a group entity. That accounting outcome is maintained in regulatory accounts with an unfavorable impact on those entities' solvency and leverage ratios.

### Application challenges for corporates

45. ANC's stakeholders have identified situations in which the application guidance on agency relationships might be relevant in the assessment of control over a corporate, with nevertheless the use of significant judgement.

46. For example, when an entity's shareholder has significant governance rights ie this shareholder is the managing partner but has a minority shareholding compared to the other shareholders, it is highly judgmental to assess whether this shareholder acts as an agent or a principal. The rationale for its management role is key in the assessment. Generally, it has this management position because it is the only shareholder with the relevant resources in terms of experience and skills relating to the investee's business activity. The application guidance in IFRS 10 and the Application Examples relate to financial institutions. It would be useful if the Standard were to provide some examples relating to other business activities.

47. The analysis of control is also challenging whenever there is a disconnection between power and returns. For example, if a foreign entity wants to invest in the defence sector in the US, it is required to devolve all its governance power to a '*proxy board'* composed of people authorised by the US Ministry of Defence. The objective is the foreign investor being denied access to classified information. In this example, assessing whether the '*proxy board*' is the agent of the foreign investor, or conversely, prevents that investor from controlling the investee, is challenging.

48. The disconnection between power and returns also arises in some legal forms of entities. For example, in France, one or several shareholders of *'Société en Commandite par Actions*' with minority holdings may have, by virtue of the by-laws, a position of managing partner(s). The status of managing partner gives extensive governing rights on behalf of all other shareholders. The assessment of control over corporate foundations, or non-for-profit organizations, also happens to rely on a principal versus agent assessment.

49. Finally, some stakeholders question whether there is a link between the principal versus agent guidance in IFRS 10 and the one in IFRS 15. Those stakeholders acknowledge the differing objectives of such guidance in both IFRS Standards. However, when the assessment is difficult in one Standard, they look at additional guidance in the other Standard to help reach a conclusion. ANC thinks it would be useful to enhance the IFRS 10 application guidance with relevant items from the IFRS 15 one.

| The link between power and returns—Non-contractual agency relationships |
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| **Question 3(b)** |
| In your experience:<br>(i) to what extent does applying paragraphs B73–B75 of IFRS 10 enable an investor to assess whether control exists because another party is acting as a de facto agent (ie in the absence of a contractual arrangement between the parties)?<br>(ii) how frequently does the situation in which an investor needs to make the assessment described in question 3(b)(i) arise?<br>(iii) please describe the situations that give rise to such a need. |

50. ANC notes that situations in which an entity might act as a *de facto agent* of the investor mainly arise within a consolidated group when the investor is an intermediate holding preparing consolidated financial statements.

51. *In its* *Report on the application of IFRS 10, IFRS 11 and IFRS 12* dated 29 March 2021 (paragraphs 87–99 of this Report), ESMA explained that EECS discussed several cases in which the assessment of *a de facto agent* position was key in the control analysis. ESMA has identified two situations worth being illustrated:
    - situation in which the investor and a sister entity have together more than half of the voting rights in the investee (say 39% for the investor and 20% for the sister company): is the sister entity a *de facto agent* of the investor, because the mother entity has the power to make it act on the investor's behalf?
    - situation in which the investor and its mother entity have together more than half of the voting rights in the investee: can the mother entity be a *de facto agent* of the investor?

52. Those examples show that additional application guidance in IFRS 10 would be necessary, in particular to answer the following questions:
    - when two entities that hold together more than half of an investee's voting right, are under common control of an ultimate parent, is one of them necessarily acting as a *de facto agent* on behalf of the other?
    - can a mother entity be a *de facto agent* on behalf of its subsidiary?
    - when returns and power are separated between two entities under common control, is the entity holding power necessarily a *de facto agent* of the entity having the returns?

53. ANC recommends the IASB develop Application Examples dealing with the assessment of control within a group. ANC notes that this matter may have possible interactions with the IASB's project on *Business Combinations Under Common Control*.

## Investment entities

| Investment entities—Criteria for identifying an investment entity |
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| **Question 4(a)** |
| In your experience:<br>(i) to what extent does applying the definition (paragraph 27 of IFRS 10) and the description of the typical characteristics of an investment entity (paragraph 28 of IFRS 10) lead to consistent outcomes? If you have found that inconsistent outcomes arise, please describe these outcomes and explain the situations in which they arise.<br>(ii) to what extent does the definition and the description of typical characteristics result in classification outcomes that, in your view, fail to represent the nature of the entity in a relevant or faithful manner? For example, do the definition and the description of typical characteristics include entities in (or exclude entities from) the category of investment entities that in your view should be excluded (or included)? Please provide the reasons for your answer. |

54. ANC notes that very few issuers in France apply the consolidation exception for investment entities. On the French regulated market, only one issuer falls within the scope of the consolidation exception.

55. So few issuers apply the consolidation exception because it is considered that:
    - all the typical characteristics of an investment entity as described in IFRS 10 shall be met at the same time for an investor to be within the scope of that exception.
    - an exception and the scope of exceptions shall not be extended by analogy or equivalence—so the exception is applied strictly.

56. For example, in its Report on the application of IFRS 10, IFRS 11 and IFRS 12 dated 29 March 2021 (paragraphs 100–127 of this Report), ESMA explains that an enforcer negatively concluded on the qualification of investment entity of an issuer, on the following grounds:
    - disclosure of the fair value of the portfolio is provided to board members only and some investors have no representatives in the board of directors, so that the criterion in paragraph B85.K(a) of IFRS 10 is not met;
    - the primary measurement attribute used by the key management personnel to evaluate the performance of the investments is the investee's operating and financing performance rather than its fair value.

57. On an international basis, there seems to be diversity in the application of the definition, some stakeholders using a less strict application of the criteria. This leaves room for a significant level of judgement and inconsistent outcomes for situations with similar facts and circumstances.

58. Some of ANC's stakeholders think that IFRS 10 lacks clarity with regard to the following matters:
    - documentation of the exit strategies, in particular when investments are made on a long-term basis;
    - definition of *investment related activities*.

59. In addition, ANC thinks the IASB should clarify the differences, if any, between (i) an investment entity as defined in IFRS 10 and (ii) a venture capital organization that might be accounted for at fair value as specified in IAS 28. Because the exception in IFRS 10 and the exemption in IAS 28 seem to pursue the same objective, the IASB could consider aligning the definitions and wording.

| **Investment entities—Subsidiaries that are investment entities** |
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| **Question 4(b)** |
| In your experience:<br>(i) are there situations in which requiring an investment entity to measure at fair value its investment in a subsidiary that is an investment entity itself results in a loss of information? If so, please provide details of the useful information that is missing and explain why you think that information is useful.<br>(ii) are there criteria, other than those in paragraph 32 of IFRS 10, that may be relevant to the scope of application of the consolidation exception for investment entities? |

60. The definition and typical characteristics of an investment entity require management to use fair value as the main metrics to (i) evaluate the performance of the investment and (ii) communicate with its investors. Therefore, information regarding the fair value of the investments is provided to investors, but the required level of aggregation of that information is unclear.

61. Paragraphs 19B and 19C of IFRS 12 require an investment entity to provide information regarding each unconsolidated subsidiary, including those held through a subsidiary that is an investment entity. Nevertheless, those requirements do not include disclosing the fair value of each direct or indirect investment. Therefore, the disclosure of all the investments' fair value is not necessarily included in the financial statements but is part of the figures communicated to the investors, considering the typical characteristics of an investment entity. That information might be provided to investors at the level of the subsidiary that is an investment entity.

62. If the fair value of investments is only disclosed at the level of the subsidiary that is an investment entity, ANC considers that, absent further disaggregation, there is a lack of information regarding the fair value of the sub-investments made indirectly through that subsidiary.

63. Accordingly, in ANC's view, IFRS 12 should require, in addition to the disclosures required in paragraph 19B, the fair value of each individually material reported investment.

64. ANC has not identified any other additional information need and would disagree with requiring the disclosure of summarised financial information of investments that are material to the investment entity. The IASB decided to require a fair value measurement of subsidiaries instead of requiring their consolidation. This should not be compensated by disclosures on amounts that would be in the consolidated financial statements had the consolidation exception not been applied.

**Accounting requirements**

| **Accounting requirements—Change in the relationship between an investor and an investee** |
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| **Question 5(a)** |
| In your experience:<br>(i) how frequently do transactions, events or circumstances arise that:<br>(a) alter the relationship between an investor and an investee (for example, a change from being a parent to being a joint operator); and<br>(b) are not addressed in IFRS Standards?<br>(ii) how do entities account for these transactions, events or circumstances that alter the relationship between an investor and an investee?<br>(iii) in transactions, events or circumstances that result in a loss of control, does remeasuring the retained interest at fair value provide relevant information? If not, please explain why not, and describe the relevant transactions, events or circumstances. |

65. ANC thinks transactions that change the relationship between an investor and an investee are rather common and that requirements in IFRS Standards do not currently provide a sufficient basis to account for those transactions.

**Transactions involving a joint operation**

- **Moving from control to joint control**

66. For example, it is common that an investor contributes a business to a new entity that will be then jointly controlled. If the newly-formed joint arrangement is a joint operation as defined in IFRS 11, there is no requirement in IFRS Standards to account for such a transaction.

67. Accordingly, entities' management have used their judgement in developing and applying an accounting policy to account for those transactions. ANC has identified two types of accounting policies in this respect:
    - some entities apply paragraph B98 of IFRS 10 that requires to (i) derecognise *all* the subsidiary's assets and liabilities and (ii) remeasure any retained interest at fair value, or
    - some entities derecognise only the portion of the assets and liabilities to which the investor has no longer any right (assets) or for which it has no longer any obligation (liability) according to the joint operation contract.

68. Those accounting policies may result in materially different outcomes, notably because of the potential impact of remeasurement. Consequently, ANC recommends the IASB undertake standard-setting in this respect.

- **Moving from control to joint control**

69. *Annual improvements to IFRSs, cycle 2015-2017*, have clarified how an entity accounts for its previously held interest when it obtains control of a business that is a joint operation. In those circumstances, an entity applies the requirements for a business combination achieved in stages in IFRS 3, including remeasuring its previously held interest in the joint operation at fair value.

70. ANC's stakeholders question the relevance of such remeasurement in a situation in which the investor has already direct rights on the assets and obligations for the liabilities of the joint operation.

**Transactions involving a subsidiary that is not a business**

71. ANC has identified diversity in how entities account for the loss of control of a subsidiary that is not a business, when the entity retains significant influence over the investee:
    - some entities account for such transactions applying the requirements in IFRS 10 and remeasure the retained interest at fair value at the date of loss of control.
    - some entities view this transaction as a sale of assets only and accordingly, measure the retained interest on the basis of the carrying amont of the assets of the investee.

72. ANC notes that the IASB issued narrow-scope amendments to IFRS 10 and IAS 28 *Investments in Associates and Joint Ventures* in 2014 (*Sale or Contribution of Assets between an Investor and its Associate or Joint Venture*). Those amendments were initially set to be effective from annual periods commencing on or after 1 January 2016. However, in December 2015, the IASB decided to postpone the effective date of these amendments indefinitely. This matter is still unsolved.

73. The interaction between IFRS 10 and other IFRS Standards when a subsidiary does not contain a business have recently triggered requests to the consideration of the IFRS Interpretations Committee (Committee):
    - the interactions with IFRS 15 *Revenue from Contracts with Customers* when an entity structures its contracts with customers through the sale of the shares of an entity owning the outcome of the performance obligation. The Committee did not finalise the related tentative agenda decision. In June 2020, the IASB decided not to add any project on this matter on its workplan.
    - the interaction with IFRS 16 *Leases* when an entity disposes of a subsidiary that includes a single asset and subsequently leases back that asset. The Committee did not finalise the related tentative agenda decision and refered the matter to the IASB.

74. ANC recommends the IASB to provide guidance on the interactions between IFRS 10 and other IFRS Standards.

**Loss of control by contract alone**

75. Control over an investee might arise from specific rights held by the investor by virtue of a contract (for example a shareholders' agreement that gives the investor power over the voting rights of other shareholders). If the specific rights expire, the investor will lose control over the investee without any sale transaction.

76. ANC's constituents question the relevance of remeasuring the interest held in the investee at fair value when the loss of control occurs without a sale transaction.

| Accounting requirements—Partial acquisition of a subsidiary that does not constitute a business |
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| **Question 5(b)** |
| In your experience:<br>(i) how do entities account for transactions in which an investor acquires control of a subsidiary that does not constitute a business, as defined in IFRS 3? Does the investor recognise a non-controlling interest for equity not attributable to the parent?<br>(ii) how frequently do these transactions occur? |

77. ANC considers that transactions in which an investor acquires control of a subsidiary that does not constitute a business will become more common further to the publication, in 2018, of the amendments to IFRS 3 *Definition of a business* that have in practice extended the scope of entities that do not constitute a business.
78. Such transactions are already widespread in the real estate industry where (i) single asset entities are common and (ii) acquisitions are structured through share deals instead of asset deals.
79. ANC observes that the prevailing accounting policy results in the recognition of non-controlling interests (NCI) when a partial acquisition occurs. The asset is accounted for 100% of its value (or cost grossed-up to 100%) and the corresponding NCI are presented in the investor's equity.
80. ANC nevertheless agrees there is inconsistency between IFRS 10 that requires to recognise NCI relating to the prorata share of the net assets of the subsidiary, irrespective of whether the subsidiary contains a business, and IFRS 3 that does not mention the accounting for non-controlling interests when describing the accounting for an acquisition of an entity that does not constitute a business.
81. ANC is not aware of any accounting policy resulting in recognising only the price paid as the asset's carrying amount without recognising any NCI. ANC would not understand such an accounting policy which has, in its view, the following flaws:
    - the undistributed profit or loss of the subsidiary shall be allocated between the investor and the non-controlling interests, creating an NCI balance that would be linked only to part of the net assets of the subsidiary;
    - recognising only a portion of the value of the asset (and a portion of the related amortization expense) is not consistent with the recognition of 100% of the revenue and expenses of the subsidiary.
82. ANC recommends the IASB provide application guidance to confirm that NCI shall be recognised even if the subsidiary is not a business.

## IFRS 11 *Joint Arrangements*

| **Collaborative arrangements outside the scope of IFRS 11** |
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| **Question 6** |
| In your experience:<br>(a) how widespread are collaborative arrangements that do not meet the IFRS 11 definition of 'joint arrangement' because the parties to the arrangement do not have joint control? Please provide a description of the features of these collaborative arrangements, including whether they are structured through a separate legal vehicle.<br>(b) how do entities that apply IFRS Standards account for such collaborative arrangements? Is the accounting a faithful representation of the arrangement and why? |

84. ANC thinks there are circumstances in which (i) the requirements in IFRS 11 do not apply (because the investors do not have joint control over the investee) and (ii) it is either challenging to determine the applicable requirements in IFRS Standards or the applicable requirements result in information that is not useful.

85. Those circumstances relate to arrangements that (i) are usually structured through a separate vehicle and (ii) have all the features of a joint operation in the light of assessment of the 'other facts and circumstances' as specified in paragraphs B29–B33 of IFRS 11 but (iii) do not give investors the investee's joint control. More precisely, the investee's output is typically dedicated to the investors, according to a take-or-pay contract, so that the investee depends solely on the resources brought by the investors to settle its liabilities. Applying the requirements in IFRS 11, investors would conclude they have rights to the assets of the investee and obligations for its liabilities. Nevertheless:
    - absent joint control, IFRS 11 does not apply;
    - in the light of the investors' holding in the investee and/or the governance rights, the investors conclude they have significant influence over the investee and thus, apply IAS 28 to their investment and account for it according to the equity method.

86. Paragraph 23 of IFRS 11 states that '*a party that participates in a joint operation, but does not have joint control, shall also account for its interest in the arrangement in accordance with paragraphs 20–22 if that party has rights to the assets, and obligations for the liabilities, relating to the joint operation. If a party that participates in, but does not have joint control of, a joint operation does not have rights to the assets, and obligations for the liabilities, relating to that joint operation, it shall account for its interest in the joint operation in accordance with the IFRSs applicable to that interest*'. This paragraph clearly specifies that the accounting by the investor depends upon whether it has rights to the assets and obligations for the liabilities, rather than whether it has joint control.

87. Consequently, applying the requirements in paragraph 23 of IFRS 11, an investor that has rights to the assets and obligations for the liabilities of an investee but does not exert joint control over that investee would (i) account for its interest in the arrangement applying IFRS 11 if the investee is jointly controlled by other investors whereas it would (ii) account for its interest in the arrangement applying IAS 28 if the entity is not jointly controlled by the other investors (assuming the investor has significant influence[7]). ANC questions whether those differing accounting outcomes do result in useful information.

88. ANC also notes that a joint operator that accounts for its investment in a joint operation applying IFRS 11 would have to account for the same investment applying IAS 28 if (i) the other joint investor were to sell a portion of its investment in the joint operation to a new investor and (ii) this sale were to result in joint control between the investors ceasing. In such a situation, neither the investor's governance rights—ie it is part of all decisions, even if they are now made by a majority rule built with the investor and one of the partners or the other, instead of unanimity—nor the investor's rights to the assets and obligations for the liabilities are changed. The sole change is that the investee is no longer a joint control. Here again, ANC holds the view that the resulting accounting outcome is questionable.

[7] The investor would account for its investment in the investee applying IFRS 9 *Financial Instruments* otherwise.

89. Therefore, ANC thinks that IFRS Standards should require an investor to account for its investment in an investee applying paragraphs 20–22 of IFRS 11 whenever it has rights to the assets and obligations for the liabilities of that investee, irrespective of whether the investee is jointly controlled. In other words, IFRS Standards should primarily reflect the investor's rights and obligations.

90. ANC observes that the situations described above are rather common in some industries, and in particular in the extractive industries.

91. Other types of collaborative arrangements are frequent in the automotive industry. For example, two or more car manufacturers—that might be competitors—agree to share their development and production resources to design and produce almost identical vehicles that will be marketed under the participants' brands. Those cooperation agreements might be structured through a separate entity, in which all participants invest, that manufactures the vehicles. Those agreements may also not necessitate the use of a specific entity—in this case, one participant may provide funding to another participant that in charge of the development and the production, etc.

92. Finding the appropriate accounting treatment for those agreements is challenging in practice, considering the breadth of structuration possibilities and the fact that IFRS 11 does not provide a specific framework for those arrangements. Entities generally avoid applying the requirements in IFRS 11 to these arrangements considering (i) the lack of application guidance and (ii) the difficulties reported in our reply to Question 8.

93. ANC also thinks the IASB should clarify the link (if any) between those collaborative arrangements and the 'collaboration arrangements' mentioned in paragraph 6 of IFRS 15. Additional application guidance on those arrangements and the way to account for them would therefore be helpful.

| **Classifying joint arrangements** |
|---|
| **Question 7** |
| In your experience:<br>(a) how frequently does a party to a joint arrangement need to consider other facts and circumstances to determine the classification of the joint arrangement after having considered the legal form and the contractual arrangement?<br>(b) to what extent does applying paragraphs B29–B32 of IFRS 11 enable an investor to determine the classification of a joint arrangement based on "other facts and circumstances"? Are there other factors that may be relevant to the classification that are not included in paragraphs B29–B32 of IFRS 11? |

**ANC's preliminary comments**

94. ANC notes that the IASB, when drafting its Request for Information on IFRS 10, 11 and 12, has not sought stakeholders' feedback on the consequences of applying the equity method to all joint ventures. In other words, the RFI does not surprisingly include any question about the removal of proportionate consolidation from IFRS Standards. This matter was contentious during the development of IFRS 11. Consistent with paragraph 6.51 of the *Due Process Handbook*, ANC would have expected the IASB to consult on this matter. Many considered proportionate consolidation as the benchmark method in IAS 31 *Interests in Joint Ventures*. Most of French issuers used this method to account for jointly controlled entities. Therefore, the replacement of proportionate consolidation by (i) the equity method (in most of the cases) or (ii) the accounting for assets and liabilities in a joint operation (more rarely) was the most important change resulting from the first-time application of IFRS 11.

95. This has created significant changes in how entities report in their consolidated financial statements the performance of their joint ventures. This has notably affected operations in some jurisdictions where it is merely impossible to develop business activities without entering into a joint venture agreement with a local partner. This is particularly true in the automotive industry where all the Chinese business is conducted through joint ventures—this, in turn, leads nowadays to billions of euros of revenue from the sale of vehicles being not portrayed on the revenue line item of the largest car manufacturers in the world. ANC's stakeholders consider that those circumstances provide evidence that the removal of proportional consolidation has resulted in the loss of useful information and thus, has not improved financial reporting.

96. Immediately after the first-time application of IFRS 11, some entities in France developed alternative performance measures based on proportionate consolidation, either in their IFRS 8 *Operating Segments* disclosures or for performance communication outside their financial statements. Most of those entities have now stopped this dual communication having considered (i) the burden of maintaining two accounting principles for joint ventures together with (ii) the enforcement pressure from regulators. However, as an example outside France, DongFeng communicates its performance using the proportionate consolidation method in its management commentary—this information supplements the information in its financial statements in which investments in joint ventures are accounted for applying the equity method.

97. ANC furthermore notes that the European prudential regulation requires banks to account for their investments in jointly controlled financial institutions using the proportionate consolidation method for the purpose of measuring the regulatory ratios. Without discussing whether prudential consolidation better reflects a financial institution's performance and risk exposure than IFRS Standards, ANC notes that discrepancies between the regulatory and accounting frameworks on the consolidation methods create a significant burden for entities.

98. Users who provided feedback to ANC also question whether the removal of proportionate consolidation has improved the usefulness of financial reporting. They observe that when investors have an investment in a joint venture, none of those investors consolidate the assets, liabilities, income and expenses of the joint venture, which, in their view, is not a satisfactory outcome, specifically when the joint venture has a significant amount of financial liabilities with external parties and/or the investors. They also note that the removal of proportionate consolidation has weakened the relevance of the statement of cash flows because cash flows from joint ventures are no longer reported in that statement.

99. For all these reasons, ANC would have expected the IASB to take the opportunity of the PIR of IFRS 11 to reassess the relevance of its decision to remove proportionate consolidation from IFRS Standards. ANC would welcome reading the IASB's rationale for not having sought feedback in this respect.

**ANC's comments on identifying joint operations**

100. Most of the joint operations identified by entities are structured through a separate vehicle. ANC and its constituents have seldom identified a separate vehicle—which has legal existence i.e. that is able to hire people, own assets, incur liabilities, and sign contracts with parties other than the investors—that would meet the characteristics of a joint operation on the sole basis of its legal form.

101. In 2014, when French listed entities first applied IFRS 11, extensive discussions took place regarding the qualification of SCCVs ('Société Civile de Construction Vente'—unlimited liability entities used for the development of real estate programs). It has been concluded, with the help of IASB staff, that these entities were joint ventures and not joint operations, because the legal form does not provide the investors with rights to the assets and obligations for the liabilities of the entity. This led banks, construction companies and pure players of real estate development, to account for their investments in SCCVs using the equity method leading to a significant change in the presentation of their activities in the statement of profit or loss. In France, real estate development programs are often conducted through jointly controlled SCCV due to the requirements of local councils which grant project authorisations.

102. More generally, in the French legal environment, ANC has not identified circumstances in which the contractual terms of an arrangement override the consequences of the the separate vehicle's legal form in a way that could be enforced in a court case.

103. That is why ANC thinks that the identification of a joint operation often relies, if not always, on assessing the other facts and circumstances. In assessing whether the other facts and circumstances give the investor direct rights to the assets of the joint arrangement and direct obligations for its liabilities, ANC observes that the only arrangements that qualify for a joint operation are production entities, the output of which is dedicated to the investors under a take or pay arrangement so that the payments made by the investors to the entity are sufficient for the entity to settle its liabilities. Whenever the entity obtains resources from customers (ie entities partially or fully dedicated to the market), it meets the definition of a joint venture.

104. The Committee confirmed the analysis above in two agenda decisions published in March 2015. Those agenda decisions have restricted the scope of joint operations structured through a separate vehicle to one single fact pattern. ANC and its constituents (i) think this scope is too narrow to fairly portray the way entities develop their activities in some geographical areas and thus (ii) recommend the IASB undertake standard setting to extend the definition joint operations to a broader population of arrangements.

105. Should IASB decide not to undertake any such standard-setting, ANC would welcome IASB's views on variations of the fact pattern described in paragraph 103 the conclusion of which is challenging in practice:
    - the separate vehicle sells its output to the investors with a margin enabling it to accumulate financial resources. When the accumulated margin is sufficient, the vehicle does not depend on the resources provided by the investors to settle its liabilities because it is able to settle them on its own. In this situation, do the investors have obligations for the liabilities of the joint arrangement? ANC thinks that whenever the investors are the only providers of resources for the vehicle, it can be only be a joint operation, irrespective of when those resources are provided. ANC notes that all stakeholders do not necessarily share this view and would therefore welcome clarification from the IASB.
    - the separate vehicle sells its output to the investors under a take-or-pay contract whose term is significantly shorter than the useful life of the production asset. In this situation, investors have rights to the assets only during the supply contract term, so that they have not a right to significantly all the output.

| Accounting requirements for joint operations |
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| **Question 8** |
| In your experience:<br>(a) to what extent does applying the requirements in IFRS 11 enable a joint operator to report its assets, liabilities, revenue and expenses in a relevant and faithful manner?<br>(b) are there situations in which a joint operator cannot so report? If so, please describe these situations and explain why the report fails to constitute a relevant and faithful representation of the joint operator's assets, liabilities, revenue and expenses. |

106. ANC has identified circumstances in which IFRS 11 is unclear on how a joint operator reports its assets, liabilities, revenue and expenses.

**The right to the outputs differs from the interest held in the separate vehicle**

107. When the joint operator holds an interest in the separate vehicle that differs from the percentage of the output it is entitled to (and it is committed to buy), IFRS 11 is unclear on:
    - the basis on which the joint operator accounts for its assets, liabilities, revenue and expenses, and
    - how to account for any difference.

108. ANC thinks that the assets, liabilities, revenue and expenses should be reported on the basis of the percentage of output to which the joint operator is entitled because it is the basis for its rights to the assets and obligations for the liabilities of the joint operation. Having said that, ANC observes that there is diversity in practice and that the accounting for the diffences between the accounting for the assets and liabilities and the percentage of interest remains unclear.

**There is a difference between the right to the output and the actual allocation of the output, or the right to the output changes throughout the joint operation' life**

109. ANC considers that one-off changes in the repartition of output, with cash compensation between the joint operators, is not challenging. The matter that is more challenging is when the compensation will be made through future deliveries.

110. In March 2019, the Committee addressed this issue and its implications on revenue recognition from the sale to external customers. ANC notes that the agenda decision is silent on how to account for the right to obtain additional output in the future (or the obligation to give up future output). ANC also notes that the issue is widespread, in particular in extractive industry, and thus, recommends the IASB to develop application guidance in this respect.

111. The allocation of output between the joint operators might also change over time, either as a result of a change in the joint operation agreement, or according to pre-agreed conditions. In those situations, application guidance would be welcome on:
    - how to account for the consequences of a change in the arrangement, or
    - the basis a joint operator should retain to account for its assets, liabilities, revenue and expenses when the right to the ouput changes according to a pre-agreed pattern.

**The take-or-pay contract has a duration that is less than the useful life of the assets**

112. There are situations in which the operators have agreed on an allocation of the output on the basis of take-or-pay contracts whose duration is significantly less than the useful life of the assets. At the end of the contracts, it is expected to renew them with, eventually, a new allocation basis corresponding to the reassessed needs of each operator.

113. The accounting of such arrangements might be challenging with regard to the following matters:
    - on which basis should a joint operator account for its assets and liabilities if the allocation of output is expected to change at the end of the initial take-or-pay contract?
    - how to account for the change in the allocation of the output, if it leads to an allocation that differs from what has been initially accounted for?
    - how should a joint operator take into account the risk that the take-or-pay contracts will not be renewed? In the identification of a joint operation? Or in the accounting for the assets and liabilities, and the amortization pattern of the assets?

## IFRS 12 *Disclosure of Interests in Other Entities*

| **Question 9** |
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| In your experience:<br>(a) to what extent do the IFRS 12 disclosure requirements assist an entity to meet the objective of IFRS 12, especially the new requirements introduced by IFRS 12 (for example the requirements for summarised information for each material joint venture or associate)?<br>(b) do the IFRS 12 disclosure requirements help an entity determine the level of detail necessary to satisfy the objective of IFRS 12 so that useful information is not obscured by either the inclusion of a large amount of detail or the aggregation of items that have different characteristics?<br>(c) what additional information that is not required by IFRS 12, if any, would be useful to meet the objective of IFRS 12? If there is such information, why and how would it be used? Please provide suggestions on how such information could be disclosed.<br>(d) does IFRS 12 require information to be provided that is not useful to meet the objective of IFRS 12? If yes, please specify the information that you consider unnecessary, why it is unnecessary and what requirements in IFRS 12 give rise to the provision of this information. |

114. In general, ANC believes that IFRS 12 provides useful information.

115. Most of ANC's stakeholders have not identified concerns regarding how entities have implemented the requirements in IFRS 12. They have no concern regarding missing information, or information provided that is not usefull at all.

116. However, ANC has identified two additional disclosures that may be relevant in the notes to the financial statements relating to subsidiaries with significant non-controlling interest:
    - the split on non-controlling interest by operating segment;
    - the amount of cash and cash equivalent held in such subsidiaries: paragraph B13(a) of IFRS 12 requires to disclose the amount of cash and cash equivalent for each joint venture that is significant to the entity, but does not require the same for subsidiaries with significant non-controlling interests. ANC believes that such information would be useful, because if dividend distribution is the normal way to transfer cash from a group entity to the other, any such distribution will be allocated on a prorata basis to non-controlling interests. Therefore, part of the cash on the balance sheet is not really available for the group, and that information should be disclosed.

117. ANC also reminds that the requirements in paragraph 21(b)(ii) of IFRS 12 still create legal difficulties. This paragraph requires a reporting entity to disclose for each material joint venture or associate summarised financial information as specified in paragraphs B12 and B13 of IFRS 12. Such summarised information may relate to listed joint ventures or associates and jurisdictional regulatory requirements may prevent the investor from disclosing such information until the joint ventures or associates have released their own financial statements. In an Agenda Decision published in January 2015, the Committee noted there is no provision in IFRS 12 that permits the non-disclosure of the information required in paragraph 21(b)(ii) of that Standard. ANC thinks that IFRS 12 should specify that an investor shall provide that information unless the disclosure of such information would result in the investor breaching law or regulations (such as a breach of regulation on privileged information).

**Other topics**

| **Question 10** |
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| Are there topics not addressed in this Request for Information, including those arising from the interaction of IFRS 10 and IFRS 11 and other IFRS Standards that you consider to be relevant to this Post-implementation Review? If so, please explain the topic and why you think it should be addressed in the Post-implementation Review. |

**Puts written on non-controlling interests**

118. The interactions between IAS 32 *Financial Instruments: Presentation*, IFRS 10 (and formerly IAS 27) and IFRS 9 *Financial Instruments* (formerly IAS 39) have been a long-standing accounting issue. ANC believes that the PIR of IFRS 10 is an opportunity for the Board to draw the complete picture of the issue and start undertaking a standard-setting project in order to solve the unanswered questions.

119. In that respect, ANC believes that such a project does not necessarily need to be included in the FICE project if this project preserves the fundamentals of IAS 32 and confirms that a commitment to buy non-controlling interests (NCI) shall lead to a classification of those NCI as a financial liability.

120. If the starting point of the classification as a financial liability is clear, ANC has identified several other accounting issues that are not currently addressed by IFRS Standards and would deserve application guidance to reduce the observed diversity in reporting practices.

121. ANC identified the following accounting issues:

    - unsurprisingly, how to account for the remeasurement of the liability when the exercise price of the call is variable, is the essential matter that needs to be addressed, although ANC believes there is no diversity in practice in this respect (the adjustment of group equity is the prevailing accounting practice);
    - the interactions with IFRS 3 *Business Combinations* when the put exists from acquisition date. Is such transaction eligible to partial recognition of goodwill when the exercise of the put will transfer 100% of the equity interests of the subsidiary to the reporting entity?
    - how and where to account for changes in NCI due to the allocation of the total comprehensive income between the group and the NCI, or due to dividend distributions?
    - should an interest expense be recognised if the put option is not exercisable until a future date?

**Interactions between IFRS 10 and other IFRS Standards when the investee does not contain a business**

122. The IFRS Interpretations Committee received several requests on the inconsistency that may exist between IFRS 10 and other IFRS Standards for the accounting of transactions involving the loss of control of a subsidiary that does not contain a business.

123. The questions relate to the IFRS Standard that an entity shall apply to such transactions ie either IFRS 10, or the Standard that would ‘naturally’ be applied to the transaction, should it be structured as an asset deal rather than a share deal:

    - IFRS 15, and whether to recognise revenue when the contract with a customer implies the transfer of the shares of a subsidiary that owns the outcome of the performance obligation;
    - IFRS 16, and whether to apply the requirements for sale and leaseback to a transaction structured through the loss of control of subsidiary holding a specified asset that is subsequently leased to the group.

124. Questions also relate to the accounting for the loss of control of a subsidiary while retaining interest in that subsidiary:
    - does the fact that the reporting entity has retained an interest in the former subsidiary prevents it from applying the requirements in other Standards listed above?
    - and is it relevant to remeasure the retained interests at fair value on the date when control is lost if the former subsidiary does not contain a business?

**Role of independent directors / directors representing employees in the assessment of control**

125. In its answer to Question 2(c), ANC has highlighted the fact that some boards of directors might include a number of independent directors and/or directors representing employees that may prevent the main shareholder, even if it holds the majority of the voting rights in the general assembly, to gather the majority of the votes in the governing body.

126. ANC thinks that such a situation should not, in isolation, prevent the majority / dominant shareholder to conclude it controls the investee. ANC is nevertheless aware of diversity of practices in that respect and recommends the IASB include application guidance on how to consider those directors in the assessment of control.