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International Accounting Standards Board
30 Cannon Street
London EC4M 6XH

By email to: commentletters@iasb.org

Dear Sirs

Exposure Draft ED 9 “Joint Arrangements”

I am writing on behalf of London Investment Banking Association (LIBA) to comment on the IASB's 13 September exposure draft ED 9 *Joint Arrangements* (“the ED”). LIBA is, as you know, the principal UK trade association for investment banks and securities houses; a list of our members is attached.

Overview

While we support the stated objectives of the ED (elimination of the option of proportionate consolidation as part of the Board's strategy of convergence between IFRS and US GAAP, and the move away from focusing on the form of an arrangement as the primary determining factor for the accounting treatment), for the reasons set out below we do not support all of its proposals:

- * The proposed changes appear to introduce new concepts that may have a potentially significant impact on other current IASB work such as the Consolidation, Derecognition and Conceptual Framework projects. For example:
 - the revised definition of joint arrangements and joint assets seems to eliminate the notion of control; and
 - the ED requires the reporting entity to separately recognise contractual rights and obligations of a joint arrangement, with only the remaining assets and obligations being subject to the equity method of accounting.

We find the ED does not adequately discuss all the proposed conceptual changes, and it is therefore not clear why they are considered necessary or why the chosen approach is preferable. Further, it does not address the potentially wider implications of the new concepts and how they might impact areas other than joint ventures; inter alia how they tie in with other current projects (notably Consolidation) and how they relate to other IFRS concepts (for example significant influence).

Instead of the present ED, we suggest the IASB should issue a discussion paper as a basis for a full consultation on these topics (such a paper could perhaps form part of a wider discussion paper on Consolidation or on the Conceptual Framework).

- * We believe the introduction of new concepts means that the ED has not met the stated convergence objective. Because US GAAP does not first require the recognition of contractual rights and obligations with only the residual being subject to the equity method of accounting, it creates new differences between US GAAP and IFRS. Further, proportionate consolidation exists in certain industries in the US (e.g. construction, mining, oil/gas), as does the concept of jointly controlled assets.
- * We are concerned that there would be practical problems in implementing the ED as it stands, in particular the ability of entities to identify and value individual rights and obligations.

For the reasons stated above, we are unable to support the ED in its present form. We would however support a revised approach under which the Board would issue a more limited standard which simply removed the option of proportionate consolidation, and a separate discussion paper which developed the idea of recording specific assets and liabilities.

Responses to Questions in the ED

We now turn to the specific questions set out in the “Invitation to Comment” section of the ED:

Q1: Do you agree with the proposal to change the way joint arrangements are described? If not, why?

We do not fully understand the implications of, and hence find it difficult to agree with, the proposal to change the way joint arrangements are described.

The analogous existing (IAS 31) definitions have not caused practical problems in our industry and we therefore find it unclear why change is considered necessary. We believe the proposed changes also create a number of conceptual issues:

- * The ED introduces the idea of joint arrangements, which it then classifies into three potential types. This definition is therefore key to the proposed approach, but it has fundamentally changed from that used previously: it eliminates the notion of control and introduces shared decision making, with little explanation of what this new concept means and how it should be applied. We find the motivation for this to be unclear. BC17 states that “control does not translate well to an asset” but does not explain further, even though the concept of control is fundamental to the current Conceptual Framework definition of an asset. It also states that control is an appropriate description for “arrangements where there is a separate business or economic activity...” which would appear to capture joint arrangements. We believe this change in concept needs to be subject to more discussion.

- * We also find it unclear how the shared decision making concept relates to other IFRS concepts, such as “significant influence”. The interaction with, and the effect on, other current IASB projects are also unclear. For example, the consolidation paper issued for the Board’s educational session in November 2007 states that in the absence of strategic control, the way to identify assets/obligations controlled is to identify each party's contractual rights and obligations. It also notes that the approach is similar to that proposed in the ED. Although we understand that no decisions were taken in this session, we are concerned that retaining the concept in the ED could cause problems at a later stage of the consolidation project, as it could leave no choice but to apply the same approach. Here again we believe the ED might have wider implications than its stated objectives and that it should therefore be discussed in more detail.
- * The elimination of control and the introduction of shared decision-making in joint arrangements places more importance on the definition of the various types of arrangements (i.e. joint asset, joint operation, joint venture). While IAS 31 requires joint control of an asset in order to meet the definition of jointly controlled assets, in the ED only joint ventures are subject to joint control. The Basis of Conclusions explains that control is only defined in IAS 27 and that its definition does not translate well to joint assets or joint operations. Given that the current framework refers to control as a key characteristic of an asset, we believe the Basis of Conclusions does not sufficiently discuss/analyse this matter in order to rule out jointly controlled assets. In fact, we question if there should be a distinction between the fundamental concept of control in relation to entities and assets.
- * It is not clear if the elimination of the control notion in the revised definition of joint assets represents the intention to modify the definition of an asset more widely. This would have considerable impact and would result in the recognition of assets that are not controlled by the entity. If the IASB intends to change the definition of an asset, it is important to clarify this intention and to explain why the proposed changes are necessary. Equally we believe the IASB should discuss the potential different approaches in detail and explain why the chosen approach is preferable.

Aside from these conceptual issues, we are concerned that the main body of the text does not provide sufficient detail on the key characteristic of joint arrangements. It does not sufficiently state the type of shared decisions that would constitute a joint arrangement and if/how these decisions differ from decisions which constitute (joint) control. As the notion of shared decision making is fundamental to the definition of a joint arrangement, it is important to discuss the type and characteristics of such decision making in the main body of the standard, thereby also clarifying whether shared decision making requires the party to obtain a benefit. The lack of clarity on this point is a particular concern for our industry, where it is very common for different parties to have an involvement in the same financial asset: charges, mortgages, interest-only strips, derivatives etc. We therefore find it essential to have clarity regarding what differentiates a joint asset from involvement by multiple parties in a single asset. It would also be helpful if the Board were to provide an additional Illustrative Example where the underlying asset is a financial instrument.

We are also concerned that the revised definition of shared decision-making appears somewhat circular. Appendix A defines a joint arrangement as “a contractual arrangement whereby two or more parties undertake an economic activity together and share decision-making relating to that activity”. It then describes shared decisions as “decisions that require the consent of all the parties to a joint arrangement”.

In addition, we find Appendix B and the Illustrative Examples to be potentially confusing when compared to the draft standard, which does not clearly state that parties may have interests in the different types of joint arrangements at the same time. It can only be seen from this Appendix and the Illustrative Examples together that each party first recognises its contractual rights and obligations of a joint asset or joint operation, and then the residual assets and liabilities of the joint arrangement are considered to see if they are part of a joint venture of these parties. We believe the wording in paragraph 4 of the proposed standard should be amended to state this more clearly.

For all these reasons we do not agree with the proposed definitions of joint arrangements and their various forms. To provide a sound basis for these definitions, we believe a preliminary views document is necessary which discusses the conceptual details mentioned above. We therefore request the Board to issue a separate discussion paper including a comprehensive analysis about the recognition concept of assets/liabilities and the interaction with the control notion. The existing ED could however be taken forward to a cut-down final standard which simply removes the option of proportionate consolidation.

Q 2 Do you agree that a party to a joint arrangement should recognise its contractual rights and obligations relating to the arrangement? If so, do you think that the proposals in the exposure draft are consistent with and meet this objective? If not, why? What would be more appropriate?

The core principle requires the party to a joint arrangement to recognise its contractual rights and obligations arising from the arrangement. It appears to be included in order to address the Board’s concern that treating the form rather than the substance of the arrangement is currently the most significant factor in determining the accounting. However, it is unclear to us why the proposed change is necessary to ensure focusing on the substance of the arrangement. We have not observed significant practice of entities focusing on the form of arrangements rather than their substance under IAS 31 and we believe that this issue is dealt with in existing IFRS, following the guidance in paragraph 35 of the Framework and in paragraph 32 of IAS 31. Unfortunately, the Board’s clarification of the problem in BC 6 is not helpful because it does not explain how the example would be assessed in accordance with IAS 31 and how it should be assessed now.

Further, we do not believe that the proposed change (i.e. accounting for the contractual rights and obligations of an arrangement) achieves the objective of focusing on the substance of an arrangement as the primary determining factor for the accounting treatment, because it places more weight on the classification as a specific type of joint arrangement based on its contractual terms rather than its substance.

We are also unclear why the IASB uses the wording “contractual rights and obligations” rather than assets and liabilities. This change in terminology raises a number of questions which require clarification:

- * Does the use of these words imply a change in asset and liability definition? Again, it raises the question of whether the IASB intended to exclude the control notion of the asset definition. Or alternatively, does it imply that a contractual right automatically results in the capacity to control the benefits of the asset?
- * Does the wording “contractual rights and obligations” include legal and constructive rights or does it limit the recognition to rights and obligations that are contractually enforceable? If the latter were the case the principle seems to imply that intangible rights, which do not necessarily need to be legally enforceable in order to meet the current definition of an asset, and constructive obligations should not be recognised if part of a joint arrangement.

Finally, we are unclear why the ED needs to require the recognition of contractual rights and obligations relating to the arrangement, surely this is already required by the applicable IFRS (e.g. IAS 39, IAS 17).

Q 3 Do you agree that proportionate consolidation should be eliminated, bearing in mind that a party would recognise assets, liabilities, income and expenses if it has contractual rights and obligations relating to individual assets and liabilities of a joint arrangement? If not, why?

The Joint Ventures project was added to the agenda as a short term convergence project and by prohibiting the proportionate consolidation, in principle the IASB would achieve convergence with US GAAP. We agree with the elimination of proportionate consolidation, which is consistent with the convergence objective. However, the requirement in the ED to recognise specific assets and liabilities separately, with the residual accounted for under the equity method, creates new differences between IFRS and US GAAP which we feel have been insufficiently explained for us to support at this stage.

Q 4 Do you agree with the disclosures proposed for this draft IFRS? If not, why? Are there any additional disclosures relating to joint arrangements that would be useful for users of financial statements?

Subject to the comments above, we agree with the proposed disclosures.

Q 5 Do you agree with the proposal to restore to IAS 27 and IAS 28 the requirements to disclose a list of description of significant subsidiaries and associates? If not, why?

We agree that this information is useful. However Paragraph 41, as currently drafted, is a recognition rather than disclosure principle which we suggest should be moved to Paragraphs 23-27. The wording of Paragraph 41 could then be changed to reflect the disclosure required in respect to the share of changes recognised in other comprehensive income.

Q 6 *Do you agree that it is more useful to users if an entity discloses current and non-current assets and liabilities of associates than it is if the entity discloses total assets and liabilities? If not, why not?*

We agree that it is useful information to provide disclosures about current and non-current assets and liabilities rather than only total assets/liabilities. Disclosing current and non-current assets/liabilities provides useful details in respect to the leverage of an entity and its upside potential.

Other comments

We have two additional comments on the ED:

SIC-13 – Non-Monetary Contributions by Venturers (ED Paragraph 27)

- * In accordance with the Board’s policy of incorporating into an IFRS the consensus of any interpretation that is capable of incorporation within a single standard, BC 20-21 states that the ED incorporates the consensus of SIC-13 *Jointly Controlled Entities - Non-Monetary Contributions by Venturers*. It further notes that the consensus of SIC-13 regarding non-monetary contributions made by a venturer to a joint venture is consistent with upstream and downstream transactions with associates and therefore, the ED refers only to Paragraph 22 of IAS 28 *Investments in Associates*. While we agree that this reference to IAS 28 incorporates the part of SIC 13 which refers to a venturer recognising the portion of a gain or loss which is attributable only to the interest of the other ventures (i.e. consistent with the accounting for upstream and downstream transactions), we believe the following guidance is missing:
 - a) when a portion of gain or loss is considered unrealised and therefore should not be recognised;
 - b) how additional consideration should be accounted for by the venturer; and
 - c) how any unrealised gain or loss should be presented in the financial statements of the venturer.

Consequently, we do not believe the reference to IAS 28 is sufficient and we suggest the wording of Paragraphs 5(a)-(c), 6 and 7 of SIC-13 should be incorporated into the ED.

Accounting for joint assets (ED Paragraph 22)

- * We see potential confusion in relation to the proposed accounting for joint assets. Paragraph 22 of the ED requires a party to recognise “its share of the joint asset, classified according to the nature of the asset”. This wording is identical to IAS 31 and at first sight appears to imply that the party should account for its interest in accordance with the IFRS applicable to the nature of the underlying (proportionate/joint) asset and liabilities. However, this does not seem to result from the flowchart in Appendix B and the Illustrative Examples (e.g. Examples 2 and 5), which seem to imply that the party should account for its contractual right (e.g. right of use). We therefore believe it would

be helpful for the Board to clarify its intention on how to classify interests in joint assets in accordance with the ED.

I hope Board will find the above comments to be helpful; please let us know if there are aspects which are unclear or where you would like us to expand our remarks.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Ian Harrison', with a long, sweeping flourish extending to the right.

Ian Harrison
Director

LONDON INVESTMENT BANKING ASSOCIATION

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Arden Partners plc	J.P. Morgan Securities Ltd
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