

STAFF PAPER

March 2019

IFRS[®] Interpretations Committee meeting

Project	Customer's right to access the supplier's software hosted on the cloud (IAS 38)		
Paper topic	Agenda decision to finalise		
CONTACT(S)	Satenik Vanyan Joan Brown	svanyan@ifrs.org jbrown@ifrs.org	+44 (0) 20 7246 6918 +44 (0) 20 7246 6916

This paper has been prepared for discussion at a public meeting of the IFRS Interpretations Committee (Committee) and does not represent the views of the International Accounting Standards Board (Board), the Committee or any individual member of the Board or the Committee. Comments on the application of IFRS Standards do not purport to set out acceptable or unacceptable application of IFRS Standards. Decisions by the Board are made in public and reported in IASB[®] *Update*. Decisions by the Committee are made in public and reported in IFRIC[®] *Update*.

Introduction

1. At its September and November 2018 meetings, the IFRS Interpretations Committee (Committee) discussed a submission about how a customer accounts for Software as a Service (SaaS) cloud computing arrangements. Specifically, the submitter asked about the accounting for fees paid or payable to access the supplier's application software running on the supplier's cloud infrastructure.
2. The Committee concluded that the requirements in IFRS Standards provide an adequate basis for an entity to account for fees paid or payable to access the supplier's application software in SaaS arrangements. Consequently, the Committee tentatively decided not to add this matter to its standard-setting agenda.
3. The purpose of this paper is to:
 - (a) analyse the comments on the tentative agenda decision; and
 - (b) ask the Committee whether it agrees with our recommendation to finalise the agenda decision.
4. There are two appendices to this paper:
 - (a) Appendix A—proposed wording of the agenda decision; and

- (b) Appendix B—comment letters.

Comment letter summary

5. We received 13 comment letters on the tentative agenda decision, reproduced in Appendix B to this paper.
6. Ten respondents agree with the Committee’s tentative decision not to add the matter to its standard-setting agenda for the reasons outlined in the tentative agenda decision. Almost all respondents either explicitly agree, or did not disagree, with the Committee’s conclusion that a contract that conveys to the customer only the right to receive access to the supplier’s application software in the future is a service contract.
7. One respondent (Deloitte) disagrees with the Committee’s decision not to add this matter to its standard-setting agenda for the reasons discussed below. ACTEO suggests that the Committee refrain from publishing an extensive agenda decision to deal with a limited problem, the resolution of which risks unintended consequences. The Accounting Standards Board of Japan (ASBJ) suggests that the Committee reassess whether it is appropriate to publish the agenda decision as proposed, or instead might be preferable to address the matter by amending IFRS Standards.
8. Several respondents highlight the need for improving IAS 38 *Intangible Assets*.
9. Respondents’ comments, and our analysis of those comments, are set out below.

Staff analysis

10. The Committee developed the tentative agenda decision in response to three questions raised in the submission:
 - (a) In a contract for access to the supplier’s application software running on the supplier’s cloud infrastructure, does the customer receive a software asset at the contract commencement date or a service over the contract term? (Question 1)

- (b) If the contract contains a software lease, does the customer apply the requirements in IFRS 16 *Leases* or those in IAS 38? (Question 2)
 - (c) How does a customer measure an intangible asset recognised applying IAS 38? (Question 3)
11. We have grouped respondents' main comments, and our analysis, to mirror that structure.

Question 1—software asset or service

12. In response to Question 1, the Committee concluded that in the fact pattern described in the submission, the customer receives a service over the contract term—the customer does not receive a software lease or a software intangible asset at the contract commencement date.

Respondents' comments

13. Almost all respondents either explicitly agree, or do not disagree, with the Committee's conclusion and explanation on Question 1 in the tentative agenda decision.
14. One respondent, the ASBJ, says there could be unintended consequences from the Committee's conclusion on Question 1. It says a right of access does not necessarily prevent the customer from having decision-making rights about how and for what purpose the software is used because that right would depend on the terms and conditions of the contract.

Staff analysis

15. We agree that the assessment of whether a customer receives a software asset at the contract commencement date or a service over the contract term depends on the terms and conditions of the particular contract. However, in the fact pattern described in the submission (and in the tentative agenda decision), the customer has *only* the right to receive access to the supplier's software over the contract term. If the customer were to have decision-making rights to change how and for what purpose the software is used, then we think those rights go beyond a right to receive access to the software over the contract term. The tentative agenda

decision explains that the supplier has those ‘how and for what purpose’ decision-making rights in the fact pattern described in the submission.

16. Consequently, we recommend no significant changes to the section of the agenda decision dealing with Question 1—nonetheless, we suggest that the Committee make some editorial changes to improve the clarity. Appendix A to this paper outlines our suggested changes.

Question 2—IAS 38 or IFRS 16

17. In response to Question 2, the Committee concluded that a software lease is a licensing agreement within the scope of IAS 38, and not of IFRS 16. In reaching its conclusion, the Committee read the words ‘..such as..’ in paragraph 6 of IAS 38 to mean ‘for example’.

Respondents’ comments

18. ACTEO and the Autorité des Normes Comptables (ANC) explicitly agree with the Committee’s conclusion on Question 2.
19. However, Deloitte, the Global Financial Reporting Collective (GFRC), KPMG and the ASBJ disagree. Some say the words ‘..such as..’ in paragraph 6 of IAS 38 could be read in more than one way. For example, Deloitte says those words could be read to say IAS 38 applies to licencing agreements for items *similar to* motion picture films, etc., which would not necessarily include software leases. KPMG, the ASBJ and the GFRC are also of the view that the scope of IAS 38 is narrower than implied by the tentative agenda decision. Deloitte and KPMG think paragraph 4 of IFRS 16 could apply to software leases, which would mean that a customer applies either IAS 38 or IFRS 16 to software leases.

Staff analysis

20. The Committee’s conclusion on Question 1 (ie that the contract is a service contract) means that Questions 2 and 3 do not arise in the fact pattern described in the submission. Nonetheless, to be helpful the Committee included explanatory material in the agenda decision on those questions—the objective of doing so was

to provide a framework within which an entity might assess whether and when it recognises an asset in cloud computing arrangements.

21. Respondents' comments indicate that including a response to Question 2 has raised more questions than answers. For this reason, we recommend deleting this section of the tentative agenda decision. We think the Committee is able to respond to the submission without answering Question 2—as noted above, Question 2 does not arise in the fact pattern described in the submission.

Question 3—Recognition and measurement in IAS 38

22. In response to Question 3, the Committee concluded that if a customer receives a software lease, applying IAS 38 it (a) recognises the right-of-use as an intangible asset at the contract commencement date, and (b) measures the right-of-use initially at cost. That section of the tentative agenda decision noted that the application guidance in paragraphs B58-B62 of IFRS 15 *Revenue from Contracts with Customers* on licences might be helpful in assessing whether a customer's rights are sufficient to give it a right to use software.

Respondents' comments

23. ACTEO, the ASBJ, KPMG, the ASCG and the GFRC disagree with including the reference to IFRS 15, saying:
- (a) it may imply that the counterparties to a licensing agreement must apply symmetrical accounting.
 - (b) the requirements in paragraphs B58-B62 of IFRS 15 were not developed for the purpose of identifying when a customer obtains an asset, and are inadequate for that purpose.
 - (c) a software licence is generally a 'right of use' licence applying IFRS 15. Suppliers often recognise revenue from cloud arrangements over time not because the software licence is a 'right of access' licence, but because it is not distinct from the hosting service. Applying the application guidance on licences in IFRS 15 might inappropriately result in a customer

concluding that it has a right to use software, rather than a right to access software.

24. The Organismo Italiano di Contabilità (OIC) and the Canadian Accounting Standards Board (AcSB) suggest that the Committee clarify whether, applying paragraphs 10-12 of IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors*, a customer could apply the measurement requirements in IFRS 16 to intangible assets and any related liability, in the absence of specific measurement requirements in IAS 38.

Staff analysis

25. As noted above, the Committee’s conclusion on Question 1 (ie that the contract is a service contract) means that Questions 2 and 3 do not arise in the fact pattern described in the submission.
26. Respondents’ comments indicate that responding to Question 3 has raised a number of questions. In addition, we note that, other than the reference to IFRS 15, the response to Question 3 in the tentative agenda decision provides little in addition to that included in response to Question 1.
27. For these reasons, we recommend deleting the section of the tentative agenda decision addressing Question 3. As noted above, we think the Committee is able to respond to the submission without answering Question 3.

Improvements to IAS 38

Respondents’ comments

28. ACTEO, the ASBJ, KPMG, Deloitte, the ANC and the Accounting Standards Committee of Germany (ASCG) identify a need to improve IAS 38. KPMG says the tentative agenda decision concludes that IAS 38 is the relevant Standard, however the analysis relies mainly on concepts in IFRS 16 and IFRS 15 to apply IAS 38. In its view, this highlights that IAS 38 is no longer fit for purpose in dealing with the increasing number of complex intangible asset arrangements linked to digitalisation. ACTEO expresses similar views, noting that ‘given the evolution of business models and the emergence of new asset categories, it is

obvious now that [IAS 38] needs to be revisited to incorporate these new assets and circumstances’. The ASCG highlights (a) the broad variety of arrangements linked to digitalisation in addition to SaaS arrangements, such as ‘infrastructure as a service’ and ‘platform as a service’ arrangements, and (b) that these arrangements can be structured in very different ways.

Staff analysis

- 29. We agree with respondents that this submission has highlighted shortcomings in the IAS 38 requirements that apply the definition of an asset and, in particular, those relating to control. We think it might be possible to make targeted improvements to this aspect of the Standard by, for example, incorporating into IAS 38 some of the concepts and requirements already in IFRS 16 and the *Conceptual Framework for Financial Reporting*.
- 30. To develop proposals for any such changes to IAS 38, the Board would need to add a project to its standard-setting agenda. Accordingly, we recommend reporting respondents’ feedback on IAS 38 to the Board for consideration in developing its next Agenda Consultation.

Other comments

- 31. Some respondents suggest further clarifications to the tentative agenda decision. The following table summarises these comments, along with our analysis and recommendations:

Respondent comments	Staff analysis
It is unclear whether the phrases ‘a customer’s right to use’ and ‘a customer’s right to access’ in the tentative agenda decision are used with the same intention as in IFRS 15. If the intention is different, some respondents	We think the phrases ‘right to access’ and ‘right to use’ in the tentative agenda decision are used in a similar way to how they are used in IFRS 15 regarding licences. We also think those phrases describe well the different rights that might arise for a customer from cloud computing arrangements.

<p>suggest using different words. (KPMG, ASBJ)</p>	<p>We recommend no change to the agenda decision in this respect.</p>
<p>ACTEO expressed concerns about (a) the use of similar, but different, notions to assess the existence of an asset (software lease vs software intangible asset); and (b) not explaining clearly the difference between control over a right-of-use and control over an underlying asset.</p>	<p>Depending on the particular terms and conditions of a contract, a customer could receive either:</p> <ul style="list-style-type: none"> a) a software lease, ie the right to use software for a period of time; b) a software intangible asset, eg rights to the actual software (master code); or c) a service contract. <p>In discussing the assessment of which of these the customer receives, the agenda decision refers to the applicable requirements in the Standards (ie those in IFRS 16 for a lease and those in IAS 38 for an intangible asset).</p> <p>We recommend no change to the agenda decision in this respect.</p>
<p>KPMG suggests that the agenda decision state explicitly that it does not address whether the contract contains a lease of tangible assets.</p>	<p>We agree that, depending on the particular terms and conditions of a contract, a cloud computing arrangement could contain a lease of hardware/infrastructure. Agenda decisions do not typically list the various things that they do not consider. However, in this instance we think it is helpful to add to the fact pattern that the contract does not contain a lease of tangible assets—the addition of that fact may help to avoid the implication that a cloud computing arrangement would never contain such a lease.</p> <p>We recommend changing the description of the fact pattern in this respect.</p>

<p>KPMG suggests identifying the underlying asset in the analysis, and explaining that there are a number of different reasons why the contract may not contain a lease.</p>	<p>We understand that, in some contracts, the supplier owns the underlying software and, in others, the supplier might own licences to software. Consequently, in assessing whether a contract contains a lease, the underlying asset might be different in different contracts.</p> <p>We think it would complicate the agenda decision to discuss possibly different underlying assets. The fact pattern described in the submission is a service contract and, thus, any additional detail in this respect would not be relevant in assessing the fact pattern submitted.</p> <p>We recommend no change to the agenda decision in this respect.</p>
<p>Deloitte suggests that the Board or Committee undertake a project on a related matter that it says causes significant difficulties and divergence in practice; that related matter is the accounting for the cost of implementing a cloud computing arrangement that is a service.</p>	<p>The cost of implementing a cloud computing arrangement is different from the cost of accessing the supplier’s software in such an arrangement. The US Financial Accounting Standards Board issued requirements on this topic in 2018. However, this topic is different from the question submitted and beyond the scope of this agenda decision.</p>
<p>The AcSB suggests including a visual illustration of the steps an entity considers in accounting for cloud computing arrangements.</p>	<p>If all of the explanatory material included in the tentative agenda decision were retained in the final agenda decision, then we think we should consider this suggestion. However, if the Committee agrees with our recommended deletions, we think such a visual illustration is not needed.</p>

Staff recommendation

32. We recommend that:
- (a) the agenda decision is finalised as published in IFRIC[®] Update in [November 2018](#), subject to (i) the changes recommended in paragraphs 21 and 27 of this paper, and (ii) a number of editorial suggestions as a result of the recommended changes. Appendix A to this paper sets out the proposed wording of the final agenda decision.
 - (b) feedback from respondents regarding the need for improvements to IAS 38 (specifically in relation to intangible asset arrangements linked to digitalisation) be reported to the Board. We recommend including this in a separate paragraph in IFRIC Update—that paragraph would supplement, but not form part of, the agenda decision.

Question for the Committee
<p>Does the Committee agree with our recommendation to:</p> <ul style="list-style-type: none"> (a) finalise the agenda decision set out in Appendix A to this paper? (b) report to the Board feedback from respondents on the need for improvements to IAS 38?

Appendix A—Proposed wording of the agenda decision

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

Customer's right to access the supplier's software hosted on the cloud (IAS 38 *Intangible Assets*)

The Committee received a request about how a customer accounts for a 'Software as a Service' cloud computing arrangements. ~~In these arrangements,~~ in which the customer contracts to pay a fee in exchange for a right to access the supplier's application software for a specified term. The supplier's software runs on cloud infrastructure managed and controlled by the supplier. The customer accesses the software on an as-needed basis over the internet or via a dedicated line. The contract does not convey to the customer the right to use any tangible asset.

Does the customer receive a software asset at the contract commencement date or a service over the contract term?

~~The first step is to decide whether the customer receives a software asset at the contract commencement date or a service over the contract term.~~

The Committee noted that a customer receives a software asset at the contract commencement date if either (a) the contract contains a software lease, or (b) the customer otherwise obtains control of software at the contract commencement date.

In the contract described in the request, if the customer does not receive a software asset at the contract commencement date, then the contract is a service contract—ie the customer receives a service over the contract term.

A software lease

IFRS 16 *Leases* defines a lease as 'a contract, or part of a contract, that conveys the right to use an asset (the underlying asset) for a period of time in exchange for consideration'. Paragraphs 9 and B9 of IFRS 16 explain that a contract conveys the right to use an asset if, throughout the period of use, the customer has both:

- a. the right to obtain substantially all the economic benefits from use of the asset (an identified asset); and

- b. the right to direct the use of that asset.

Paragraphs B9–B31 of IFRS 16 provide application guidance on the definition of a lease. Among other requirements, that application guidance specifies that a customer generally has the right to direct the use of an asset by having decision-making rights to change how and for what purpose the asset is used throughout the period of use.

Accordingly, in a contract that contains a lease the supplier has given up those decision-making rights and transferred them to the customer at the lease commencement date.

The Committee observed that, ~~if a contract conveys to the customer only the right to receive access to the supplier's application software over the contract term, the contract does not contain a lease.~~ a right to receive future access to the supplier's software running on the supplier's cloud infrastructure does not in itself give the customer any decision-making rights about how and for what purpose the software is used—the supplier would have those rights by, for example, deciding how and when to update or reconfigure the software, or deciding on which hardware (or infrastructure) the software will run. Accordingly, if a contract conveys to the customer only the right to receive access to the supplier's application software over the contract term, the contract does not contain a lease.

A software intangible asset

IAS 38 defines an intangible asset as 'an identifiable non-monetary asset without physical substance'. It notes that an asset is a resource controlled by the entity and paragraph 13 specifies that an entity controls an intangible asset if it has the power to obtain the future economic benefits flowing from the underlying resource and to restrict the access of others to those benefits.

The Committee observed that, if a contract conveys to the customer only the right to receive access to the supplier's application software over the contract term, the customer does not receive a software intangible asset at the contract commencement date. A right to receive future access to the supplier's software does not, at the contract commencement date, give the customer the power to obtain the future economic benefits flowing from the software itself and to restrict others' access to those benefits.

Consequently, the Committee concluded that a contract that conveys to the customer only the right to receive access to the supplier's application software in the future is a service contract. The customer receives the service—the access to the software—over the contract term. If the customer pays the supplier before it receives the service, that prepayment gives the customer a right to future service and is an asset for the customer.

~~If the contract contains a software lease, does the customer apply the requirements in IFRS 16 or those in IAS 38?~~

~~If the contract contains a software lease, the next step would be to consider whether the customer applies IFRS 16 or IAS 38 to account for the lease.~~

~~Paragraph 6 of IAS 38 states that 'rights held by a lessee under licensing agreements for items such as motion picture films, video recordings, plays, manuscripts, patents and copyrights are within the scope of this Standard and are excluded from the scope of IFRS 16'. Paragraph 3(e) of IFRS 16 similarly excludes such rights from its scope.~~

~~IAS 38 does not define a licensing agreement. However, IFRS 15 Revenue from Contracts with Customers specifies that a licence (including a licence of software) establishes a customer's rights to the intellectual property of a supplier. IFRS 15 also identifies that a licence can provide the customer with a right to use the supplier's intellectual property.~~

~~Consequently, the Committee concluded that a software lease is a licensing agreement within the scope of IAS 38, and not of IFRS 16.~~

~~Is a right to use software recognised as an intangible asset at the contract commencement date?~~

~~A right to use software is an identifiable non-monetary item without physical substance. A customer controls that right-of-use if it has the power to obtain the future economic benefits flowing from the right-of-use and to restrict others' access to those benefits (paragraph 13 of IAS 38).~~

~~To have the right to use software, the customer must have both (a) the right to obtain substantially all the economic benefits from use of the software, and (b) the right to direct the use of that software throughout the contract term. Having those rights would~~

~~mean that the entity also controls the right to use the software applying the criteria for control in IAS 38.~~

~~Consequently, the Committee concluded that, if the customer has the right to use software, it recognises that right of use as an intangible asset at the contract commencement date (subject to the recognition criteria in paragraph 21 of IAS 38).~~

~~Assessing whether a customer's rights are sufficient to give it the right to use software requires judgement considering the terms and conditions of the contract. Paragraphs B58–B62 of IFRS 15 include application guidance that might be helpful in making this assessment.~~

~~***How does a customer measure an intangible asset recognised applying IAS 38?***~~

~~If the customer recognises an intangible asset applying IAS 38, the next step would be to measure the asset.~~

~~Paragraph 24 of IAS 38 requires intangible assets to be measured initially at cost.~~

~~The Committee concluded that the requirements in existing IFRS Standards provide an adequate basis for an entity to account for fees paid or payable to access the supplier's application software in Software as a Service arrangements. Consequently, the Committee {decided} not to add this matter to its standard-setting agenda.~~

Appendix B—Comment letters

6 February 2019

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

Dear Ms Lloyd

Tentative agenda decision – IAS 38 *Intangible Assets*: Customer’s right to access the supplier’s software hosted on the cloud

Deloitte Touche Tohmatsu Limited is pleased to respond to the IFRS Interpretations Committee’s publication in the November IFRIC Update of the tentative decision not to take onto the Committee’s agenda the request for clarification on how a customer in a ‘Software as a Service’ cloud computing arrangement.

We disagree with the IFRS Interpretations Committee’s decision not to add this item onto its agenda. We note that the agenda decision suggests that all licencing agreements are out of the scope of IFRS 16. We believe that this conclusion is an interpretation of the requirements of IFRS 16.3(e) and of IAS 38.6. A reasonable acceptable alternative interpretation of those paragraphs is that the reference to “rights held by a lessee under licensing agreements for such items as motion picture films, video recordings, plays, manuscripts, patents and copyrights” is that only leases of licensing agreements for items *similar* to motion pictures films, video recordings, plays, manuscripts, patents and copyrights are necessarily within the scope of IAS 38. Under this alternative interpretation, leases of licensing agreements for other items (in particular, software) may be accounted for either under IFRS 16 or IAS 38 as permitted by IFRS 16.4. We believe that this alternative interpretation is commonly applied in practice. If the scope of contracts excluded from IFRS 16 by paragraph 3(e) is to be interpreted more broadly, this would need to be confirmed by an IFRIC Interpretation.

The use of the words “right to access” as part of the discussion on whether a ‘Software as a Service’ arrangement meets the definition of an intangible asset (in the section “A software intangible asset” of the TAD) may cause confusion because it may be read to imply a symmetry in the analysis of whether a licence represents an intangible asset in IAS 38 and the analysis required in IFRS 15 to determine the timing of recognition of revenue under IFRS 15. We suggest that that the Committee may use different words.

Additionally software as a Service arrangement is an example, but not the only type of arrangements, for which the assessment of whether a contract is to be accounted for as an executory contract or as an intangible asset is difficult. We suggest that the Board may consider whether to add this topic to its agenda.

We also note that a key related issue that causes significant difficulties and divergence in practice is the accounting for the cost of implementing a cloud computing arrangement that is a service. In light of the FASB Emerging Issues Task Force pronouncement ASU 2018-15 Customer’s Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract, we encourage IFRS IC (or the IASB Board) to add this issue to their agenda.

If you have any questions concerning our comments, please contact Veronica Poole in London at +44 (0) 20 7007 0884.

Yours sincerely

A handwritten signature in grey ink, appearing to read 'V. Poole', with a stylized flourish at the end.

Veronica Poole
Global IFRS Leader

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

La Défense, February 6, 2019

Tentative Agenda Decisions – IFRIC Update November 2018

Dear Sue,

MAZARS is pleased to comment on the various IFRS Interpretations Committee tentative agenda decisions published in the November 2018 IFRIC Update.

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

We would like to draw your attention to two issues that are worth considering:

- The tentative decision on physical settlement of contracts to buy or sell a non-financial item (see Appendix 2 to this letter) is contrary to the practice applied by large companies in the energy sector, and we think it necessary to undertake a comprehensive analysis of the issue and the rationale for their current practice before finalizing any decision;
- The issue of the accounting for the curing of a credit-impaired financial asset is not an easy one, and when diving into examples, it appears that there exist within IFRS 9 some unclear requirements or even inconsistencies between the definitions involved. We have tried to develop examples evidencing those difficulties, and we stand ready to present them and our concerns in a dedicated meeting with IFRS IC Staff / members.

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

Yours faithfully

Handwritten signature of Michel Barbet-Massin.Handwritten signature of Edouard Fossat.

Michel Barbet-Massin
Financial Reporting Advisory

Edouard Fossat

61 RUE HENRI REGNAULT - 92075 PARIS LA DÉFENSE CEDEX
TÉL : +33 (0)1 49 97 60 00 - FAX : +33 (0)1 49 97 60 01 - www.mazars.fr

MAZARS SAS
SOCIÉTÉ PAR ACTIONS SIMPLIFIÉE
CAPITAL DE 37 000 EUROS - RCS NANTERRE B377 505 565 - SIRET 377 505 565 00087 - APE 7022Z
SIÈGE SOCIAL : 61, RUE HENRI RÉGNAULT - 92400 COURBEVOIE - TVA INTRACOMMUNAUTAIRE : FR 94 377 505 565

Appendix 4

Customer's right to access the supplier's software hosted on the cloud (IAS 38 Intangible Assets)—Agenda Paper 5

We agree on the technical conclusion reached by the Interpretations Committee, that in the fact pattern described in the Agenda Decision the customer obtains only the right to receive access to the supplier's application software in the future, and that it is a service contract.

Having said that, we question the relevance of all the developments added in the Agenda Decision regarding the distinction between a software intangible asset and a software lease, and the applicable standards depending on the situation. While not disagreeing with those, we find it surprising:

- To analyse the distinction between a software lease and a software intangible asset, although it has been previously concluded that the contract described in the fact pattern corresponds to neither categories;
- To provide guidance at the end of the Agenda Decision on how to assess whether customer's rights are sufficient to give it the right to use a software, without using that guidance to support the initial conclusion that in the described situation the customer does not have the right to use the software.

In addition, we note that IAS 38 is an old standard, that was developed far before the changes in the business model of the software industry. We believe that this standard has not been designed to deal with the new Software as a Service type contracts, and that it probably needs to be updated to properly address the accounting for such contracts.

We therefore recommend to the Interpretations Committee not to issue an Agenda Decision that goes beyond the simple answer to the submission.



KPMG IFRG Limited
15 Canada Square
London E14 5GL
United Kingdom

Tel +44 (0) 20 7694 8871
brian.odonovan@kpmgifrg.com

Ms Sue Lloyd
International Accounting Standards Board
Columbus Building
7 Westferry Circus
London
E14 4HD

Our ref BOD/288

6 February 2019

Dear Ms Lloyd

Tentative agenda decision: Customer's right to access the supplier's software hosted on the cloud (IAS 38 Intangible assets)

We appreciate the opportunity to comment on the IFRS Interpretations Committee's (the Committee) tentative agenda decision *Customer's right to access the supplier's software hosted on the cloud (IAS 38 Intangible assets)* (IFRIC Update November 2018). We have consulted with, and this letter represents the views of, the KPMG network.

Overall we agree with the Committee's tentative decision not to add this issue to its standard-setting agenda. However, we disagree that the customer should refer to the guidance in IFRS 15 *Revenue from contracts with customers* as recommended in the tentative agenda decision. We explain our concerns, and include other detailed comments, in the appendix to this letter.

We hope you find this letter helpful. Please contact Brian O'Donovan at +44 (0) 20 7694 8871 if you wish to discuss any of the issues raised.

Yours sincerely

KPMG IFRG Limited

KPMG IFRG Limited

Appendix

Relevance of IFRS 15 to accounting by the customer

The tentative agenda decision indicates that the guidance in paragraphs B58-B62 of IFRS 15 may be helpful in assessing whether the customer's rights are sufficient to give it the 'right to use' the supplier's software. This is the guidance that the supplier will use to assess whether its promise in granting a distinct licence is a promise to provide a 'right to access' or a 'right to use' its intellectual property.

We do not believe that the customer should generally apply this guidance, for the following reasons.

Firstly, under IFRS 15.B59A, software is an example of intellectual property that often has significant stand-alone functionality – i.e. a software licence is generally a 'right to use' licence under IFRS 15. Only in limited scenarios are the future updates so critical to the functionality of the software that a software licence is 'right to access' under IFRS 15 – e.g. anti-virus software. Therefore, if the customer applies the IFRS 15 licensing guidance, this will generally lead to the conclusion that it has a 'right to use' the supplier's software. This outcome is inconsistent with the direction of the tentative agenda decision that cloud arrangements often provide a right to receive access to the supplier's application software in the future.

Secondly, suppliers often recognise revenue from cloud arrangements over time because the software licence is not distinct from the hosting service under Step 2 of the IFRS 15 model – not because the nature of the supplier's promise is to provide a 'right to access' its intellectual property under paragraphs B58-B62 of IFRS 15. The tentative agenda decision does not discuss whether the software licence is distinct from the hosting service from the perspective of the supplier, or how the customer would assess whether the arrangement contains separate lease and non-lease components – e.g. by applying the guidance in IFRS 16.B32-33.

For these reasons, we recommend that the Committee reconsider the references in the tentative agenda decision to IFRS 15. In addition, we recommend that the tentative agenda decision avoid the terms 'right to access' and 'right to use', except when they are being used in their IFRS 15 sense (or IFRS 16 in the case of 'right to use').

Other comments on the tentative agenda decision

We have the following additional comments on the wording of the tentative agenda decision related to the discussion of IFRS 16 *Leases*.

- The tentative agenda decision states that the contract involves the use of 'cloud infrastructure' (which the agenda paper notes includes hardware) and may involve the use of 'a dedicated line'. The tentative agenda decision does not address whether the contract includes a lease of tangible assets, presumably because this was not the focus of the submission. We recommend that the tentative agenda decision state explicitly that it does not address whether the contract contains a lease of tangible assets.
- The tentative agenda decision discusses whether the contract contains a lease but does not identify what is the underlying asset in this analysis. Depending on the nature of the underlying asset, it may be clear there is no lease without having to consider which party takes the 'how and for what purpose decisions' – e.g. because there is no identified asset, or the customer does not obtain substantially all of the benefits. We recommend that the tentative agenda decision identify the underlying asset in the analysis and explain that there are a variety of reasons why the contract may not contain a lease.
- The tentative agenda decision states that 'a software lease is a licensing agreement within the scope of IAS 38'. The preceding text appears to equate the term 'licence' in IFRS 15 with the term 'licensing agreement' in IFRS 16.3(e) and IAS 38. We note that the standards were developed independently at different times, and use different terms; we are sceptical that the terms were intended to be equivalent. It is unclear whether the Committee's conclusion relates to the fact pattern under discussion, or is intended to apply more generally. We recommend that this is clarified.
- The tentative agenda decision does not refer to IFRS 16.4, under which the customer could elect not to apply IFRS 16 to a component of the contract that is found to contain a lease of an intangible asset. This election could simplify the customer's analysis and avoid the issue discussed above. We recommend it is added to the tentative agenda decision.

The tentative agenda decision concludes that IAS 38 is the relevant standard, however the analysis primarily relies on concepts in IFRS 16 and IFRS 15 to apply IAS 38. This highlights a broader issue with IAS 38 no longer being fit for purpose to address the increasing number of complex intangible asset arrangements due to digitalisation. We believe that the Board should consider a project on IAS 38.

February 6, 2019

Submitted electronically via ifric@ifrs.org

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

Dear Sirs:

Re: Tentative agenda decision on IAS 38 *Intangible Assets* – Customer’s right to access the supplier’s software hosted on the cloud

The [Canadian Accounting Standards Board](http://www.frascanada.ca) (AcSB) appreciates the IFRS Interpretations Committee’s efforts and its process to consider the issue we submitted on customer’s accounting in cloud computing arrangements. We observe that cloud computing arrangements, in which a customer pays fees to a supplier to access a supplier’s application software, are becoming more prevalent among private sector entities in Canada. Therefore, it is important to clarify how IFRS Standards should be applied to account for these types of cloud computing arrangements.

We followed the Committee’s deliberations and discussed the tentative agenda decision with members of our [IFRS® Discussion Group](#). We agree with the Committee’s decision not to add this item to its agenda based on the explanation provided. However, we have comments relating to the Committee’s conclusions in the scope and measurement sections of the tentative agenda decision.

Scope. The Committee concluded that a software lease is a licensing agreement within the scope of IAS 38 and not of IFRS 16 *Leases*. During the Committee’s deliberations, it indicated that paragraph 3(e) of IFRS 16 captures all rights held by a lessee under licensing agreements and not just the examples specified. To further clarify the tentative agenda decision, we recommend that the Committee be more explicit as to what is excluded from the scope of IFRS 16. Therefore, we recommend the following clarification to the tentative agenda decision:

“Consequently, the Committee concluded that because a software lease is a licensing agreement and paragraph 3(e) of IFRS 16 excludes from the scope of IFRS 16 all rights to intangible assets held by lessees under licensing agreements, ~~a~~the software lease is a licensing agreement within the scope of IAS 38, and not of IFRS 16.”

Measurement. The tentative agenda decision does not address how to measure the related liability when a customer recognizes the software, or the right to use software, as an intangible asset under IAS 38. Members of our IFRS Discussion Group shared some of the challenges in measuring the related liability, including determining what term should be used and which payments to include. We suggest that the tentative agenda decision also address this question, potentially by directing stakeholders to guidance in IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors* in the absence of specific requirements in IAS 38. We think that providing this clarification will highlight the need for stakeholders to develop an accounting policy and consider other IFRS Standards that deal with similar and related issues, such as IFRS 16, to determine the measurement of the related liability. We observe that similar guidance was included in earlier drafts of the tentative agenda decision contained in staff agenda papers.¹ However, we note that this guidance was focused on measuring the asset side of the transaction.

Overall, we think that the tentative agenda decision provides helpful guidance to account for an arrangement in which fees are paid or payable to access the supplier's application software by a customer. Furthermore, while flowcharts are not typically used in agenda decisions, we think a visual illustration will be more effective in explaining the steps a stakeholder needs to consider to account for such an arrangement.

We would be pleased to elaborate on our comments in more detail if you require. If so, please contact me or, alternatively, Lester Cheng, Director, Accounting Standards (+1 416 204-3476 or email lcheng@acsbcanada.ca) or Davina Tam, Principal, Accounting Standards (+1 416 204-3514 or email dtam@acsbcanada.ca).

Yours truly,



Linda F. Mezon, FCPA, FCA
CPA (MI), CGMA
Chair, Canadian Accounting Standards Board
lmezon@acsbcanada.ca
+1 416 204-3490

¹ Refer to [Staff Agenda Paper 5A](#) in September 2018 and [Staff Agenda Paper 5A](#) in November 2018.

About the Canadian Accounting Standards Board

We are an independent body with the legal authority to establish accounting standards for use by all Canadian publicly accountable enterprises, private enterprises, not-for-profit organizations and pension plans in the private sector. We are comprised of a full-time Chair and volunteer members from a variety of backgrounds, including financial statement users, preparers, auditors and academics; a full-time staff complement supports our work.

Our standards

We have adopted IFRS[®] Standards as issued by the IASB for publicly accountable enterprises. Canadian securities legislation permits the use of U.S. GAAP in place of IFRS Standards in certain circumstances. We support a shared goal among global standard setters of high-quality accounting standards that result in comparable financial reporting outcomes regardless of the GAAP framework applied.

We developed separate sets of accounting standards for private enterprises, not-for-profit organizations and pension plans. Pension plans are required to use the applicable set of standards. Private enterprises and not-for-profit organizations can elect to apply either the set of standards developed for them, or IFRS Standards as applied by publicly accountable enterprises.

Our role vis-à-vis IFRS Standards

Our responsibility to establish Canadian GAAP necessitates an endorsement process for IFRS Standards. We evaluate and rely on the integrity of the IASB's due process as a whole, and monitor its application in practice. In addition, we perform our own due process activities for each new or amended IFRS Standard to ensure that the standard is appropriate for application in Canada. We reach out to Canadians on the IASB's proposals to understand and consider their views before deciding whether to endorse a final IFRS Standard. A final standard is available for use in Canada only after we have endorsed it as Canadian GAAP.

About the IFRS[®] Discussion Group

The IFRS Discussion Group (the Group) is an advisory committee of the Canadian Accounting Standards Board (AcSB) that provides a regular public forum to discuss issues arising in Canada from the application of IFRS Standards. The Group is made aware of such issues through its members, who have an in-depth knowledge of IFRS Standards, and our stakeholders, who can submit issues for consideration by the Group. Potential agenda items are assessed against a set of criteria including whether the issue is widespread (either within an industry or across various industries) in Canada, and whether there is divergent practice or the potential for divergent practice. The Group's discussion generally acts to raise awareness in order to help stakeholders understand the principles and requirements in IFRS Standards. However, at times, the Group may make a recommendation to the AcSB to refer a particular issue to the IASB or IFRS Interpretations Committee. The AcSB discusses the recommendation and decides on next steps.



Liberté • Égalité • Fraternité

RÉPUBLIQUE FRANÇAISE



AUTORITÉ DES NORMES COMPTABLES

5, PLACE DES VINS DE FRANCE

75573 PARIS CÉDEX 12

Phone (+ 33 1) 53.44.28 53

Internet <http://www.anc.gouv.fr/>

Mel patrick.de-cambourg@anc.gouv.fr

Chairman

Paris, 6 February 2019

Mrs Lloyd

IFRS Interpretations Committee Chair

7 Westferry Circus, Canary Wharf

London, UK, E14 4HD

November 2018 - IFRS-IC tentative agenda decisions

Dear Mrs Lloyd,

Dear Sue,

I am writing on behalf of the Autorité des Normes Comptables (ANC) to express our views on the IFRS-IC tentative decisions published in November 2018 IFRIC Update regarding IFRS 9 – *Physical settlement of contracts to buy or sell a non-financial item*, IAS 38 – *Customer's right to access the supplier's software hosted on the cloud* as well as IFRS 9 – *Curing of a credit-impaired financial asset*. This letter sets out some of the most critical comments raised by interested stakeholders involved in ANC's due process.

[...]

Customer's right to access the supplier's software hosted on the cloud (IAS 38)

ANC concurs with the conclusion of the Committee that IFRS 16 does not apply to the customer's right to access the supplier's software hosted on the cloud since such contract does not convey a right to control the use of the underlying asset but only a right to receive access.

As implicitly suggested by the tentative decision, we support applying either of both solutions (service or asset) depending on facts and circumstances.

We are concerned that an agenda decision beyond the sole conclusion on the scope exemption of IFRS 16 may have unintended consequences and therefore suggest limiting the decision to that statement.

Furthermore, we note that IAS 38 has been issued to deal with intangible assets such as development costs, brands and licenses but may not properly apply to emerging transactions in a digital economy including but not limited to SAAS, crypto-assets and blockchain... Thus, we are of the view that it would be worth considering updating IAS 38 as part of a specific standard-setting project.

[...]

Please do not hesitate to contact us should you want to discuss any aspect of our letter.

Yours sincerely,
Patrick de Cambourg
Patrick de Cambourg
Kind regards.

1 February 2019

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

Dear Ms. Lloyd

IFRS Interpretations Committee Tentative Agenda Decisions

The Malaysian Accounting Standards Board (MASB) welcomes the opportunity to provide comments on the following Tentative Agenda Decisions published in IFRIC Update December 2018:

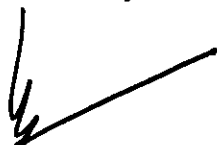
- (1) Credit enhancement in the measurement of expected credit losses (IFRS 9 *Financial Instruments*).
- (2) Curing of a credit-impaired financial asset (IFRS 9 *Financial Instruments*).
- (3) Physical settlement of contracts to buy or sell a non-financial item (IFRS 9 *Financial Instruments*).
- (4) Sale of output by a joint operator (IFRS 11 *Joint Arrangements*).
- (5) Customer's right to access the supplier's software hosted on the cloud (IAS 38 *Intangible Assets*).

We agree with the Committee's decision not to take these issues onto its agenda and we agree with the Tentative Agenda Decisions.

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

Thank you.

Yours sincerely,



TAN BEE LENG
Executive Director



ASCG • Zimmerstr. 30 • 10969 Berlin

Sue Lloyd
Chair of the IFRS Interpretations Committee
7 Westferry Circus, Canary Wharf
London E14 4HD

United Kingdom

IFRS Technical Committee

Phone: +49 (0)30 206412-12

E-Mail: info@drsc.de

Berlin, 06 February 2019

Dear Sue,

RE: The IFRS IC's tentative agenda decisions in its November 2018 meeting

On behalf of the Accounting Standards Committee of Germany (ASCG), I am writing to comment on the tentative agenda decisions taken by the IFRS Interpretations Committee (IFRS IC) and published in the November 2018 IFRIC Update.

We agree with four of the tentative agenda decisions. However, in respect of two tentative agenda decisions we have concerns with the decision and the reasons cited, namely the tentative decisions on physical settlement of contracts (IFRS 9) and cloud computing (IAS 38).

Please find our detailed comments in the appendix to this letter. If you would like to discuss our views further, please do not hesitate to contact Jan-Velten Große (groesse@drsc.de) or me.

Yours sincerely,

Andreas Barckow

President

Contact:

Zimmerstr. 30 D-10969 Berlin
(via Markgrafenstr.19a)
Phone: +49 (0)30 206412-0
Fax: +49 (0)30 206412-15
E-Mail: info@drsc.de

Bank Details:

Deutsche Bank Berlin
IBAN-Nr.
DE26 1007 0000 0070 0781 00
BIC (Swift-Code)
DEUTDE33XXX

Register of Associations:

District Court Berlin-Charlottenburg, VR 18526 Nz
President:
Prof. Dr. Andreas Barckow
Executive Director:
Prof. Dr. Sven Morich

Appendix – Detailed Comments

[...]

IFRS 16 / IAS 38 – Rights to access the supplier's software hosted on the cloud

We deem the tentative agenda decision not adding sufficient clarity to this complex issue. In particular, we do not agree with the finding that “the requirements in existing IFRSs provide an adequate basis”. This is because the decision refers to software as a service (SaaS), as the agenda paper acknowledges. However, there is a broad variety of agreements on SaaS, as well as infrastructure as a service (IaaS) or platform as a service (PaaS). Even more prevalent are agreements that comprise multiple services/elements, and to make the picture complete, there are agreements under which the individual elements software and infrastructure are not managed and provided by the very same counterparty. With that in mind, the decision and its rationale do not seem to provide sufficient clarity for judging the many other fact patterns, even if they are close to the fact pattern in the submission.

Further, we are not convinced by the line of argument, which suggests a sequence as to how one should apply existing requirements in assessing whether or not there is an asset to be recognised (and if so, what kind of asset). In particular, we do not find the initial step of assessing the applicability of IFRS 16 intuitive, i.e. assessing the nature of the agreement (is it a lease or not). To us, it appears equally or even more appropriate if the first step were to assess the applicability of IAS 38. Further, we deem the reference to IFRS 15.B58 et seqq. to be inadequate. Our view is that these requirements had been drafted to help assessing whether the nature of the promise is a performance obligation being satisfied over time or at a point in time, while the focal point here is whether the asset, if any, is a right to access or a right to use (for which, at best, IFRS 15.B56 is relevant). The Committee's usage of a *right to access* corresponding with no asset recognition and *right to use* corresponding with asset recognition (a lease) therefore does not seem to have the right anchor.

In light of this, we would appreciate if the IFRS IC consider changes in the wording of its final decision aiming at more clearly addressing the variety of (other) fact patterns and aiming at better structuring the questions to be asked (i.e. asset or not, nature of the asset, nature of the agreement etc.) as well as the respective IFRS requirements to be assessed.

1 February 2019

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

Comments on the Tentative Agenda Decision Relating to IAS 38 *Intangible Assets*
— Customers Right to Access Suppliers Application Software

1. The Accounting Standards Board of Japan (the “ASBJ” or “we”) welcome the opportunity to comment on the IFRS Interpretation Committee (the “Committee”)’s tentative agenda decision relating to IAS 38 *Intangible Assets* — Customers right to access suppliers application software, proposed in the November 2018 IFRIC Update.
2. We agree that the accounting for ‘Software as a Service’ (SaaS) contracts should be addressed considering that they are becoming widespread. We understand that the interpretation provided in the tentative agenda decision is one possible way of accounting for SaaS contracts.
3. However, we are concerned that the following descriptions in the tentative agenda decision may cause unintended consequences:
 - a. All contracts that convey to the customer only the right to receive access to an asset over the contract term would be recognised as service contracts.

We are of the view that whether a right to access gives rise to an asset should be determined based on the terms and conditions of the contract. The tentative agenda decision states that a right to access does not give the customer any decision-making rights about how and for what purpose the software is used, and

that the supplier would have such rights or the rights of deciding how and when to update or reconfigure the software. However, we think a right to access does not necessarily prevent the customer from having decision-making rights because that right would depend on the terms and conditions of the contract.

- b. As a consequence of discussing the issue in relation to IFRS 15 *Revenue from Contracts with Customers*, the requirements relating to licenses in IFRS 15 are clarified.

Paragraph B52 of IFRS 15 describes the items that may be included in the scope of licences, but it does not specify that a customer's right to a software would always qualify as a licence. In addition, paragraphs B58-B62 of IFRS 15 describe the requirements to determine whether the nature of the entity's promise in granting the licence to a customer is a right to access the entity's intellectual property as it exists throughout the licence period, or a right to use the entity's intellectual property as it exists at the point in time at which the licence is granted. The tentative agenda decision refers to the descriptions as helpful guidance when assessing whether the customer's rights are sufficient to give the customer the right to use the software. However, we do not think it is clear whether the phrases "a customer's right to use" and "a customer's right to access" in the tentative agenda decision are used with exactly the same intention in IFRS 15, which is used in the context of assessing the nature of the entity's promise.

- c. All contracts related to leases of software (including contracts that are not SaaS contracts) would be viewed as licensing agreements within the scope of IAS 38 and thus are excluded from IFRS 16.

In the absence of a clear definition of licenses in IFRS Standards and considering that there may be various forms of contracts related to software in the future, it is not necessarily appropriate to conclude that all contracts related to leases of software would be viewed as licensing agreements.

- d. All types of licensing agreements, including those that involve software, may be included in the scope of paragraph 6 of IAS 38.

Similar to c. above, in the absence of a clear definition of licenses in IFRS Standards and considering that there may be various forms of contracts related to software in the future, it is not necessarily appropriate to conclude that all licencing agreements would be included in the scope of paragraph 6 of IAS 38.

4. We believe that the Committee should consider these issues above, and reassess whether it is truly appropriate to publish the tentative agenda decision as proposed. Depending on the outcome of the considerations, in some cases, we believe that it may be preferable to address the issues by amending IFRS Standards.
5. We hope our comments are helpful for the Committee's and the IASB's consideration in the future. If you have any questions, please feel free to contact us.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Yukio Ono', with a stylized flourish at the end.

Yukio Ono
Chairman
Accounting Standards Board of Japan

**Organismo Italiano di Contabilità – OIC
(The Italian Standard Setter)**

Italy, 00187 Roma, Via Poli 29
Tel. +39 06 6976681 fax +39 06 69766830
E-mail: presidenza@fondazioneoic.it

IFRS Interpretations Committee
Columbus Building
7 Westferry Circus
Canary Wharf
London E14 4HD
United Kingdom
ifric@ifrs.org

5 February 2019

Re: IFRS Interpretations Committee tentative agenda decisions published in the November 2018 IFRIC Update

Dear Ms Lloyd,

We are pleased to have the opportunity to provide our comments on the IFRS Interpretations Committee (“the Committee”) tentative agenda decisions included in the September 2018 IFRIC Update.

Our comments refer to the following issues:

- a. *Physical settlement of contracts to buy or sell a non-financial item (IFRS 9 Financial Instruments);*
- b. *Customer’s right to access the supplier’s software hosted on the cloud (IAS 38 Intangible Assets);*
- c. *Curing of a credit-impaired financial asset (IFRS 9 Financial Instruments).*

[...]

Customer's right to access the supplier's software hosted on the cloud (IAS 38)

We agree with the Committee's conclusions on this issue.

The tentative agenda decision states that if the customer recognises an intangible asset, that asset shall be measured at cost.

We note that:

- IAS 38 does not specify whether the cost of an intangible asset includes some of the payments that may be required in the arrangements described in the fact pattern, such as variable payments or payments payable during optional periods;
- IFRS 16 includes measurement guidance that deal with variable payments and optional periods

We think that the Committee should clarify in its final decision whether, applying the hierarchy in paragraphs 10-12 of IAS 8, a customer may apply the measurement guidance in IFRS 16 by analogy to measure these intangible assets.

[...]

Should you need any further information, please do not hesitate to contact us.

Yours sincerely,

Angelo Casò
(Chairman)



Association pour la participation des
entreprises françaises à l'harmonisation
comptable internationale

The Chairman of the IFRS IC

Columbus Building, 7
Westferry Circus

Canary Wharf

London E14 4HD.

18 January 2019

Dear Ms Lloyd,

Re : Tentative agenda decision **“Customers right to access suppliers application software”**

Draft comment letter – Customer’s right to access supplier’s application software

We welcome the opportunity to comment on the above tentative agenda decision published in November 2018.

Our concern is not so much the conclusion that the Committee seems to reach to (i.e. the qualification of the arrangement as a service over the contract term in most cases) but rather the content of the agenda decision and the rationale that is developed there.

Indeed, we note that the Committee relies on complex and often roundabout reasoning, which refers to several standards (IAS 38, IFRS 16 and IFRS 15) and several different notions, to deal with a subject that the Committee concludes is adequately dealt with in existing standards and therefore does not require standard-setting activity. We believe that such a way forward is risky since it may make accounting for licence arrangements and other new “rights to access” even more confusing and complex.

IAS 38 is an old standard developed at a time when intangible assets were mainly limited to goodwill, development costs, brands, patents and customer portfolios. Given the evolution of

business models and the emergence of new asset categories, it is obvious now that this standard needs to be revisited to incorporate these new assets and circumstances. Software as a Service (SAAS) arrangements are just one example of the emerging business model and it would seem imprudent to deal with them in isolation without worrying about the consequences this may have on other types of arrangements;

Furthermore, we also have concerns with the following elements of the tentative agenda decision:

- Use of a circular approach difficult to understand: the analysis begins by referring to IFRS 16 to define a software lease which is then scope out from this standard
- Reference to IFRS 15 which may imply that a systematic symmetry must be respected between "seller" and "buyer" standards [concerning the method of recognition of income versus the method of recognition of the expenditure], whereas the subject has never been discussed by the IASB and could convey to unintended change in current accounting practices.
- Use of similar but different notions to assess the existence of an asset (software lease vs software intangible asset).
- Accentuation of the confusion by not explaining clearly the difference between control over a right of use and control over an underlying asset.

In conclusion, we believe that the Committee should refrain from publishing an extensive agenda decision to deal with a limited problem for which there is certainly a risk of continuing divergence of practices but whose resolution could create many other collateral damages. The only obvious conclusion that could be published without risk of unintended consequences is the one concerning the scope exemption of IFRS 16. At the same time, we encourage the IASB to consider the need for a thorough review of IAS 38.

If you require any clarification or information, please do not hesitate to contact us.

Yours sincerely,

Patrice MARTEAU
Chairman

A handwritten signature in black ink, appearing to read 'Patrice Marteau', written in a cursive style.

POSITION PAPER



IASB Tentative Agenda Decision — Customers' right to access suppliers application software

WSBI (World Savings and Retail Banking Group)
ESBG (European Savings and Retail Banking Group)
Rue Marie-Thérèse, 11 - B-1000 Brussels

ESBG Transparency Register ID 8765978796-80

28.01.2019



WSBI



ESBG



WSBI-ESBG welcomes the opportunity to comment on the IFRS Interpretations Committee's tentative decision on customers' right to access suppliers application software hosted on the cloud.

We would like to highlight that we share the Committee's view that the requirements in existing IFRS Standards provide an adequate basis for a company to account for its rights to access a supplier's application software in SaaS arrangements. More specifically, we welcome the clarification if a contract conveys to the customer only the right to receive access to the supplier's application software over the contract term, the contract does not contain a lease and consequently is a service contract.

For a contract that contains a software lease (because the customer has both (1) the right to obtain substantially all the economic benefits from the use of the identified asset and (2) the right to direct the use of that asset), the Committee concluded that a software lease is a licensing agreement within the scope of IAS 38, and not IFRS 16.

We acknowledge the crucial changes in the internal and external environment of banking institutions and how the use of digital technologies are transforming and impacting their business models (i.e. new generation of bank customers and new client expectations, the digitalisation of the economy and society, competition from the FinTech sector, etc.).

Banks are subject to extensive and comprehensive regulations that establish capital definitions and minimal capital requirements and, accordingly, we appreciate the work the Committee has carried out to address the challenges that may arise in identifying if those arrangements are within the scope of IFRS 16 or IAS 38 and their subsequent measurement.

Nevertheless, as a more general comment that might be considered by the IASB in the future, we would like to point out to the difficulty in practice to distinguish application software and system software. Depending on where companies draw the line that distinguishes between them both will determine the amounts being mainly presented as intangible and tangible assets in the balance sheet of financial institutions. In addition, we share most of the concerns depicted in the supporting papers of the Committee's discussion regarding the difficulties to estimate the cost of an intangible asset, and any related liability, evaluated from license fees when there is uncertainty about the extent of future payments (contract extension options) or when there are variable and/or contingent payments to be made.



About WSBI (World Savings and Retail Banking Institute) (Boiler plate)



World Savings and Retail Banking Institute - aisbl
Rue Marie-Thérèse, 11 ■ B-1000 Brussels ■ Tel: +32 2 211 11 11 ■ Fax : +32 2 211 11 99
Info@wsbi-esbg.org ■ www.wsbi-esbg.org

About ESBG (European Savings and Retail Banking Group) (Boiler plate)



European Savings and Retail Banking Group – aisbl
Rue Marie-Thérèse, 11 ■ B-1000 Brussels ■ Tel: +32 2 211 11 11 ■ Fax : +32 2 211 11 99
Info@wsbi-esbg.org ■ www.wsbi-esbg.org

Published by WSBI-ESBG. [Date]

4 February 2019

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

The Global Financial Reporting Collective is pleased to offer its comments on the Tentative Agenda Decision—Customers right to access supplier’s application software.

We are sorry, but we do not support the tentative agenda decision.

Scope

The tentative Agenda Decision states:

Paragraph 6 of IAS 38 states that ‘rights held by a lessee under licensing agreements **for items such as** motion picture films, video recordings, plays, manuscripts, patents and copyrights are within the scope of this Standard and are excluded from the scope of IFRS 16’. Paragraph 3(e) of IFRS 16 similarly excludes such rights from its scope. (emphasis added)

The decision ignores the words “for items such as” and instead jumps to IFRS 15 to decide what is a licence. This troubles us. Fundamentally, when there is a specific scope exclusion we think you should read the words in that exclusion and not look to another Standard for ways to read them. If the IASB had meant IAS 38 to exclude all licensing agreements it would, presumably, have stated just that. The fact that the exclusion is qualified (limited) by adding the words “for items such as motion picture films, video recordings, plays, manuscripts, patents and copyrights” suggests that the IASB did not intend to exclude all licences of intellectual property.

The scope exclusion for lessors (IFRS 16.3 (d)) is clearly intended to be wider than the scope exclusion for lessees (IFRS 16.3 (e)). The Agenda Decision refers to intellectual property more generally. Does this mean that the committee thinks that licences for any intellectual property are excluded from IFRS 16? If this is your conclusion, we don’t understand why IFRS 16.3 (d) and IFRS 16.3 (e) use different words.

The illustrative examples that accompany IFRS 3 provide examples of intangible assets. Motion picture films, video recordings, plays, manuscripts and copyrights are all described as “artistic-related intangible assets”. Patented technology is included under the heading of technology-based intangible assets, and computer software is also listed as a technology-based intangible asset. We do not know if the Committee has concluded that the other technology-based assets listed in IFRS 3 IE39, such as databases, are also caught by this scope exclusion. The IFRS 3 illustrative examples also list several other categories of intangible assets. We know that the tentative Agenda Decision does not refer to the IFRS 3 illustrative examples, but we think this is

a valid reference. The tentative Agenda Decision gives us no basis for assessing the extent of the assets covered by IFRS 16.3 (e).

Assets versus services

One of our members set as an exercise for their class the task of analysing this tentative Agenda Decision, including writing their version of it. We thought we would share one of the responses.

Agenda Decision - Customers right to access supplier's application software

The Committee received a request about how a customer accounts for 'Software as a Service' cloud computing arrangements. In these arrangements, the customer contracts to pay a fee in exchange for a right to access or use the supplier's application software for a specified term. The supplier's software runs on cloud infrastructure managed and controlled by the supplier. The customer accesses the software on an as-needed basis over the internet or via a dedicated line.

Software is an intangible asset. The first step is to decide whether the arrangement gives the customer control of the software, or a copy of it, or whether it is a service and therefore an executory contract.

IAS 38.13 states that an entity controls an asset if it "has the power to obtain the future economic benefits flowing from the underlying resource and to restrict the access of others to those benefits." Paragraphs 13 to 16 of IAS 38 provide additional guidance on control. The Committee observed that IFRS 15 *Revenue from Contracts with Customers* provides guidance in paragraphs B58 to B62 on distinguishing between licences that transfer control at a point in time and those that give access over time. Similarly, IFRS 16 *Leases* provides guidance in paragraphs B9 to B31 on that is helpful in distinguishing between the lease of an asset and a service. Both of these Standards use a control-based model and it is appropriate to use the guidance in them to support an assessment of a cloud computing arrangement.

Entities will need to apply judgement when they assess a specific arrangement, but IFRS Standards provide an adequate basis for assessing whether the arrangement gives the entity control of an intangible asset or whether it is a service.

If an entity concludes that it controls the intangible asset it applies the requirements in IAS 38 for recognising and measuring an acquired intangible asset and the requirements in IFRS 9 in relation to the liability to make payments over the contracted period. Such an arrangement could also meet the definition of a lease in IFRS 16. However, IFRS 16 excludes from its scope licensing arrangements for some types of intangible asset. The Committee concluded that it was not clear whether software is one of the intangible assets anticipated by IFRS 16.3 (e). If the arrangement is a lease and an entity wants to apply IFRS 16 it would need to apply that policy consistently, to all similar arrangements. The Committee observed that the financial reporting should be substantially the same when IAS 38 or IFRS 16 is applied and should not, therefore, cause diversity in practice.

The Committee concluded that the requirements in existing IFRS Standards provide an adequate basis for an entity to account the arrangements described and therefore decided not to add this matter to its standard-setting agenda.

We thought this was a good analysis, particularly for a student. It influenced some of our comments. Note that the student has changed the opening paragraph to say "access or use". We think this is appropriate if you do go ahead and finalise the Agenda Decision. When we read the words "a right to access" we assumed this was about a service because IFRS 15 emphasises that for a licence a right to access is transferred over time (which seems like a service) whereas a right to use is transferred at a point in time (which seems like an asset).

We thought the drafting was not as clear and concise as it could be. From our observation of the meeting and from reading the staff papers it appears that this was a difficult one to write. We know that writing clearly and concisely can be challenging, but we encourage you to redraft this particular Agenda Decision. The fact that it took two meetings to produce is an indication, to us, that it might be a difficult issue to explain. However, that makes it even more important to have clarity. The version the student prepared effort is less than half the length of the tentative Agenda Decision. We are sure it could be improved, but it seems to cover the salient points.

Unfortunately, our conclusion is that this particular Agenda Decision is not helpful and we encourage you to simplify it and explain why you concluded that software is one of the asset types anticipated by the scope exception.

Thank you for considering our comments.



Global Financial Reporting Collective

4 February 2019

About the Global Financial Reporting Collective

The **Global Financial Reporting Collective** is a coalition of academics who support global financial reporting standards and who are motivated to help the IASB to develop high quality standards. The Collective does not have a jurisdictional base. It operates as a virtual, global network.

The Collective was established in 2018. In its initial phase it is managed by a small group of volunteers who analyse IASB proposals and collate comments into comment letters to the IASB. In the second phase the Collective plans to develop a website that will enable a broader range of academics, and practitioners, to provide analysis of proposals. Any comments and input received will not be attributed to an individual. We plan to provide mechanisms to allow individuals to make observations which can then be assessed on their merits, rather than be influenced by the reputation of the submitter—a blind review process.

The primary focus of comments from the Collective is on the clarity and internal and conceptual consistency of proposals, mainly informed from experience with teaching from IFRS Standards or applying them in practice. The Collective does not represent any sector and will not lobby on behalf of any entity or sector to support a particular view.

The purpose of the **Pacioli Initiative** is to make research and learning resources available to the broader community of people using global financial reporting standards. A portal for sharing these resources is being developed as part of the second phase of the Collective. We welcome any input on IFRS-related matters that could be helpful to those who teach or research in this area.

Rio de Janeiro, February 06, 2019

CONTRIB 0012/2019

Ms Lloyd
International Accounting Standards Board
Columbus Building
7 Westferry Circus
Canary Wharf
London
E14 4HD, UK.

Subject: Tentative agenda decision

Reference: Customers right to access suppliers application software

Dear Ms Lloyd,

Petróleo Brasileiro S.A. - Petrobras welcomes the opportunity to comment on the IFRS Interpretations Committee's tentative agenda decision - Customers right to access suppliers application software. We believe this is an important opportunity for all parties interested in the future of IFRS and we hope to contribute to the progress of the Board's activities.

We generally agree with the Interpretations Committee's conclusion and we support the decision not to add this item to its agenda

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

Respectfully,

/s/Rodrigo Araujo Alves

Rodrigo Araujo Alves

Chief Accounting and Tax Officer