



Conseil National de la Comptabilité

3, Boulevard Diderot

75572 PARIS CEDEX 12

Téléphone 01 53 44 52 01

Télécopie 01 53 18 99 43/01 53 44 52 33

Internet <http://www.cnc.bercy.gouv.fr>

Mel jean-francois.lepetit@cnc.finances.gouv.fr

Le Président

JFL

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IASB

30 Cannon Street

LONDON EC4M 6XH

UNITED KINGDOM

- Response to D 23 : Distributions of non-cash assets to owners

Dear Sir,

I am writing on behalf of the CNC to give you our comments on the above-mentioned Draft Interpretation. We support the decision of the IFRIC to issue an interpretation on non-cash dividends as we believe this will reduce diversity in practice and ensure comparability in financial reporting.

Overall, we agree with the proposed view expressed in the draft interpretation. We believe that a distribution of dividends involves two operations:

1. the decision to distribute an asset that can be either a cash or non-cash asset resulting in the recognition of a liability; and
2. the settlement of that liability by the giving up the asset.

We, therefore, broadly agree that IAS 37 is the appropriate standard to measure the liability and that the fair value of the assets to be distributed is the best estimate of the value of the liability that has to be recognised. However, as explained below, IFRIC should clarify that it is not stating that IAS 37 requires fair value as the best estimate in all circumstances to measure the provisions.

Finally, we support the recognition in profit or loss of the credit balance resulting from the difference between the asset's carrying amount and the value of the liability.

Our detailed comments are set out in the Appendix.

We hope you find these comments useful and would be pleased to provide any further information you might require.

Yours sincerely,

Jean-François LEPETIT

Appendix

Question 1 - Specifying how an entity should measure a liability for a dividend payable

Paragraph 9 of the draft Interpretation proposes that an entity should measure a liability to distribute non-cash assets to its owners in accordance with IAS 37 *Provisions, Contingent Liabilities and Contingent Assets*. The IFRIC concluded that all dividends payable, regardless of the types of assets to be distributed, should be addressed by a single standard.

Do you agree with the proposal? If not, do you agree that all dividends payable should be addressed by a single standard? Why? What alternative would you propose?

Do you agree with the proposals? If not, why?

Recognising a liability

We agree with the assumption that the transaction actually consists of two separate transactions, i.e. (i) a decision to make a distribution that is a non-exchange transaction with shareholders acting in their capacity as owners and (ii) an exchange transaction settling a liability by giving up an asset according to the resolution approved by the body entitled to make such a decision.

We believe that an obligation arises as a result of that decision regardless of the type of assets distributed (whether in cash or in kind) if the entity has no realistic alternative for settling the obligation, i.e. according to IAS 10.13, the decision is no longer at the discretion of the entity. We are of the view that the nature of the assets distributed should not affect the way the transaction should be accounted for.

In most cases, the decision to distribute (a single asset, a group of assets or the investment in a business) will require legal or administrative authorizations, and involve a certain time span between the date at which the dividend is declared and the date at which the liability is settled and the assets are effectively transferred to the shareholders. The entity will be required to reflect the existence of the obligation in the financial statements during that period.

In that respect, we also agree with the IFRIC's analysis that IAS 37 is the most appropriate standard to evaluate the amount of the liability that should be recognized.

Measuring the liability

We broadly agree that, in this specific situation, the fair value of the assets to be distributed is the most relevant indicator to determine the amount of the liability that should be recognised as it represents the best estimate of the expenditure incurred to settle the obligation. In our view, using that value will help users of the financial statements in assessing the economic value of the assets that are given up to the owners and the impact of such a transaction on the level of the future cash flows that the entity is transferring to its owners.

However, despite this support we have certain reservations as to the way IFRIC is referring to fair value. We would disagree with IFRIC's comments if the intention was to consider that the measurement attribute of IAS 37 should always be interpreted as being the fair value. Actually, our response in favor of the fair value measurement of the liability in this particular case does not mean that using that reference will always be relevant in determining the value of a liability in all circumstances under IAS 37. In some cases the best estimate of the expenditure will be determined based on the most likely single outcome which is not fair value (i.e. the amount that an entity would be the more likely required to pay to settle the obligation).

For that reason, we strongly recommend the IFRIC to clarify that point and to include a comment in the interpretation that indicates that even if fair value is the appropriate measure in determining the amount of the liability addressed in D23, using fair value will not always be appropriate in all cases.

Remeasuring the liability

We agree with the view taken in the draft interpretation to recognise any adjustment to the liability as an adjustment to equity as it is consistent with the way the liability has been initially recognised. For the reason stated in BC 27, we believe that, as the liability should reflect the value of the distribution, any adjustment of that value should impact the financial statements in the same manner.

Question 2: Specifying how any difference between the carrying amount of the assets distributed and the carrying amount of the dividend payable should be accounted for when an entity settles the dividend payable

Paragraph 12 of the draft Interpretation proposes that, when the dividend payable is settled, any difference between the carrying amount of the assets distributed and the carrying amount of the dividend payable should be recognised in profit or loss. Paragraphs BC28–BC43 of the Basis for Conclusions explain the reasons for this proposal. The Basis for Conclusions also includes an alternative view that the difference should be recognised directly in equity (see paragraph BC44).

Which view do you support and why?

We agree with the consensus reached by the IFRIC in the draft interpretation that the difference between the carrying amount of the assets to be distributed to the owners and the value of the liability should be recognised in profit or loss at the settlement date of the liability. We believe that:

1. the value increase of the assets is only related to internal or external factors such as the performance of the entity, synergies realised within the group of assets within which the asset or assets have been integrated and operated, market increases or anticipations. That increase is not a consequence of the decision made by the shareholders. In other words, even if the decision to distribute the assets is the triggering event that leads to the recognition of such a revaluation, it is not the cause of it.
2. the settlement of the liability is a separate transaction that should be accounted for according to the appropriate standards and we see no reason to draw a distinction between a liability to shareholders and a liability to a third party.
3. the accounting treatment that should be applied should reflect the revaluation of those assets as this would have been achieved had the assets been sold to a third party or used to settle a liability to that third party.

Additionally, the proposed accounting treatment:

1. is compliant with the income's definition of the framework which states at paragraph 70 that « *Income is increases in economic benefits during the accounting period in the form of inflows or enhancements of assets or decreases of liabilities that result in increases in equity, other than those relating to contributions from equity participant.* »
2. presents the benefits not to be impacted by the way the deal has been structured. In other words, the effects on the financial statements of such accounting treatment would be the same regardless of the way the assets have been transferred, i.e. whether the entity has transferred the assets through:
 - (i) a transaction that resulted in a spin off or a distribution to shareholders;
 - (ii) a sale for cash to a newco specially created for that purpose, in which the ownership interest of the shareholders is identical to their respective ownership in the entity that has sold the assets, and a distribution of the proceeds obtained

We also feel that such an accounting treatment will ensure consistency between an entity that has revalued its assets through profit or loss (investment properties at fair value with changes in fair value recognised in profit or loss, derivatives used as fair value hedge instruments instead of cash flow hedge instruments, etc.). Not recognising such an effect in profit or loss would also raise the question of the recycling of the gain or loss related to the financial assets available for sale and accounted for in other comprehensive income. IAS 39

states that at the time the assets are derecognised, the cumulative gain or loss previously recognised in equity is reclassified in profit or loss. We feel that IAS 39 does not allow for exemption to the recycling requirements

Question 3: Whether an entity should apply the requirements in IFRS 5 to non-current assets held for distribution to owners

Both the Board and the IFRIC concluded that the requirements in IFRS 5 Non-current Assets Held for Sale and Discontinued Operations should be applied to non-current assets held for distribution to owners as well as to non-current assets held for sale (see paragraphs BC45–BC48 of the Basis for Conclusions).

Do you agree that an entity should apply IFRS 5 to non-current assets that are held for distribution to owners? If not, why and what alternative would you propose?

We believe that the rules provided by IFRS 5 regarding the classification of assets held for sale should be extended by analogy to assets held for distribution. We agree that the carrying amount of assets held for distribution to owners will no longer be recovered through continuing use and are, therefore, similar to assets held for sale. We are convinced that such information is very useful for the users of the financial statements and should be required to be disclosed directly in the balance sheet.

However, we do not believe that some of the measurement requirements of IFRS 5 are appropriate for assets held for distribution as there will not be any costs to sale.

The Board noted that IFRS 5 requires an entity to classify a non-current asset as held for sale when the sale is highly probable and the entity is committed to a plan to sell (emphasis added). For assets held for distribution to owners, this raises the following three questions:

- (a) Should an entity apply IFRS 5 when it is committed to make a distribution or when it has an obligation to distribute the assets?**
- (b) Do you think there is a difference between those dates?**
- (c) If there is a difference between the dates and you think that an entity should apply IFRS 5 at the commitment date, what is the difference? What indicators should be included in IFRS 5 to help an entity to determine that date?**

We feel that the commitment date, as referred to by IFRS 5, is different from the obligation date as the commitment does not create any obligation for the entity to distribute assets to the owners. As opposed to a firm commitment, which is legally enforceable (and which creates an obligation under IAS 37), a commitment as described by IFRS 5 is an action the appropriate level of management decides upon but for which completeness is still at the discretion of the entity. At this stage of completeness, no decision has been made that irrevocably requires the entity to honour the commitment (i.e. to distribute the assets).

On that basis and for the reasons stated above, we believe that the obligation date should be the trigger event for reclassifying the assets to be distributed as “assets held for distribution”. Such a date should also be the date for recognising the liability and the date for revaluing the assets.