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Project	Conceptual Framework		
Paper topic	Guidance to support the definition of a liability— economic compulsion, constructive obligations and contractual obligations		
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## Guidance to support the definition of a liability— economic compulsion, constructive obligations and contractual obligations

### What this paper covers

The Conceptual Framework defines a liability as ‘a present obligation...’.

This paper considers the need for additional guidance in the Conceptual Framework to clarify the meaning of the term ‘obligation’.

The discussion in this paper is drafted in a format in which it could be included in the Discussion Paper.

**What problems could this guidance help to address?**

The additional guidance discussed in this paper would seek to clarify the role of economic compulsion in identifying obligations, and the difference between economic compulsion and a constructive obligation.

The Board has made general statements that economic compulsion does not, by itself, create an obligation, and it could add this general principle to the Conceptual Framework. However, the implications of such a principle are not entirely clear, and some of the apparent implications—especially for liability-equity classification—have proved controversial. Further guidance might help to clarify:

- (a) the difference between economic compulsion and a constructive obligation; and
- (b) the role of economic compulsion in the identification of the substance of contractual obligations.

**Questions for Board members**

Board members will be asked:

- 1 Whether they think the Discussion Paper should cover the matters addressed in this paper.
- 2 If so, whether they think the proposed text adequately identifies the existing problems and viable ways of addressing the problems.
- 3 If they have any tentative leanings as to whether the Conceptual Framework should:
  - (a) improve the existing description of a constructive obligation (see paragraphs 16-20); or
  - (b) restrict the definition of a liability to obligations that are enforceable by legal or equivalent means (see paragraphs 21-27)?
- 4 If they have any comments on the material on assessing the substance of contractual rights and obligations (see paragraph 43).

### **How the text in this paper would fit into the Discussion Paper**

The text in this paper would be added to the section discussing the definition of a liability. That section will propose additional guidance for the Conceptual Framework on a number of matters, including the following matters that might be relevant to the discussion in this paper:

- a) if a liability exists for one party, an asset exists for another party (symmetry);  
and
- b) the following are not liabilities:
  - (i) a requirement to provide economic resources (eg future salaries to employees) only if, at the same time or earlier, the entity receives economic resources of equal or greater value (eg service from employees);
  - (ii) losses that an entity will have to incur if it chooses to stay in business, but will avoid if it closes the business;
  - (iii) a non-binding offer that the entity can withdraw without penalty but that will result in an obligation if accepted; or
  - (iv) requirements to make payments only on liquidation (for example payments to ordinary shareholders and costs that the entity would incur only on liquidation).

*This paper is a very early draft of text that could be included in the Conceptual Framework discussion paper. It has been prepared by the staff for discussion by the IASB. Issues discussed and conclusions reached will be subject to change.*

## Chapter [X] Elements

### MEANING OF ‘OBLIGATION’—IMPACT OF ECONOMIC COMPULSION

#### Introduction

1. Sometimes it is clear that an entity will have to take a particular course of action in future, because that action will be so much more economically advantageous—or less economically disadvantageous—than any of the available alternatives. In such situations, the entity can be regarded as being economically compelled to take the action. This paper uses the term ‘economic compulsion’ to refer to such situations.
2. If the entity’s action could require it to transfer resources to another party (without receiving resources of equivalent value in exchange), the question arises as to whether the economic compulsion creates an obligation that meets the definition of a liability.
3. The Board has made general statements that economic compulsion does not, by itself, create an obligation, and it could add this principle to the Conceptual Framework. However, the implications of such a principle are not entirely clear, and some of the apparent implications—especially for liability-equity classification—have proved controversial. Further guidance might help resolve questions that arise when the Board or others seek to identify liabilities.

4. Problems relating to economic compulsion arise in practice in two different contexts:
- (a) *in distinguishing constructive obligations from economic compulsion.* These problems arise in situations where *no* formal legal mechanism (contract, statute etc.) constrains the entity's future actions, ie where there are no obligations that another party could enforce against the entity. A liability could exist if the entity has a 'constructive obligation', but constructive obligations can be difficult to distinguish from economic compulsion. See paragraphs 5-27.
  - (b) *in evaluating the effect of economic compulsion on contractual options.* Problems also arise in situations where the entity's future actions *are* constrained by a legal mechanism—typically a contract. Problems arise if the entity has options under the contract but economic compulsion will limit the entity's freedom to exercise its options. See paragraphs 28-44.

## **Distinguishing constructive obligations from economic compulsion**

### ***Definition of constructive obligation***

5. The existing Conceptual Framework describes an obligation as 'a duty or responsibility to act in a certain way'. It then states that, although obligations may be legally enforceable as a consequence of a binding contract or statutory requirement, they may also arise 'from normal business practice, custom and a desire to maintain good business relations or act in an equitable manner'<sup>1</sup>.
6. IAS 37 *Provisions, Contingent Liabilities and Contingent Assets* notes that a liability can arise from a legal obligation or from a 'constructive' obligation, and defines the latter as follows:

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<sup>1</sup> Paragraph 4.15.

A *constructive obligation* is an obligation that derives from an entity's actions where:

- (a) by an established pattern of past practice, published policies or a sufficiently specific current statement, the entity has indicated to other parties that it will accept certain responsibilities; and
- (b) as a result, the entity has created a valid expectation on the part of those other parties that it will discharge those responsibilities.

7. Applying this definition, the *Guidance on Implementing IAS 37* identifies as an example of a constructive obligation the environmental obligations of an entity that, although operating in a country with no environmental legislation, has a record of honouring its widely-published policy of cleaning up all contamination it causes<sup>2</sup>.
8. IAS 19 *Employee Benefits* also refers to constructive obligations. It requires entities to account for both legal and constructive obligations for employee benefits. It describes legal obligations as arising from the formal terms of employment contracts or benefit plans, and constructive obligations as arising from the entity's informal practices. It states that informal practices (such as paying bonuses in excess of those to which employees are contractually entitled) give rise to a constructive obligation if they leave the entity with no realistic alternative but to pay benefits, for example if a change in practices would cause unacceptable damage to the entity's relationship with its employees<sup>3</sup>.
9. IFRS 2 *Share-based Payment* also uses the notion of constructive obligations, though without using the label. It states that an entity has a present obligation to settle a share-based payment transaction in cash if 'the entity has a past practice or stated policy of settling in cash, or generally settles in cash whenever the counterparty asks for cash settlement'<sup>4</sup>.

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<sup>2</sup> *Guidance on Implementing IAS 37*, Section C, Example 2A.

<sup>3</sup> IAS 19, paragraph 4(c). The description of a constructive obligation in IAS 19, including the notion of 'no realistic alternative', was based on the exposure draft that preceded IAS 37. The IASB's predecessor, the IASC, did not conform the wording in IAS 19 to the final wording in IAS 37 because it did not have a practice of making consequential amendments to other standards.

<sup>4</sup> IFRS 2, paragraph 41.

**Problems in practice**

10. Some people using IFRSs have reported that it can be difficult to judge whether and to what extent an entity's past practices, policies or statements are sufficient to have created a valid expectation among other parties that the entity will accept specific responsibilities.
  
11. Furthermore, the line between a constructive obligation and economic compulsion, as described in paragraph 1, appears to be unclear. For example, difficulties arose when the European Union issued a directive that prompted IFRIC Interpretation 6 *Liabilities arising from Participating in a Specific Market—Waste Electrical and Electronic Equipment*. The directive required manufacturers of electrical and electronic equipment to contribute to the costs of disposing of equipment manufactured in earlier periods (historical waste), with each manufacturer's contribution being proportional to its market share in a specified period (the measurement period). Some people argued that manufacturers had a constructive obligation for the costs of historical waste before the measurement period because 'when it would be necessary for the entity to undertake an unrealistic action in order to avoid the obligation then a constructive obligation exists and should be accounted for'. The IFRIC rejected this argument, concluding that 'a stated intention to participate in a market during a future measurement period does not create a constructive obligation for future waste management costs'.<sup>5</sup>
  
12. It is perhaps not surprising that people think that economic compulsion can be sufficient to create a constructive obligation. Some (older) IFRSs identify constructive obligations in situations in which the entity might be economically compelled to act in a particular way, but does not necessarily have an obligation to another party to do so. For example:
  - (a) IAS 37 identifies an entity as having a 'constructive obligation' to restructure a business once it has announced or started to implement a detailed restructuring plan<sup>6</sup>; and

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<sup>5</sup> IFRIC 6, paragraphs BC9 and BC10.

<sup>6</sup> IAS 37, paragraph 72.

- (b) IAS 34 *Interim Financial Reporting* identifies a lessee as having a constructive obligation for contingent lease rentals at its interim reporting date, if it expects to achieve by the end of the period a specified level of sales above which contingent lease rentals would become payable.<sup>7</sup>
13. In the contingent lease rental example, any obligation that the lessee has to the lessor is a legal (contractual) one. There is no constructive obligation arising in advance of the legal obligation—the lessee does not have a constructive obligation to continue to make sales for the rest of its reporting period. The IASC appears to have used the term ‘constructive obligation’ to justify the recognition of a liability before the legal obligation has become unconditional, ie while the outcome depends on the entity’s future actions.

#### **Possible solutions**

14. There is less risk of ‘constructive obligations’ being wrongly identified for situations like contingent lease rentals if the Board provides additional guidance on the impact of uncertain future events (including the entity’s own future actions). Such guidance is discussed in [another section of the discussion paper—see Agenda Paper 3C for the February 2013 meeting]. If it is clearer that legal obligations can exist before all conditions have been satisfied, people might be less inclined to use the term ‘constructive obligation’ to describe legal obligations whose outcome depends on the entity’s future actions.
15. The Board could take further steps to improve comparability and distinguish constructive obligations from economic compulsion. These steps could involve:
- (a) adding further guidance to support the definition of a constructive obligation (paragraphs 16-20); or
  - (b) limiting the definition of a liability to obligations that another party could *enforce* against the entity (paragraphs 21-27).

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<sup>7</sup> IAS 34, paragraph B7



*Improve guidance on ‘constructive obligations’*

16. One approach would be to add guidance to support the definition of a constructive obligation. Additional guidance could emphasize that for an entity to have a constructive obligation:
- (a) it must have a duty or responsibility *to another party*. It is not sufficient that an entity will be economically compelled to act in its own best interests or in the best interests of its shareholders;
  - (b) the other party must be one who would benefit from the entity fulfilling its duty or responsibility or suffer loss or harm if the entity fails to fulfil its duty or responsibility. In other words, the other party must be the one to whom, or on whose behalf, the entity is required to transfer an economic resource (without receiving resources of equivalent value in exchange); and
  - (c) as a result of the entity’s past actions, the other party can reasonably rely on the entity to discharge its duty or responsibility.
17. Further guidance could be added to clarify (as IAS 37 already does) that it is not necessary to know the identity of the party to whom the obligation is owed—indeed the obligation may be to the public at large.<sup>8</sup>
18. Adding this guidance should not undermine existing requirements for well-understood examples of constructive obligations—such as obligations for environmental rehabilitation or employee benefits—because in these cases there is usually a counterparty who is reasonably relying on the entity to discharge its responsibilities. However, the guidance would clarify that, although an entity might be economically compelled to continue to operate in a particular market or to restructure an underperforming business, such economic compulsion does not in itself amount to a constructive obligation.

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<sup>8</sup> IAS 37, paragraph 20.

19. The Board proposed this approach in its Exposure Draft of Proposed Amendments to IAS 37 and IAS 19, published in June 2005. The Board proposed additional guidance<sup>9</sup> similar to that set out in paragraph 16 and, on the basis of that guidance, concluded that an entity does not have a constructive obligation to restructure a business, even if it has announced or started to implement a detailed restructuring plan. This is because it has no obligation to others and is not bound by its plan to the extent that it cannot avoid an outflow of resources.<sup>10</sup> Consequently, the Board proposed to delete from IAS 37 the requirements for recognising restructuring provisions and replace them with a statement that ‘a cost associated with a restructuring is recognised on the same basis as if that cost arose independently of the restructuring’<sup>11</sup>.
20. This proposal—which would have aligned IAS 37 with the requirements of US generally accepted accounting practices, and would still have required entities to identify liabilities for some individual costs associated with a restructuring—received widespread support from those commenting on the exposure draft. However, the Board never implemented the proposal because it halted its project to amend IAS 37 in the light of opposition to some other changes proposed in the exposure draft.

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<sup>9</sup> Exposure Draft of proposed amendments to IAS 37 *Provisions, Contingent Liabilities and Contingent Assets* and IAS 19 *Employee Benefits*, published in June 2005, paragraph 15.

<sup>10</sup> Paragraph BC68.

<sup>11</sup> Paragraph 62.

*Define 'obligation' to mean enforceable*

21. Alternatively, the Board could make a more substantial change. Rather than emphasising the need for there to be an obligation to another party, the Board could limit the definition of a liability to obligations that another party could *enforce* against the entity.
  
22. The Board developed such an approach during the *Elements and Recognition* phase of its Conceptual Framework project in 2007-2008. The Board tentatively approved a working definition of a liability that would require the obligation to be 'enforceable against the entity by legal or equivalent means'. Additional guidance explained that 'equivalent means' would be those in which there was both an enforcement mechanism and a separate party to operate the mechanism. Examples of 'equivalent means' included:
  - (a) the disciplinary procedures of a self-regulatory body; and
  - (b) an arbitration mechanism set up by a commodity exchange to resolve disputes between member traders.
  
23. Legally enforceable obligations include those that are established by contract or imposed by government. In some jurisdictions, some constructive obligations (as defined in IAS 37) may also be legally enforceable. In some jurisdictions, equitable obligations—ie those that stem from a duty to another party to do that which an ordinary conscience and sense of justice would deem fair, just or right—might be legally enforceable by courts of equity. However, in other cases, constructive and ethical obligations might not be enforceable against the entity. Such unenforceable obligations would not meet the definition of a liability.
  
24. Defining a liability as an obligation that is enforceable by legal or equivalent means could eliminate the need to define a constructive obligation.

25. Any requirement for an obligation to be enforceable by legal or equivalent means would refer to the *mechanism* that creates an obligation. It would not affect the assessment of *when* that obligation arises. In other words, it would not rule out obligations that will be enforceable only on the occurrence of an uncertain future event. So it could be applied with any of the approaches discussed at the February 2013 meeting in Agenda Paper 3C *Guidance to support the definition of a liability—future events*.
26. In favour of restricting liabilities to obligations that are enforceable by legal or equivalent means, it could be argued that:
- (a) if a future transfer of resources is not enforceable against the entity, it is not an obligation. An entity is not bound by another party ‘reasonably relying’ on it to continue its past practices or policies. The entity retains the discretion to balance the benefits of transferring resources (such as maintaining good relationships or avoiding reputational damage) against the costs. If the entity faces financial difficulties, it could change its policies or practices and avoid the transfer of resources. In other words, any future transfer will be discretionary and should be recognised in the period in which the discretion is exercised.
  - (b) restricting liabilities to enforceable obligations could improve comparability. Identifying a constructive obligation requires the entity to assess whether another party can ‘reasonably’ rely on the entity to discharge specified responsibilities. Judgements about the reasonableness of another party’s behaviour could be extremely subjective. Arguably, enforceability is the most tangible evidence.
  - (c) restricting liabilities to enforceable obligations would provide users of financial statements with relevant information about the obligations that an entity cannot avoid. For some transactions, it might also be appropriate to require disclosure of information about other (unenforceable) costs that the entity expects to incur in future in relation to past activities (eg for discretionary rehabilitation of previous environmental damage). Any disclosure requirements could be considered in individual standards.

27. However, against restricting the definition of a liability to enforceable obligations, it could be argued that:
- (a) an approach that excludes some constructive obligations could provide less relevant information to users of financial statements about the entity’s future cash flows relating to past activities. For example, suppose a mining company has a well-publicised policy of restoring environmental damage to the same standard throughout the world. If it recognised a liability for only the costs that it could be forced to incur applying the legal requirements in each of the jurisdictions in which it operates, it would not recognise the full expected costs of its mining activities for the period.
  - (b) if concerned about comparability for any particular types of transaction, the Board could, at a standards level, require liabilities for that type of transaction to be legally enforceable. The US Financial Accounting Standards Board (FASB) chose to take this approach when developing its requirements for asset retirement obligations. The definition of a liability in the FASB *Statements of Concepts* encompasses legal, equitable and constructive obligations, including obligations that are not legally enforceable<sup>12</sup>. However, the FASB *Accounting Standards Codification*® requirements for asset retirement obligations<sup>13</sup> apply only to legal obligations<sup>14</sup>. The FASB restricted the scope to legal obligations on the grounds that doing so would achieve more consistent application because determining when a constructive obligation exists can be very subjective<sup>15</sup>.

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<sup>12</sup> FASB Statement of Concepts No. 6 *Elements of Financial Statements*, paragraphs 36 and 40.

<sup>13</sup> Topic 410-20-15 in the FASB Accounting Standards Codification®

<sup>14</sup> The FASB Codification defines a legal obligation as: An obligation that a party is required to settle as a result of an existing or enacted law, statute, ordinance, or written or oral contract or by legal construction of a contract under the doctrine of promissory estoppel.

<sup>15</sup> FASB Statement No. 143 *Accounting for Asset Retirement Obligations*, Appendix B, Paragraph B16.

## Effect of economic compulsion on contractual obligations

### *Problems in practice*

28. Questions about economic compulsion also arise in situations where the entity's future actions *are* constrained by a legal mechanism—typically a contract. Questions arise if the entity has options under the contract but economic compulsion will limit the entity's freedom to exercise its options.
29. The existing Conceptual Framework states that 'in assessing whether an item meets the definition of an asset, liability or equity, attention needs to be given to its underlying substance and economic reality and not merely to its legal form'<sup>16</sup>. This principle—which is consistent with the qualitative characteristic of faithful representation—is also stated explicitly in some standards. For example, IAS 32 *Financial Instruments—Presentation* states that 'the substance of a financial instrument, rather than its legal form, governs its classification in the entity's statement of financial position'<sup>17</sup>.
30. Several IFRSs give guidance on how an entity should assess the substance of a contract. For example:
- (a) IAS 32 requires entities to consider both explicit and indirect obligations<sup>18</sup>;
  - (b) several IFRSs require entities to disregard contractual terms that have 'no commercial substance', 'lack commercial substance' or are 'not substantive'. For example, IFRS 4 *Insurance Contracts* requires entities to identify the existence of significant insurance risk 'ignoring scenarios that lack commercial substance'<sup>19</sup>. And IFRS 10 *Consolidated Financial Statements* requires an investor to consider only substantive rights in assessing whether it controls an investee<sup>20</sup>.

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<sup>16</sup> Conceptual Framework, paragraph 4.6.

<sup>17</sup> IAS 32, paragraph 18.

<sup>18</sup> IAS 32, paragraph 20.

<sup>19</sup> IFRS 4, paragraph B23.

<sup>20</sup> IFRS 10, paragraph B22.

- (c) IFRS 10 provides guidance that ‘for a right to be substantive, the holder must have the practical ability to exercise that right’<sup>21</sup>. IFRS 10 also gives several examples of factors that might affect an acquirer’s practical ability to exercise its rights relating to an investee. These factors include ‘terms and conditions that make it unlikely that the rights would be exercised’<sup>22</sup>.
- (d) IFRS 4 explains that a scenario that lacks commercial substance is one that has ‘no discernible effect on the economics of the transaction’<sup>23</sup>.

31. However, questions have arisen as to whether the entity should also look beyond the terms of the contract and take into account other facts and circumstances that result in the entity being economically compelled to exercise its contractual rights in a particular way.

32. The International Financial Reporting Interpretations Committee (IFRIC) was asked to consider this question in 2006. It was asked whether a financial instrument with the following terms should be classified as a financial liability or equity instrument applying IAS 32:

**Example: Financial instrument with ‘dividend blocker’ and ‘step-up’ clauses**

The terms of a financial instrument are such that the issuer has no contractual obligation to pay an annual dividend to the holder, or to ever redeem the instrument. However:

- (a) the issuer has an *option* to pay a dividend of a specified amount. Unless the issuer pays the full amount, it cannot pay any dividend to its ordinary shareholders; and
- (b) the issuer has an *option* to redeem the instrument at a specified future date. If it does not redeem the instrument on that date, the dividend ‘steps up’ to an amount that would give a cost of finance higher than the issuer would otherwise have to incur.

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<sup>21</sup> IFRS 10, paragraph B22.

<sup>22</sup> IFRS 10, paragraph B23(a)(iii).

<sup>23</sup> IFRS 4, paragraph B23.

33. In this example, it could be argued that the linkage to dividends on the ordinary shares and the ‘step-up’ clause economically compel the issuer to pay dividends on the instrument and redeem the instrument on the specified date. Otherwise the entity would suffer the adverse economic consequences of the disaffection of ordinary shareholders, difficulties in raising similar finance again and a higher cost of finance than it would otherwise have to incur. Thus, the holders can be reasonably assured of receiving the ‘discretionary’ dividend and redemption proceeds. Therefore the instrument is priced, and behaves, like fixed-term debt.
34. The question was whether, given the absence of a contractual obligation to pay a dividend or redeem the instrument, the issuer should nevertheless classify the instrument as a liability on the grounds of economic compulsion.
35. The IFRIC decided not to take the matter onto its agenda and reported its discussions to the Board. The Board discussed the matter at its June 2006 meeting. The Board noted that, for a financial instrument to be classified as a liability, the issuer must have a contractual obligation. The Board confirmed that such a contractual obligation could be established explicitly or indirectly, but it must be established through the terms and conditions of the instrument. Thus, by itself, economic compulsion would not result in a financial instrument being classified as a liability applying IAS 32. The Board also stressed that IAS 32 requires an assessment of the substance of the contractual arrangement. It does not, however, require or permit factors not within the contractual arrangement to be taken into consideration in classifying a financial instrument.<sup>24</sup>
36. In the light of the Board’s statement, entities are now advised that financial instruments like the instrument described in paragraph 32 should be classified as equity instruments. However, some people have expressed concern about instruments being classified as equity when they behave so much like debt.

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<sup>24</sup> IASB *Update*, June 2006



37. Furthermore, some perceive the Board's statement about economic compulsion as being inconsistent with some of its more recent decisions. In some forthcoming IFRSs, the Board proposes to require entities to take into account a 'significant economic incentive' in assessing the extent of their contractual obligations. For example, the Board has tentatively decided that the future IFRS on leases should require entities to identify the term of a lease to include an optional lease period if the lessee has a significant economic incentive to exercise an option to extend the lease into an optional period, or not to exercise an option to terminate the lease before the end of an optional period<sup>25</sup>.

### **Alternative analysis**

38. The principle that the Board appears to have been stressing in 2006 was that, in assessing the substance of a contract, an entity should take into account only the terms (whether explicit or implicit) of the contractual arrangement itself—it should not overlay factors beyond the contractual arrangement. If the contractual arrangement does not contain an obligation, economic compulsion does not create an obligation.
39. However, it could be argued that, applying this principle, it is possible to develop a different analysis of the instrument described in paragraph 32 from that being applied in practice. That different analysis might lead to a conclusion that the instrument should be classified as a liability.
40. The instrument contains an explicit term giving the issuer an option to redeem the instrument on the specified future date. Therefore, it must also contain a term (whether explicit or implicit) that gives the issuer an option *not* to redeem the instrument on that specified future date. If it is clear from the outset that this second option has no commercial substance, the option should be disregarded in the assessment of the substance of the contract. If this option is disregarded, only one 'option' remains—to redeem the instrument. If an entity has only one option, that option is in substance a requirement. Therefore, the contract contains an (indirect) obligation to redeem the instrument. There is no need to look beyond the terms of the

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<sup>25</sup> IFRS *Update*, February 2011

contractual arrangement to reach a conclusion that the instrument contains a financial liability that obliges the entity to redeem the instrument.

41. Such an analysis is consistent with that underpinning IFRS 2, which states that an entity with a choice of settling a share-based payment transaction either in cash or by issuing equity instruments ‘has a present obligation to settle in cash if the choice of settlement in equity instruments has no commercial substance’<sup>26</sup>.

**Possible solution**

42. As explained in paragraph 30, several IFRSs provide guidance on the factors that an entity should take into consideration in assessing the substance of contractual rights and obligations. There are consistent principles underpinning this guidance and it might be useful to add the principles to the Conceptual Framework. The discussion paper could propose to include these principles in the section discussing contractual rights and obligations (see paragraphs 29-31 of Agenda Paper 3B for the February 2013 meeting).
43. The Discussion Paper could propose to include some or all of the following general principles:
- (a) an entity should report the substance of a contract. In some cases, the legal form of a contract is an important part of the substance of the contract. In other cases, the legal form is only a minor part of the substance.
  - (b) a group or series of contracts that achieves, or is designed to achieve, an overall commercial effect should be viewed as a whole. One case where this may be particularly important is if rights or obligations in one contract entirely negate obligations or rights in another contract.
  - (c) all terms—whether explicit or implied—should be taken into consideration. Implied terms could include, for example, obligations imposed by statute, such as statutory warranty obligations imposed on entities that enter into contracts for the sale of goods to customers.

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<sup>26</sup> IFRS 2, paragraph 41.

- (d) terms that have no commercial substance should be disregarded.
- (e) one situation in which a right (including an option) has no commercial substance is the situation in which it is clear from the inception of the contract that the holder will not have the practical ability to exercise the right.
- (f) if, after disregarding options with no commercial substance, an option holder has only one remaining option, that option is in substance a requirement.

44. The inclusion of these general principles in the Conceptual Framework could be sufficient to clarify the role of economic compulsion in assessing contractual rights and obligations.

### Questions for the Board

<b>Economic compulsion, constructive obligations and contractual obligations</b>	
1	Do you think that the Discussion Paper should cover the matters addressed in this paper?
2	If so, do you think that the proposed text adequately identifies the existing problems and viable ways of addressing the problems?
3	Do you have any tentative leanings as to whether the Conceptual Framework should: <ul style="list-style-type: none"> <li>(a) improve the existing description of a constructive obligation (see paragraphs 16-20); or</li> <li>(b) restrict the definition of a liability to obligations that are enforceable by legal or equivalent means (see paragraphs 21-27)?</li> </ul>
4	Do you have any comments on the material on assessing the substance of contractual rights and obligations (see paragraph 43)?