29 October 2012

RE: IFRS Foundation Constitution Drafting Review: separating the role of the IASB Chair and the Executive Director.

Dear Madam/Sir

Mazars is pleased to comment on this drafting review of the IFRS Foundation Constitution.

As already expressed in our comment letter dated April 8 2011 on Consultative Report on the Review of the IFRS Foundation’s Governance, we agree with separating the roles of the IASB Chair and the CEO of the IFRS Foundation for the following reasons:

(i) this separation would enable the IFRS Foundation to fulfil its role of oversight of the IASB in a fully independent way, eliminating any potential for suspicion of conflict of interests;

(ii) the Chair of the IASB will be able to devote all his or her time to technical issues related to the development of high quality, global financial reporting standards without consuming time on more “political” and “operational” issues.

As a result, we welcome the recent internal structural reorganisation (i.e. appointment of a person different from the IASB Chair as the Executive Director of the IFRS Foundation) and the proposal to incorporate changes to the Constitution to reflect this separation of the role of Chairman of the IASB and CEO of the IFRS Foundation.
We have the following specific comments regarding the proposed limited wording changes to the IFRS Foundation Constitution:

- we are afraid that the separation of the two roles does not appear as clearly in the proposed drafting review as this was initially intended.
  
  o For instance, the proposed paragraph 47 states that ‘The Executive Director shall report to the IASB Chair on matters relating to the IASB’s standard-setting activities and to the Trustees on all other matters’, whereas the appendix to the drafting review makes reference only to the operational functions of the Executive Director. Because of the remaining hierarchical link between the IASB Chair and the Executive Director (the IASB Chair being superior when it comes to technical aspects), we understand that the IASB Chair would maintain some influence over the activities of the Executive Director if the amendment is adopted as currently proposed.

  o Confusion as to the roles of each function might be reduced by clearly explaining what is meant by ‘standard setting activities’ in paragraph 47, or by simply deleting any reference to standard setting from this paragraph.

  o It could also be a good idea to define more precisely the tasks and responsibilities of the Executive Director, e.g. by giving some examples of the “operational decisions affecting the day-to-day management of the IFRS Foundation and staff”.

- furthermore, we think there should be more guidance in the Constitution when it comes to the professional qualifications required for the Executive Director; we propose adding a dedicated paragraph for this purpose, similarly to what has been done concerning the appointment of Trustees (§ 7) and the appointment of members of the IASB (§ 25) or the IFRS IC (§ 39).

- the drafting review remains silent as to the possibility or the ban for an existing IASB or IFRS IC member or for a Trustee to be elected as the Executive Director of the IFRS Foundation. In our opinion, in order to guarantee the complete impartiality of the Executive Director and a clear separation between the technical and operating tasks within the IFRS Foundation, the Constitution should contain an explicit statement (for example, in paragraph 15) that neither the Trustees nor any IASB or IFRS IC members or their staff can be elected Executive Director of the IFRS Foundation.
• For the sake of clarity, we suggest slightly modifying the proposed structure of the Constitution by:

  o presenting the role and function of the Executive Director described in paragraph 47 under a separate heading ‘Executive Director of the IFRS Foundation’, and

  o removing the paragraph 48 under a heading ‘The IASB Chair and the staff’.

• In our view, paragraph 47 should also clearly state the term for which the Executive Director has been appointed and whether the term can be renewed. If the Executive Director is recruited for an undefined time period, this fact should also be stated. We deem it also useful to provide a list of situations in which the Executive Director could be dismissed.

• Finally, we think that the proposed paragraph 15b as drafted is confusing: one could understand that “the Executive Director and the IASB Chair are appointed together (i.e. at the same time)”, whereas the intended meaning of this paragraph to our understanding is as follows: “the Trustees and the IASB Chair jointly appoint the Executive Director”. We therefore suggest revising the wording of this section to avoid confusion. We also question whether the appointment-making power entrusted with the IASB Chair is appropriate and whether it does not come into conflict with the stated objective of separating the two roles: in our opinion, the IASB Chair should only have a role of consultant and not a decision-making power when appointing the Executive Director.

We would be pleased to discuss our comments with you and stay at your disposal should you require further clarifications or additional information.

Yours sincerely

Michel Barbet-Massin
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