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FAC 02: The Proposed Conceptual Framework and its possible effect on the reporting of Contingent Liabilities

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Abstract

This paper examines the International Accounting Standards Board's ("IASB's") proposed changes to liabilities within the Exposure Draft of the revised *Conceptual Framework*3, and the implications of these changes for the reporting of contingent liabilities, in the event that IAS 37⁴ were to be amended to align with the *Draft Framework's* proposals. This paper finds that the *Draft Framework's* liability definition has very few notable changes, yet the *Draft Framework's* recognition criteria will likely impact the number of obligations to be recognised in the future. Specifically, contingent liabilities that are considered to be 'present obligations' but fail the existing recognition criteria, may in future meet both the definition and recognition criteria for liabilities. This will impact key financial statement indicators such as an entity's net asset value and net profit. The results of this paper are therefore useful to a broad array of financial statement users as well as the IASB who are presently engaging various stakeholders on whether to take on an active project to amend IAS 37.

Keywords: contingent liability, recognition

³ The revised *Conceptual Framework* is hereinafter referred to as the "*Draft Conceptual Framework*" or the "*Draft Framework*".

⁴ International Accounting Standard 37: Provisions, Contingent Liabilities and Contingent Assets

Introduction

The Conceptual Framework for Financial Reporting (the "Conceptual Framework" or "the Framework") "describes the objective of, and the concepts for, general purpose financial reporting" (IASB, 2015a, par. IN1). It also forms a basis for the development of International Financial Reporting Standards ("IFRS"). The Conceptual Framework has been under extensive review since 2004 and one of the key areas subject to development has been the definitions of assets and liabilities, and the related recognition criteria.

There are numerous issues associated with the existing *Framework* that the IASB has sought to address in their update project. One area of concern is the existing recognition principles that potentially result in the inappropriate reporting of an entity's obligations. In particular, *contingent liabilities* as defined in IAS 37 are never recognised on the statement of financial position. This research paper investigates whether or not contingent liabilities would be reported any differently, in the event that the proposed definition and recognition principles for liabilities within the *Draft Framework* were to be incorporated into IAS 37. A direct implication of this would result in entities reflecting a lower (or higher) net asset value.

This research paper may be of benefit to the IASB as they currently deliberate on the direction of the *Conceptual Framework* project and whether or not IAS 37 merits being added to their active project agenda (IASB, 2015c, par. 8).

1. Background: The Conceptual Framework

The IASB and the Financial Accounting Standards Board⁵ initiated a joint project in 2004 to overhaul their existing *Conceptual Frameworks*. Since the project's inception there have been two chapters of the *Draft Framework* released – Chapter 1 (*The Objective of General Purpose Financial Statements*) and Chapter 3 (*Qualitative Characteristics of Useful Financial Information*). These chapters became effective within the existing *Conceptual Framework* in 2010.

The exposure draft of the *Conceptual Framework*, which forms the focus of this research paper, was issued in May 2015, and was open for public comment until November 2015. At the time of finalising this paper, the comment period had closed and the IASB staff were reviewing the comment letters. This will inform a decision by the IASB on the future direction of the *Conceptual Framework* project.

⁵ Financial Accounting Standards Board: The Financial Reporting Standards setting board in the United States of America.

1.1. The Qualitative characteristics of useful financial information

The 2010 updates to the *Conceptual Framework* included revisions to the qualitative characteristics of useful financial information. These characteristics are intended to inform what financial information should be reported.

The qualitative characteristics comprise:

- (a) Fundamental qualitative characteristics, namely:
 - Relevance and
 - Faithful representation, and
- (b) Enhancing characteristics, namely:
 - Comparability
 - Timeliness
 - Verifiability, and
 - Understandability (IFRS Foundation, 2014a, par. QC19).

The IASB seeks to maximise these qualities to the greatest extent possible (IFRS Foundation, 2014a, par. QC33). Information needs to be both relevant and faithfully represented, to be useful. These characteristics, together with the additional enhancing characteristics, represent an ideal financial information-set that the developed IFRS are expected to help achieve. At all times, the benefit of obtaining the information with these characteristics needs to outweigh the cost of obtaining the information. This is known as the 'cost constraint', and is a pervasive constraint that is constantly reflected on by the IASB as they develop IFRS.

An understanding and awareness of these characteristics, and the cost constraint, is critical when evaluating the effects of the proposed changes in the *Draft Framework*, and indeed, any IFRS.

2. The relevance of contingent liabilities in practice

In public finance practice, information on contingent liabilities has aided the analysis of sovereign risk (Cebotari, 2008). This has proven to be particularly useful in assessing the "true financial position of the public sector" (Cebotari, 2008). For example, there are "implicit contingent liabilities [that] governments take on during periods of financial and economic distress by bailing out banks...or even private enterprises" (Cebotari, 2008). Furthermore, there has been a larger focus by credit rating agencies, such as Standard & Poor's and Moody's, in incorporating this information in their credit risk assessment of various economies (Cebotari, 2008).

Adequate contingent liability disclosure for the purpose of making risk assessments can also fulfil a vital role in the private sector. The objective of general purpose financial reporting extends its meaning to aiding the users of financial statements in assessing the risks, timing and uncertainty of an entity's future net cash flows (IFRS Foundation, 2014f, par. OB3). There is greater need for the appropriate representation of these obligations if these users incorporate contingent liability disclosure in their risk assessment of an entity. Therefore, just as the information on contingent liability disclosure is incorporated in a public finance sphere, the decision to appropriately represent a liability in the financial statements is pivotal in fulfilling the objective of general purpose financial reporting.

3. IAS 37 & Contingent Liabilities

IAS 37 contains specific guidance on accounting for the recognition, measurement, presentation and disclosure of provisions, contingent liabilities and contingent assets. This guidance is generally consistent with the principles embedded in the existing *Conceptual Framework* relating to defining and recognising liabilities.

IAS 37 defines a *provision* as a 'liability of uncertain timing or amount' (IFRS Foundation, 2014d, par. 10).

Provisions are recognised on the statement of financial position if they meet the general recognition criteria for liabilities i.e. a reliable estimate of the outflow can be made, and it is considered probable that the outflow will occur.

IAS 37 further states that the term "probable" means "more likely than not to occur" (IFRS Foundation, 2014d, par. 24). Accordingly, if there is a greater than 50% chance of an outflow occurring, a provision for the best (reliable) estimate of the outflow is recognised. If an outflow is not considered more than likely to occur, or if a reliable estimate cannot be made, the obligation is known as a *contingent liability*. Contingent liabilities can also arise due to a possible (as opposed to 'present') obligation, as discussed in the next section.

3.1. Contingent liabilities in IAS 37

Per IAS 37, a contingent liability is defined as:

- " (a) a **possible obligation** that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity; or
 - (b) a **present obligation** that arises from past events but is not recognised because:

- i. it is not **probable** that an outflow⁶ of resources embodying economic benefits will be required to settle the obligation; or
- ii. the **amount** of the obligation cannot be measured with sufficient reliability" (IFRS Foundation, 2014d, par. 10).

IAS 37 requires that a contingent liability be "disclosed...unless the possibility of an outflow of resources embodying economic benefits is remote" (IFRS Foundation, 2014d, par. 28). Accordingly, contingent liabilities are never recognised as liabilities on the statement of financial position and will therefore have no direct impact on the net assets nor financial performance of an entity. However, the relevant details relating to these items appear as disclosure in the notes to the financial statements.

The IASB emphasised the importance of recognition in satisfying the objective of general purpose financial reporting: "The failure to recognise an asset or a liability is not rectified by disclosure... If some assets or liabilities are not recognised, the resulting depiction of the entity's resources and obligations would be incomplete and would thus provide a less faithful representation of the entity's financial position" (IASB, 2013a, par. 4.24). The recognition decision is thus fundamental when assessing the information needs of users⁷.

It can be seen that the definition of a contingent liability is comprised of two components, a "possible obligation" and a "present obligation" that is unrecognised. These two components require separate consideration. In order to do so effectively, each component of the contingent liability definition will be dealt with independently and hereinafter referred to as "type (a)", being a contingent liability that is a "possible obligation", and "type (b)", a contingent liability that is a "present obligation" that is unrecognised.

3.2. Problems with the existing recognition criteria

A concern with the probability criterion⁸ within the existing recognition criteria is its inconsistent interpretation and application within various Standards. "Some existing Standards do not apply a probability recognition criterion, for example, IFRS 9 *Financial Instruments*. Those that do apply such a criterion use different probability thresholds. These include 'probable', 'more likely than not', 'virtually certain' and 'reasonably possible'. The use of the different terms indicates a lack of consistency in

⁶ "Outflow" refers to the outflow of future economic benefits in all cases

⁷ This research paper does not analyse the relative appropriateness of recognition versus disclosure in respect of reporting contingent liabilities. Rather, this paper simply **identifies the IASB**'s amendments to the Conceptual Framework and the potential reporting outcomes for contingent liabilities.

⁸ The probability criterion in the existing recognition criteria: "It is probable that any future economic benefit associated with the item will flow to or from the entity" (IFRS Foundation, 2014b, par. 4.38).

the meaning attached at the Standards-level to the term 'probable' as used in the *Conceptual Framework*' (IASB, 2015b, par. BC5.8).

IAS 37 states that the term "probable" means "more likely than not to occur" (IFRS Foundation, 2014d, par. 23). As a consequence, the mere fact that an outflow is less than fifty percent likely to occur will result in that item's complete exclusion from recognition. Litigation was identified as an obligation prone to this disproportionate effect, where, as a court case developed, the probability of outflow could swing below and above this threshold and result in major accounting consequences for very small economic changes (IASB, 2015b). The result is that certain items are not recognised at all merely due to their *less-than-likely* outflow of economic benefits. This effect of not recognising obligations on the basis of a technical default potentially undermines the fundamental qualitative characteristics as set out in Chapter 3 of the *Conceptual Framework* (IFRS Foundation, 2014a).

4. A comparison of liabilities in the existing and Draft Framework

4.1. The definition of a liability

Draft Framework's definition:
"A liability is a present obligation of the
entity to transfer an economic resource
as a result of past events" (IASB, 2015a,
par. 4.24).

The guidance in the *Draft Framework* provides two conditions for a present obligation to exist:

"An entity has a present obligation to transfer an economic resource if both:

- (a) the entity has no practical ability to avoid the transfer; and
- (b) the obligation has <u>arisen from past events</u>; in other words, the entity has received the economic benefits, or conducted the activities, that establish the extent of its obligation" (IASB, 2015a, par. 4.31).
- 4.2. A comparison of the definitions of a liability in the existing and Draft Framework

No practical ability to avoid the transfer

The existing definition describes the event to be obligating once the entity has *no realistic alternative* but to settle the obligation, while the *Draft Framework's* definition

describes this rather as a *practical inability* to avoid the transfer of economic resources. The latter definition provides a seemingly greater extent of leeway through its use of the word "practical" as opposed to "realistic". The IASB has, however, noted that these two terms are similar in meaning, but chose to propose the term "no practical ability to avoid" because [it thought] that it most effectively [conveyed] the need to identify what the entity [was] able to do, instead of what the probable outcome will be. Furthermore, it [mirrors] the term 'practical ability', which [is] applied in some existing Standards in assessing whether an entity has control of an asset" (IASB, 2015b).

Therefore, the emphasis in the *Draft Framework's* approach has been shifted to the entity identifying whether it has committed an act sufficient enough to be an obligating event.

Arisen from past events

Both the existing and *Draft Framework's* liability definitions require the occurrence of a past event to give rise to a present obligation of the entity. In both cases, therefore, the recognition of a liability is not dependent on the future actions of the entity. The emphasis has therefore remained on an entity's past actions and whether those actions are sufficient enough to give rise to an obligation.

There could, however, be considerable uncertainty as to what is sufficient for this purpose. The *Draft Framework* distinguishes between two forms of uncertainty:

- " (a) uncertainty about whether an asset or a liability exists ('existence uncertainty')
 - (b) uncertainty about whether an asset or a liability will result in any inflow or outflow ('outcome uncertainty')" (IASB, 2015a).

An example of existence uncertainty is in relation to litigation where an entity has committed an act but it is unclear whether they will be obliged to pay damages or a fine for their related actions (IASB, 2013a). This extends to the uncertainty in how the law applies to those particular events (IASB, 2010a:5).

The uncertainty inherent in the existing and *Draft Framework's* liability definitions is primarily centred on existence uncertainty. Outcome uncertainty is more relevant to the recognition criteria (which is yet to be discussed).

To summarise, it is apparent that the definitions in the existing and Draft Framework are largely similar. The effect of the proposed change in the definition of a liability will be discussed further in Chapter 6, which analyses the effect of the proposed change for contingent liabilities.

4.3. The recognition criteria for a liability

Existing recognition	Draft Framework's recognition criteria:
criteria:	
"(a) It is probable that	"[Assets and] liabilities should be <u>recognised</u> if such
any future economic	recognition provides users of financial statements with:
benefit associated with	(a) relevant information about the asset or the
the item will flow to or	liability and about any income, expenses or
from the entity; and	changes in equity;
(b) The item has a cost	(b) a faithful representation of the asset or the
or value that can be	liability and of any income, expenses or
measured with	changes in equity; and
reliability" (IFRS	(c) information that results in the benefits
Foundation, 2014b, par.	exceeding the cost of providing that
4.38).	information" (IASB, 2015a, par. 5.9)
	In addition, "recognition may not provide relevant information: (i) if it is uncertain whether [an asset or] a liability exists; (ii) if an asset or a liability exists, but there is only a low probability that an [inflow or] outflow of economic benefits will result; or (iii) if all of the measurements of [an asset or] a liability that could be obtained have such a level of measurement uncertainty that the resulting information has little relevance" (IASB, 2015a, par 5.13).

4.4 A comparison of the recognition criteria in the existing and *Draft Framework:*

The former explicitly defined recognition criteria has been removed from the Draft Framework. Instead, relevance and faithful representation9 have become the factors that will drive recognition decisions. In the view of the IASB, "basing recognition criteria on the qualitative characteristics should result in useful information" (IASB, 2015b, par. BC5.20).

The relevance, faithful representation and benefits of any information is primarily dependent "on the item and the specific facts and circumstances" (IASB, 2015a, par. 5.10). The exercise of judgement is therefore essential in determining the usefulness

⁹ as set out in the chapter on the *Qualitative Characteristics of Useful Financial Information*

of information when applying the *Draft Framework's* recognition criteria. A detailed discussion of this criteria follows:

Relevant information

The Draft Framework's recognition criteria incorporates three considerations for whether or not recognising the liability will result in *relevant* information. Information is *not* considered to be relevant when:

i. <u>It is uncertain whether an asset exists, or is separable from goodwill, or whether a liability exists:</u>

The interpretations of the *Draft Framework's* liability *definition* establishes that existence uncertainty is a significant consideration for whether an entity has a *present obligation*. The presence of this type of uncertainty will likely result in an obligation not meeting the *Draft Framework's* definition of a liability. However, notwithstanding this practical filter within the *Draft Framework's* liability definition, an obligation would further fail to meet the *Draft Framework's* recognition criteria as a result of this additional consideration in the recognition criteria.

ii. There is only a low probability that an inflow or outflow of economic benefits will result:

In certain cases, the probability of outflow could be so low that recognition of the liability would lead to irrelevant information, if estimated and recognised in the financial statements. In other situations, however, recognition of a liability even when there is a low probability of an outflow occurring may provide relevant information, especially if the measurement of the asset or the liability reflects the low probability and is accompanied by explanatory disclosures" (IASB, 2015a:53). Determining how probable the outflow is, may in itself be difficult to determine, especially where there is no observable transaction or price. This is particularly evident in the case of litigation as a result of its non-transactional nature. Ultimately, the probability of the outflow occurring assists in determining whether the reported information would be relevant or not.

iii. A measurement of an asset or a liability is available (or can be obtained) but the level of measurement uncertainty is so high that the resulting information has little relevance and no other relevant measure is available (or can be obtained):

The recognition of an obligation requires the measurement thereof. The existing recognition criteria refers to the cost or value of an outflow as being "reliably measurable". Despite any unobservable transaction or price, the outflow can still be deemed to be reliably measurable through the use of estimation. There

are various measurement bases suggested in terms of the *Draft Framework* that could be used to obtain a reliable estimate (IASB, 2015a).

However, where the estimate of the amount of the potential outflow is subject to significant uncertainty, the "resulting information [has] little relevance, even if the estimate is properly described and disclosed. This may be the case when the range of possible outcomes is extremely wide and the likelihood of each outcome is exceptionally difficult to estimate, [or] measuring the resource or obligation requires unusually difficult or exceptionally subjective allocations of cash flows that do not relate solely to the item being measured" (IASB, 2015a:54).

Faithful representation

Just as faithful representation is equally as meaningful as relevance in providing useful financial information in the existing *Framework*, it has equivalent prominence within in the *Draft Framework*'s recognition criteria. It is apparent that the IASB has sought for the preparers of financial statements to balance these criteria, giving commensurate weight to each when making recognition decisions. However, many respondents to the Discussion Paper (IASB, 2013a) argued that "faithful representation" is redundant in the context of recognition. These respondents argued that "there are no circumstances when recognising an asset or a liability would provide information that is relevant but yet could not result in a faithful representation" (IASB, 2015b:68). The IASB, however, continued to affirm their view that faithful representation is necessary when making recognition decisions. This view was derived from the need for an entirely consistent application of the *Qualitative Characteristics* within the *Draft Conceptual Framework* (IASB, 2015b:68).

Cost constraint

This cost constraint was already captured in Chapter 3: *Qualitative Characteristics of Useful Financial Information* (IFRS Foundation, 2014a:A30). Albeit having a greater prominence within the *Draft Framework's* recognition criteria, this term has not deviated in meaning from the existing *Framework*.

5. Additional literature

The subject matter of this research paper was primarily guided by the *Conceptual Framework*, both in its existing and revised Draft form, as well as IAS 37. Relevant additional literature includes the following:

5.1. IASB staff papers on the implication of the *Draft Framework* for the reporting of liabilities

The IASB staff have issued a number of agenda papers that address the likely impact of the *Draft Framework* on the recognition of liabilities (IASB, 2015c; 2015d; 2015e).

In these papers, a number of familiar examples, such as provisions for restructuring costs, legal requirements to install smoke detectors, and provisions for bonuses, are applied to the proposed liability definition and recognition criteria, with the conclusion drawn that the proposed amendments would not result in a change in the timing of the recognition of liabilities (IASB, 2015e, par. 2.17-2.20). The only exception to this is an example dealing with a provision for government levies payable, which would probably result in an outcome that is different to the current requirements of IFRIC 21 *Levies*, an interpretation that has been heavily criticised in any event (IASB 2015e, par. 1.18-1.19).

However, none of the examples in these agenda papers address the possible consequences of the *Draft Framework* for contingent liabilities. Hence this research paper fills a void in the current available guidance.

5.2. Contingent liabilities in IFRS 3

There is a notable exception in IFRS 3¹⁰ to the recognition requirements of IAS 37 in relation to contingent liabilities. It is explicitly mentioned that the acquirer shall recognise contingent liabilities assumed in a business combination if "it is a present obligation that arises from past events and its fair value can be measured reliably" (IFRS Foundation, 2014c, par. 23). This is seemingly contrary to the general recognition criteria as a contingent liability should be recognised in a business combination "even if it is not probable that an outflow of resources would be required to settle that obligation" (IFRS Foundation, 2014c, par. 23). However, the expected probability of the obligation outflow was said to be encompassed in the fair value measurement of the contingent liability (IFRS Foundation, 2014e, par. 33). Therefore, despite the difficulty in measuring or estimating a probability for the outflow of these obligations, this exception implies that the IASB acknowledges the relevance in recognising these obligations, albeit with the use of a different measurement basis.

5.3. Literature conclusion

The purpose of this research paper is to investigate whether or not the proposed liability definition and recognition criteria within the *Draft Framework* would result in contingent liabilities being reported any differently in future, should the proposed criteria ultimately be incorporated into IAS 37. Such an investigation is by its nature, a highly technical analysis of a financial reporting concept. The literature mentioned thus far therefore contains the extent of the relevant technical concepts and principles

¹⁰ International Financial Reporting Standard 3: Business Combinations

that inform the outcome of this investigation, and therefore no further literature is considered to be relevant for the purpose of this study.

6. Application of the proposed changes within the Draft Framework to contingent liabilities

6.1. The definition of liabilities

In spite of the changed terminology and supporting guidance, the liability definition in both the existing and the *Draft Conceptual Frameworks* are largely equivalent in meaning. The proposed liability definition will now be applied to the existing definitions of contingent liabilities, in order to determine whether or not what are currently known as 'contingent liabilities' would in future meet the formal (proposed) definition of a 'liability'.

Recall that there are currently two types of contingent liabilities, namely "type (a)¹¹" and "type (b)¹²" contingent liabilities. Recall further that the *Draft Framework*'s liability definition encompasses the term "present obligation":

" A liability is a <u>present obligation</u> of the entity to transfer an economic resource as a result of past events" (IASB, 2015a).

Accordingly, since *type* (a) contingent liabilities are merely *possible* obligations, they fail to meet the existing liability definition, and therefore similarly fail to meet the *Draft Framework*'s liability definition. As such, no change in the accounting treatment of *type* (a) contingent liabilities is expected.

However, for *type* (b) contingent liabilities, where a present obligation *does* exist but where the probability of outflow is uncertain or cannot be reliably estimated, the accounting treatment may differ in future.

6.2. The recognition criteria

"Type (b)" contingent liabilities:

An issue identified following the release of the Discussion Paper (IASB, 2013a) with the *Draft Framework's* recognition criteria was that the range of assets and liabilities to be recognised will likely increase. The IASB have, however, noted that their aim

¹¹ a **possible obligation** that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity" (IFRS Foundation, 2014d).

¹² a **present obligation** that arises from past events but is not recognised because:

it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation; or

ii. the **amount** of the obligation cannot be measured with sufficient reliability" (IFRS Foundation, 2014d).

"has been solely to develop tools that enable it to take decisions based on a more coherent set of principles, which result in useful information. The IASB has not had, and does not have, an objective of either increasing or decreasing the range of assets and liabilities recognised" (IASB, 2015b, par. BC5.13).

Nonetheless, despite the IASB's stated objective in revising the recognition criteria, the *Draft Framework's* recognition criteria could affect the recognition of "type (b)" contingent liabilities. Most notably, contingent liabilities that were previously unrecognised as a result of a less-than-fifty percent probability of outflow could forthwith be considered for recognition if the resultant effect provides relevant information to users that is faithfully represented, and the cost of preparing such information does not outweigh the benefits to be derived from its recognition.

It is clear that a thorough evaluation of the qualitative characteristics is necessary in order to determine which of the existing type (b) contingent liabilities would be required to be recognised (according to the proposed recognition principles). It is only once all of the facts and circumstances unique to each obligation are considered that it will it be possible to judge whether that obligation should be recognised.

However we can conclude that the *Draft Framework's* definition and recognition criteria will likely lead to a greater number of obligations being recognised in future.

7. Conclusion

In their *Conceptual Framework* update project, the IASB sought to address numerous concerns with the existing *Framework*. One concern that was investigated in this research paper was the outdated recognition principles that fail to reflect the current thinking of the IASB. The *Draft Framework's* recognition principles have been established with direct reference to the *Qualitative Characteristics of Useful Financial Information*. In the view of the IASB, "basing recognition criteria on the qualitative characteristics should result in useful information" (IASB, 2015b, par. BC5.20).

It is clear that in doing so, more judgement will be required when making recognition decisions based on the *Draft Framework*. However, the link that has been established between the qualitative characteristics of financial information and the recognition criteria provides the recognition criteria with more meaningful context within the broader objective of financial reporting.

Although the IASB staff has issued a number of agenda papers that address the likely impact of the *Draft Framework* on the recognition of liabilities, none of the examples in these agenda papers address the possible consequences of the *Draft Framework* for contingent liabilities. Hence the findings of this research paper assist in providing additional guidance on the possible consequences of the proposals within the *Draft Framework*.

This paper shows that the proposed changes to the existing definition and recognition principles for liabilities will likely impact the way contingent liabilities are reported in the future, should the IASB amend IAS 37 to align with these principles. Specifically, present obligations that are 'contingent liabilities' and are not currently recognised, could meet the proposed definition and recognition criteria of a liability. The recognition of more liabilities would impact key financial statement indicators such as the net asset value and net profit of an entity.

The extensive use of judgement will likely have a knock-on effect for the assurance providers of financial statements. Such professions will need to place greater emphasis on their assessment of the judgements applied in the preparation of the financial statements

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