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4 December 2007

The Chairman
Australian Accounting Standards Board
PO Box 204
Collins Street West
MELBOURNE VIC 8007

Dear David,

Re: Invitation for Comment on ED 9 Joint Arrangements

We refer to "ED 9 Joint Arrangements" issued by the AASB in October 2007.

Accounting for Joint Arrangements is crucial to BHP Billiton and its stakeholders. The varying methods of recognition for significant investments in our joint ventures such as Escondida, Mozal and Paranam considerably impact the BHP Billiton financial statements and the transparency of information provided to meet the requirements of analysts and major shareholders. Accordingly, we will continue to examine changes to the proposed accounting for joint arrangements closely and with great interest.

In the context of the proposed exposure draft, we do not concur with the proposed accounting for joint ventures.

Approach to Accounting for Joint Ventures under IFRS/AIFRS to date

At 30 June 2007, BHP Billiton proportionately consolidated in excess of 20 of its investments in significant joint venture mining and petroleum operations in its financial statements. In addition, BHP Billiton equity accounted various joint venture entities in order to comply with AASB 131 "Interest in Joint Ventures". This was due to AASB 131 as issued not permitting proportionate consolidation of joint venture entities. While amendments to AASB131 (via AASB2007-4) permitted early adoption of the choice to apply proportionate consolidation, the extensive systems work and data restatement required to implement this change preclude such adoption.

Application of the equity method to joint venture entities results in the public presentation of financial information in a manner contrary to BHP Billiton management's view of the business. As the substance of our joint venture arrangements mean they are a natural extension and highly integrated component of our total business structures, their financial performance is viewed and managed with a full perspective of each element. Due to the lack of transparency arising from the equity accounting method for significant joint venture entities (such as Escondida, Mozal and Paranam) analysts and shareholders required supplementary information to enable them to understand the makeup of the Group's financial result and to monitor the relationship between performance measures and their consequences. The additional disclosures provided to analysts and shareholders included:

- An Underlying EBIT which represents Earnings before net finance costs and taxation, and jointly controlled entities' net finance costs and taxation and any exceptional items.
- Revenue together with share of jointly controlled entities revenue.
- Capital Expenditure including capital expenditure of certain jointly controlled entities

Adoption of ED 151 "Australian Additions to and Deletions from IFRSs, and other amendments"

As a result of the shortcomings outlined above, effective 1 July 2007 the Group will be implementing ED 151, "Australian Additions to and Deletions from IFRSs, and other amendments", and will choose to proportionately consolidate all of its joint venture entities. Whilst this change in accounting policy has required significant information technology and process changes, BHP Billiton believes the resulting financial statements will provide the most relevant financial "picture" of the Group. This will enable all users to receive key relevant information inclusive of joint venture entities in the primary financial statements. It also enables BHP Billiton to present its financial statements on the same basis as its peer group companies holding identical interests.

Changes proposed by ED9 Joint Arrangements
BHP Billiton do not support the changes proposed by ED 9 for the following reasons:

- Unlike AASB 131 which mandated accounting treatment for joint venture entities dependent upon the legal form of the arrangement, ED 9 requires accounting recognition based on a legal form approach to both the contractual rights and obligations of the joint venture and the interest in the joint venture. This results in the creation of multiple interests in each joint venture arrangement where interests in appropriate assets and liabilities are recognised and the remaining interest is equity accounted.

  Prior to IFRS, BHP Billiton was required under both Australian and UK GAAP to choose to account for its interests in joint ventures using either proportionate consolidation or the equity method. This required an assessment of the substance of each arrangement, determining whether each joint venture had the capacity to deploy its own scarce resources and carry on its own trade, thereby forming an "entity" in its own right. While IAS31 maintained the same choice, the principles for applying those methods of accounting were poorly expressed, such that the choice became an "all or nothing" situation. We believe the basis of policy choice under Australian and UK GAAP provided a more meaningful test than that put forward in both IAS31 and the exposure draft. It also provided a more meaningful financial reporting outcome which was endorsed by all users.

- ED9 explains that proportionate consolidation for joint venture entities would not be permitted. If this is true, as noted above, BHP Billiton believes the equity method of accounting is inferior to proportional consolidation. Proportionate consolidation provides enhanced transparency of the financial composition and performance of joint arrangements. Equity accounting fails to convey meaningful information that correlates with the risk and reward profile of such arrangements. Application of the equity method results in the public presentation of financial information in a manner contrary to management's view of the business. As the substance of BHP Billiton joint venture arrangements means they are natural extension and highly integrated component of BHP Billiton total business structures, their financial performance is viewed and managed with a full perspective of each element.
  Imposition of equity accounting on the Group's joint ventures will result in two sets of financial information having to be prepared – one set to comply with IFRS and another set of financial information to enable management of the business and to better inform analysts and shareholders. Pursuant to IFRS8, we note that segment information will continue to be prepared on a proportionate consolidation basis, contrary to the basis of accounting used in the primary financial statements under ED9.

- It is not clear under ED9 what a venturer with an undivided interest in a shared asset will report in its own balance sheet. Do they record their respective proportionate share of the actual asset on their balance sheet or do they record an intangible asset, being the right to use that asset? Take the example of a jointly owned aircraft whereby each joint owner has the right to take physical possession for an agreed portion of time and operate the aircraft for their own purposes. Is the asset the aircraft itself or the right to use of the aircraft for an agreed period of time? ED9 suggests the former, and in substance we agree with that outcome, but how does this accounting coincide with the concepts in IAS17/IFRIC4, such that a right to use an asset applies a "substantially all" test? Further, how does the accounting for this right under ED9 align with the requirements of IAS38?

- For traditional unincorporated joint ventures in the extractive industries, it is unclear what recognition of the "rights and obligations that the venturer enjoys" entails. In such arrangements, neither venturer typically has any direct rights over the physical assets themselves. Assets deployed in mining operations are committed to a manner of operation that precludes any one venturer from operating the asset to suit their own needs. Rather, the assets are operated by the appointed operator pursuant to the joint venture agreement. Does the ED permit a share of all such assets to be recognised or do the venturers report their right to a share of the production derived from the operation of the assets? In substance, each venturer has an operational and financial risk and reward exposure that is equivalent to one involving direct ownership of the assets. Accordingly, BHP Billiton believes the venturers should report their share of the underlying assets. However, it is unclear how the principle of ED9, to report assets and liabilities based on the contractual rights of the venturers, would permit such reporting.

- The ED introduces the concept of shared decision making but provides very little detail on the meaning of this concept and how it is assessed. Is it intended to be different to joint control, and if so, in what respects? BHP Billiton interprets joint control as something that does not require all participants in a joint venture to possess. However, shared decision making as defined implies that all participants need to consent. If this is correct, the vast majority of joint arrangements in the extractive industry would be scoped out of ED 9. Is this what the IASB intends?

- BHP Billiton understands that the IASB is working with the FASB to align the conceptual framework. It is our view that until that project has concluded on issues such as how to account for parts of assets or rights to particular aspects of assets, any attempt to align IFRS joint arrangement accounting with US GAAP should be postponed. We note that USGAAP permits proportionate consolidation in certain circumstances for foreign private issuers and in the extractive/construction industries.

- BHP Billiton would also encourage the IASB to invite comprehensive extractive industry participation in the formulation of the standard. The examples provided in the standard are not representative of the commercial reality of typical joint arrangements used by the mining, oil and gas industries.

<u>*Specific matters on which comment is sought*</u>

Question 1 – Definitions and terminology

The exposure draft proposes that the IFRS should be applied to arrangements in which decisions are shared by the parties to the arrangement. The exposure draft identifies three types of joint arrangement—joint operations, joint assets and joint ventures. A party to an arrangement may have an interest in a joint operation or joint asset, as well as an interest in a joint venture. Joint ventures are subject to joint control (see paragraphs 3–6 and 8–20 and Appendix A of the draft IFRS and paragraphs BC16–BC18 of the Basis for Conclusions).

Question 1: Do you agree with the proposal to change the way joint arrangements are described? If not, why?

BHP Billiton does not agree with the proposal to change the way joint arrangements are described. The language set to us is not intuitive and confusing to users.

We also believe that the definitions may exclude a large number of joint arrangements from the scope of this standard. A joint arrangement is defined as "a contractual arrangement whereby two or more parties undertake an economic activity together and share decision-making relating to that activity". A party to a joint arrangement is defined as "an entity that participates in shared decisions relating to the joint arrangement". Shared decisions are defined as "decisions that require the consent of **all** the parties to a joint arrangement."

Under many of BHP Billiton's current joint arrangements there are multiple parties to the joint venture agreement, not all of whom enjoy joint control. For example, BHP Billiton may have a 60% ownership, venturer "B" 30% and venturer "C" 10%. In order to agree strategic operating and financing decisions the joint venture agreement may provide that a resolution can be passed if 70% of the vote is achieved. Currently, under existing IFRS, BHP Billiton clearly does not enjoy control but considers it has joint control together with venturer B. Venturer C does not enjoy joint control as it has no capacity, acting in concert with other venturers, to ensure actions are decided or blocked. Under the proposed standard, because shared decisions require the consent of all the parties to a joint arrangement, this particular arrangement would not fall into the scope of the proposed standard and consequently BHP Billiton would be entitled to establish its own accounting policy pursuant to IAS8..

Questions 2 and 3 – Accounting for joint arrangements

The exposure draft proposes:
• that the form of the arrangement should not be treated as the most significant factor in determining the accounting.
• that a party to a joint arrangement should recognise its contractual rights and obligations (and the related income and expenses) in accordance with applicable IFRSs.
• that a party should recognise an interest in a joint venture (ie an interest in a share of the outcome generated by the activities of a group of assets and liabilities subject to joint control) using the equity method. Proportionate consolidation would not be permitted.
(See paragraphs 3–7 and 21–23 of the draft IFRS and paragraphs BC5–BC15 of the Basis for Conclusions.)

Question 2: Do you agree that a party to a joint arrangement should recognise its contractual rights and obligations relating to the arrangement? If so, do you think that the proposals in the exposure draft are consistent with and meet this objective? If not, why? What would be more appropriate?

Limiting basis of recognition to "contractual" rights and obligations is too restrictive and fails to account for the substance of the arrangement.

BHP Billiton finds the proposal to recognise contractual rights and obligations relating to the joint arrangement confusing, complicating and driven by form rather than substance. As explained in the ED, the proposed concepts results in creating multiple interests in an arrangement when there is an entity involved. Whilst the proposed standard suggests that the form of the arrangement should not be treated as the most significant factor in determining the accounting, the examples in the proposed standard suggest that when there is an entity involved, the interest in the entity should be equity accounted and assets or liabilities (or the rights/obligations of those assets/liabilities) operated by the venture should be brought directly onto the balance sheet of the venturer. This approach is still unduly influenced by the form rather than the substance of the arrangement and appears inconsistent with the intent of the proposed changes. For example, National or State laws may prevent joint venturers from owning property in common, or commercial arrangements with customers may require an incorporated entity to be the counterparty in sale contracts, even though in reality all that is happening is that the legal entity is selling product on behalf of the venturers.

It is not clear what a venturer with an undivided interest in a shared asset will report in its own balance sheet. Using the example given in the proposed standard of several companies owning an aircraft jointly, it is not clear if the venturers each report an aircraft asset on their balance sheet (at their respective proportionate cost of acquisition) or an intangible asset, being the right to use the aircraft. The example suggests that it is the latter however this seems to be contradictory to the guidance given in respect of example five in the proposed standard where the venturers recognise their direct share of mineral reserves, bearing in mind that US GAAP, EITF Issue No. 04-2, "Whether Mineral Rights Are Tangible or Intangible Assets", has opined that mineral rights are tangible assets.

For traditional unincorporated joint ventures in the extractive industry we are not sure what the proposed standard expects to be done. The principle expressed is to recognise the rights and obligations that the venturer enjoys. In such arrangements, neither venturer has any rights over the physical assets themselves (e.g. neither venturer can choose to operate the assets in their own way or to produce their own piece of output). Rather, the assets are operated by an appointed operator pursuant to the joint venture agreement. It is unclear whether the proposed standard expects that the asset that the venturer reports is the proportionate interest in the underlying asset (e.g. BHP Billiton reports as an asset the share of the cost it invested in the joint venture property, plant and equipment) or its right to the share of the production derived from the operation of the assets. In our view the only sensible answer is the former, however the proposed standard appears to contradict the manner in which a company reports its right to use an asset for a portion of its available time.

BHP Billiton suggests that the approach adopted in UK GAAP be used in IFRS. Under UK GAAP a Joint arrangement that is not an entity is defined according to the substance of the arrangement. For a Joint Arrangement to be a separate entity, that is, a joint venture that would require equity accounting, it must carry on a trade or business of its own and not just be part of its participants' trades or businesses. Such an entity will have some independence from its participants to pursue its own commercial strategy in buying and selling and will have access to the market in its own right for its main outputs and inputs. Where these conditions are not satisfied, the substance of the arrangement involves a natural extension of the business of the venturers, one in which the risks and rewards of the business activity are jointly controlled by the venturers and the risk and reward profile is best conveyed by proportionate consolidation of the assets, liabilities, revenues and expenses.

Question 3: Do you agree that proportionate consolidation should be eliminated, bearing in mind that a party would recognise assets, liabilities, income and expenses if it has contractual rights and obligations relating to individual assets and liabilities of a joint arrangement? If not, why?

BHP Billiton does not agree that proportionate consolidation should be eliminated. As discussed above, BHP Billiton believes the standard has over-complicated the method for accounting for joint arrangements. A situation where one arrangement can have multiple aspects and those aspects may be separately accounted for is untenable particularly where a joint venturer is required to equity account an interest in an entity (when the joint arrangement is conducted through the joint entity) **and** bring assets and liabilities held by the entity directly onto the balance sheet of the venturers. This will be particularly complicated when rights and obligations relating the to assets and liabilities change and therefore require a change in accounting methodology.

BHP Billiton believes that if a joint arrangement is a natural extension and highly integrated component of a total business structure, their financial performance should viewed and managed with a full perspective of each element regardless of the legal form of the vehicle used. The proportional consolidation method provides this transparency.

Questions 4-6 Disclosure

The exposure draft proposes:
• to require an entity to describe the nature of operations it conducts through joint arrangements (see paragraph 36 of the draft IFRS and paragraph BC22 of the Basis for Conclusions).
• to align the disclosures required for joint ventures with those required for associates in IAS 28 Investments in Associates (see paragraphs 39–41 of the draft IFRS and paragraph BC23 of the Basis for Conclusions).
• to require the disclosure of summarised financial information for each individually material joint venture and in total for all other joint ventures (see paragraph 39(b) of the draft IFRS and paragraph BC13 of the Basis for Conclusions).
• as consequential amendments to IAS 27 Consolidated and Separate Financial Statements and IAS 28, to require disclosure of a list and description of significant subsidiaries and associates. Those disclosure requirements were deleted in 2003 as part of the Improvements project. However, the Board understands from users that such disclosures are useful.
• as a consequential amendment to IAS 28, to require disclosure of current and non-current assets and current and non-current liabilities of an entity's associates. The proposed IFRS would require disclosure of current and non-current amounts, whereas IAS 28 currently requires disclosure of total assets and total liabilities.

Question 4: Do you agree with the disclosures proposed for this draft IFRS? If not, why? Are there any additional disclosures relating to joint arrangements that would be useful for users of financial statements?

BHP Billiton agrees with the proposal to require an entity to describe the nature of operations it conducts through joint arrangements.

Notwithstanding our objections to equity accounting (as outlined above), BHP Billiton agrees that the disclosures required for joint ventures be aligned with those required for associates, where both joint ventures and associates are equity accounted. However, we do not agree that the same level of reporting and accountability be applied to one instance where the venturer holds joint control and the other instance where an investor holds only significant influence.

To impose additional disclosure of summarised financial information for each material joint venture is not sufficient. If this additional information is deemed necessary in a note, then the primary outcome of the standard should be re-examined. The ultimate test of the success of a standard is whether it provides users with useful and meaningful financial information in an efficient and unambiguous fashion. Inferior standards should not be compensated by copious additional disclosures.

BHP Billiton believes that the assets and liabilities of joint arrangements should be proportionally consolidated and factored into the primary statements with disclosure to acknowledge that certain assets and liabilities are subject to joint control (not control).

Question 5: Do you agree with the proposal to restore to IAS 27 and IAS 28 the requirements to disclose a list and description of significant subsidiaries and associates? If not, why?

BHP Billiton agree that disclosing a list of significant subsidiaries and associates is useful to the readers of the financial statements and should be reinstated in the disclosure requirements of IAS 27 and IAS 28.

Question 6: Do you agree that it is more useful to users if an entity discloses current and non-current assets and liabilities of associates than it is if the entity discloses total assets and liabilities? If not, why?

As noted above, BHP Billiton believes the equity method is inferior to proportional consolidation. One of the compelling reasons for this preference is the lack of information provided to stakeholders when the equity method is employed for joint ventures. Accordingly, we do not believe additional disclosure should be provided to compensate for the lack of transparency provided by equity accounting.

We would like to take this opportunity to thank the AASB for providing the opportunity to comment on this important issue.

Yours sincerely,

Nigel Chadwick
Group Financial Controller