

## Statement 167 Insights for the Tourism, Hospitality and Leisure ("THL") Industry

The Financial Accounting Standards Board ("FASB") recently issued FASB Statement No. 167 ("Statement 167") **Amendments to FASB Interpretation FIN 46(R) ("FIN 46R")** (ASC 810-10), (revised December 2003), Consolidation of Variable Interest Entities, which significantly changes the consolidation determination for variable interest entities ("VIEs"). Currently, FIN 46R focuses primarily on a quantitative determination of which party is exposed to a majority of the VIE's risk and rewards. However, under the new standard, joint consideration is introduced such that an enterprise will need to qualitatively consider both its power and its economic interests in the VIE.

Statement 167 may have a significant impact on financial reporting considerations for companies in the THL industry. THL companies typically enter into arrangements that share economic interests and decision powers between numerous parties (e.g., with management agreements between a management company and a hotel owner, joint ventures between real estate developers and attraction operators). These structures give rise to consolidation issues that have to be carefully analyzed.

This document highlights some of the issues THL companies are likely to encounter as they begin to implement the new accounting requirements of Statement 167. Using examples drawn from actual scenarios encountered by Deloitte & Touche LLP ("Deloitte") practitioners in the THL industry, this publication will focus on the changes from FIN 46R to Statement 167 that

are most likely to impact THL companies. For additional details on the revised consolidation guidance in Statement 167, please see Deloitte's **June 16, 2009 Heads Up, FASB Amends the Consolidation Guidance Related to Variable Interest Entities and our October 20, 2009 Heads Up, Oh Thank Heaven It's 167... Implementation Guidance!**

### Summary of Relevant Changes for THL Companies

#### 1. Consideration of decision-making rights

Statement 167 changed the criteria for determining the primary beneficiary ("PB") from a quantitative determination to a joint consideration of decision-making rights (power) and obligation to absorb losses or right to receive benefits of a VIE that could potentially be significant to the VIE (economics). Previously a PB analysis under FIN 46R would have focused on which party absorbed the majority of a VIE's expected losses and residual returns. Under Statement 167, one would not only have to determine whether a party holds a variable interest in the entity, but also who holds the rights to make the decisions over the activities that most significantly impact the economics of the entity. For example, in a management agreement for a hotel property, does the manager or the owner of the property hold the rights to make the decisions over the activities that most significantly impact the economics of the hotel? To complicate matters further, in other arrangements (e.g., a joint venture between a casino operator and a real-

**Figure 1. Statement 167 Consolidation Decision Model**



estate developer), power may be divided (see paragraph 14E of Statement 167), with one party controlling certain important decisions such as location and financing, and the other party controlling certain operating decisions that may be subject to veto or approval by the other party. In those circumstances, one would have to analyze the underlying activities controlled by each party, to determine which ones most significantly impact the economics of the entity. This analysis is likely to be highly qualitative. In other situations (e.g. joint ventures) the venture partners may have shared power, whereby no one party has the power to direct the activities of a VIE and therefore no party is the PB. Pursuant to paragraph 14D of Statement 167 power is shared if two or more unrelated parties direct the activities of a VIE and if the decisions about those activities require the consent of each of the parties sharing power.

## 2. “Kick-out” rights

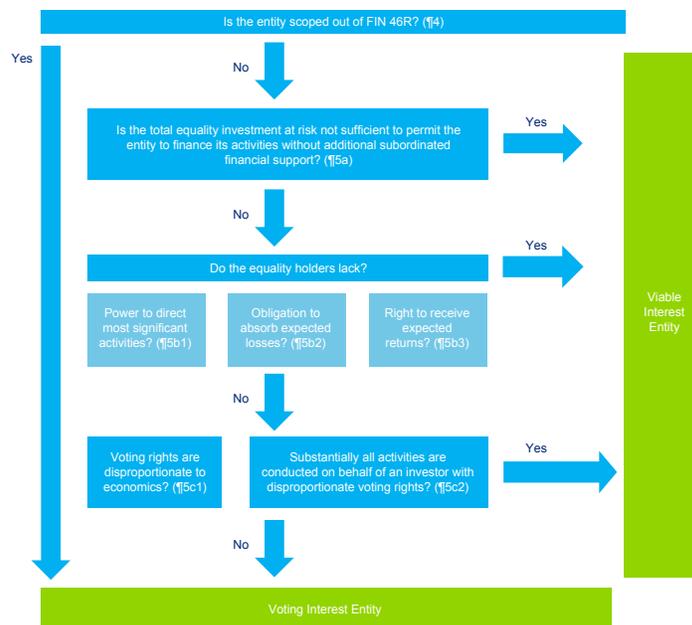
Statement 167 will change the way in which decision-making contracts (e.g. management contracts), specifically, are considered, both in determining whether an entity is a VIE and also who is the PB. Pursuant to Statement 167, a single party (including its related parties and de facto agents) must be able to exercise their rights to remove the decision maker in order for the “kick-out” rights to be considered substantive. Previously under FIN 46R, a simple majority of owners that could exercise kick-out rights was considered a substantive right. During its deliberations on the amendments to FIN 46R, the FASB acknowledged inconsistencies in this view and other guidance under U.S. Generally Accepted Accounting Principles (“U.S. GAAP”) — particularly EITF Issue No. 04-5 *Investor’s Accounting for an Investment in a Limited Partnership When the Investor*

*is the Sole General Partner and the Limited Partners Have Certain Rights* (“EITF Issue 04-5”) and EITF Issue No. 96-16 *Investor’s Accounting for an Investee When the Investor Has a Majority of the Voting Interest but the Minority Shareholder or Shareholders Have Certain Approval or Veto Right* (“EITF Issue 96-16”) (ASC 810-10-25) in which voting rights are considered substantive if they are held by a simple majority. In certain situations, this may create a significant change in the consolidation analysis for the THL industry because entities previously identified as voting interest entities, as a result of granting management rights to investors through management contracts, could now be considered VIEs. As a result of the change to the guidance around kick-out rights, THL companies that exercise control over the VIEs’ significant activities and cannot be removed by a single party may be considered to have one of the characteristics of a controlling financial interest. In contrast, if the equity owners have rights over the most significant decisions made by the management entity, it may be appropriate to conclude that decision making is held by the equity owners. The basis for conclusions within Statement 167 indicates the FASB will address this inconsistency as part of a project to reconsider consolidation accounting more broadly.

## 3. Consideration of fees paid to Decision Makers or Service Providers

For THL Companies, variable interests in an investment vehicle often include management and incentive fees, as well as direct equity investments. As it relates to the fees, the FASB modified the guidance for determining whether fees paid to a decision maker or service provider are variable interests. The fees are considered to be a variable

Figure 2. VIE Determination Model



interest unless they meet all of the following criteria from Statement 167, paragraph B22:

- The fees are compensation for services provided and are commensurate with the level of effort required to provide those services,
- Substantially all of the fees are at or above the same level of seniority as other operating liabilities of the entity that arise in the normal course of the entity's activities, such as trade payables,
- The decision maker or service provider and its related parties, if any, do not hold other interests in the variable interest entity that individually, or in the aggregate, would absorb more than an *insignificant* amount of the entity's expected losses or receive more than an insignificant amount of the entity's expected residual returns,
- The service arrangement includes terms, conditions, or amounts that are customarily present in arrangements for similar services negotiated at arm's length,
- The total amount of the anticipated fees are *insignificant* relative to the total amount of the variable interest entity's anticipated economic performance, and
- The anticipated fees are expected to absorb an *insignificant* amount of the variability associated with the entity's anticipated economic performance.

Based on the criteria set forth within Statement 167, an investment or financial guaranty in an entity made by a THL company that also manages the entity could result in the management or incentive fee being considered a variable interest under the third criterion above. Similarly, incentive fee arrangements could also represent a variable interest under the fifth and sixth criteria above. Fixed management fees might not be considered a variable interest in such entities, but an evaluation under all criteria above would need to be performed, including an assessment of any subordination and significance of the fees. With respect to the evaluation of the fees paid, Statement 167 does not define the term "insignificant" as highlighted in the criteria above. However, paragraph A75 of Statement 167 indicates (among other things) that the FASB used the term "insignificant" instead of the term "more than trivial" because "more than trivial" has been interpreted in practice to be a very small amount (i.e., anything other than zero)

and "no evaluation of the facts and circumstances related to the interest or the enterprise's involvement with the [VIE] is considered when making this determination."<sup>1</sup> As a general guideline, Deloitte interprets the "insignificant" threshold as follows: if the variability absorbed by the decision maker or service provider exceeds 10% of the expected losses or residual returns of the VIE in question, then the conditions described in the third and sixth criteria above are not considered to have been met, and therefore the fees paid to the decision maker or service provider would be considered a variable interest. This interpretation is by no means a bright line. Qualitative factors would also need to be analyzed and therefore Deloitte does not expect that being below the quantitative threshold alone provides sufficient basis to conclude that the relevant fees paid to a decision maker or service provider are insignificant.

If the remaining conditions in paragraph B22 of Statement 167 are met, such fees would not be deemed to be a variable interest, and therefore further quantitative and qualitative analyses to determine whether the manager is the PB would not be required. The FASB recently issued an exposure draft to amend portions of Statement 167, including the guidance in paragraph B22. THL companies will need to follow these developments as there may be substantial changes (see Deloitte's November 11, 2009 Heads Up, *FASB Exercises Its Kick-Out Right — Board Votes to Defer Statement 167 for Interests in Certain Entities*).

#### 4. Transfer restrictions

Previously (mostly seen in arrangements such as joint ventures), if mutual transfer restrictions existed between the parties involved (e.g., one joint venture partner may not sell its stake in the joint venture without the consent of the other joint venture partner), FIN 46R specified that such restrictions generally created a *de facto* agency relationship between the parties. This had the effect of requiring the PB analysis to be performed pursuant to the related party framework. Statement 167 amended such guidance to conclude that mutual transfer restrictions do not create a *de facto* agency relationship between the parties involved, so long as such restrictions were based on mutually agreed terms by willing, independent parties. This will likely change the framework under which THL companies evaluate arrangements where there are currently mutual transfer restrictions.

<sup>1</sup> Q&A Number 6, Deloitte Heads Up publication, Volume 16, Issue 37, October 20, 2009.

## What has not changed from FIN 46R to Statement 167

### 1. Business scope exception

Statement 167 retained the business scope exception described in paragraph 4(h) of FIN 46R. This is an important exception for THL companies because a large number of entities to be evaluated for consolidation, such as hotels, met the FASB Statement No. 141R *Business Combinations* (“Statement 141R”) (ASC 805-00-55) definition of a business and met the other conditions in paragraph 4(h) to utilize the business scope exception.

### 2. Protective rights held by franchisors

Pursuant to FSP FIN 46(R)-3, *Evaluating Whether as a Group the Holders of the Equity Investment at Risk Lack the Direct or Indirect Ability to Make Decisions about an Entity’s Activities through Voting Rights or Similar Rights under FASB Interpretation No. 46 (revised December 2003)* (“FSP FIN 46(R)-3”), a franchisor’s rights in a franchise arrangement are typically considered to be protective rights. This has the effect of excluding such rights from the analysis of paragraph 5(b)(1) and the PB analysis in paragraph 14 of FIN 46R. While the FSP FIN 46(R)-3 was nullified by Statement 167, the exclusion of protective rights from the PB analysis was carried forward, through the inclusion of typical franchisor rights as examples of protective rights. The FASB stated in paragraph A65 of Statement 167 that it “does not expect or intend for the nullification of that FSP [FIN 46(R)-3] to result in a significant change in practice to franchisors’ evaluations of the characteristic in paragraph 5(b)(1).”

### Implications for financial statement presentation

THL companies operate under a variety of business models, each with multiple implications under Statement 167. To the extent that a THL company is identified as having a controlling financial interest under Statement 167, the company may be required to consolidate all of the VIE’s assets and liabilities with the third party investors reflected as noncontrolling interest holders. This is expected to result in a variety of financial reporting implications. One such implication is how a company should account for intercompany transactions between the VIE and the company, such as management fees paid by the VIE to the company.

From a balance sheet perspective, paragraph 22A of FIN 46R as amended by Statement 167 requires separate presentation of certain assets and liabilities of consolidated VIEs. These implications could impact a variety of metrics that analysts may use in evaluating THL companies, including return on assets, return on equity, and operating margins.

THL companies may want to consider how best to “tell their story” to investors and analysts as a result of any significant changes to their consolidated financial

statements. Additional insight and transparency will likely be needed, particularly within the notes to the financial statements, as well as the Management’s Discussion and Analysis portion of the quarterly and annual filings with the Securities and Exchange Commission (“SEC”) for public registrants.

### Example application

The following examples represent a variety of scenarios that are intended to help illustrate some of the significant differences (and some similarities) that are expected to be encountered by THL companies upon adoption of Statement 167.

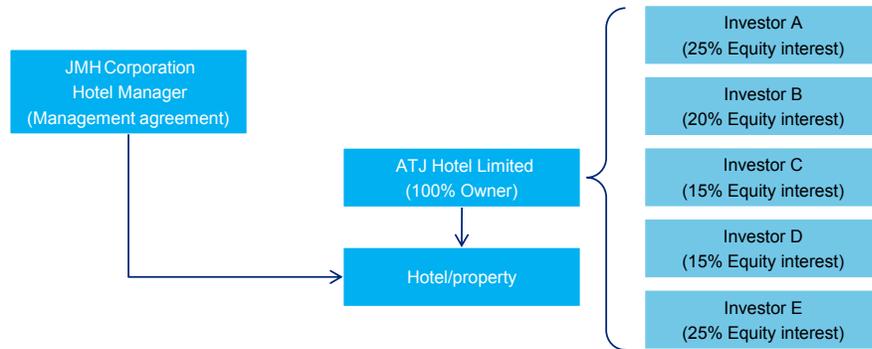
**General facts and circumstances:** JMH Corporation develops, owns and/or manages resorts and hotels worldwide through several investment vehicles such as wholly-owned subsidiaries, investment in joint ventures, ownership interests in joint venture partners, management agreements with third party owned hotels, etc.

### Example 1: Management Agreement With No Ownership Interest and No Debt and Business Scope Exception is Met (see Figure 3)

**Design of entity:** JMH Corporation has an agreement to manage the operations of ATJ Hotel Limited, a third party-owned hotel, for a management fee equal to a percentage of revenues and an incentive fee equal to a percentage of gross operating profits over a contractually stipulated amount. JMH Corporation has no ownership interest in and is not required to provide funding to ATJ Hotel Limited and/or the third party owners of ATJ Hotel Limited. In addition, JMH Corporation has no debt due from ATJ Hotel Limited and/or the third party owners of ATJ Hotel Limited. In addition to the facts discussed above, JMH Corporation did not participate in the development or design of ATJ Hotel Limited, including the ownership structure, financing and operating model. Under the terms of the management agreement, JMH Corporation provides employees with expertise in managing the hotel, while ATJ Hotel Limited provides the land, building, furniture, fixtures, equipment, operating capital and financing needed to operate the hotel. The management agreement also stipulates that JMH Corporation is responsible for managing the daily operations of ATJ Hotel Limited, however significant decisions regarding the business activities such as the brand under which the hotel will operate, approval of the operating and capital budgets, and operations of the hotel are dependent upon the third party owners of ATJ Hotel Limited.

**Evaluation:** In determining whether an entity should be consolidated, we must first consider the guidance in Statement 167, which involves determining whether 1) the reporting enterprise holds a variable interest in another entity and 2) whether that entity is a VIE. The entity that

**Figure 3. Example 1: Management Agreement With No Ownership Interest and No Debt and Business Scope Exception is Met**



consolidates the VIE is the PB of the VIE. There are several exceptions to this analysis, the most common being the business scope exception.

Generally resorts and hotels are operated for the purpose of providing a return in the form of cash dividends and/or gain upon sale to investors. Resorts and hotels also have relevant inputs (hotel property, employees), processes (strategic management and marketing teams), and outputs (the entity has customers, actively markets and generates room, food and beverage and other hotel related revenues and has measurable sales). As a result, generally third party-owned resorts and hotels meet the definition of a business as described in Statement 141R. In addition to being a business, the other conditions discussed in FIN 46R cannot be present in order to utilize the business scope exception. Statement 167 did not amend any of these conditions.

Based on the fact pattern above, JM H Corporation is a hotel manager, only engaged to oversee the daily operating activities of the hotel and JM H Corporation did not participate in the design of ATJ Hotel Limited. The management agreement between JM H Corporation and ATJ Hotel Limited does not indicate that the hotel is designed so that substantially all of its activities are conducted on behalf of JM H Corporation and JM H Corporation did not provide any equity or subordinated financial support. Therefore, pursuant to the original application of FIN 46R, ATJ Hotel Limited met the description of a business and further met the criteria in FIN 46R to apply the business scope exception. As Statement 167 did not amend the business scope exception, it would be expected that JM H Corporation would continue to apply the business scope exception.

**Example 2: Management Agreement with No Ownership Interest and No Debt and Business Scope Exception is Not Met — Evaluation of Management Fees as a Variable Interest**

**Design of Entity:** In the following example, assume the same facts in Example 1 above, except that JM H Corporation was involved with the design of ATJ Hotel Limited and therefore does not meet the business scope exception per Statement 167. Furthermore, assume that JM H Corporation has an agreement to manage the operations of ATJ Hotel Limited for a management fee equal to 5% of total revenues and an incentive fee equal to 2% of gross operating profits over a 20 year term, with an automatic renewal option of 10 years.

**Evaluation:** Paragraph B22 of FIN 46R, as amended by Statement 167, provides guidance on determining whether an enterprise is acting in a fiduciary role in a VIE. Per Statement 167 fees paid to decision makers and service providers are not variable interests when they meet all of the following:

- a. The fees are compensation for services provided and are commensurate with the level of effort required to provide those services,
- b. Substantially all of the fees are at or above the same level of seniority as other operating liabilities of the entity that arise in the normal course of the entity's activities, such as trade payables,
- c. The decision maker or service provider and its related parties, if any, do not hold other interests in the variable interest entity that individually, or in the aggregate, would absorb more than an insignificant amount of the entity's expected losses or receive more than an insignificant amount of the entity's expected residual returns,
- d. The service arrangement includes terms, conditions, or amounts that are customarily present in arrangements for similar services negotiated at arm's length,
- e. The total amount of the anticipated fees are insignificant relative to the total amount of the variable interest entity's anticipated economic performance, and

- f. The anticipated fees are expected to absorb an insignificant amount of the variability associated with the entity's anticipated economic performance.

For the purpose of this example, assume that based upon a thorough qualitative analysis, the terms, conditions, and amount of fees for the services that are being provided appear to be commensurate with the level of effort required to provide those services, and consistent with the terms of similar services that are negotiated at arm's length. Furthermore, it is assumed in this example that the management fees are at the same level of seniority as other operating liabilities when the management fees are earned. It is also assumed in this example that JMH Corporation does not hold any other variable interests in ATJ Hotel Limited. The October 20, 2009 Deloitte Heads Up, *Oh Thank Heaven It's 167...Implementation Guidance! Guidance on Statement 167 Implementation Issues*, provides additional guidance on applying criteria c, e & f of paragraph B22 of Statement 167. The FASB did not provide a definition of insignificant, but it is noted that determination of this amount involves an evaluation of the facts and circumstances related to the interest or the enterprise's involvement with the VIE, and the evaluation of significance should be used consistently with similar fee arrangements by the entity. The Deloitte Heads Up discusses 10 percent as a general guideline to determine significance of absorption of variability through the fee arrangements. It also notes that the 10 percent should not be used as a bright line test, as the facts and circumstances need to be evaluated with significant professional judgment. Based upon a thorough qualitative and quantitative analysis, it was determined the management fee of 5% of total revenues and an incentive fee equal to 2% of gross operating profits, were insignificant relative to the amount of ATJ Hotel Limited's economic performance and were not expected to absorb a significant amount of variability. This determination was based upon the evaluation of the design of the management agreement (being that of just carrying out the day-to-day operations of the hotel), coupled with the fact that the fees would not be significant to ATJ Hotel Limited as the amount of the fees are not expected to exceed 10 percent of ATJ Hotel Limited's economic performance. As there are no variable interests in ATJ Hotel Limited (note from the facts in Example 1 that there were no other sources of potential variable interests), JMH Corporation is not required to further evaluate its interest under paragraph 14 of Statement 167.

Now assume the same facts as above, except that JMH Corporation has a 39% ownership interest in ATJ Hotel Limited. This would cause criteria c above to not be met as the equity ownership absorbs more than an insignificant amount of ATJ Hotel Limited's expected losses and returns. Therefore, assuming ATJ Hotel Limited was concluded to

be a VIE, JMH would have to evaluate whether they are the PB pursuant to paragraph 14. The purpose of paragraph B22 of Statement 167 is not to circumvent the general guidelines concerning consolidation of VIEs, but instead to identify whether decision makers or service providers (e.g., under a management agreement) are acting as a principal as opposed to a fiduciary.

### **Example 3: Management Agreement With 5% Ownership Interest and No Debt and Business Scope Exception is Not Met and Significant Participation in the Design of the Entity**

**Design of Entity:** Assuming the same case facts described in Example 1, with the exception being that JMH Corporation was deemed to have participated significantly in the design of ATJ Hotel Limited, and the resulting conclusion was that ATJ Hotel Limited no longer meets the business scope exception of Statement 167. Additionally, assume that JMH Corporation also holds a 5% equity investment in ATJ Hotel Limited and ATJ Hotel Limited is deemed to be a VIE. Under the terms of the management agreement, JMH Corporation provides employees with expertise in managing the hotel, while ATJ Hotel Limited provides the land, building, furniture, fixtures, equipment, operating capital and financing needed to operate the hotel. The management agreement also stipulates that JMH Corporation is responsible for managing the daily operations of ATJ Hotel Limited, however significant decisions regarding the business activities such as the approval of the operating and capital budgets, and operations of the hotel are dependent upon the approval of the owners of ATJ Hotel Limited (with voting rights proportional to their ownership percentages). Additionally, in this example assume that one party holds a majority of the equity interest in ATJ Hotel Limited.

**Evaluation:** Based on the fact pattern above, JMH Corporation is a hotel manager with minority ownership interest, and is engaged only to oversee the daily operating activities of the hotel. Additionally, JMH Corporation (through the management agreement and its 5% voting interest) lacks the ability to direct the activities that most significantly impact ATJ Hotel Limited's economic performance (as ATJ Hotel Limited is merely carrying out the day to day operations as directed and approved by the equity owners). As a result, JMH Corporation would not be considered the primary beneficiary of ATJ Hotel Limited and, as such, would not be required to consolidate ATJ Hotel Limited.

However, if there are situations where the management agreement provides decision making authority to the manager and a single party does not have kick-out rights, the power to direct the activities of the VIE may be considered to be held by the manager.

**Example 4: Joint Venture Agreement With Significant Involvement (see Figure 4)**

**Design of entity:** Only consider and assume the following facts in evaluating and assessing Example 4. JMH Corporation entered into a joint venture agreement with TACM Company for the purpose of developing a property and marketing and selling the units of the property. JMH Corporation and TACM Company both made equal initial capital contributions and each obtained a 50% ownership in SBC Holdings Limited. TACM Company is responsible for decisions related to the marketing and initial sales of the property units. JMH Corporation is responsible for decisions related to the development and construction, as well as the ongoing management of the property operations.

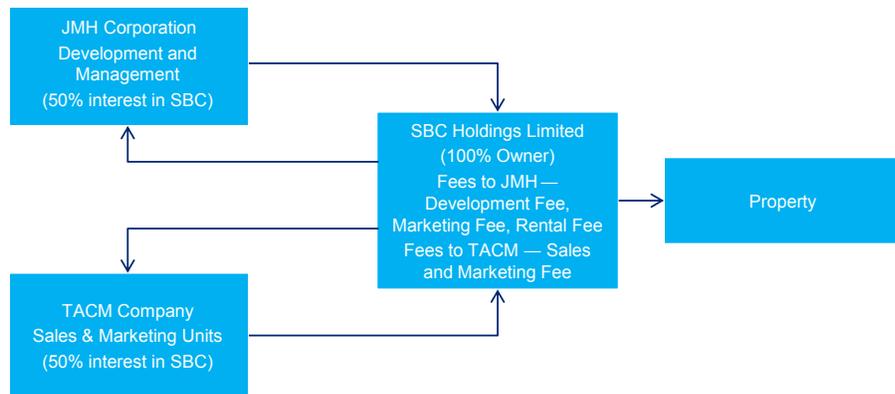
SBC Holdings Limited obtained financing for the construction of the property, and both TACM Company and JMH Corporation joint and severally guaranteed the loan. TACM Company will receive sales and marketing fees and JMH Corporation will receive a development fee during construction and a management and rental fee when the project begins operations. In addition, both TACM Company and JMH Corporation have agreed to mutual transfer restrictions (i.e. both parties cannot sell, transfer

or encumber their interest without the approval of the other party). Both TACM Company and JMH Corporation divide the responsibility for the day-to-day management and operations of the principal activities of SBC Holdings Limited. In addition, both TACM Company and JMH Corporation must jointly approve certain decisions of SBC Holdings Limited, including, the admission of a new owner, the acquisition of new property, transactions unrelated to the primary business purpose, the election, selection, and removal of principal executives and the hiring of key employees, and approval of material incremental financing.

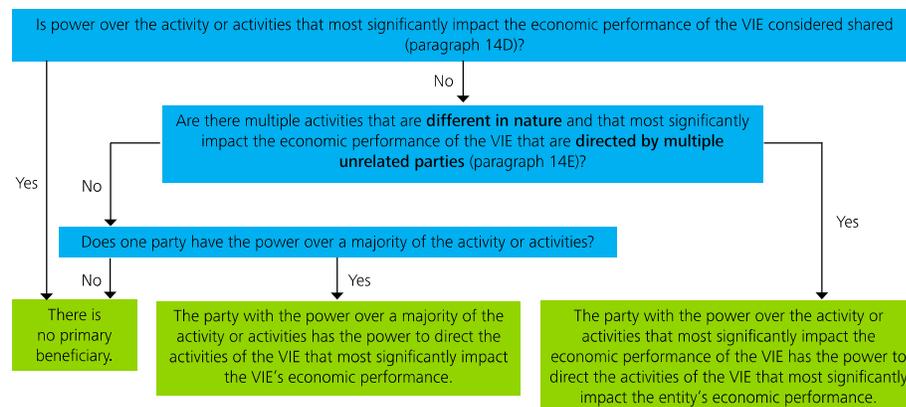
**Evaluation:** Assume that SBC Holdings Limited does not meet the business scope exception criteria in Statement 167.

Assume also that for this example, SBC Holdings Limited is a VIE and thus, JMH Corporation must determine whether it is the PB of SBC Holdings Limited. Prior to the implementation of Statement 167, the transfer restrictions described above resulted in this fact pattern being analyzed pursuant to the related party guidance in paragraph 17, as JMH Corporation and TACM Company were considered de facto agents. However, as noted above, since these restrictions were mutually agreed upon between willing, independent parties, Statement 167 no longer assumes that JMH Corporation is a

**Figure 4. Example 4: Joint Venture Agreement With Significant Involvement**



The following flowchart illustrates how the primary beneficiary is determined when multiple parties have power over the significant activities (excerpted from Statement 167).



de facto agent of TACM Company. Therefore, determination of the PB is evaluated pursuant to Statement 167 paragraph 14 which states that an enterprise shall be deemed to have a controlling financial interest in a VIE if it has both of the following characteristics: a) the power to direct the activities of the VIE that most significantly impact the entity's economic performance and b) the obligation to absorb losses of the entity that could potentially be significant to the VIE or the right to receive benefits from the entity that could potentially be significant to the VIE. The development and the ongoing management of the property are concluded to be the activities that most significantly impact the economics of SBC Holdings Limited. The rights requiring joint approval were concluded to be protective rights. Therefore under paragraph 14 of Statement 167, JMH Corporation would be determined to be the party that has control over the activities that most significantly impact the economics of the SBC Holdings Limited. In addition, through the various variable interests held by JMH Corporation (equity interest, service fees and debt guarantee), JMH Corporation has the obligation to absorb losses and has the right to residual returns that could be significant to the variable interest entity. As a result JMH Corporation would be deemed to be the primary beneficiary of SBC Holdings Limited and therefore is required to consolidate the entity.

### Implementation issues

Outside of the potential changes to financial statement consolidation conclusions and presentation from adopting Statement 167, the other major challenge THL companies may face is the operational burden of implementation. THL companies will first need to identify the complete population of entities requiring assessment under the new standard. In addition to the numerous management and development agreements that THL companies are involved in, they could also be involved in a significant number of strategic partnership and joint ventures, each requiring a unique assessment. The change in kickout rights application for both VIE determination and power determination will also require a reassessment of those entities previously identified as voting interest entities. Each company may have multiple unique arrangements, so the assessment may require a significant amount of time and effort, including developing new accounting policies and procedures. THL companies will need to inventory the existing population of all investments, arrangements, and potential special purpose entities, in order to evaluate each of these individually. The evaluation is not only required upon adoption, but also continually in order to track and reassess the determination of the PB pursuant to Statement 167 and monitor whether there are any reconsideration events that would prompt the company to evaluate whether the entity continues to be a VIE. The adoption of Statement 167 may require the consolidation or deconsolidation of various entities.

Once the appropriate interests have been consolidated (or deconsolidated) and the financial statements have been issued, THL companies should then develop a process to perform a continual reconsideration assessment of the VIEs and PB. This will likely involve coordination between multiple parties including accounting policy, corporate accounting, legal department, and the company's various business units. Consideration should be given as to whether the current reporting systems have the functionality to house the consolidation conclusions and whether automation of the reassessment process is possible.

If the systems are not integrated, management of the THL company must then consider the best approach to manually consolidate entities into its financial statements. Additionally, for those companies that are SEC registrants, they also need to consider implementing and testing appropriate financial reporting controls to ensure this process is compliant with the requirements of Section 404 of the Sarbanes-Oxley Act.

THL companies should also consider how best to accumulate the information needed for the additional financial statement disclosures required under Statement 167 (which are substantially similar to those already required under FSP FAS 140-4 and FIN 46(R)-8<sup>1</sup>). For example, new disclosures would include the significant judgments and assumptions made in the consolidation analysis, the nature of, and changes in, the risks associated with involvement with the VIE, and how involvement with the VIE effects the company's financial position, performance, and cash flows. Additionally, in the periods prior to adoption of Statement 167, public registrant companies will need to begin the process of accumulating information required for their disclosures under SAB Topic 11 .M<sup>2</sup> to "discuss the potential effects of adoption."

### Final commentary

Implementation of Statement 167 may have a significant impact on THL companies both from a financial reporting standpoint and the level of effort required to comply. Additionally, SEC registrant companies with a calendar year-end only have a few months to complete all phases of the implementation and file their initial quarterly financial statements. The task ahead may be formidable, but it is not impossible — the key will be timely reaction, finding the right resources and developing the right action plan.

<sup>1</sup> FASB Staff Position No. FAS 140-4 and FIN 46(R)-8, Disclosures by Public Entities (Enterprises) about Transfers of Financial Assets and Interests in Variable Interest Entities.

<sup>2</sup> SEC Staff Accounting Bulletin Topic 11 .M, Disclosure Of The Impact That Recently Issued Accounting Standards Will Have On The Financial Statements Of The Registrant When Adopted In A Future Period.

### Deloitte offers companies assistance with adoption of Statement 167:

Our professionals bring THL industry-specific experience, along with expertise in technical accounting related to consolidation accounting, transaction structuring, risk management, internal controls and processes, systems, and technology. We have experience working with THL companies in formulating a comprehensive implementation plan and supporting the plan's effective execution. Specifically, we can assist in the following activities (subject to applicable independence rules and regulations):

- **PMO** – Assist in the organization and management of a central oversight for entire implementation project
- **Accounting policy** – Assist in the development or assessment of accounting policies, procedures, and controls related to derecognition and consolidation
- **Transaction structuring** – Advise and assist with structuring new transactions or restructuring existing transactions under the new accounting standards
- **Consolidation assessment** – Assist in the initial and continuous assessment of existing contracts and other variable interest relationships for consolidation considerations
- **Technology needs** – Advise in addressing the technological impact the amendments might have on an organization, including system strategy to meet those needs
- **Impact on internal controls** – Assist in the review, design, implementation and testing of existing or new control sets relevant to the consolidation process
- **Disclosures assessment** – Advise on disclosures implications resulting from adoption of Statement 167
- **Education and training** – Provide training to educate an organization's finance and accounting departments and other stakeholders on the new amendments and their implications to an organization.

Please contact us if we may be of assistance to you in your implementation of Statement 167.

### Deloitte's THL Practice:

To learn more about our practice, visit us online at [www.deloitte.com/us/thl](http://www.deloitte.com/us/thl). Here you can access our complimentary Dbriefs webcast series, Deloitte Insights podcast program, innovative and practical industry research, and a lot more about the issues facing Tourism, Hospitality and Leisure businesses from some of the industry's most experienced minds.

### Authors

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**Brian Jobe**  
Partner  
Deloitte & Touche LLP  
+ 1 973 602 6388  
[bjobe@deloitte.com](mailto:bjobe@deloitte.com)

**Adrian Schwartz**  
Partner  
Deloitte & Touche LLP  
+1 203 761 3544  
[aschwartz@deloitte.com](mailto:aschwartz@deloitte.com)

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**Chrissie Barsouian**  
Manager  
Deloitte & Touche LLP  
+ 1 617 437 2161  
[cbarsoouian@deloitte.com](mailto:cbarsoouian@deloitte.com)

**Val Bauduin**  
Senior Manager  
Deloitte & Touche LLP  
+1 203 708 4850  
[vbauduin@deloitte.com](mailto:vbauduin@deloitte.com)

**Phil Nix**  
Senior Manager  
Deloitte & Touche LLP  
+ 1 407 246 8254  
[phnix@deloitte.com](mailto:phnix@deloitte.com)

---

**Michael Parker**  
Senior Manager  
Deloitte & Touche LLP  
+ 1 702 893 5190  
[miparker@deloitte.com](mailto:miparker@deloitte.com)

**Isabelle Rodriguez**  
Senior Manager  
Deloitte & Touche LLP  
+1 305 808 2514  
[irodriguez@deloitte.com](mailto:irodriguez@deloitte.com)

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**Deloitte Tourism, Hospitality and Leisure Leaders**

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<b>Adam Weissenberg</b> Vice Chairman U.S. Tourism, Hospitality & Leisure Leader Deloitte & Touche LLP + 1 973 683 6789 aweissenberg@deloitte.com	<b>James C. Cascone</b> Principal, Restaurants Co-Leader Deloitte & Touche LLP +1 213 553 1300 cjascone@deloitte.com	<b>Jeff Ortwein</b> Director, Gaming Leader Deloitte & Touche LLP + 1 702 893 3107 jortwein@deloitte.com
<b>Steve Steinhauer</b> Director, Restaurants Leader Deloitte & Touche LLP + 1 213 688 3231 ssteinhauer@deloitte.com	<b>Tom Walker</b> Partner, Audit & Enterprise Risk Services Leader Deloitte & Touche LLP +1 702 893 4236 towalker@deloitte.com	<b>John Zamora</b> Partner, Hospitality and Cruise Lines Leader Deloitte & Touche LLP + 1 305 372 3114 johnzamora@deloitte.com
<b>Tom Omberg</b> Financial Accounting & Reporting Services Leader Deloitte & Touche LLP tomberg@deloitte.com +1 212 436 4126		

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