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Kevin Stevenson, Chairman
International Financial Reporting Interpretations Committee
30 Cannon Street
London EC4M 6XH
United Kingdom

Dear Mr. Stevenson,

Decommissioning, Restoration and Environmental Rehabilitation Funds

Deloitte Touche Tohmatsu is pleased to comment on the International Financial Reporting Interpretations Committee's (IFRIC) Draft Interpretation—*Decommissioning, Restoration and Environmental Rehabilitation Funds* (the draft Interpretation or D4). We question the value added to the IFRS reporting requirements by the draft Interpretation. We do not believe that current practices, absent the draft Interpretation, are sufficiently diverse or inconsistent with the IFRS framework to justify the introduction of an IFRIC interpretation.

Decommissioning funds in practice range from trusts controlled by the entity through to government funds over which the entity has no influence. We do not believe the scope in paragraph 3 adequately describes the range of possible structures and terms, and are concerned at the accounting outcomes that might be achieved by using this Interpretation to apply by analogy to decommissioning funds not described in paragraph 3. We believe that the broad range of fact patterns in relation to such funds make it impossible for the IFRIC to develop a single comprehensive Interpretation that results in appropriate outcomes for all decommissioning funds.

We strongly disagree with the decision of the IFRIC (BC10) that rights to receive reimbursement in the form of cash, and rights to receive reimbursement other than cash (such as where the fund pays for decommissioning expenditure directly) should be accounted for in the same manner. We believe that in deciding that items that meet the definition of financial assets and items that do not meet the definition of financial assets should always be accounted for in the same way IFRIC is departing from the IFRS framework without appropriate justification.

As illustrated by our specific comments below we believe the draft Interpretation creates more anomalies within the accounting framework than it resolves. Accordingly we believe the IFRIC should re-evaluate the need for developing a final Interpretation.

Basis of presentation

We concur with the IFRIC that where the fund does not relieve the contributor of its obligation to pay decommissioning costs, an asset and a liability should be recognised by the contributor. We agree that the general criteria for presentation of assets and liabilities on a net basis are generally not met by the type of arrangement specified in the draft Interpretation. However, we are not aware of alternative interpretations or variations of presentation in this regard.

Classification of assets arising from decommissioning funds

We are concerned that the draft Interpretation raises issues about the appropriate derecognition criteria for financial assets. We note that assets transferred to decommissioning funds would generally not meet the IAS 39 criteria for derecognition in the books of the entity since the entity ordinarily retains the risks and rewards of ownership of the contributed assets. We believe it would be more relevant to focus on the nature of the asset recognised and suggest that, if IFRIC chooses to proceed with issuance of the Interpretation, the final Interpretation address any specific disclosures about the restrictions on the use of the asset.

We believe that the disclosure of restrictions on the use of the asset should be required to be presented in a separate note, as we believe it is appropriate that where the use of cash or other assets is restricted, disclosure of that fact should be clearly highlighted in order to ensure the attention of users is drawn to this information.

Virtual certainty

We are concerned by the assertion that because “the purpose of the funds is to segregate assets to fund decommissioning costs” the “virtually certain” test will be met (D4.BC.12). We do not believe it appropriate to assume that reimbursement from all such funds is virtually certain. We believe entities ought to be reminded in the Interpretation that in applying the Interpretation, preparers must make an assessment as to whether the virtual certainty criterion is or is not met. We believe that particularly in the cases such as multi-contributor funds and funds that are heavily regulated by legislation, an automatic assumption of virtually certain recoverability is inappropriate. We are also concerned that in specifying that such arrangements do meet the virtual certainty criteria the IFRIC may unintentionally have, by analogy, relaxed the virtual certainty criteria in IAS 37 *Provisions, Contingent Liabilities and Contingent Assets* (“IAS 37”) as it relates to other reimbursement assets.

Asset Cap (D4.7)

We strongly oppose the imposition of the asset cap proposed in paragraph 7 of the draft Interpretation. We believe that limiting the asset recognised by reference to the recognised liability creates an arbitrary asset value which may not reflect the economic reality of the terms of the fund. Paragraph 2(d) recognises that there could be situations where the contributor has restricted access to any surplus assets of the fund. We believe that this approach is inconsistent with the IFRS framework, and illustrate our concerns in the examples that follow:

1. Some funds may allow an entity that has effectively over-contributed to use that over-contribution as a reduction in future contributions. This could occur for example when the operator of a strip mine contributes £110 to a fund at the direction of the fund

administrator, but based on mining to date has only incurred an obligation of £100. Where this is the case we do not believe entities should be prevented from recognising the future economic benefits of the effective pre-payment simply because they are unable to recognise the future economic sacrifices associated with the decommissioning in accordance with IAS 37.

2. We are concerned about the impact of the asset cap on a situation where the decommissioning liability has been extinguished through other means. As an example, where a considerable portion of the decommissioning liability arose due to a change in legislation, and the actual damage to be rectified was caused by a past owner. The entity could, having contributed as legally required to the fund, come to an agreement for the past owner to pay the decommissioning costs. Accordingly, the decommissioning provision is reduced to zero, and so is the asset. However, it is reasonable to assume that in such circumstances the monies paid into the plan might be recoverable from the plan, albeit after a lengthy administrative delay. We do not believe the draft Interpretation gives sufficient consideration to the question of recoverability of monies from decommissioning funds other than through the extinguishment of decommissioning obligations.
3. As an extreme example of this point, the draft Interpretation specifically notes that the asset and liability will not necessarily be settled on a net basis, suggesting that in some circumstances the entity will pay decommissioning costs and then seek reimbursement from the fund. If the entity had at year end, paid a significant portion of decommissioning costs, but insufficient to legally entitle the entity to reimbursement, the asset should not be re-classified as a receivable. As a result the provision would be reduced for the activities already paid for, and as a result of the asset cap, so would the asset, despite the fact that on completion of certain additional requirements (for instance a formal site inspection) a significantly greater asset than is now recognised will be reimbursable in the near term.

Should the IFRIC consider it appropriate to proceed with the draft Interpretation we believe the specific issues noted above should be resolved prior to the issuance of the final Interpretation.

We appreciate the opportunity to provide our comments. If you have any questions concerning our comments, please contact Ken Wild in London at (0207) 007 0907.

Sincerely,

Delante Touche Robinson

