

6 February 2023

Bruce Mackenzie  
Chair  
IFRS Interpretations Committee  
Columbus Building  
7 Westferry Circus  
Canary Wharf  
London  
United Kingdom

Dear Mr Mackenzie

## **Tentative agenda decision – Definition of a Lease – Substitution Rights (IFRS 16)**

Deloitte Touche Tohmatsu Limited is pleased to respond to the IFRS Interpretations Committee's publication in the November 2022 IFRIC Update of the tentative agenda decision (TAD) not to take onto the Committee's agenda the request about how to assess whether a contract contains a lease.

With regards to the first issue addressed within the TAD, the level at which to evaluate whether a contract contains a lease, we agree with the decision not to add this item on to the Committee's agenda and the conclusions as presented in the TAD.

On the second issue of how to assess whether a contract contains a lease when the supplier has particular substitution rights, we acknowledge that it may be reasonable to conclude that in the fact pattern presented in the TAD the supplier's substitution right is not substantive. However, we are concerned that the conclusion seems to be based on the fact that the supplier does not benefit economically from substitution *throughout* the period of use. This conclusion implies that a substitution right is only substantive if it is economically beneficial to the supplier at all times during the lease term.

We note that IFRS 16:B16 states:

*'An entity's evaluation of whether a supplier's substitution right is substantive is based on facts and circumstances at inception of the contract and shall exclude consideration of future events that, at inception of the contract, are not considered likely to occur.'*

This paragraph can reasonably be read to indicate that future events that are likely to occur should be considered in the assessment of whether a substitution right is substantive. We note that in practice there will often be a period at the start of a lease where substitution is not economically beneficial to the supplier. We expect that a supplier would apply judgement and consider all factors in IFRS 16:B15-B19 to determine whether the substitution right is substantive.

Whilst in the fact pattern in the TAD there is a clearly defined period where the supplier is not expected to benefit economically from exercising its right to substitute a battery, in other fact patterns there may be some uncertainty over the date when substitution becomes economically beneficial and the period during which substitution is not economically beneficial may not be significant in the context of the overall

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contract. In these circumstances it would appear reasonable to consider these factors as part of the judgement in determining whether a supplier's right to substitute an asset is substantive throughout the period of use.

We would therefore suggest that to improve the applicability of the analysis to other fact patterns, the TAD should explain the judgement applied in reaching the conclusion that the condition in IFRS 16:14(b) is not met in the fact pattern presented in the TAD.

If you have any questions concerning our comments, please contact Veronica Poole in London at +44 (0) 20 7007 0884.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'V Poole', with a stylized flourish at the end.

**Veronica Poole**  
Global IFRS and Corporate Reporting Leader