

7 February 2005

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

Dear Kevin,

## **Liabilities Arising from Participating in a Specific Market – Waste Electrical and Electronic Equipment**

Deloitte Touche Tohmatsu is pleased to comment on the International Financial Reporting Interpretations Committee's (IFRIC) Draft Interpretation 10 – *Liabilities Arising from Participating in a Specific Market – Waste Electrical and Electronic Equipment* (the draft interpretation or D10).

We agree with the consensus reached by IFRIC. We suggest that IFRIC includes in the Basis for Conclusions, a reference to Example 11A as set out in Appendix C to IAS 37 – *Provisions, Contingent Liabilities and Contingent Assets* which clarifies paragraph 19 of IAS 37 in that no provision should be recognised as, until participation in the market during the measurement period, no obligation “*exists independently of the company's future actions – even the intention to incur the expenditure depends on the company deciding to continue operating the furnace....*”

We are aware that some may draw a comparison between the Waste Electrical and Electronic Equipment Directive (WE&EE directive) and Example 1 in Appendix C to IAS 37 related to warranties. To clarify this issue, we suggest IFRIC makes it clear in the Basis for Conclusions that the warranties in Example 1 are enforceable for three years and these “*give rise to a legal obligation,*” which would require the seller to pay another party (for example) to take over that obligation, in the event of ceasing to operate.

A conceptual problem is introduced where an entity (e.g. Entity A) has a widely published environmental policy in which it undertakes to decommission its own products in a similar manner as would be the case under the WE&EE directive, but accepting that, during the measurement period the actual costs may be apportioned to another entity. Consistent with Example 2B, Entity A would have a constructive obligation arising from the manufacture of the products (synonymous with “*contamination of the land*” in Example 2B). Another entity (e.g. Entity B) without a widely published environmental policy would only recognise an obligation at the time of participation in the market. Would Entity A, with a widely published environmental policy, still be required to reflect a constructive obligation once this draft Interpretation is in effect?

It appears that prior to the actual participation in the market during the measurement period, an entity that has manufactured ‘historic’ products does not have a contingent liability that should be accounted for in accordance with IAS 37 because this participation depends on the future actions of the entity. Therefore, it may be useful for IFRIC to consider introducing disclosure requirements similar to those for contingent liabilities in order for such potential liabilities to be disclosed in financial statements.

### **Editorial and other comments**

Paragraph 6 of the draft that sets out the ‘issue’ presumes that the “*entity has an obligation*” but goes on to ask “...*when does a liability arise...*” We suggest that this apparent contradiction be removed by redrafting the ‘issue’ paragraph.

We question the usefulness of the last sentence in paragraph 7 of the draft Interpretation (“*The liability may or may not arise at the same time as waste management costs are incurred.*”). We suggest that IFRIC consider whether this statement is necessary. This comment also applies to paragraph BC4.

Paragraph BC4 clearly indicates that the draft Interpretation only deals with ‘historical’ waste. We understand that each producer is responsible for financing the waste management cost relating to its own ‘new’ products. We note the draft Interpretation has not indicated explicitly why ‘new’ products are not dealt with. In order to avoid confusion amongst preparers regarding the products to which the draft Interpretation will apply, we suggest that IFRIC consider including a paragraph similar to BC5 setting this out.

The WE&EE directive clearly distinguishes wastes for private households and wastes other than for private households. We are concerned that paragraph BC5 does not contain the detailed facts relating to the disposal of historical waste other than for private households and therefore the view presented therein is a generic one and subject to misinterpretation once the detailed legislation in this regard is promulgated.

Due to the distinction drawn in paragraph BC3 between ‘new’ and ‘historical’ waste, we suggest the word ‘new’ in the first sentence of paragraph BC10 be deleted as it may cause confusion in interpreting the principle explained therein. Alternatively, the word ‘new’ in BC10 could be replaced with the word ‘historical’ in order to be consistent with the issue dealt with by the draft.

We appreciate the opportunity to provide our comments. If you have any questions concerning our comments, please contact the undersigned at (020) 7007 0907.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Wild", written over a single horizontal line that extends to the left and right of the signature.

Ken Wild  
**Global IFRS Leader**