ASSOCIATION OF PENSION LAWYERS
c/o Allen & Overy LLP, One Bishops Square, London, E1 6AD

International Accounting Standards Board
30 Cannon Street
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By email

7 November 2016

Dear Sirs

Proposed amendments to IFRIC interpretation 14

I am writing on behalf of the Legislative and Parliamentary Committee of the Association of Pension Lawyers (the **Committee**). The Association of Pension Lawyers represents members of the legal profession in the UK who specialise in pensions and pensions-related law. It has over 1000 members. It is a non-political, non-lobbying, not for profit organisation.

Extension of IFRIC 14

We understand from the meeting papers of the September IFRS Interpretations Committee that the committee has made drafting amendments to the proposals in last year's exposure draft (ED/2015/5), and has recommended that the International Accounting Standards Board (the **IASB**) finalises the proposed amendments.

We note one of these amendments changes the draft to refer to parties' powers to use surplus to "settle liabilities", rather than powers to "wind up a plan" (paragraph 71 of Staff Paper ref 3A). While this is presented as a minor drafting amendment, the IASB should be aware that the change may have significant consequences, and may change the effect of IFRIC14 for some companies. This amendment should therefore be made only if this change is intended.

Differences between a power to "wind up a plan" and a power to "settle liabilities"

A unilateral (and without restrictive conditions) trustee power to trigger a winding up under a plan's governing documentation is reasonably rare in practice. However in respect of those plans where it does apply it is potentially very significant. A winding up triggers a debt under Section 75 of the Pensions Act 1995 on the participating employers equal to the full deficit in the plan calculated on a basis equal to the cost of securing all the plan's liabilities with an insurance company.

By contrast, materially more plans will include a unilateral administrative power for the trustee to secure (i.e. "settle") liabilities by purchasing a policy in a member's name with an insurance company instead of paying benefits. Exercising such a power however does not bring forward any funding obligations of the participating employers as it is not a trigger for Section 75 Pensions Act 1995. The Trustee is only likely to use the power in individual cases for specific reasons. It will not change the "balance of power" between the trustee and plan sponsor in respect of any agreement on plan funding in the way that a unilateral trustee power to wind up a plan may well do.

However, despite the very different nature of the powers (and their impact on plan funding and consequent availability of plan surplus to the sponsor), the proposed amendment to IFRIC 14 would result in the same treatment for *both* of any accounting surplus in the plan. If this is outcome is unintentional we suggest the IASB revisits the amendment.

The IASB should also be aware that almost all pension plans would permit trustees to secure their liabilities by purchasing policies with an insurance company and then hold those policies (because pensions law and most trust deeds defaults all investment powers to the trustee). In exercising such a power, they are not "settling their liabilities" because the obligations remain with the plan (albeit matched with an insurance policy asset). However there is no difference in economic reality as regards the availability of surplus to an employer as between a unilateral trustee power to invest in insurance policies within the plan (which essentially all trustees have) and a trustee power to buy-out member benefits unilaterally with an insurance company outside the plan (which is rarer but still reasonably common). We think it would be misleading to those who rely on company accounts if that distinction led to difference in accounting treatment.

I would be very happy to discuss any of the above if helpful.

Please direct any reply to the Association in this matter to me, Neil Bowden, at neil.bowden@allenovery.com and the address set out above.

Yours sincerely

Neil Bowden
For and on behalf of the Association of Pension Lawyers