LEGAL TEXT FOR PROPOSED MODIFICATION P390

SECTION C: BSCCO AND ITS SUBSIDIARIES (VERSION 25.0)

10.2 Ring-Fencing of Permitted Affiliates

Amend paragraph 10.2.1 to read as follows:

10.2.1 Without prejudice to paragraphs 3.4 and 3.5, but subject to paragraph 10.1, the following provisions shall apply (as relevant) to BSCCo and to each Permitted Affiliate:

(a) without prejudice to paragraph 3, BSCCo shall not transfer, lease, licence, or lend any sum or sums, asset (including non-financial resources), right, or benefit to a Permitted Affiliate except by way of:

(i) a payment properly due for any goods, services, data, information, or assets provided on an arm's length basis and on normal commercial terms; or

(ii) a transfer, lease, licence, or loan of any sum or sums, data, information, asset, right, or benefit that is on an arm's length basis and on normal commercial terms~~;~~,

and, for the avoidance of doubt, BSCCo may not transfer, lease, licence or lend any data or information to a Permitted Affiliate other than is permitted elsewhere in the Code;

(b) except as permitted in paragraph 10.2.1(a), BSCCo shall not enter into any borrowing for or on behalf of a Permitted Affiliate where the term "borrowing" has the same meaning as that term in accordance with paragraph 3.4.4;

(c) BSCCo and each Permitted Affiliate shall implement agreed contractual arrangements to ensure that:

(i) where any common or shared costs between BSCCo and a Permitted Affiliate are incurred these costs are allocated reasonably and equitably, provided that in determining such allocation a Permitted Affiliate shall not be obliged to pay in excess of the established market rate, if applicable; and

(ii) where BSCCo incurs any costs (including costs in respect of any liabilities incurred by BSCCo) that arise as a consequence of services provided by BSCCo, or on BSCCo's behalf by a BSC Agent, to a Permitted Affiliate, such costs shall be recoverable from the Permitted Affiliate on a cost recovery basis; and

(d) Parties shall have no liability or obligation to provide financial support to a Permitted Affiliate in respect of its performance of Permissible Activities.

ANNEX C-1: PERMISSIBLE ACTIVITIES

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Insert a new paragraph 4 to read as follows:

4. Other Permitted Activities

4.1 General

4.1.1 Subject to paragraph 4.1.2, 4.1.3 and 4.1.4, BSCCo shall be entitled to establish or acquire a company or companies, either solely or together with a third party, to become a Permitted Affiliate carrying out Permissible Activities (**"PACo"**) for the purpose of:

(a) investigating and, if the Board of PACo decides to do so, participating in a Permissible Activity Tender; and

(b) performing the functions and responsibilities of the proposed PACo Role,

provided that the total consideration for the payment in respect of all of the allotted shares of PACo shall not exceed £1.00.

4.1.2 Prior to commencing a tender for a Permissible Activity, BSCCo shall satisfy itself that the proposed PACo Role meets the following conditions:

(a) that the proposed PACo Role relates to the UK and/or the Republic of Ireland;

(b) that the proposed PACo Role relates to the gas, electricity, heat and/or transport sector;

(c) that the proposed PACo Role is linked to BSCCo core competencies;

(d) BSC Parties shall benefit from BSCCo undertaking the proposed PACo Role;

(e) that BSCCo undertaking the proposed PACo Role shall not place disproportionate risk on BSC Parties;

(f) that BSCCo undertaking the proposed PACo Role shall not prevent standards of service under the Code from being maintained by BSCCo; and

(g) that BSCCo's role given to it under the Code shall not give it any undue competitive advantage in a contestable activity.

4.1.3 For the avoidance of doubt, if BSCCo is not satisfied that the conditions in paragraph 4.1.2 have been met it shall not pursue the proposed PACo Role.

4.1.4 At any point prior to undertaking substantive work on a formal offer by the Permitted Affiliate for the provision of the proposed PACo Role, BSCCo shall seek the views of Parties, the Panel and interested third parties in accordance with paragraphs 4.1.5, 4.1.6 and 4.1.7.

4.1.5 Where it is reasonably practicable to do so, BSCCo shall notify the persons referred to in paragraph 4.1.4 that it intends to, or may intend to, seek comments under paragraph 4.1.4.

4.1.6 BSCCo shall send out a notice to the persons referred to in paragraph 4.1.4 inviting them to provide comments on BSCCo's potential participation in one or more Permissible Activity Tenders within such period as the Board may determine (and in any event, no less than 10 Business Days from the date of the notice) ("**Tender Notice**"). The Tender Notice shall contain information on the nature and scope of the proposed PACo Role which BSCCo is interested in but shall not include any information that is confidential to third parties or which BSCCo reasonably regards as being commercially sensitive.

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4.1.7 As soon as reasonably practicable after receipt of the comments referred to in paragraph 4.1.6, BSCCo shall:

(a) publish a summary of the comments received by the persons referred to in paragraph 4.1.4;

(b) send to the Authority:

(i) a copy of the comments received by the persons referred to in paragraph 4.1.4; and

(ii) a summary of BSCCo's assessment against the conditions referred to in paragraph 4.1.2

together with an invitation to consider PACo's proposed Permissible Activity Tender for the proposed PACo role (**"Request for Permissible Activity Consent**").

4.1.8 The Authority may no later than 15 Business Days after receipt of the Request for Permissible Activity Consent:

(a) reject BSCCo's Request for Permissible Activity Consent; or

(b) inform BSCCo that it will communicate its decision and, having regard for the timelines applicable to the Permissible Activity Tender, provide a date by when such decision will be made;

(c) if no response is received by BSCCo pursuant to paragraph 4.1.8(a) or (b) the Authority shall be deemed for the purposes of the Code to have provided its consent to PACo's proposed Permissible Activity Tender.

4.2 PACo Tender

4.2.1 Subject to paragraphs 4.2.2, 4.2.4, 4.3 and notwithstanding Section C10.2, BSCCo may provide a loan or grant credit to PACo (interest or non-interest bearing) on such terms as the Board may approve, from time to time, provided always that the maximum amount of the loan or credit granted shall not in any event exceed the sum of one hundred thousand pounds sterling (£100,000.00) per each Permissible Activity Tender with this amount linked to the Retail Price Index to account for inflation ("**Total Amount Lent**") to enable PACo to pay, in aggregate in connection with a Permissible Activity Tender:

(a) its third party costs (including in respect of professional advisors), expenses, other outgoings and liabilities incurred in connection with the planning, preparation, negotiation and award (or any other process leading to an award), of the proposed Permissible Activity Role; and

(b) its overhead costs (including, without limitation, personnel costs), provided that such costs shall in the first instance be incurred by BSCCo on behalf of PACo,

(together, "**PACo Tender Costs**").

4.2.2 The total aggregate PACo Tender Costs in any given BSC Year shall in no event exceed 1% of that year's Annual Budget.

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4.2.3 Subject to paragraphs 4.2.1 and 4.2.2 and in relation to each Permissible Activity Tender, PACo Tender Costs may be incurred over successive BSC Years.

4.2.4 PACo Tender Costs shall be BSC Costs and BSCCo shall keep account of such costs, expenses and liabilities separately from all other BSC Costs.

4.2.5 BSCCo shall notify the Panel, the Authority and Parties whether or not it has been successful in a tender exercise as soon as reasonably practicable after the PACo is entitled to publish that information.

4.3 Reimbursement of PACo Tender Costs to Trading Parties

4.3.1 The amounts recoverable by BSCCo as PACo Tender Costs are amounts expended or funded by or on behalf of Trading Parties pursuant to paragraph 4.2 and any amounts which are otherwise described in the Code as PACo Tender Costs.

4.3.2 BSCCo shall procure the agreement of PACo that in the event PACo is successful in a PACo Tender exercise PACo shall repay Aggregate PACo Tender Costs to BSCCo within the PACo Tender Recovery Period.

4.3.3 Subject to paragraphs 4.3.2, 4.3.5 and 4.3.6, Trading Parties shall be entitled to recover Aggregate PACo Tender Costs in accordance with their respective Main Funding Shares at that time.

4.3.4 Subject to paragraph 4.3.5 it is acknowledged that:

(a) in the event PACo is unsuccessful in a PACo Tender exercise, it is unlikely that BSCCo will be able to recover Aggregate PACo Tender Costs (in whole or in part) from PACo; and

(b) if BSCCo were obliged to reimburse Aggregate PACo Tender Costs to Trading Parties the financial consequences of such reimbursement would be borne by Trading Parties themselves.

4.3.5 Notwithstanding Section C3.4.6, in accordance with paragraph 4.3.4, the Parties agree that:

(a) subject to paragraph 4.3.5(b), any loan arrangements agreed pursuant to this paragraph 4 may provide that the Board may, in its absolute discretion, resolve to write off any loan or credit provided to PACo for PACo Tender Costs in the event of:

(i) an unsuccessful PACo Tender exercise; or

(ii) a successful PACo Tender where PACo has subsequently ceased performing the PACo Role prior to the end of the PACo Tender Recovery Period,

provided the amount written off shall not exceed the Total Amount Lent which would otherwise have been receivable and shall in no event exceed 1% of the Annual Budget of the BSC Year in which the loan or credit was granted; and

(b) for the purposes of the Code, such loan arrangements as referred to in paragraph 4.3.6(a) which permit the Board to write off a loan or credit to PACo shall be treated as arrangements concluded at arm's length and on normal commercial terms.

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4.3.6 For the avoidance of doubt, BSCCo shall procure that any PACo Tender Costs provided pursuant to paragraph 4.2.1(a) which are not spent shall be refunded to BSCCo.

4.4 Shareholder arrangements with PACo

4.4.1 For the avoidance of doubt, the form of the Memorandum and Articles of Association of PACo shall not form part of the Code, but shall be subject to Board approval.

4.4.2 BSCCo shall approve a dividend policy issued by PACo from time to time and, notwithstanding Section C3.4.6, any dividend payable to BSCCo shall be subject to that dividend policy.

4.4.3 In its capacity as the PACo Shareholder, BSCCo shall:

(a) appoint the chairman of the PACo Board from time to time;

(b) ensure that the initial chairman of the PACo Board appoints the other initial directors of PACo;

(c) have the power to appoint or remove directors of PACo; and

(d) approve or reject the appointment of directors of PACo.

4.5 Financial Reporting

4.5.1 BSCCo shall:

(a) ensure that PACo submits, as soon as reasonably practicable after it is notified of its success or not (as the case may be) in a PACo Tender exercise and every year thereafter until repayment of the Aggregate PACo Tender Costs or the loan is written off in accordance with paragraph 4.3.5 (as the case may be), a statement of its costs incurred in accordance with paragraph 4.2.1 to BSCCo;

(b) submit any summary it receives from PACo pursuant to paragraph 4.5.1(a) to the Panel at its next available meeting and every year thereafter until repayment of the Aggregate PACo Tender Costs or the loan is written off in accordance with paragraph 4.3.5 (as the case may be);

(c) as soon as reasonably practicable after receipt of the statement referred to in paragraph 4.5.1(a), determine the Aggregate PACo Tender Costs and the recovery share for each Trading Party and provide its own statement of account to the Panel, the Authority and all Parties (excluding commercially sensitive information). Subject to the Panel's approval, such statement of account shall be final and binding in the absence of manifest error (provided that such error must be notified no later than six months following receipt of the statement of account, failing which the statement of account shall be a final determination for the purposes of the Code); and

(d) BSCCo shall ensure that PACo Tender Costs are subject to a statutory audit and such findings are reported to the Panel and Parties.

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ANNEX X-1: GENERAL GLOSSARY (VERSION XXX)

Insert the following new definition into the general glossary in alphabetical order to read as follows:

"**Aggregate PACo Tender Costs**":	means the aggregate amount of PACo Tender Costs incurred in respect of a successful PACo Tender exercise comprising each amount of PACo Tender Costs pursuant to: (i) Annex C-1 paragraph 4.2.1(a) repayable together with interest at a market commercial rate from the first day of the month after the month in which such amount was paid to PACo until the re-payment date; and ~~(i)~~(ii) Annex C-1 paragraph 4.2.1(b) repayable on a capital repayment basis based on BSCCo's statement of account provided in accordance with paragraph 4.5.1(c);
"**PACo**":	means a company engaging in Permissible Activity in accordance with Section C Annex C-1 and duly incorporated in England and Wales;
"**PACo Board**":	means the board of directors of PACo;
"**PACo Role**":	means the role undertaking one or more Permissible Activities following a Permissible Activity Tender;
"**PACo Shareholder**":	means BSCCo in its capacity as holder of some or all of the issued share capital of PACo;
"**PACo Tender Costs**":	means the costs referred to in paragraph 4.2 of Section C Annex C-1;
"**PACo Tender Recovery Period**":	means the period starting from the commencement date of the contract awarding the PACo Role and ending a maximum of 5 years thereafter;
"**Permissible Activity Tender**":	means a tender in accordance with paragraph 4 of Section C Annex C-1;
"**Total Amount Let**":	means any amounts lent by BSCCo to PACo in accordance with paragraph 4.2.1 of Section C Annex C-1;

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