

DRAFT LEGAL TEXT FOR PROPOSED MODIFICATION P365

SECTION C: BSCCO AND ITS SUBSIDIARIES (*version 21.0*)

ANNEX C-1: PERMISSIBLE ACTIVITIES

Insert new paragraph 3 to read as follows

3. Retail Energy Code (REC) Administrative Services (RECAS) Role

3.1 General

3.1.1 BSCCo shall be entitled to establish or acquire RECASCo for the purpose of:

- (a)** investigating and, if the Board of RECASCo decides to do so, participating in a RECAS Tender; and
- (b)** performing the functions and responsibilities of the RECAS Role,

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

3.2 RECAS Tender

3.2.1 Subject to paragraphs 3.2.3 and 3.3, BSCCo may provide a loan or grant credit to RECASCo 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 total aggregate sum of one hundred thousand pounds sterling (£100,000.00) to enable RECASCo to pay, in aggregate in connection with a RECAS 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 RECAS 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 RECASCo,

(together, "RECAS Tender Costs").

3.2.2 Subject to paragraph 3.2.1, RECAS Tender Costs may be incurred over successive BSC Years.

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

3.2.4 BSCCo shall submit any report it receives from RECASCo pursuant to paragraph 3.4.6(c) to the Panel at its next available meeting and every quarter thereafter until repayment of the Aggregate RECAS Tender Costs or the loan is written off in accordance with paragraph 3.3.6 (as the case may be).

3.2.5 BSCCo shall ensure that RECAS Tender Costs are subject to a statutory audit and such findings are reported to the Panel and Parties.

3.3 Reimbursement of RECAS Tender Costs to Trading Parties

3.3.1 The amounts recoverable by BSCCo as RECAS Tender Costs are amounts expended or funded by or on behalf of Trading Parties pursuant to paragraph 3.2 and any amounts which are otherwise described in the Code as RECAS Tender Costs.

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

3.3.3 Subject to paragraphs 3.3.2, 3.3.5 and 3.3.6, Trading Parties shall be entitled to recover Aggregate RECAS Tender Costs in accordance with their respective Main Funding Shares at that time.

3.3.4 As soon as reasonably practicable after receipt of the statement referred to in paragraph 3.4.5(c), BSCCo shall determine the Aggregate RECAS 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).

3.3.5 Subject to paragraph 3.3.6 it is acknowledged that:

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

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

3.3.6 Notwithstanding Section C3.4.6, in accordance with paragraph 3.3.5, the Parties agree that:

(a) subject to paragraph 3.3.6(b), any loan arrangements agreed pursuant to this paragraph 3 may provide that the Board may, in its absolute discretion, resolve to write off any loan or credit provided to RECASCo for RECAS Tender Costs which relates to an unsuccessful RECAS Tender exercise, provided the amount written off shall not exceed the total cumulative amount of £100,000.00 plus any interest agreed to have been paid in the agreement documenting that loan or credit which would otherwise have been receivable; and

(b) for the purposes of the Code, such loan arrangements as referred to in paragraph 3.3.6(a) which permit the Board to write off a loan or credit to RECASCo shall be treated as arrangements concluded at arm's length and on normal commercial terms.

3.3.7 For the avoidance of doubt, BSCCo shall procure that any RECAS Tender Costs provided pursuant to paragraph 3.2.1(a) which are not spent shall be refunded to BSCCo.

3.4 Shareholder arrangements with RECASCo

3.4.1 At all times BSCCo shall be the registered holder of all of the issued share capital in RECASCo.

- 3.4.2 For the avoidance of doubt, the form of the Memorandum and Articles of Association of RECASCo shall not form part of the Code, but shall be subject to Board approval.
- 3.4.3 Subject to the provision of RECAS Tender Costs, but without limitation to paragraph 3.4.4, BSCCo shall not provide any finance or financial support to RECASCo.
- 3.4.4 BSCCo agrees and undertakes that it shall not cause RECASCo to be in default of the Legal Requirements of the RECAS Role by reason of any act or omission in connection with its capacity as the RECASCo Shareholder, and each Party agrees that BSCCo may contract or otherwise put in place arrangements with RECASCo on such basis, unless:
- (a) such act or omission is required by reason of a Legal Requirement and/or the Code; and
 - (b) BSCCo has first notified and, where practicable, consulted with RECASCo in relation to such act or omission.
- 3.4.5 In its capacity as the RECASCo Shareholder, BSCCo shall:
- (a) subject always to paragraph 3.4.4:
 - (i) appoint the chairman of the RECASCo Board from time to time;
 - (ii) ensure that the initial chairman of the RECASCo Board, in consultation with the Panel, appoints the other initial directors of RECASCo;
 - (iii) have the power to appoint or remove directors of RECASCo; and
 - (iv) approve or reject the appointment of directors of RECASCo;
 - (b) ensure that RECASCo provides a quarterly summary of RECAS Tender Costs to BSCCo, provided that RECASCo shall:
 - (i) ensure that it reports on total costs and, subject to paragraph 3.4.5(b)(ii), provides in sufficient detail a breakdown of the costs such as to provide BSC Parties with a reasonable level transparency in respect of the scope and level of expenditure; and
 - (ii) be entitled to exclude any information from the breakdown of costs provided to Parties which relates to the affairs of RECASCo, a BSC Company or any other third party and is in RECASCo's reasonable opinion confidential and/or commercially sensitive in connection with a RECAS Tender; and
 - (c) without prejudice to paragraph 3.4.5(b), ensure that RECASCo submits, as soon as reasonable practicable after it is notified of its success or not (as the case may be) in a RECAS Tender exercise, a statement of its costs incurred in accordance with paragraph 3.2.1(b) to BSCCo.

SECTION X: DEFINITIONS AND INTERPRETATION (version 79.0)

ANNEX X-1: GENERAL GLOSSARY

Amend Section X by inserting the following definitions in alphabetical order into Annex X-1 General Glossary:

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| <u>"Aggregate RECAS Tender Costs":</u> | <u>means the aggregate amount of RECAS Tender Costs incurred in respect of a successful RECAS Tender exercise comprising each amount of REC Tender Costs pursuant to:</u> <u>(i) Annex C-1 paragraph 3.2.1(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 RECASCo until the re-payment date; and</u> <u>(ii) Annex C-1 paragraph 3.2.1(b) repayable on a capital repayment basis based on BSCCo's statement of account provided in accordance with paragraph 3.3.4;</u> |
| <u>"RECAS Role":</u> | <u>means the role of 'Retail Energy Code (REC) Administrative Services (RECAS)';</u> |
| <u>"RECAS Tender Costs":</u> | <u>has the meaning given to that term in Annex C-1 paragraph 3.2.1;</u> |
| <u>"RECAS Tender Recovery Period":</u> | <u>means the period commencing on the date RECAS Tender Costs are first paid to RECASCo and ending a maximum of 5 years thereafter;</u> |
| <u>"RECAS Tender":</u> | <u>means all activities, by or on behalf of RECASCo, in connection with the planning, preparation, negotiation and award of, or any other process leading to an award of the RECAS Role;</u> |
| <u>"RECASCo Board":</u> | <u>means the board of directors of RECASCo;</u> |
| <u>"RECASCo Shareholder":</u> | <u>means BSCCo in its capacity as holder of all of the issued share capital of RECASCo;</u> |
| <u>"RECASCo":</u> | <u>means a company duly incorporated in England and Wales;</u> |