

DRAFT PROPOSED MODIFICATION P290

SECTION C: BSCCO AND ITS SUBSIDIARIES (version 16.0)

Insert new paragraph 3.4.6 to read as follows:

3.4 Restrictions on powers of BSCCo

3.4.6 Except where expressly provided for in the Code, BSCCo shall not give any cross-subsidy to, or receive any cross-subsidy from, an Affiliate of BSCCo.

Insert new paragraph 3.5.2 to read as follows:

3.5 BSCCo resources

3.5.1 If at any time the resources (which in this paragraph 3.5 does not mean financial resources) of BSCCo are inadequate to enable it to perform any particular requirement of the Code (including a requirement specified by the Panel or a Panel Committee or Workgroup pursuant to paragraph 3.1.1), BSCCo shall promptly so notify the Panel and discuss the matter with the Panel, and following such discussion shall take such steps and procure such resources as are necessary to enable BSCCo to meet such requirement (as it may have been modified following such discussion) as soon as is reasonably practicable.

3.5.2 Without prejudice to paragraph 3.5.1, BSCCo shall at all times act in a manner to ensure it has available to it such resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents and facilities, on such terms and with all such rights, as shall ensure that it is at all times able to discharge its powers, functions and responsibilities under the BSC in all respects.

Insert new paragraph 7.1.6 to read as follows:

7.1.6 The provisions of this paragraph 7 shall not apply to SECACo.

Insert new paragraph 11 to read as follows:

11. SMART ENERGY CODE ADMINISTRATOR

11.1 General

11.1.1 Notwithstanding paragraph 3.4.5(b), BSCCo shall be entitled to subscribe for, acquire or hold any share or security in a body corporate other than the BSC Companies for the purpose of conducting a SECA Tender exercise, and if successful in such exercise, performing the relevant role, functions and responsibilities in accordance with such successful SECA Tender.

11.1.2 Nothing in this paragraph 11 shall affect or limit BSCCo's obligation to discharge its functions and responsibilities pursuant to the Code.

11.1.3 Without prejudice to paragraph 3 (but subject to paragraph 11.2), BSCCo shall not transfer, lease, license, or lend any sum or sums, asset (including non-financial resources), right, or benefit to SECACo except by way of:

- (a) a payment properly due for any goods, services, or assets provided on an arm's length basis and on normal commercial terms; or
- (b) a transfer, lease, licence, or loan of any sum or sums, asset, right, or benefit that is on an arm's length basis and on normal commercial terms; or
- (c) payments for group corporation tax relief or for the surrender of advance corporation tax calculated on a basis not exceeding the value of the benefit received.

11.1.4 Reference in this paragraph 11.1 to the term "**BSC Companies**" shall not include SECACo.

11.2 SECACo tender

11.2.1 Subject to paragraphs 11.2.3 and 11.3, BSCCo may provide a loan or grant credit to SECACo on such terms as the Board may approve, from time to time, to enable SECACo to pay, in connection with a SECA Tender exercise:

- (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 SECACo role, provided always that such third party costs shall not in any event exceed the total aggregate sum of £50,000; 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 SECACo but shall in no event exceed £60,000,

(together, “**SECA Tender Costs**”).

11.2.2 Subject to paragraph 11.2.1, SECA Tender Costs may be incurred over successive BSC Years.

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

11.2.4 BSCCo shall submit any report it receives from SECACo pursuant to paragraph 11.4.6(c) to the Panel at its next available meeting and every quarter thereafter until repayment of the Aggregate SECA Tender Costs or the loan is written off in accordance with paragraph 11.3.6 (as the case may be).

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

11.3 Reimbursement of SECACo Tender Costs to Trading Parties

11.3.1 The amounts recoverable by BSCCo as SECA Tender Costs are amounts expended or funded by or on behalf of Trading Parties pursuant to paragraph 11.2 and any amounts which are otherwise described in the Code as SECA Tender Costs.

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

11.3.3 Subject to paragraphs 11.3.2, 11.3.5 and 11.3.6 Trading Parties shall be entitled to recover Aggregate SECA Tender Costs in accordance with their respective Main Funding Shares.

11.3.4 As soon as reasonably practicable after receipt of the statement referred to in paragraph 11.4.6(d), BSCCo shall determine the Aggregate SECA 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), which subject to the Panel’s approval 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 referred to in paragraph 11.4.6(d), failing which the statement of account shall be a final determination for the purposes of the Code).

11.3.5 Subject to paragraph 11.3.6 it is acknowledged that:

- (a) in the event SECACo is unsuccessful in a SECA Tender exercise, it is unlikely that BSCCo will be able to recover Aggregate SECA Tender Costs (in whole or in part) from SECACo; and
- (b) if BSCCo were obliged to reimburse Aggregate SECA Tender Costs to Trading Parties the financial consequences of such reimbursement would be borne by Trading Parties themselves.

- 11.3.6 Notwithstanding paragraph 3.4.6, in accordance with paragraph 11.3.5, the Parties agree that:
- (a) subject to paragraph 11.3.6(b), any loan arrangements agreed pursuant to this paragraph 11 may provide that the Board may, in its absolute discretion, resolve to write off any loan or credit provided to SECACo for SECA Tender Costs which relates to an unsuccessful SECA Tender exercise, provided the amount written off shall not exceed the total cumulative amount of £110,000 plus interest which would otherwise have been receivable; and
 - (b) for the purposes of the Code, such loan arrangements as referred to in paragraph 11.3.6(a) which permit the Board to write off a loan or credit to SECACo shall be treated as arrangements concluded at arm's length and on normal commercial terms.
- 11.3.7 For the avoidance of doubt, BSCCo shall procure that any SECA Tender Costs provided pursuant to paragraph 11.2.1(a) which are underspent shall be refunded to BSCCo.

11.4 Shareholder arrangements with SECACo

- 11.4.1 At all times BSCCo shall be the registered holder of all of the issued share capital in SECACo.
- 11.4.2 For the avoidance of doubt, the form of the Memorandum and Articles of Association of SECACo shall not form part of the Code, but shall be subject to Board approval.
- 11.4.3 Subject to the provision of SECA Tender Costs, but without limitation to paragraph 11.4.4, BSCCo shall not provide any finance or financial support to SECACo.
- 11.4.4 Notwithstanding paragraph 3.4, BSCCo shall not enter into any borrowing for or on behalf of SECACo where the term "borrowing" has the same meaning as that term in accordance with paragraph 3.4.4.
- 11.4.5 BSCCo agrees and undertakes that it shall not cause SECACo to be in default of the Legal Requirements of the Smart Energy Code by reason of any act or omission in connection with its capacity as the SECACo Shareholder, and each Party agrees that BSCCo may contract or otherwise put in place arrangements with SECACo on such basis, unless:
- (a) BSCCo is required to take such step by reason of a Legal Requirement and/or the Code; and
 - (b) BSCCo has first notified and, where practicable, consulted with SECACo in relation to such step.
- 11.4.6 In its capacity as the SECACo Shareholder, BSCCo shall ensure SECACo's contractual agreement, that:
- (a) subject always to paragraph 11.4.5:
 - (i) the Board shall appoint the chairman of the SECACo Board from time to time;
 - (ii) the initial chairman of the SECACo Board shall, in consultation with the Panel, appoint the other initial directors of SECACo;
 - (iii) BSCCo, in its capacity as SECACo Shareholder, shall have the power to appoint or remove directors of SECACo; and
 - (iv) BSCCo, in its capacity as SECACo Shareholder, shall approve or reject the appointment of directors of SECACo;
 - (b) SECACo shall provide a quarterly summary of SECA Tender Costs to BSCCo, provided that SECACo shall:
 - (i) ensure that it reports on total costs and, subject to paragraph 11.4.6(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 SECACo, a BSC Company or any other third party and is in

SECACo's reasonable opinion confidential and/or commercially sensitive in connection with a SECA Tender;

- (c) without prejudice to paragraph 11.4.6(b), SECACo shall, as soon as reasonable practicable after it is notified of its success or not (as the case may be) in a SECA Tender exercise, submit a statement of its costs incurred in accordance with paragraph 11.2.1(b) to BSCCo; and
- (d) in the event that SECACo is successful in a SECA Tender exercise, as soon as reasonably practicable thereafter:
 - (i) BSCCo and SECACo shall implement an agreed dividend policy which shall, inter alia, ensure that all dividends recommended by the SECACo Board from time to time are subject to the approval of the Board; and
 - (ii) without prejudice to paragraph 3.4.6, BSCCo and SECACo shall implement agreed contractual arrangements to ensure that where any common or shared costs between BSCCo and SECACo are incurred these costs are allocated on a normal commercial basis, provided that in determining such allocation SECACo shall not be obliged to pay in excess of the established market rate.

SECTION X: DEFINITIONS AND INTERPRETATION (*version 55.0*)

ANNEX X-1: GENERAL GLOSSARY

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

- “Aggregate SECACo Tender Costs”:** means the aggregate amount of SECA Tender Costs incurred in respect of a successful SECA Tender exercise comprising each amount of SECA Tender Costs pursuant to:
- (i) Section C, paragraph 11.2.1(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 SECACo until the re-payment date; and
 - (ii) Section C, paragraph 11.2.1(b) repayable on a capital repayment basis based on BSCCo’s statement of account provided in accordance with paragraph 11.3.4;
- “SECA Tender”:** means all activities, by or on behalf of SECACo, in connection with the planning, preparation, negotiation and award of, or any other process leading to an award of, the role(s) of SECACo;
- “SECA Tender Costs”:** has the meaning given to that term in Section C, paragraph 11.2.1;
- “SECA Tender Recovery Period”:** means the period commencing on the date SECA Tender Costs are first paid to SECACo and ending a maximum of 5 years thereafter;
- “SECACo”** means, in accordance with Section C, paragraph 11.1.1, the entity which may engage in the tender exercise in respect of, and if successful perform, one or more of the roles of:
- (i) Code Administrator for the purposes of the Smart Energy Code (as that role is defined by the Smart Energy Code); and/or
 - (ii) Secretariat for the purposes of the Smart Energy Code (as that role is defined by the Smart Energy Code);
- “SECACo Board”:** means the board of directors of SECACo;
- “SECACo Shareholder”:** means BSCCo in its capacity as holder of all of the issued share capital

of SECACo;

“Smart Energy Code”

[means the industry code of that name as specified in the Smart Communication Licence];