

ANNEX 13
INSOLVENCY REMOTENESS ANALYSIS

This Annex sets out the Board's consideration of Guiding Factor 7(d) of the Guidance, which provides that the FDP should set out a Fund structure that is "insolvency remote". Insolvency remoteness in this context means that (a) the prospects of the Fund becoming insolvent are remote and (b) the Fund Assets are protected from the Operator's creditors in the event the Operator (or an associated company) becomes insolvent.

The Board's consideration of Guiding Factor 7(d) is set out in this Annex as follows:

1. Part A (*Fund Insolvency*) of this Annex, which covers the prospects of the FDP Implementation Company becoming insolvent; and
2. Part B (*Operator Insolvency*) of this Annex, which covers whether the Fund Assets are protected in the event of the Operator's insolvency.

PART A – FUND INSOLVENCY

In its assessment of whether the prospects of the FDP Implementation Company becoming insolvent are remote, the Board considered that the approach taken by rating agencies when determining insolvency remoteness would provide a useful framework for its analysis. It has therefore applied a set of key criteria, which have been derived from the following documents:

- "Bankruptcy Remoteness Criteria for Special Purpose Entities in Global Structured Finance Transactions", dated October 2014 by Moody's Investor Service; and
- "Legal Criteria: Structured Finance: Asset Isolation and Special-Purpose Entity Methodology", Part B (Insolvency-Remoteness of SPEs), dated 29 March 2017 by S&P Global Ratings.

These criteria and the Board's assessment of whether each of the criteria is met are set out in the following table. The Board considers that the vast majority of these criteria are met with respect to the FDP Implementation Company, such that the prospects of it becoming insolvent are remote.

#	Criteria	Satisfied for FDP Implementation Company?	Comments
1	Restrictions on activities, objects and powers (including ability to incur debt)	Yes	FDP Implementation Company has specific restrictions placed on it to prevent it from either borrowing money or engaging in other business and thus incurring associated risks. These include:

#	Criteria	Satisfied for FDP Implementation Company?	Comments
			<ul style="list-style-type: none"> its primary purpose is to implement its obligations and, to the extent it considers appropriate, the exercise of its rights under the FDP; it is structured as a special purpose vehicle with limited corporate powers (it cannot borrow, give guarantees or pledge its assets except for collateralising certain permitted arrangements under the FAP); it cannot enter into third-party agreements (under which it might incur liabilities) except as (i) permitted by the FAP on a bona fide arm's length terms (clause 56.2.7 (<i>Powers of the FDP Implementation Company to be restricted</i>) of the FAP) or (ii) approved by both its Independent Directors and the Secretary of State; and its Independent Directors have a duty to promote its primary purpose and have also pledged to do so in their capacity as the holders of the Independent Director Shares.
2	Independently owned and managed	Yes	<p>The FDP Implementation Company is a special purpose vehicle, with one (1) non-voting share (the Non-Voting Operator Share) held by the Operator and the remaining majority of shares owned by either (i) the Independent Directors or (ii) the FDP Company Administrator in circumstances (beyond the control of the Operator) where there are no Independent Directors.</p> <p>The Board has considered whether the Operator's approval right with respect to the FDP Implementation Company's Annual Budget under the FDP Budget and Services Agreement (see row 12 below) poses a material risk to the independence of the FDP Implementation Company. The Board's view is that it does not because (i) if the Operator rejects the Annual Budget, it goes through an independent expert determination process (rather than it being a blanket rejection right), (ii) the FDP Implementation Company is only required to use "reasonable endeavours" to avoid costs and liabilities exceeding the Approved Annual Budget (rather than this being a hard obligation on the FDP Implementation Company) and (iii) the Operator's indemnity</p>

#	Criteria	Satisfied for FDP Implementation Company?	Comments
			<p>provided to the FDP Implementation Company extends to costs not included in the Annual Budget.</p> <p>It is also a requirement of the FAP that the FDP Implementation Company be operated by the Independent Directors, each of whom must:</p> <ul style="list-style-type: none"> • affirm independence from the Operator and any of its Affiliates and undertake to maintain such independence during their appointment; • be independent in character and judgement; and • not have Notifiable Circumstances apply to them to the satisfaction of the other Independent Directors or if any such Notifiable Circumstances apply, all Independent Directors, having considered the Notifiable Circumstances which apply, are satisfied that such person is independent in character and judgement.
3	Restrictions on merger or reorganisation	Yes	<p>The FDP Implementation Company cannot issue securities other than issuing the Non-Voting Operator Share and the redeemable Independent Director Shares. The Non-Voting Operator Share can only be issued and held by the Operator and may not be transferred other than pursuant to security granted in accordance with the FAP or rights granted under the NASTA. Similarly, the Independent Director Shares may only be issued to and held by Independent Directors and may not be transferred.</p>
4	Limitations on amendments to organisational documents	Yes	<p>The FAP designates the following as "Mandatory Articles", which cannot be amended without the Secretary of State's consent and cannot be contradicted or overridden by other amendments:</p> <ul style="list-style-type: none"> • Article 3 – Objects • Article 4 – Powers • Article 5 – Asset Lock • Article 6 – Amendments to Mandatory Articles • Article 9 – Directors may delegate • Article 10 – Committees of Directors

#	Criteria	Satisfied for FDP Implementation Company?	Comments
			<ul style="list-style-type: none"> Article 11 – Directors to take decisions collectively Article 15 – Quorum for directors' meetings Article 17 – Conflicts of interest Article 20 – Appointment of Directors Article 22 – Termination of Director's appointment Article 31 – Classes of Shares Article [32] – The Non-Voting Operator Share Article [33] – Operator Shareholder's Reserved Matters Article [34] – The Independent Director Shares Article [39] – Quorum for General Meetings Article [52] – Registered Office and COMI <p>The square bracketed numbers of the Articles above, which are taken from Section 4 of Schedule 17 (<i>Governance Arrangements</i>) of the FAP, no longer align with the FDP Implementation Company AoA due to the clause numbering updates made to the latter document not being reflected in the FAP. The Board notes that the FAP will need to be updated to so align before it is finalised for signing (and the Board has assumed such update will be made for the purposes of the Advice).</p>
5	No realistic prospect that it will incur secondary liabilities or be at risk of consolidation	Yes	The FDP Implementation Company cannot give guarantees or pledge its assets except for collateralising certain permitted arrangements under the FAP. It will also be majority owned by Independent Directors.
6	Its activities will not result in any tax liabilities	No	The Board has reviewed the paper from Herbert Smith Freehills LLP entitled “Sizewell C Limited: FDP Tax” and dated 4 February 2025, which provided that the activities of the FDP Implementation Company may trigger tax liabilities. As set out in row C.6 of Annex 5 (<i>Risk Matrix Identifying Key Potential Risks to Shortfall in Funding the Cost of</i>

#	Criteria	Satisfied for FDP Implementation Company?	Comments
			<i>FDP Liabilities</i>), the FAP is designed to ensure that the FDP Implementation Company can ultimately discharge tax liabilities.
7	No outstanding liabilities from previous activities	Yes	The FDP Implementation Company will be a newly incorporated special purpose vehicle with limited corporate powers.
8	It has all the necessary licences and authorisations	Yes* (see next column)	As discussed further in Annex 14 (<i>Licences and Authorisations for the FDP Implementation Company</i>), the Board's understanding is that no specific licences or authorisations should be required for the FDP Implementation Company's permitted activities. The Board, however, notes a theoretical risk that the FDP Implementation Company may need to obtain FCA authorisation in order to manage the Fund Assets if it were to be held that, contrary to the intention of the funded decommissioning plan regime, the FDP and the FDP Implementation Company structure were found to constitute (for example) a constructive trust or similar mechanism with the Operator retaining the beneficial interest in the Fund Assets.
9	Transaction creditors agree to contractual terms that legally prevent them from successfully filing against the Company (e.g., where it has created a security interest or similar in favour of holders of rated debt)	Yes	The NASTA includes an acknowledgement that, among other things, " <i>sums, assets, bank accounts, investments and other securities held by [the FDP Implementation Company]</i> " and " <i>such other assets of [the FDP Implementation Company] as there may be from time to time</i> " are all "protected assets" for the purposes of section 56 of the 2008 Act (see paragraph 1.2 of Part B (<i>Operator Insolvency</i>) below). It also provides that that the Secretary of State has security over these "protected assets" and that, notwithstanding any provision of the Security Documents, neither the Security Trustee nor the lenders have any security over the protected assets (other than the shares in the Operator). As such, it appears that the only creditor that can make a claim against the FDP Implementation Company is the Secretary of State (in which case, any such claim would not be made in the Secretary of State's capacity as a provider of debt or equity to the Operator or its holding company). It seems highly unlikely that the Secretary of State would take this route – the much more likely route would seem to be the exercise of statutory powers pursuant to the Nuclear Transfer Scheme (or

#	Criteria	Satisfied for FDP Implementation Company?	Comments
			<p>expansion of statutory powers) to wind up the FDP Implementation Company and transfer the Fund Assets to the Secretary of State.</p> <p>The Board has considered whether a breach of the FAP by the FDP Implementation Company may expose the FDP Implementation Company to claims from the Operator (which is the counterparty under the FAP). Given the Operator's indemnity under the FDP Budget and Services Agreement noted in row 12 below, the Board's view is that such claim would be highly unlikely to be brought by the Operator since the Operator will ultimately be liable to indemnify the FDP Implementation Company for its liabilities in relation to the claim.</p> <p>The Board has also considered whether the FDP could be modified to erode these protections for the FDP Implementation Company. In this regard, clause 7.3 (<i>Limitations for the benefit of the FDP Company</i>) of the Section 46 Agreement provides that, in no circumstances (including following expiry of the Section 46 Agreement), may certain modifications to the FDP be made, including those which (i) adversely affects the FDP Implementation Company's access to the Fund Assets in the event that the Operator does not provide funding to the FDP Implementation Company, or (ii) impose additional obligations on the FDP Implementation Company without such rights as are reasonably necessary to enable the FDP Implementation Company to carry out those obligations or which the FDP Implementation Company could not otherwise reasonably be expected to fulfil. As such, the Board considers that there are adequate protections in relation to such risk of an FDP modification.</p> <p>For completeness, the Board has additionally considered that certain advisers, fund managers and other consultants of the FDP Implementation Company would be unlikely to agree to contractual terms that legally prevent them from successfully filing against the FDP Implementation Company. The Board does not consider this to be a significant risk given the likely quantum of the relevant contracts with those advisers, fund managers and other consultants compared to the value of the Fund Assets. Also, the Operator's indemnity to the FDP Implementation Company for all costs and liabilities under clause 13.1 (<i>Indemnity</i>) of the FDP Budget and Services Agreement</p>

#	Criteria	Satisfied for FDP Implementation Company?	Comments
			will include any such liabilities to those advisers, fund managers and other consultants and, during the Operational Period, the FDP Allowance Building Block under the SZC Economic Licence will cover such liabilities.
10	No material likelihood that transaction creditors will choose to file against the Company (e.g., where it has created a security interest or similar in favour of holders of rated debt)	Yes	As per row 9 above.
11	Shareholders and/or management are very unlikely to have an incentive to cause the Company to file for bankruptcy	Yes	The majority of the shareholders and the management of the FDP Implementation Company will be the Independent Directors, who are very unlikely to be incentivised to cause the FDP Implementation Company to file for bankruptcy.
12	No material possibility that it will ever be in sufficient financial distress to file for voluntary bankruptcy	Yes	<p>The FDP Implementation Company has a significantly expanded role in terms of investment decision-making compared to HPC. Nevertheless, whilst the investments may result in losses, they are unlikely to result in substantial liabilities for the FDP Implementation Company so as to result in financial distress.</p> <p>In particular, clause 9.3 (<i>Investment Rules Apply to all FDP Investments</i>) of the FAP requires that the FDP Implementation Company must not undertake certain listed investments, loans, transactions or other activities (such as making, pledging or providing security over the Fund Assets) (being the Prohibited Practice) in respect of the Fund Assets. Clause 13.1.2 (<i>The Operator may review Investment Orders</i>) of the FAP allows the Operator to challenge the FDP Implementation Company if the Operator reasonably considers that the implementation of an Investment Order from the FDP Implementation Company would constitute a Prohibited Practice, which may then be referred to an independent investment expert (clause 13.2.2 (<i>FDP</i></p>

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			<p><i>Implementation Company must dispute Inconsistent Investment Notice or withdraw Investment Order</i>) of the FAP).</p> <p>While the FAP does not prohibit shorting of stocks (which may theoretically lead to unlimited liability for the FDP Implementation Company), its use of derivatives is limited to situations where the purpose of such derivative transactions is to contribute to a reduction of risks or to facilitate efficient portfolio management (such efficient portfolio management being intended to avoid a material change in the Fund's risk profile or introducing any material additional risks). Permitted Investments must also be made consistent with the long-term nature of the Investment Strategy, and the FDP Implementation Company is prohibited under the FAP from pledging or providing security over the Fund Assets, which may practically limit its ability to post eligible collateral for the purposes of shorting transactions.</p> <p>In addition, the FDP Implementation Company's costs are required to be covered by the Operator pursuant to the terms of the FDP Budget and Services Agreement. This works as follows.</p> <ul style="list-style-type: none"> • The FDP Implementation Company is to submit a draft Annual Budget to the Operator for the Operator's approval each year (such approval not to be unreasonably withheld) (clause 11.7 (<i>Agreement of the Annual Budget</i>) of the FDP Budget and Services Agreement). • Clause 9.8.4 (<i>Pass-Through Costs Audit Guidance</i>) of the FDP Budget and Services Agreement provides that to the extent that any costs forming part of an Annual Budget are not recoverable in accordance with the terms of the SZC Economic Licence, the Operator shall be entitled to reject and exclude such costs from an Annual Budget, to the minimum extent necessary to ensure that the same shall be recoverable under the SZC Economic Licence. • Such rejection on the basis of unrecoverability under the SZC Economic Licence would seem unlikely. The FDP Allowance Building Block in the SZC Economic Licence includes any operational expenditure incurred by the FDP Implementation

#	Criteria	Satisfied for FDP Implementation Company?	Comments
			<p>Company (paragraph 2 (<i>FDP Allowance Building Block</i>) of Special Condition 34 (<i>FDP Allowance Building Block during the Pre-PCR Phase</i>) and paragraph 2 (<i>FDP Allowance Building Block</i>) of Special Condition 51 (<i>FDP Allowance Building Block during the Operations Phase</i>)).</p> <ul style="list-style-type: none"> • If the Operator rejects the draft Annual Budget, the FDP Implementation Company and the Operator must go through the dispute resolution process (in respect of the Disputed Sums only) including an independent expert referral procedure (clause 11.9 (<i>Disputed Sums</i>) of the FDP Budget and Services Agreement). • The Annual Budget approved by the Operator or determined by the independent expert will be the basis for the Operator to fund the FDP Implementation Company's expenses in advance via payments every six (6) months under the FDP Budget and Services Agreement and in accordance with the FAP. Even if such provisional sums paid in advance turn out to be insufficient and calls are made on the Fund Assets, it is not expected that the FDP Implementation Company's expenses will be of a sufficient magnitude that these will threaten the sufficiency of the Fund Assets. • Whilst the FDP Implementation Company is only obliged to use "reasonable endeavours" not to incur liabilities or costs in excess of the Approved Annual Budget, the Operator's indemnity to the FDP Implementation Company for all costs and liabilities etc under clause 13.1 (<i>Indemnity</i>) of the FDP Budget and Services Agreement covers any cost incurred in excess of those predicted in an Approved Annual Budget. <p>During the post-closure period (when the Operator no longer receives the Allowed Revenue), the operating costs of the FDP Implementation Company would need to be drawn from the Fund Assets in accordance with the FAP. The Board understands that the FDP Implementation Company's post-closure operating costs are accounted for in the DWMP (and would therefore be incorporated into the End of Generation Target by virtue of the definition of "Cost of Decommissioning" in the FAP). See also paragraph</p>

#	Criteria	Satisfied for FDP Implementation Company?	Comments
			<p>3.12 of Part A (<i>Factual Background</i>) of Annex 7 (<i>Funded Decommissioning Programme</i>).</p> <p>In an early closure scenario, the Partial Revocation regime under the SZC Economic Licence (as discussed further in <i>Annex 11 (SZC Economic Licence)</i>) will lead to a reprofiling of the Contributions under the FAP and payment to the Operator of the FDP Final Amount over an up to ten-year time horizon. Such FDP Final Amount is expressed to be an aggregate of the amount required to cover any FDP Shortfall and the Operator's estimate of the costs to be incurred by the FDP Implementation Company during the Partial Revocation Period. To the extent this underestimates the FDP Implementation Company's costs, the FDP Implementation Company can draw from the Fund Assets in accordance with the FDP Budget and Services Agreement to fund such costs. Further, if a Partial Revocation or a full revocation occurs and there is an FDP Shortfall, and the Secretary of State has not otherwise removed from the Operator its liabilities in respect of such FDP Shortfall (including through the implementation of a Pre-Consented Nuclear Transfer Scheme), the NASTA provides that the Secretary of State will pay to the FDP Implementation Company an amount equal to the FDP Shortfall and any FDP Implementation Company costs.</p>

PART B – OPERATOR INSOLVENCY

In its consideration of whether the Fund Assets are protected in the event of the Operator's insolvency, the Board has considered the following categories of risk:

1. the risk that an Operator's insolvency would leave the existing assets of the FDP Implementation Company at risk (e.g., from a creditor of the Operator);
2. the risk of Contributions not continuing through an Operator's insolvency or an administration; and
3. the risk of an Operator's insolvency.

The Board's analysis has focused primarily on the first two categories above, since if those risks are remote, the risk of Operator insolvency is of less concern for the prudence of the FDP. As such, whilst the third category of risk above has been considered by the Board, emphasis has been placed on consideration of the first two risk categories above.

For the reasons set out below, the Board's view is that the Fund Assets are protected in the event of the Operator's insolvency.

1. RISK OF OPERATOR INSOLVENCY ON THE ASSETS OF THE FDP IMPLEMENTATION COMPANY

1.1. Legally distinct entity

The FDP Implementation Company is a legally distinct entity from the Operator and does not guarantee the Operator's liabilities. As such, the creditors of the Operator are highly unlikely to be able to make claims against the FDP Implementation Company with respect to the Operator's liabilities to its creditors.

1.2. Protected assets

- (A) "Protected assets", as defined in section 56 of the 2008 Act, are "security" for the performance of obligations provided by way of a trust or other arrangements in accordance with an approved funded decommissioning programme and any property or rights in which it consists. Such security includes deposits of money.
- (B) As noted in Part A above (row 9), there is a contractual acknowledgement by the parties to the NASTA including the Security Trustee that the assets of the FDP Implementation Company are designated as "protected assets" for the purposes of section 56 of the 2008 Act. It would therefore appear that (as noted in row 9), in effect, the only creditor that can make a claim against the FDP Implementation Company and its assets is the Secretary of State.
- (C) Although Allowed Revenue in respect of the FDP Allowance Building Block will be received into the Operator's general account before transfer to the FDP Account, the SZC Economic Licence could be construed as an "other arrangement" for the purposes of section 56 of the 2008 Act rendering the deposit of money by virtue of payment of the FDP Allowance Building Block a protected asset from the moment of receipt by the Operator. This is consistent with the designation of protected assets in the NASTA (see further below).
- (D) Protected assets must be applied and enforceable in accordance with the trust or other arrangements (that set out such protected asset, e.g., trust that creates the security) (section 56(4) of the 2008 Act). The trust or other arrangement takes

priority over other legislation, so the protected asset (such as the Contributions) must effectively only be used for its designated purpose.

- (E) The Insolvency Act 1986 and other legislation would not apply to the protected assets to the extent that such law or regulation prevents or restricts: (i) the protected assets from being applied in accordance with the trust or other arrangement; or (ii) the enforcement of the protected assets (section 56(5) of the 2008 Act).
- (F) Pursuant to clause 5.3 (*Nuclear Administration*) of the NASTA, it is contractually acknowledged and agreed that the following assets have been designated as "protected assets":
 - (i) sums received by the Operator from either market revenues or Difference Payments which are equivalent to the payments which the Operator is required to make to the FDP Implementation Company in respect of the FAP and FDP which are determined by the Authority in accordance with the Contribution Notices provided to the Authority and as determined by the Authority in accordance with the FDP Allowance Building Block as set out in the SZC Economic Licence;
 - (ii) any amounts standing to the credit of the Safety Critical Opex Reserve Account;
 - (iii) any shareholding in the FDP Implementation Company;
 - (iv) any shares held by Sizewell PledgeCo Limited in the Operator;
 - (v) any shareholding in Nuclear Services (Technical) Company Limited and certain "NSCo Agreements" (as defined in the NASTA) that it entered into;
 - (vi) the sums, assets, bank accounts, investments and other securities held by the FDP Implementation Company at any relevant time;
 - (vii) any amounts standing to the credit of the FDP Account;
 - (viii) any amounts standing to the credit of the Operator DTM Control Account;
 - (ix) the Site;
 - (x) any Strategic Spares; and
 - (xi) such other assets of the FDP Implementation Company as there may be from time to time.
- (G) Also, the NASTA includes an acknowledgement and agreement by the parties to the NASTA (including the Operator and the Security Trustee) that the Secretary of State has security over these "protected assets" and that, notwithstanding the provisions of the security documents, neither the Security Trustee nor the lenders have any security over the protected assets (other than the shares in the Operator).
- (H) In summary: (1) the "protected assets" concept was designed to effectively ringfence those assets and/or security for their specified purpose (see also the explanatory notes to section 56 of the 2008 Act) and (2) the Insolvency Act 1986 and other legislation can be disapplied with respect to those protected assets. Therefore, in the event of Operator insolvency, the Fund Assets (including amounts received in respect of the FDP Allowance Building Block) cannot be used for any other purpose, save for where required to fund the Safety Critical Expenditure of the Operator (see *Annex 16 (Safety Critical Expenditure)*).

1.3. FDP Budget and Services Agreement

- (A) Clauses 13.1 (*Indemnity*) and 13.2 (*Indemnity*) of the FDP Budget and Services Agreement require the Operator to indemnify the FDP Implementation Company for any costs incurred by FDP Implementation Company as a result of performing its obligations under the FDP Budget and Services Agreement, the FAP or as required by any Applicable Laws, or in relation to enforcement by the FDP Implementation Company of the obligations of the Operator under the FDP Budget and Services Agreement or the FAP. Pursuant to clause 13.3 (*Indemnity*) of the FDP Budget and Services Agreement, in the event of an Operator Insolvency Event or the Operator failing to honour this indemnity within a reasonable period of time, the FDP Implementation Company can recover any amount due to it out of Fund Assets (consistently with clause 66.3.1 (*FDP Implementation Company may have recourse to the Fund Assets if the Operator fails to pay*) of the FAP).
- (B) The Operator undertakes to fully and effectively indemnify the FDP Implementation Company by reimbursing any amounts paid to the FDP Implementation Company out of the Fund Assets pursuant to clause 13.3 (*Indemnity*) of the FDP Budget and Services Agreement, following which the FDP Implementation Company shall transfer such amount to the Fund Assets.
- (C) In turn, the FDP Allowance Building Block in the SZC Economic Licence includes "any" costs incurred (or forecasted to be incurred) by the FDP Implementation Company in implementing its obligations and, if applicable, exercising its rights under or in relation to the FDP, subject to the obligations under the SZC Economic Licence and the Authority's audit process under Pass-Through Costs Audit (paragraphs 2 and 3 (*FDP Allowance Building Block*) of Special Condition 34 (*FDP Allowance Building Block during the Pre-PCR Phase*) and (paragraphs 2 and 3 (*FDP Allowance Building Block*) of Special Condition 51 (*FDP Allowance Building Block during the Operations Phase*)). This is not expressed to be limited to the FDP Implementation Company's Approved Annual Budget.
- (D) As such, the Operator's undertaking to fully and effectively indemnify the FDP Implementation Company is covered by the FDP Allowance Building Block. In an Operator insolvency event, whether this FDP Allowance Building Block can continue to flow to the FDP Implementation Company via the Operator is not fully clear, because this "costs" component of the FDP Allowance Building Block may not be a "protected asset" under section 56 of the 2008 Act. In any event, as noted above, the FDP Implementation Company can draw on the Fund Assets to cover these costs if the Operator fails to pay. There is also provision for the Secretary of State to cover these costs under clause 5.6 of the NASTA. This, together with the FDP Allowance Building Block including the FDP Implementation Company's costs, suggests that the FDP Implementation Company's costs should be covered even in an Operator insolvency or administration.

1.4. Non-Voting Operator Share

- (A) The majority of the shares in the FDP Implementation Company are to be owned by the Independent Directors (or the FDP Company Administrator if there are no Independent Directors), with one non-voting share (the Non-Voting Operator Share) being held by the Operator. As noted above, the definition of "protected assets" in the NASTA includes any shareholding in the FDP Implementation Company, and the parties to the NASTA acknowledge that the Secretary of State has security over

these "protected assets" and that neither the Security Trustee nor the lenders have any security over the protected assets (other than the shares in the Operator). As such, we do not think the Non-Voting Operator Share held by the Operator in the FDP Implementation Company would be at risk of being transferred to a creditor of the Operator (other than the Secretary of State) in an Operator insolvency scenario, albeit noting that it would be possible for the shares in the Operator itself to be transferred to such a creditor in that scenario.

- (B) As discussed in *Annex 12 (Nuclear Administration and Nuclear Transfer Schemes)*, the Secretary of State may implement a Nuclear Transfer Scheme in respect of the Operator and the FDP Implementation Company following certain trigger events specified in the NASTA, and this may involve transferring all or part of the assets (including the Fund Assets) and liabilities of both the Operator and the FDP Implementation Company to the NDA. Subject to the specific replacement FDP arrangements approved by the Secretary of State at the time any Nuclear Transfer Scheme is implemented, the FAP and management of the Fund Assets by the FDP Implementation Company may be terminated (with corresponding implications for the FDP Implementation Company's ability to remain operating as a going concern). As discussed in *Annex 10 (Legislative Background)*, the Board is not best placed to advise on the remoteness or otherwise of such risk, as this will depend on the actions of future governments.

2. FDP PAYMENTS THROUGH AN OPERATOR INSOLVENCY OR AN ADMINISTRATION

2.1. Nuclear administration and NTS

- (A) The nuclear administration regime and the Nuclear Transfer Scheme are summarised in *Annex 12 (Nuclear Administration and Nuclear Transfer Schemes)*. As mentioned therein, even in circumstances where an RLNC Administration Order has been issued in respect of the Operator, the SZC Economic Licence provides for the Allowed Revenue (including the FDP Allowance Building Block) to continue to be paid to the Operator and prohibits the Authority from revoking the SZC Economic Licence while the RLNC Administration Order is continuing. This is an important mitigant against the risk of the Operator's insolvency having an adverse impact on the Fund Assets.
- (B) As discussed in *Annex 12 (Nuclear Administration and Nuclear Transfer Schemes)*, the Nuclear Administration may result in transferring as a going concern the whole or part of the Operator to a wholly-owned subsidiary, securities in which would subsequently be transferred to a third-party company. This transfer would only occur if certain criteria set out in section 32(5) of the 2022 Act are satisfied, including that the rescue of the Operator as a going concern will not achieve the objective of commencing and continuing electricity generation or will not do so without such a transfer.
- (C) Further, pursuant to the FAP, the FDP Implementation Company and the Operator consent to the Secretary of State effecting a Nuclear Transfer Scheme to transfer, as applicable:
- (i) the Operator's property, rights and liabilities;
 - (ii) the Operator;
 - (iii) the FDP Implementation Company; and/or

- (iv) the FDP Implementation Company's property, rights and liabilities (including the Fund Assets),

in each case, to the NDA or a publicly owned company in accordance with:

- (v) the terms of the NASTA;
 - (vi) section 32 of the 2022 Act as a means of achieving the objective of the relevant licensee nuclear company administration; and/or
 - (vii) the terms of the SZC Economic Licence.
- (D) In this regard, the Board understands that the FAP arrangements would no longer remain effective, and a replacement FDP structure would then be required if the assets of the Operator and/or the FDP Implementation Company were transferred to the NDA. As discussed in Annex 10 (*Legislative Background*), the Board is not best placed to advise on the remoteness or otherwise of any risks associated with a replacement FDP structure, as this will depend on the actions of future governments. See also paragraph 2.3 (*Interaction with the FDP*) in Annex 12 (*Nuclear Administration and Nuclear Transfer Schemes*).
- (E) For completeness, as outlined in paragraph 1.4 of Annex 12 (*Nuclear Administration and Nuclear Transfer Schemes*), whilst insolvency processes outside of the nuclear administration regime and the Nuclear Transfer Scheme can be commenced in relation to the Operator, the Board considers this would be unlikely to occur in practice.

2.2. Payment cycle

The FDP Allowance will first be paid into the Operator's general account before being paid into the FDP Account and then to the FDP Implementation Company. Pursuant to paragraph 11 (*Funded Decommissioning Programme payment obligations*) of Special Condition 13 (*Funded Decommissioning Programme*) of the SZC Economic Licence, the Operator must, by no later than ten (10) Business Days prior to the end of each calendar month, pay the full amount of the Monthly Contribution for the subsequent calendar month into the FDP Account. This should further mitigate against the risk of substantial FDP payments being trapped in the Operator.

3. RISK OF OPERATOR INSOLVENCY

As noted above, the Board has not comprehensively considered the risk of Operator insolvency. Nevertheless, below are the key mitigants against this risk that the Board has identified.

3.1. Gearing restrictions

Unlike the HPC FAP, the FAP does not include gearing restrictions on the Operator. However, the Discontinuation and Compensation Agreement includes a GSP Leverage Cap to reduce the risk of the Operator being over-leveraged (by limiting the compensation that would be paid in a Discontinuation scenario) and a net debt to RAB ratio which (if breached) would trigger a Remedy Event or a Failure Event, as applicable. A set of representations, covenants and defaults relating to the Operator's solvency as well as a gearing cap will also be included in the Finance Documents. This will help reduce the chances of the Operator being excessively leveraged.

3.2. Allowed Revenue

The Allowed Revenue the Operator is entitled to includes various building blocks to cover its key expenditures, including the Totex Building Block (in the Operations Phase) and the Tax Building Block. This structure means that the Allowed Revenue should be sufficient to cover the Operator's costs in normal circumstances.

3.3. Revenue and liquidity support

As discussed further in Annex 11 (*SZC Economic Licence*), if a Significant Unavailability Event occurs or is forecasted to occur during the Charging Year, the Operator may submit an application to request in-year Revenue Support and/or liquidity support pursuant to the terms of the SZC Economic Licence. This would be another important mitigant against the risk of Operator insolvency in a temporary extended Plant outage scenario.

3.4. Nuclear Administration and NTS

As discussed further in Annex 12 (*Nuclear Administration and Nuclear Transfer Schemes*), the nuclear administration regime provided for in Part 3 of the 2022 Act is designed to prioritise commencing and/or continuing electricity generation and to rescue the Plant as a going concern rather than prioritising credit interests. As such, this regime should provide a further mitigant against the risk of Operator insolvency.

3.5. Approved Operator Business Scope

As discussed further in row C.2 of Annex 5 (*Risk Matrix Identifying Key Potential Risks to Shortfall in Funding the Cost of FDP Liabilities*), the Operator's interpretation of the FAP is that the restrictions on the Operator's business scope under the FAP will not apply during the Decommissioning Period. This may give rise to a risk that any liabilities incurred by the Operator in connection with other non-nuclear activities may deplete the Operator's assets and divert resources which would otherwise have been available for decommissioning and/or act as a buffer for the sufficiency of the Fund Assets to avoid a Funding Shortfall. However, for the reasons discussed in row C.2 of Annex 5 (*Risk Matrix Identifying Key Potential Risks to Shortfall in Funding the Cost of FDP Liabilities*), the Board considers that such risk is unlikely to occur.