

## **Brunel Pension Partnership Corporate Structure and Governance Summary**

### **1. Introduction**

This note has been prepared to summarise the structure and constitution of Brunel Pension Partnership Limited ("**BPP Ltd**" or the "**Company**"), which is the company which is to be set up to manage the pooling of the assets in the pension funds of the 10 BPP Administering Authorities (being nine local authorities and the Environment Agency) (the "**Funds**").

### **2. Review process**

As would be expected given the complexity of the project and the involvement of the 10 Funds the documents have been subject to a considerable level of review and comment. This includes review by the s151 officers / chief finance officers, monitoring officers / legal directors, as well as the pension committee representatives of each of the Funds, as well as BPP Ltd and its chair and interim managing director.

The legal documents have mostly been prepared by Osborne Clarke ("**OC**"), with input from PricewaterhouseCoopers ("**PwC**") and Alpha Financial Markets Consulting ("**Alpha**").

### **3. Constitution and documentation**

#### **3.1 Corporate structure**

BPP Ltd will be a private company limited by shares, registered in England and Wales and with its registered office in Bristol.

The Company will be one tenth owned by each of the 10 Funds and each of the Funds will be responsible for providing one tenth of the capital required by the Company to be set up. Once operational, each Fund will be charged a service fee depending on the services taken up and assets under management.

#### **3.2 The key legal documents**

The key documents required for the creation of BPP Ltd are as follows:

- Articles of Association
- Shareholders' Agreement
- Services Agreement
- Business plan
- Terms of reference of the Oversight Board
- Terms of reference of the Client Group
- Terms of reference of the Audit, Risk and Compliance Committee
- Terms of reference of the Remuneration Committee
- Remuneration Policy

Further detail of each of these is given below.

### **4. Summary of documents**

#### **4.1 Articles of Association**

This document is required by company law, and will set out the Company's constitution and regulate the relationship between the Administering Authorities and BPP Ltd. It sets out the Company's powers and procedures and will be filed at Companies House. It is mostly procedural and mechanical, with the vast majority of the substance in the Shareholders' Agreement.

#### **4.2 Shareholders' Agreement**

This regulates key aspects of the relationship between the Administering Authorities as shareholders of the Company as well as with the Company itself. BPP Ltd will be a party to this agreement and it will define contractually the manner in which the shareholders will control BPP Ltd, and include contractual restrictions on what the company can do rather than limiting the power of the Company itself. Key provisions are:

- **Reserved matters and special reserved matters:** The Shareholders' Agreement sets out certain matters which cannot be undertaken by the Company without first obtaining the approval of shareholders. There are two lists – "special reserved matters" which cannot be undertaken without the approval of all shareholders (including approval of the business plan/budget and other matters considered fundamental to the structure and rationale of the project) and other matters which require the approval of 80% of the shareholders (i.e. eight out of the ten) (matters which are considered less significant but over which some measure of control is considered desirable without the ability for any one (or two) Funds to veto). It is worth noting that if any action is included in the business plan (which must be unanimously approved) then it is considered approved for the purposes of the reserved/special reserved matters.
- **Initial funding:** The Shareholders' Agreement sets out the requirement for each Administering Authority to provide the capital required for the Company to be set up and become operational, which is to be provided one tenth each by each Administering Authority. This may be payable in tranches rather than all up front.
- **Exit charge:** One of the matters subject to the most debate has been the proposal for there to be an exit charge. This would be a charge payable by an Administering Authority which exits from the pool operated by BPP Ltd. A proposal has been put forward by PwC which is intended to model an estimate of the loss incurred by the Company in the event that an Administering Authority were to exit. This covers both direct costs of disinvestment together with a formula for calculating the anticipated loss resulting from loss of scale and the operating costs / overheads of the Company (which will then fall to be borne by the remaining authorities). This would be expressed as a maximum or default amount, which would be subject to a duty to mitigate by BPP Ltd and would be reduced to reflect any such mitigation and to the extent otherwise agreed by the remaining Administering Authorities. This approach should provide certainty of a maximum outcome upon exit for any exiting authority together with a reasonable degree of protection for the remaining pool members that the economics of the model should not be disadvantaged too significantly by any exit.
- **Directors:** The Shareholders' Agreement sets out the agreed structure of the board of the Company, being four executive directors, one non-executive chair, two non-executive directors and a shareholder representative non-executive director. Directors must be approved by shareholders by 80% majority.

#### 4.3 **Services Agreement**

The Services Agreement will be entered into between the 10 Funds and BPP Ltd when the pool becomes operational in April 2018 (or shortly before).

This is a comprehensive document which sets out in detail the key operational and technical aspects. It covers such matters as the following: definition of services to be provided, duty of care obligations, the portfolio construction terms, FCA authorisation obligations, pricing terms, managing conflicts of interest, reporting and valuation provisions. Key provisions are:

- **Investment Objectives and Portfolios:** The Services Agreement sets out the portfolios into which the Administering Authorities' assets will be invested and the procedure whereby new portfolios can be created (at the request of Administering Authorities) and portfolios can be deleted if no longer required. There has been a level of debate around whether Administering Authorities will be able to continue holding segregated mandates – i.e. investments which cannot themselves be pooled (for example closed-ended private equity funds). The agreed position is that the Services Agreement will not prohibit such holdings, and the Client Group will have the ability to approve these on a case-by-case basis, after undertaking appropriate cost/benefit analysis.
- **Services:** Schedules to the Services Agreement set out the Core Services and the Elective Services to be provided by BPP Ltd. The Core Services will be provided to all Administering Authorities and these cover the design of portfolios, transitioning of assets, asset management and reporting. Administering Authorities may separately agree with BPP Ltd. to be provided with Elective Services for an additional fee. Elective Services include reviewing an Administering Authority's investment strategy statement, project support, specific levels of reporting, attending meetings and training sessions, and assisting with Freedom of Information Requests.

- **Reporting:** BPP Ltd. will provide each Administering Authority with quarterly and annual reports containing financial information, investment performance analysis and written commentary. An example form of report will be attached to the Services Agreement.
- **Liability:** There has been debate around whether Administering Authorities should be able to bring a claim against BPP Ltd. should it be in breach of its obligations under the Services Agreement (in the same way that would be seen in a usual investment management agreement). The position has been agreed where a claim can be brought, but subject to the terms of the Shareholders' Agreement (under which there is a duty to keep all other Administering Authorities informed of any such claim).

#### 4.4 **Business Plan**

The Business Plan is not a legal document but is important in that it defines the purpose and freedom of the Company to operate. As noted above, to the extent that an action is included within the Business Plan, the Company need not come back to the Administering Authorities to request permission to undertake the relevant action.

#### 4.5 **Terms of reference for Oversight Board**

These set out the procedures and responsibilities of the Oversight Board, which is intended to have a supervisory function. It will include representatives of each of the Funds, together with two representatives of fund members. It will not be a joint committee and does not have formal decision making powers.

#### 4.6 **Terms of reference for Client Group**

These set out the procedures and responsibilities for the Client Group, which will provide practical and technical support, guidance and assistance to the Oversight Board. It will comprise one representative of each of the 10 Funds. As with the Oversight Board, the Client Group has no formal decision-making powers.

#### 4.7 **Terms of reference for the Audit, Risk and Compliance Committee**

These set out the procedures and responsibilities of the Audit, Risk and Compliance Committee, which is a committee of the board of directors of the Company. This committee will be comprised of at least three members all of whom must be non-executive directors of the Company (including the Shareholder non-executive director).

#### 4.8 **Terms of reference of the Remuneration Committee**

These set out the procedures and responsibilities of the Remuneration Committee, which is a committee of the board of directors of the Company. This committee will be comprised of at least three members all of whom must be non-executive directors of the Company (including the Shareholder non-executive director) and shall be chaired by the chair of the Company.

#### 4.9 **Remuneration policy**

The remuneration policy defines the key elements of remuneration, particularly for senior executives. Changes to that policy (or remuneration which is inconsistent with that policy) will be a special reserved matter, and hence will require unanimous express shareholder approval. Key provisions are:

- **Remuneration caps:** Remuneration caps will be included for different levels of employees, reflecting a consistency with the approach for the public sector.
- **Performance related pay:** There will be no performance related pay (though with the ability to give recognition awards).
- **LGPS membership:** Membership of the LGPS will be offered as part of the remuneration package for new employees. The LGPS is to be open for the first three years, and revisited thereafter.

#### 5. **Decision required**

It is anticipated that the above documents will be finalised and signed in mid July and therefore appropriate approvals/delegations for finalising documents and executing them on behalf of the administering authority need to be given.

**Osborne Clarke LLP**  
2 June 2017