

## ASSESSMENT REPORT for Modification Proposal P127 Optional De-registration by Insolvent Party

Prepared by: **Governance Standing Modification Group (GSMG)**

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This document has been distributed in accordance with Section F2.1.10<sup>1</sup> of the Balancing and Settlement Code.

### RECOMMENDATIONS

The GSMG invites the BSC Panel to;

- **AGREE that the Alternative Modification P127 should be made;**
- **AGREE that the Proposed Modification P127 should not be made;**
- **AGREE a provisional Implementation Date for the Alternative Modification P127 of 13 weeks after the Authority's decision;**
- **In the event that the Authority determines that the Proposed Modification P127 should be made, AGREE a provisional Implementation Date of 13 weeks after the Authority's decision;**
- **NOTE the legal text for the Alternative Modification P127;**
- **NOTE that no legal text is provided for Proposed Modification P127;**
- **CONSULT with the Authority to determine whether such legal text is required for the draft Modification Report;**
- **AGREE that Modification Proposal P127 be submitted to the Report Phase; and**
- **AGREE that the draft Modification Report be issued for consultation and submitted to the Panel Meeting of 9 October 2003.**

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<sup>1</sup> The current version of the Balancing and Settlement Code (the 'Code') can be found at [www.elexon.co.uk/ta/bscresl\\_docs/bsc\\_code.html](http://www.elexon.co.uk/ta/bscresl_docs/bsc_code.html)

**CONTENTS TABLE**

<b>Summary of impacted parties and documents.....</b>	<b>4</b>
<b>1 Description of Proposed Modification and assessment against the Applicable BSC Objectives.....</b>	<b>5</b>
1.1 Modification Proposal .....	5
1.2 Proposed Modification .....	5
1.3 Assessment of whether or not the Proposed Modification would better facilitate the Applicable BSC Objectives .....	6
1.4 Modification Group’s cost analysis of Proposed Modification.....	6
1.5 Alternative Modification.....	6
1.6 Issues raised by the Alternative Modification .....	9
1.7 Assessment of how the Alternative Modification will better facilitate the Applicable BSC Objectives .....	9
1.8 Modification Group’s cost analysis of Alternative Modification .....	9
1.9 Governance and regulatory framework assessment .....	10
<b>2 Rationale for Modification Group’s recommendations to the Panel .....</b>	<b>10</b>
<b>3 Impact on BSC Systems and Parties .....</b>	<b>10</b>
3.1 BSCCo.....	10
3.2 BSC Systems .....	10
3.3 Parties and Party Agents .....	11
<b>4 Impact on Code and documentation.....</b>	<b>11</b>
4.1 Balancing and Settlement Code .....	11
4.2 Code Subsidiary Documents .....	12
4.3 BSCCo Memorandum and Articles of Association.....	12
4.4 Impact on Core Industry Documents and supporting arrangements.....	12
<b>5 Summary of consultations .....</b>	<b>12</b>
5.1 Modification Group’s summary of the consultation responses.....	12
5.2 Comments and views of the Modification Group .....	16
<b>6 Summary of Transmission Company analysis.....</b>	<b>16</b>
6.1 Analysis .....	16
<b>7 Summary of external advice .....</b>	<b>17</b>
<b>8 Implementation approach .....</b>	<b>17</b>
<b>9 Document control.....</b>	<b>17</b>
9.1 Authorities .....	17
<b>Annex 1 Draft legal text .....</b>	<b>18</b>
<b>Annex 2 Modification Group details .....</b>	<b>18</b>
<b>Annex 3 Consultation responses .....</b>	<b>18</b>
<b>Annex 4 Transmission Company analysis .....</b>	<b>30</b>
<b>Annex 5 BSC Agent impact assessments .....</b>	<b>31</b>
<b>Annex 6 Party impact assessments.....</b>	<b>31</b>
<b>Annex 7 Cost benefit analysis .....</b>	<b>32</b>
<b>Annex 8 Core Industry Document Owner impact assessments.....</b>	<b>32</b>

**Annex 9 Proposed text to modify BSCCo Memorandum and Articles of Association ..... 32**

**Annex 10 Terms of reference ..... 32**

### SUMMARY OF IMPACTED PARTIES AND DOCUMENTS

As far as the GSMG has been able to assess the following parties/documents have been identified as being potentially impacted by Modification Proposal P127.

Parties	Sections of the BSC	Code Subsidiary Documents
Suppliers <input checked="" type="checkbox"/>	A <input checked="" type="checkbox"/>	BSC Procedures <input checked="" type="checkbox"/>
Generators <input checked="" type="checkbox"/>	B <input type="checkbox"/>	Codes of Practice <input type="checkbox"/>
Licence Exemptable Generators <input checked="" type="checkbox"/>	C <input type="checkbox"/>	BSC Service Descriptions <input type="checkbox"/>
Transmission Company <input checked="" type="checkbox"/>	D <input type="checkbox"/>	Service Lines <input type="checkbox"/>
Interconnector <input checked="" type="checkbox"/>	E <input type="checkbox"/>	Data Catalogues <input type="checkbox"/>
Distribution System Operators <input checked="" type="checkbox"/>	F <input type="checkbox"/>	Communication Requirements Documents <input type="checkbox"/>
<b>Party Agents</b>		
Data Aggregators <input type="checkbox"/>	G <input type="checkbox"/>	Reporting Catalogue <input type="checkbox"/>
Data Collectors <input type="checkbox"/>	H <input type="checkbox"/>	MIDS <input type="checkbox"/>
Meter Operator Agents <input type="checkbox"/>	J <input type="checkbox"/>	<b>Core Industry Documents</b>
ECVNA <input type="checkbox"/>	K <input type="checkbox"/>	Grid Code <input type="checkbox"/>
MVRNA <input type="checkbox"/>	L <input type="checkbox"/>	Supplemental Agreements <input type="checkbox"/>
<b>BSC Agents</b>		
SAA <input type="checkbox"/>	M <input checked="" type="checkbox"/>	Ancillary Services Agreements <input type="checkbox"/>
FAA <input type="checkbox"/> D	N <input checked="" type="checkbox"/>	Master Registration Agreement <input type="checkbox"/>
BMRA <input type="checkbox"/>	O <input type="checkbox"/>	Data Transfer Services Agreement <input type="checkbox"/>
ECVAA <input type="checkbox"/>	P <input type="checkbox"/>	British Grid Systems Agreement <input type="checkbox"/>
CDCA <input type="checkbox"/>	Q <input type="checkbox"/>	Use of Interconnector Agreement <input type="checkbox"/>
TAA <input type="checkbox"/>	R <input type="checkbox"/>	Settlement Agreement for Scotland <input type="checkbox"/>
CRA <input type="checkbox"/> D	S <input type="checkbox"/>	Distribution Codes <input type="checkbox"/>
Teleswitch Agent <input type="checkbox"/>	T <input type="checkbox"/>	Distribution Use of System Agreements <input type="checkbox"/>
SVAA <input type="checkbox"/>	U <input type="checkbox"/>	Distribution Connection Agreements <input type="checkbox"/>
BSC Auditor <input type="checkbox"/>	V <input type="checkbox"/>	<b>BSCCo</b>
Profile Administrator <input type="checkbox"/>	W <input type="checkbox"/>	Internal Working Procedures <input checked="" type="checkbox"/>
Certification Agent <input type="checkbox"/>	X <input type="checkbox"/>	<b>Other Documents</b>
MIDP <input type="checkbox"/>		Transmission Licence <input type="checkbox"/>
TFLA <input type="checkbox"/>		
<b>Other Agents</b>		
SMRA <input type="checkbox"/>		
Data Transfer Service Provider <input type="checkbox"/>		

X = Identified in Report for last Procedure  
 N = Newly identified in this Report

<b>Estimated cost for progressing P127 through Modification Procedures</b>	<b>£ 4,000 + 66 ELEXON man days</b>
<b>Cost of implementing Proposed Modification:</b>	
Change specific	£0
Operational/maintenance	£0
<b>Total:</b>	<b>£ 0 + 21 ELEXON man days</b>

# **1 DESCRIPTION OF PROPOSED MODIFICATION AND ASSESSMENT AGAINST THE APPLICABLE BSC OBJECTIVES**

## **1.1 Modification Proposal**

Modification Proposal P127 'Optional de-registration by insolvent Party' ("P127") was raised on 28 April 2003 by Enron Capital & Trade Resources Limited (in administration). P127 seeks to allow insolvent Parties to "de-register", or withdraw, from the Balancing and Settlement Code (the "Code") and to allow those responsible for managing the insolvency process to cease incurring additional liabilities to those accrued prior to its insolvency.

When a Party enters a process of formal insolvency, it is in Default of the Code (Section H3.1.1(g)(ii)). Since this Default is capable of remedy, the insolvent Party in Default is unable to withdraw from the Code, even if it fulfils all other criteria required for a Party to withdraw (Section A5.1.3).

The Defaulting Party must therefore continue to pay the Base Monthly Charge (Annex D-3 paragraph 3.1(a)), as they remain a party to the Code. The Base Monthly Charge is currently set at £250 per month.

Administrators responsible for managing the insolvency process for such Parties are not able to limit further loss of value to creditors in pursuance of their duty of care, due to the increasing debt to BSCCo resulting from these unavoidable monthly liabilities.

Presently, the only way for a Defaulting Party to cease to be liable for the Base Monthly Charge is for the Panel to expel them from the Code (Section H3.2.1(e)). It is not the intention of the Proposer to remove the right of the Panel to expel Parties from the Code. The Proposer believes the withdrawal should be voluntary (i.e it is not proposed to make it mandatory that an insolvent Party withdraws), as there may be grounds for an insolvent Party to retain the status of signatory to the Code; for example, in circumstances where not being a party to the Code would result in loss of value to that Party's creditors.

The Proposer's objective in raising P127 is to bring an end to escalating liabilities in the form of the Base Monthly Charge<sup>2</sup>. The Proposer believes that P127 would better facilitate the achievement of Applicable BSC Objective (d), as he believes it would promote efficiency in the implementation and administration of the Balancing and Settlement arrangements. The Proposer believes this increase in efficiency is due to a reduction of BSCCo administrative costs associated with invoicing a Party for the Base Monthly Charge, when the Party may not be in a position to settle this liability. The Proposer also states that he believes that P127 would better facilitate the achievement of Applicable BSC Objective (b) - the efficient, economic and co-ordinated operation by the Transmission Company of the Transmission System. However, the Governance Standing Modification Group (GSMG) was unable to find any justification for this statement.

The Initial Written Assessment (IWA) was presented to the Panel at its meeting on 12 June 2003. The Panel recommended that P127 be submitted to a 3 month Assessment Procedure, undertaken by the GSMG.

## **1.2 Proposed Modification**

The Proposed Modification would allow an insolvent Party to be able to withdraw from the Code (pursuant to Section A.5) "at any time" as stated in the Modification Proposal.

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<sup>2</sup> Clarified by the Proposer, subsequent to the submission of the Modification Proposal.

### **1.3 Assessment of whether or not the Proposed Modification would better facilitate the Applicable BSC Objectives**

It is the GSMG's opinion that the Proposed Modification would not better facilitate the achievement of the Applicable BSC Objectives.

If the Proposed Modification were to be implemented, then it would result in Parties being able to withdraw from the Code with outstanding liabilities, as the term "at any time" in the Modification Proposal implies.

The GSMG were of the opinion that enabling an insolvent Party to withdraw "at any time" would not improve the efficiency of the implementation and administration of the balancing and settlement arrangements (Applicable BSC Objective (d)), as it would compromise BSCCo's ability to recoup, on behalf of Parties, insolvent Parties' outstanding liabilities in respect of Trading Charges and BSCCo Charges.

The GSMG also specifically considered Applicable BSC Objective (c) and decided that competition in the generation and supply of electricity was not promoted by the Proposed Modification, as other Parties would be required to pay between them the unpaid Trading Charges and BSCCo Charges of any insolvent Parties who do not settle their debts.

### **1.4 Modification Group's cost analysis of Proposed Modification**

The GSMG believed that the cost saving resulting from the reduced administrative burden on BSCCo would be outweighed by the cost for BSCCo to pursue outstanding debts of Parties released from the Code before they have paid them, via legal routes.

### **1.5 Alternative Modification**

The GSMG considered whether an Alternative Modification existed that, when compared with the Proposed Modification, better facilitated the achievement of the Applicable BSC Objectives. The GSMG developed two options, and after undertaking consultation with the industry, developed and chose a third option as the Alternative Modification.

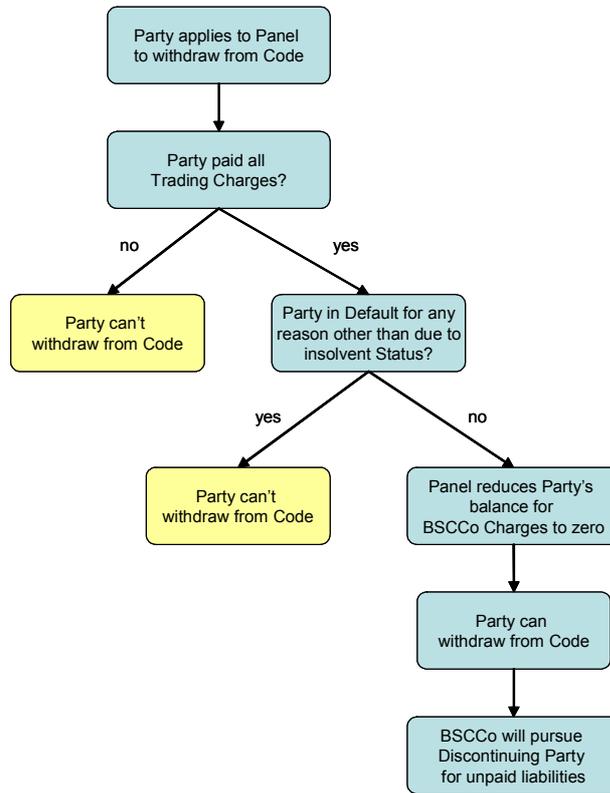
#### **Option 1: Not chosen to form Alternative Modification**

Figure 1 outlines option 1, a solution whereby an insolvent Party may apply to the Panel to withdraw from the Code. The Panel would need to determine, if there are outstanding liabilities and whether the Party is in a position to pay further amounts due. If, in the Panel's opinion, there is a high probability of not recovering the amounts due from that Party, the only reasons for the Party's Default were the unpaid charges (whether Trading Charges or BSCCo Charges) and/or as a result of its insolvency, and the Party has paid all outstanding Trading Charges *to date*, the Panel could reduce the Party's balance for BSCCo Charges, including the Base Monthly Charge, to zero and decree that the Party could withdraw from the Code.

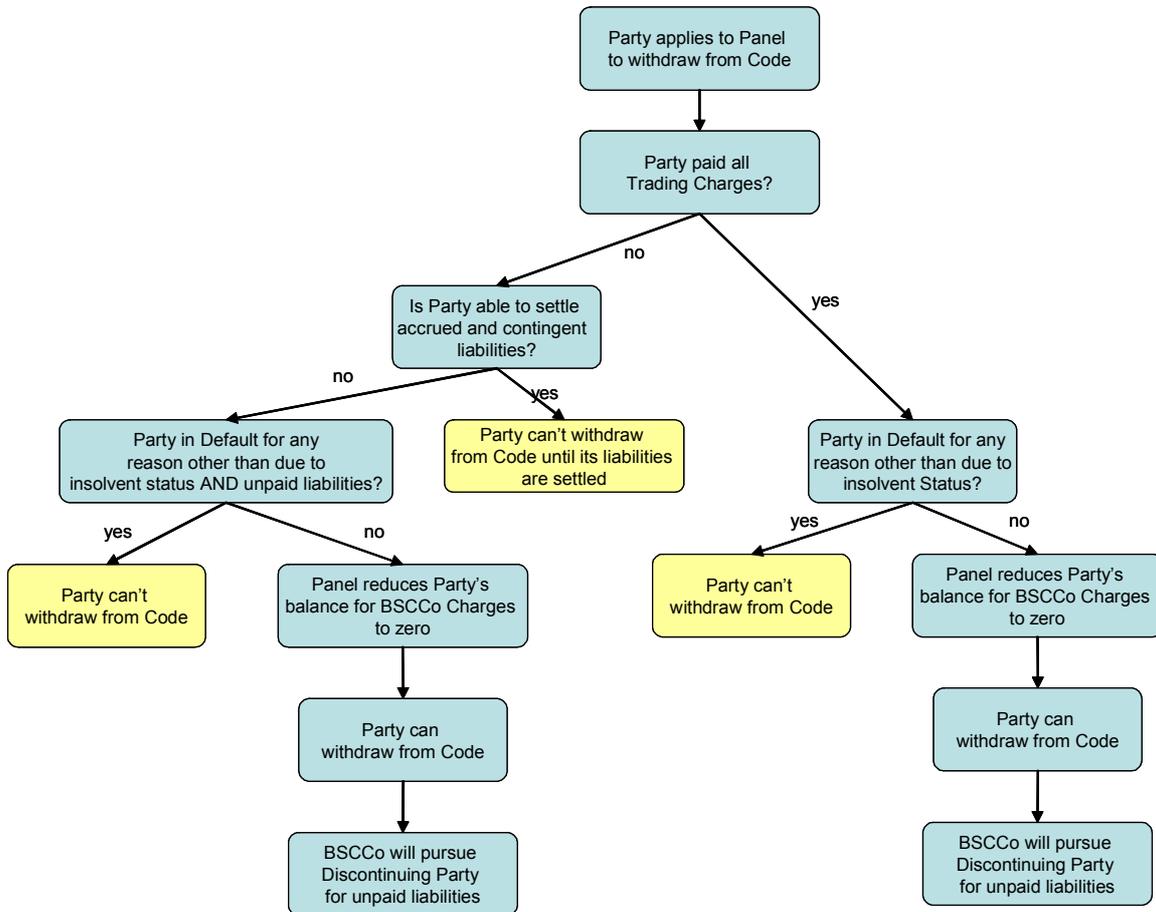
BSCCo would continue to pursue the Party for the recovery of accrued and contingent liabilities that remain outstanding.

After considering the consultation responses, the GSMG decided against forming the Alternative Modification from Option 1. The GSMG concluded that Option 1 would hinder BSCCo from recouping any outstanding Trading Charges from the insolvent Party, since once a Party has withdrawn from the Code, BSCCo would become an unsecured creditor, as BSCCo could not retain the Parties Credit Cover. In the case of an insolvent Party, Credit Cover provides BSCCo with a level of protection against the Party's lack of funds.

**Figure 1: Option 1**



**Figure 2: Option 2**



**Option 2: Not chosen to form Alternative Modification**

Figure 2 outlines option 2. Upon application by the insolvent Party, the Panel could terminate the Party's liability to the Base Monthly Charge, and set the balance of BSCCo Charges to zero; This effectively writes off the BSCCo Charges as a bad debt that will not be recovered. If the Party meets all the other criteria necessary to withdraw from the Code (apart from by reason of insolvency) pursuant to Section A5 (including that the Final Reconciliation Settlement Run for the Party's last day of trading has taken place), then they may withdraw from the Code. BSCCo would continue to pursue the recovery of accrued and contingent liabilities that would be outstanding as an unsecured creditor.

The GSMG consulted with the industry on Option 1 and Option 2 and from the consultation responses developed a third option (option 3).

**Option 3: Alternative Modification**

Figure 3 outlines option 3, a solution whereby an insolvent Party, which is in Default by virtue of being insolvent (pursuant to Section H3.3.1(g)), is provided with a mechanism by which, in certain circumstances, it is able to withdraw from the Code.

Once the insolvent Party has submitted a Withdrawal Notice (pursuant to Section A5.1.1), the Panel may decide that the balance of the Base Monthly Charge (BMC), which accrues from that point onward, need not be settled before it can withdraw from the Code.

However, even under these new circumstances the insolvent Party would not be able to withdraw without a further change to the Code. The Party would still be in Default of the Code by virtue of being insolvent (Section H3.1.1(g)). For this reason Option 3 also discounts the Party's Default due to Section H3.1.1(g) from the conditions the Party is required to meet before it can withdraw from the Code.

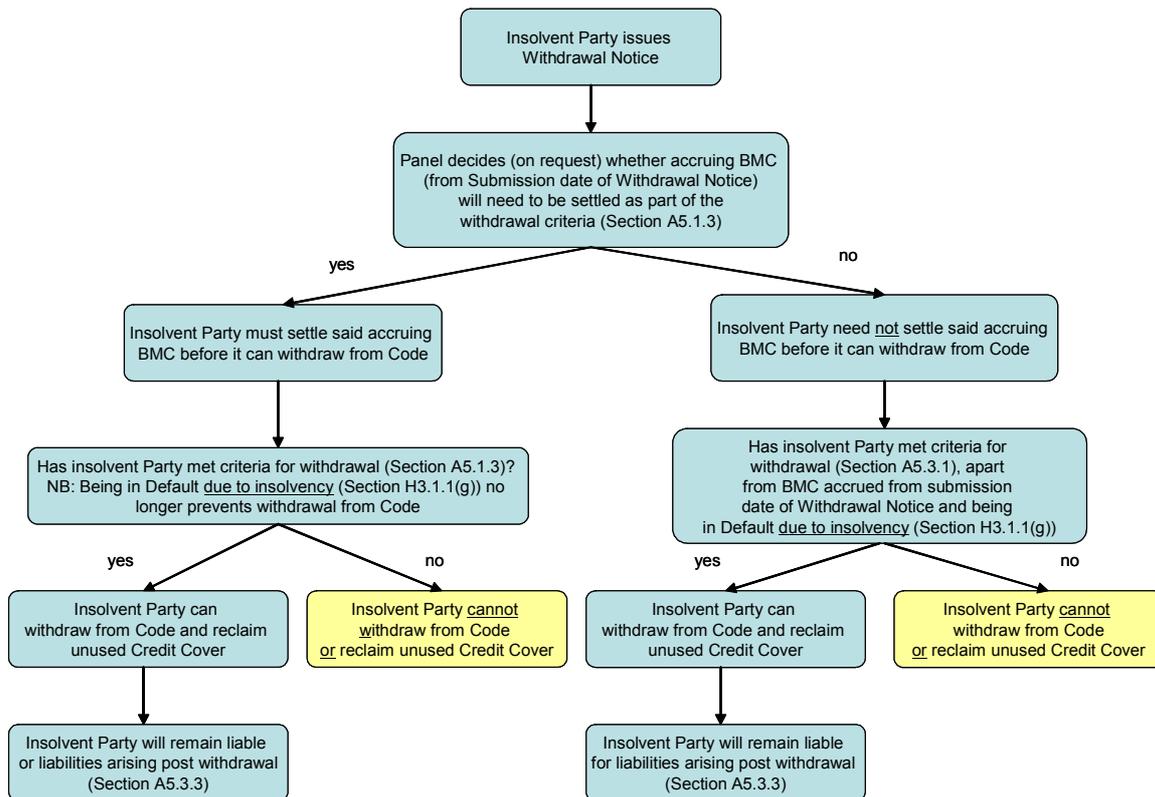
With these changes included in the solution, the insolvent Party would then be able to withdraw from the Code after the Final Reconciliation Settlement Run (RF) had taken place for the Party's last day of trading, provided it had paid all outstanding Trading Charges and BSCCo Charges (except for the BMC accrued between the submission date of its Withdrawal Notice and the date of withdrawal).

As a Defaulting Party cannot currently withdraw from the Code, there are no provisions in the Code for the Party to get back its Credit Cover. As soon as the Party had become a Defaulting Party (pursuant to Section H3.1), the Party's Credit Cover is frozen (Section M2.3.1(c)). Since Option 3 provides a mechanism by which an insolvent Party may withdraw from the Code, it also includes a mechanism by which an insolvent Withdrawing Party can reclaim its unused Credit Cover, once it has complied with the circumstances for withdrawal (Section A5.1.3).

It should be noted that option 3 had been developed following the industry consultation and based on the respondents and views of the majority of the GSMG.

The GSMG decided that Option 3 should form the Alternative Modification.

**Figure 3: Option 3 (Alternative Modification)**



## 1.6 Issues raised by the Alternative Modification

The GSMG acknowledged that there was a risk, which remaining Trading Parties would have to bear, in respect of contingent liabilities which arose after the insolvent Party had withdrawn from the Code, as BSCCo would no longer hold any collateral for such liabilities. The GSMG believed that the prospects of recovery of such liabilities from an insolvent ex-Party would be lower, but the GSMG felt the risk was acceptable.

## 1.7 Assessment of how the Alternative Modification will better facilitate the Applicable BSC Objectives

The majority of GSMG Members were of the opinion that the Alternative Modification would better facilitate the achievement of the Applicable BSC Objective (d), as it would increase the efficiency of the implementation and administration of the balancing and settlement arrangements. BSCCo's internal working processes would be improved as BSCCo would be able to, when so instructed by the Panel, to cease invoicing insolvent Parties for £500 every 2 months. (The Base Monthly Charge is invoiced every 2 months).

One member of the GSMG raised the concern that the Alternative Modification would not completely solve the defect raised by the Proposer in the Modification Proposal. This GSMG member believed that in practice insolvent Parties would never be able to withdraw from the Code, even should Alternative Modification P127 be made, as they are unlikely to be able to pay their outstanding Trading Charges and BSCCo Charges.

## 1.8 Modification Group's cost analysis of Alternative Modification

The GSMG was unable to quantify the cost saving to the industry with the implementation of the Alternative Modification. However, the group believed that the implementation of the Alternative Modification would cut the administrative burden on BSCCo to invoice a Party in the often certain knowledge that the amount would not be forthcoming. The GSMG also noted that BSCCo would be

saved the unquantifiable cost of pursuing the liability for any outstanding Trading Charges and BSCCo Charges through the legal process.

## **1.9 Governance and regulatory framework assessment**

During the assessment of the Proposed Modification and the Alternative Modification, the GSMG also considered the wider implications of P127 in the context of the statutory, regulatory and contractual framework within which the Code sits, as is required by the Code (Annex F-1, paragraph 1(g)). The GSMG was of the opinion that, were P127 to be implemented, there would be no such wider implications.

## **2 RATIONALE FOR MODIFICATION GROUP'S RECOMMENDATIONS TO THE PANEL**

The GSMG invites the Panel to endorse its recommendation that the Alternative Modification be made and that it be implemented 13 weeks after the Authority's decision. This implementation timescale takes into account the necessary lead time to develop and gain approval of the necessary changes to BSCP65, as outlined in Section 4.2 of this report.

No legal text has been commissioned for the Proposed Modification, as the GSMG felt that the Proposed Modification would seriously compromise BSCCo's ability to recoup outstanding liabilities from insolvent Parties and that the cost of developing the draft legal text could not be justified in these circumstances.

The Panel is requested to consult with the Authority to determine whether legal text for the Proposed Modification will be required for inclusion in the Report Phase consultation document and Draft Modification Report.

## **3 IMPACT ON BSC SYSTEMS AND PARTIES**

An assessment has been undertaken in respect of BSC Systems and Parties and the following have been identified as potentially being impacted by the Alternative Modification.

### **3.1 BSCCo**

The process whereby BSCCo invoice insolvent Parties will be impacted, as well as the Finance Department's Credit Control processes. If the Alternative Modification were to be made, the GSMG believe that administrative savings would result for BSCCo, the level of which is currently unquantifiable, as it will depend on the number of insolvent Parties applying to the Panel to Withdraw from the Code. BSCCo will be required to be involved in a support and information role to the Panel, when a Party undertakes the application.

Local Working Instructions for the Market Entry team in the Service Delivery Department would need to be amended. Legal advice would have to be taken by the team to ascertain a Party's insolvent status. The process of amendment and review of the process will take 10 ELEXON man days.

The Business Process Model will require amendment, which will take 5 ELEXON man days.

The Obligations Register will need to be amended, which will take 1 ELEXON man day.

### **3.2 BSC Systems**

No impacts on any BSC Systems have been identified.

### 3.3 Parties and Party Agents

Three respondents replied to the request for a high level impact assessment. All three respondents believed that there would be no impact on their systems or processes.

However, one respondent acting in the role of Party Agent highlighted an issue, in that there could be a problem for Party Agents if the Proposed Modification were to be implemented. The Party Agent is obliged to carry out its role for the Party as long as the Party is a party to the Code. If a Party becomes insolvent and is allowed to withdraw, Data Collectors and Data Aggregators would no longer be obliged to carry out their role and the data from the point of withdrawal to the Final Reconciliation Settlement Run may be lost.

The GSMG noted that this would only be an issue if the Proposed Modification were to be made and if the Alternative Modification were to be made, it would not since the solution obliges the insolvent Party to remain a party to the Code until after the Final Reconciliation Settlement Run has been carried out for its last day of trading, i.e. until its Data Collector has collected all the data for the last day of trading.

## 4 IMPACT ON CODE AND DOCUMENTATION

As a result of the Alternative Modification there will be impacts on the following:

### 4.1 Balancing and Settlement Code

The Alternative Modification requires changes to Section A (Parties and Participation), Section M (Credit Cover and Credit Default) and Section N (Clearing, Invoicing and Payment).

Section A5.1 describes the criteria by which a Party can withdraw from the Code. The change to the legal text is to introduce a clause Section A5.1.5 which allows the Panel, in its discretion to preclude the balance of the Base Monthly Charge, accrued from the date of submission of the Withdrawal Notice, from the sums to be settled before an insolvent Party can withdraw from the Code.

Section A5.1.3, which defines the criteria for withdrawal, has been amended to take into account the existence of the new clause Section A5.1.5.

Section M has an additional clause (Section M2.3.1A) to enable the Withdrawing Party (which is in Default only by virtue of being insolvent) to regain possession of its Credit Cover, which had been frozen when it went into Default.

Section M2.3.1, which stipulates the time Credit Cover can be returned by the BSC Clearer to Trading Parties that request it, has also been amended to reflect the changes introduced to the Code by Section M2.3.1A.

Section N has an additional clause (Section N2.5.4), which ensure that if insolvent Parties (only in Default for being insolvent) have paid all outstanding liabilities to date (and can fulfil withdrawal criteria in Section A) then they can have their Credit Cover returned by the BSC Clearer.

Section N2.5.2, which prevents Defaulting Party from getting its Credit Cover back if they have potential contingent liabilities has been amended to take into account Section N2.5.4.

A redlined version of the draft legal text for Alternative Modification P127 is given in annex 1.

The GSMG did not commission draft legal text for the Proposed Modification.

## 4.2 Code Subsidiary Documents

BSCP65 will need to be amended if the Alternative Modification were to be made. The requirement for a Withdrawing Party to submit BSCP65 in order to cease to be a Trading Party is stipulated in Section A4.4.1. Currently, the Withdrawal Notice Form (BSCP65/03), asks:

*Is there any outstanding breach by your company of the provisions of the Code that is capable of remedy and has not been remedied?*

This question needs to be answered positively in order for the Party to be able to withdraw. Such a remediable breach of the Code is to be in Default (even by virtue of insolvency) and, therefore, an amendment to this text will be required, since this is inconsistent with the proposed P127 legal text.

BSCP65 will also require further changes in order that the process whereby insolvent Parties apply to the Panel to have their liability to the Base Monthly Charge reduced to zero is defined.

It is estimated that the change required to BSCP65 will take 5 ELEXON man days to complete.

## 4.3 BSCCo Memorandum and Articles of Association

No amendments would be required to the BSCCo Memorandum and Articles of Association as a consequence of the Proposed or Alternative Modification.

## 4.4 Impact on Core Industry Documents and supporting arrangements

No changes would be required to any Core Industry Documents or supporting arrangements if either the Proposed or Alternative Modification were to be made.

# 5 SUMMARY OF CONSULTATIONS

A consultation document and questionnaire was issued to the industry on 30 June 2003, with a 7 July 2003 deadline for responses. Seven responses (26 Parties) were received and are attached as annex 3 of this report.

## 5.1 Modification Group's summary of the consultation responses

The following questions were asked of the respondents and the arguments are summarised below each question.

Q.1. Do you believe Proposed Modification P127 better facilitates the achievement of the Applicable BSC Objectives?	
Yes	2 (3 Parties)
No	4 (14 Parties)
No Comment	1 (9 Parties)

The principle argument put forward against the Proposed Modification was that it would hinder BSCCo from recouping outstanding Trading Charges from the insolvent Party. One respondent pointed out that once a Party ceased to be a party to the Code then BSCCo would cease to be a secured creditor in respect of any outstanding liabilities. The respondent believed that due to the companies insolvency the status of secured creditor would make a significant difference in BSCCo's ability to recoup any outstanding debts.

Two Parties were in support of P127 in principle.

Q.2. Do you believe either potential Alternative Modification option 1 or option 2 better facilitate the achievement of the Applicable BSC Objectives when compared with the Proposed Modification?	
Yes	<b>Option 1:</b> 1 (1 Party) <b>Option 2:</b> 2 (3 Parties)
No	<b>Option 1:</b> 4 (15 Parties) <b>Option 2:</b> 3 (13 Parties)
No Comment	<b>Option 1:</b> 2 (10 Parties) <b>Option 2:</b> 2 (10 Parties)

The argument put forward by one respondent in support of option 1 was that the solution would allow BSCCo to recoup outstanding liabilities. However, the GSMG noted that this is not the case, as the option proposed that the Party would be able to withdraw if it had paid all its Trading Charges to date, but it would be under no obligation to remain as a party to the Code until the Final Reconciliation Settlement Run (RF) and therefore BSCCo would be required to attempt to recoup liabilities in respect of Reconciliation Runs and would become an unsecured creditor.

Two respondents were against option 1 as they felt that any outstanding liabilities that insolvent Parties were unable to pay would have to be recouped from the other Parties. Both respondents felt that option 1 was unfair and that BSCCo should not be put in a position where the insolvent Party would be able to avoid paying their debts.

One respondent was concerned that option 1 did not allow accrued and contingent liabilities to be factored into the decision about whether or not the Party should withdraw. However, this respondent believed that option 2 allowed these to be factored into the decision, as the insolvent Party would be compelled to remain as a party to the Code until after the Final Reconciliation Settlement Run for its last day of trading had taken place.

Arguments against option 2 were predominantly based on the fact that if the Panel were to make a determination on whether or not the Party were able to pay their outstanding Trading Charge liabilities and then determined that they could not allow them to withdraw, BSCCo would find it more challenging to recoup the outstanding liabilities.

Q.3. Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered?	
Yes	1 (9 Parties)
No	3 (6 Parties)
No Comment	3 (11 Parties)

One respondent stated that a possible solution, not outlined in the consultation document, is to introduce a mechanism whereby the Panel are able to reduce the Base Monthly Charge to zero when a Party becomes insolvent, but that the Party are unable to withdraw from the Code until the Party has paid all outstanding liabilities.

Another Party outlined a similar solution whereby the insolvent Party could have its liability to BSCCo Charges set to zero but be obliged to remain a party to the code until the reconciliation process has been completed.

Q.4. Do you believe that it is appropriate for an insolvent Party to have its liability for BSCCo Charges terminated?	
Yes	4 (13 Parties)
No	2 (4 Parties)
No Comment	-

One respondent believed that the Code currently prevents insolvency practitioners from being able to discharge their statutory obligations. Another respondent believed that it would be more efficient for BSCCo not to invoice insolvent Parties in the knowledge that the liabilities are unlikely to be met. This respondent believed that treating the BSCCo Charges and Trading Charges differently makes sense since Credit Cover posted by Parties is a Code obligation and does not cover BSCCo Charges. Therefore, zeroing the balance for BSCCo Charges would be an acceptable part of the solution to address the defect identified by the Proposer.

Q.5. Do you believe that an insolvent Party should be allowed to withdraw from the Code?	
Yes	3 (4 Parties)
No	3 (13 Parties)
No Comment	1 (9 Parties)

The main argument given by respondents who replied that they were not happy for insolvent Parties to withdraw from the Code, was that it would make the recovery of outstanding liabilities more difficult. Three respondents thought that insolvent Parties should only be allowed to withdraw if they had paid all their outstanding liabilities.

Two respondents were in favour of the principle that insolvent Parties should be allowed to withdraw from the Code. One respondent thought that it would reduce the administrative burden on BSCCo, which would outweigh the benefit of recovering the money, and the second respondent believed that if the Party were allowed to withdraw before they were expelled then money that they would not have to have incurred could be saved.

Q.6. Do you believe that it is appropriate for an insolvent Party to have the balance of its BSCCo Charges set to zero so that it can withdraw from the Code?	
Yes	3 (4 Parties)
No	3 (13 Parties)
No Comment	1 (9 Parties)

One respondent felt that other Parties should not be left to pay a share of the BSCCo Charges that the insolvent party has been exempted from paying. Another Party stated that reducing the BSCCo Charges to zero would be a pragmatic solution so that the Party could withdraw, however, the respondent implied that the Trading Charges would already have been paid. The GSMG noted that this would not necessarily be the case.

Q.7. Do you believe that the Panel should be given the discretion to decide whether or not Parties with unpaid liabilities should be allowed to withdraw from the Code?	
Yes	3 (4 Parties)
No	3 (13 Parties)
No Comment	-

One respondent believed that each situation in respect of insolvent Parties wishing to withdraw from the Code would require individual consideration and that the Panel is the body that should use its discretion to determine the best course of action. Another respondent felt that the fact that a Party is not paying its BSCCo Charges would have a negative impact on all Parties and also believe that the Panel should have the discretion to allow a Party with unpaid liabilities to withdraw from the Code. A further respondent stated that it believed that BSCCo should always pursue outstanding liabilities.

Another Party was against the Panel being allowed to use its discretion in respect of this question and supported a more mechanistic approach. Another Party took the opposite stance and stated that allowing the Panel the discretion to make these decisions would negate the need for stringent rules stipulating the process and disallow each case to be considered on its own merits.

Q.8. Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by the Proposed Modification?	
Yes	4 (14 Parties)
No	1 (2 Parties)
No Comment	2 (10 Parties)

Four respondents were of the opinion that the Proposed Modification would compromise BSCCo's ability to recoup outstanding and contingent liabilities as, once the insolvent Party was allowed to withdraw from the Code, BSCCo would become an unsecured creditor.

Q.9. Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by either potential Alternative Modification option 1 or option 2?	
Yes	Option 1 – 3 (14 Parties) Option 2 – 2 (12 Parties)
No	Option 1 – 1 (1 Party) Option 2 – 1 (2 Parties)
No Comment	Option 1 – 3 (11 Parties) Option 2 – 3 (11 Parties)

One respondent believed that consideration should be given to the actual processes regarding the registered MPANs, taking note of the impact this may have upon the revenue of the Party's agents.

One respondent, making no reference to the individual consultation questions made a general comment in respect of P127. The respondent stated that while relatively indifferent to P127, he would prefer to see a solution where the Base Monthly Charge were waived for insolvent Parties, but that they were not bound by all other conditions of the Code. This respondent believed that this would provide a more

satisfactory means of addressing the recovery of any potential Trading Charge liabilities (accrued and contingent liabilities and including Reconciliation Run Charges as well as Past Notification Error Claims).

## **5.2 Comments and views of the Modification Group**

The GSMG considered the Proposed Modification and two options outlined in the consultation document and the consultation responses. The GSMG took particular note of the fact that whether or not respondents were supportive of the Proposed Modification or either option their biggest concern was that BSCCo would have its ability to recover outstanding debts from insolvent Parties compromised by any solution.

The GSMG also took particular note of several of the responses that advocated another option whereby the defects outlined by the Proposer would be remedied (namely that the party responsible for the administration process would be able to crystallise the Party's liabilities, and that insolvency alone is not a barrier to a Party being able to withdraw from the Code) and formed the Alternative Modification using some aspects of options 1 and 2 that the respondents had supported whilst taking into account issues they had highlighted. The GSMG believed that option 3 would solve both defects but also allowed BSCCo to retain the status of secured creditor until the Party have paid all its outstanding liabilities.

The GSMG noted that BSCCo could lose the status of secured creditor if a Party were to withdraw from the Code, if the Credit Cover were in the form of a Letter of Credit. They also noted that BSCCo could not be sure that a Party had paid all its liabilities with respect to reconciliation runs until the Final Reconciliation Settlement Run had taken place.

The GSMG believed that the way that these issues could be resolved would be for the Panel to have the ability to set to zero an insolvent Party's liability to the Base Monthly Charge (the escalating liability referred to in the Modification Proposal), but to obligate the Party to fulfil all of the criteria currently stipulated in the Code for withdrawing; criteria that were developed to maximise BSCCo's ability to recoup charges from Discontinuing Parties. The GSMG was minded that option 3 should include the ability for an insolvent party to withdraw if the only reason for its Default is the fact that they were insolvent.

The GSMG discussed the comment made by one respondent that consideration should be given to the actual processes regarding the registered MPANs, taking note of the impact this may have upon the revenue of the Party's agents. The GSMG felt that this was not an issue for option 3, as the solution does not propose that insolvent Parties could have their liabilities to *all* BSCCo Charges (which may relate to the registration of MPANs) zeroed. Parties would still be liable to pay these charges, and therefore P127 does not impact MPANs or the BSCCo Charges relating to them.

## **6 SUMMARY OF TRANSMISSION COMPANY ANALYSIS**

### **6.1 Analysis**

The Transmission Company did not believe that the implementation of P127 (either Options 1, 2 or 3 identified) would have any impact on the ability of the Transmission Company to discharge its obligations under the Transmission Licence. It did not believe that any of its systems or processes would be impacted and would not require a lead-time to implement P127.

The Transmission Company did not believe that the Proposed Modification would better facilitate the Applicable BSC Objectives, as it could hinder BSCCo from recouping outstanding liabilities from insolvent Parties. However, the Transmission Company feel that the Options 1, 2 and 3 may better facilitate Applicable BSC Objective (d) as they would reduce the administrative burden on BSCCo whilst allowing outstanding charges to be recouped.

A copy of Transmission Company analysis in full can be found in annex 4 of this report.

## 7 SUMMARY OF EXTERNAL ADVICE

No external advice was commissioned.

## 8 IMPLEMENTATION APPROACH

The changes required as a result of P127 do not impact BSC Agents. The changes impact BSCCo systems and processes and the changes required to BSCPs, BSCCo systems and processes will be managed by BSCCo. The estimated financial cost for implementation of the Alternative Modification is small, with 21 ELEXON man day effort being required to carry out changes to documents etc.

## 9 DOCUMENT CONTROL

### 9.1 Authorities

Version	Date	Author	Reviewer	Change Reference
0.1	16 July 2003	Change Delivery	Richard Clarke	Technical Review
0.2	17 July 2003	Change Delivery	Gareth Forrester	Technical Review
0.3	18 July 2003	Change Delivery	GSMG	Review
0.4	26 August 2003	Change Delivery	GSMG	Review
0.5	1 September 2003	Change Delivery	Rachel Lindstrom-Thomas	Technical Review
0.6	2 September 2003	Change Delivery	Gareth Forrester and David Ahmad	Technical Review
0.7	2 September 2003	Change Delivery	Justin Andrews	Technical Review
0.8	5 September 2003	Change Delivery	Helen Spindler	Quality Review
1.0	5 September 2003	Change Delivery	Panel	Decision

## ANNEX 1 DRAFT LEGAL TEXT

- Text for Proposed Modification – none commissioned.
- Text for Alternative Modification – see attached document.

## ANNEX 2 MODIFICATION GROUP DETAILS

Three Assessment Procedure Modification Group meetings took place on 18 June, 9 July and 5 August 2003. The following people have been involved in the Modification Group assessment of Modification Proposal P127.

Name	Organisation
Gareth Forrester (Chairman)	ELEXON
Rachel Lindstrom-Thomas (Lead Analyst)	ELEXON
Richard Clarke (Analyst Support)	ELEXON
Peter Bolitho	Powergen
Clare Talbot	National Grid
John Sykes	Scottish and Southern
Mark Manley	British Gas Trading
Terry Ballard	Innogy
Rachel Lockley	British Energy
Lisa Waters	Waters Wye
Phil Russell	TXU
Paul Mott	EDF Energy
Man Kwong Liu	Scottish Power

## ANNEX 3 CONSULTATION RESPONSES

### Responses from P127 Assessment Consultation

Consultation issued 30 June 2003

Representations were received from the following parties:

No	Company	File Number	Parties Represented	Non-Parties Represented
1.	YEDL/NEDL	P127_ASS_001	2	0
2.	Aquila Networks	P127_ASS_002	1	0
3.	British Energy	P127_ASS_003	3	0
4.	Innogy	P127_ASS_004	9	0
5.	British Gas Trading	P127_ASS_005	1	0
6.	NGT	P127_ASS_006	1	0
7.	LE Group	P127_ASS_007	9	0

### P127\_ASS\_001 – YEDL/NEDL

<b>Respondent:</b>	<i>Joseph Hart</i>
<b>No. of BSC Parties Represented</b>	<i>2</i>
<b>BSC Parties Represented</b>	<i>NEDL/YEDL</i>
<b>No. of Non BSC Parties Represented</b>	<i>None</i>
<b>Non BSC Parties represented</b>	<i>None</i>
<b>Role of Respondent</b>	<i>BSC Party</i>

	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
1.	Do you believe Proposed Modification P127 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	Yes	It is not appropriate that the debts of a company in insolvency continue to mount up.  Objectives C and D would appear to be better facilitated.
2.	Do you believe either potential Alternative Modification option 1 or option 2 better facilitate the achievement of the Applicable BSC Objectives when compared with the Proposed Modification? Please give rationale and state objective(s)	<b>Option 1</b> No	Does not enable consideration of accrued and contingent liabilities to be factored into the decision
		<b>Option 2</b> Yes	Enables consideration of accrued and contingent liabilities to be factored into the decision
3.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	
4.	Do you believe that it is appropriate for an insolvent Party to have its liability for BSCCo Charges terminated? Please give rationale	Yes	It is inappropriate that insolvency practitioners are unable to discharge their statutory obligations due to a constraint within the BSC
5.	Do you believe that an insolvent Party should be allowed to withdraw from the Code? Please give rationale	Yes	The administrative burden of managing the relationship seems to outweigh the benefit of recovering the money
6.	Do you believe that it is appropriate for an insolvent Party to have the balance of its BSCCo Charges set to zero so that it can withdraw from the Code? Please give rationale	Yes	
7.	Do you believe that the Panel should be given the discretion to decide whether or not Parties with unpaid liabilities should be allowed to withdraw from the Code? Please give rationale	Yes	Each case requires individual consideration and the necessary checks and balances put into place prior to withdrawal taking place – the Panel is best placed to achieve this.
8.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by the Proposed Modification? Please give rationale	No	Not through selection of Option 2 – Option 1 would as it doesn't make it a part of the decision making process
9.	Do you believe that BSCCo's ability to recoup outstanding and contingent	<b>Option 1</b> Yes	See answer to 8

	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
	liabilities from insolvent Parties would be prejudiced by either potential Alternative Modification option 1 or option 2? Please give rationale	<b>Option 2</b> No	See answer to 8
10.	Does P127 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	
11.	Are there any further comments on P127 that you wish to make?	No	

**P127\_ASS\_002 – Aquila Networks**

<b>Respondent:</b>	<i>Aquila Networks Plc Metering Services</i>
<b>No. of BSC Parties Represented</b>	
<b>BSC Parties Represented</b>	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant).</i>
<b>No. of Non BSC Parties Represented</b>	
<b>Non BSC Parties represented</b>	<i>NHHDC / NHHDA</i>
<b>Role of Respondent</b>	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state)</i>

	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
1.	Do you believe Proposed Modification P127 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	<b>Yes / No</b>	There is a chance the party will be expelled from the code at a later date. Voluntary de-registration from the code will decrease the party's outgoings.
2.	Do you believe either potential Alternative Modification option 1 or option 2 better facilitate the achievement of the Applicable BSC Objectives when compared with the Proposed Modification? Please give rationale and state objective(s)	<b>Option 1</b> Yes / No	NHHDA / NHHDC has no preference at this time but reserves the right to express opinions and preferences during later consultations.
		<b>Option 2</b> Yes / No	NHHDA / NHHDC has no preference at this time but reserves the right to express opinions and preferences during later consultations.
3.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	Yes / No	No comment
4.	Do you believe that it is appropriate for an insolvent Party to have its liability for BSCCo Charges terminated? Please give rationale	Yes / <b>No</b>	Any accrued charges should be paid as per any other commercial business when they accrue debt.

	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
5.	Do you believe that an insolvent Party should be allowed to withdraw from the Code? Please give rationale	<b>Yes</b> / No	Withdrawing from the code before expulsion decreases the party's outgoings and liabilities
6.	Do you believe that it is appropriate for an insolvent Party to have the balance of its BSCCo Charges set to zero so that it can withdraw from the Code? Please give rationale	Yes / <b>No</b>	Any accrued charges should be paid, but consideration should be given to allowing the party to pay any of these outstanding charges following withdrawal from the code
7.	Do you believe that the Panel should be given the discretion to decide whether or not Parties with unpaid liabilities should be allowed to withdraw from the Code? Please give rationale	<b>Yes</b> / No	Each situation should be judged on its own merits. If a party is unable to pay the BSCCo charges, continuing to increase their unpaid liabilities will have a negative impact on all other interested parties.
8.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by the Proposed Modification? Please give rationale	Yes / No	Unable to offer a qualified opinion
9.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by either potential Alternative Modification option 1 or option 2? Please give rationale	<b>Option 1</b> Yes / No	Unable to offer a qualified opinion
		<b>Option 2</b> Yes / No	Unable to offer a qualified opinion
10.	Does P127 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	<b>Yes</b> / No	Consideration to the actual processes involved regarding the registered MPANs should take place, taking note the impact this may have upon the revenue of the party's agents.
11.	Are there any further comments on P127 that you wish to make?	<b>Yes</b> / No	Consideration to the actual processes involved regarding the registered MPANs should take place, taking note the impact this may have upon the revenue of the party's agents.

**P127\_ASS\_003 – British Energy**

<b>Respondent:</b>	<i>Name</i>
<b>No. of BSC Parties Represented</b>	<i>Rachel Lockley</i>
<b>BSC Parties Represented</b>	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant).</i>
<b>No. of Non BSC Parties Represented</b>	<i>British Energy Generation, British Energy Power and Energy Trading and Eggborough Power Ltd</i>
<b>Non BSC Parties represented</b>	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
<b>Role of Respondent</b>	<i>Generator</i>

	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
1.	Do you believe Proposed Modification P127 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	No	Although the value of the Base Monthly charge may be relatively small by allowing a Party to withdraw from the BSC will mean that it will become harder to claim any outstanding Trading charges that a company may owe which may be a substantial sum.
2.	Do you believe either potential Alternative Modification option 1 or option 2 better facilitate the achievement of the Applicable BSC Objectives when compared with the Proposed Modification? Please give rationale and state objective(s)	<b>Option 1</b> No	If the insolvent company's outstanding charges are written off as a bad debt then it is left for the remaining BSC parties to pick up a share of these charges. We do not believe that this is acceptable.
		<b>Option 2</b> No	If the base monthly charge and trading charges are written off to zero then the chances of claiming any of the outstanding charges back will be greatly reduced.
3.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	
4.	Do you believe that it is appropriate for an insolvent Party to have its liability for BSCCo Charges terminated? Please give rationale	No	
5.	Do you believe that an insolvent Party should be allowed to withdraw from the Code? Please give rationale	No	We do not believe that any Party should be allowed to withdraw from the code if they have any charges outstanding
6.	Do you believe that it is appropriate for an insolvent Party to have the balance of its BSCCo Charges set to zero so that it can withdraw from the Code? Please give rationale	No	We do not believe that other BSC members should be left to pick up the insolvent companies remaining charges.
7.	Do you believe that the Panel should be given the discretion to decide whether or not Parties with unpaid liabilities should be allowed to withdraw from the Code? Please give rationale	No	BSCCo should always continue to pursue outstanding charges from all companies.

	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
8.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by the Proposed Modification? Please give rationale	Yes	By allowing a company to withdraw from the BSC, BSCCo would move down the pecking order of Creditors and therefore its chances of receiving any payment would reduce.
9.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by either potential Alternative Modification option 1 or option 2? Please give rationale	<b>Option 1</b> Yes	See question 8
		<b>Option 2</b> Yes	See question 8
10.	Does P127 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	
11.	Are there any further comments on P127 that you wish to make?	No	

**P127\_ASS\_004 – Innogy**

<b>Respondent:</b>	<i>Name: Terry Ballard</i>
<b>No. of BSC Parties Represented</b>	9
<b>BSC Parties Represented</b>	Innogy plc, Innogy Cogen Ltd, Innogy Cogen Trading Ltd, Npower Ltd, Npower Direct, Ltd, Npower Yorkshire Ltd, Npower Northern Ltd, Npower Yorkshire Supply Ltd, Npower Northern Supply Ltd
<b>No. of Non BSC Parties Represented</b>	
<b>Non BSC Parties represented</b>	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
<b>Role of Respondent</b>	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state)</i>

	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
1.	Do you believe Proposed Modification P127 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	No	The issue is one of charging the BSCCo Monthly Charge. A better solution may be that where an Insolvency Practitioner is appointed, the Panel should have the discretion to reduce the charge to zero.
2.	Do you believe either potential Alternative Modification option 1	<b>Option 1</b> No	See answer to question 3 below.

	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
	or option 2 better facilitate the achievement of the Applicable BSC Objectives when compared with the Proposed Modification? Please give rationale and state objective(s)	<b>Option 2</b> No	See answer to question 3 below
3.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	Yes	A procedure that allows the Panel to reduce the monthly charge of a party to zero when an Insolvency Practitioner has been appointed prevents the accrual of additional charges but leaves them as a BSC signatory until all other invoices have been raised and payments made or otherwise.
4.	Do you believe that it is appropriate for an insolvent Party to have its liability for BSCCo Charges terminated? Please give rationale	Yes	The present situation leads to charges being accumulated because insolvent parties are still required to pay them.
5.	Do you believe that an insolvent Party should be allowed to withdraw from the Code? Please give rationale	No	Allowing an insolvent party to withdraw could raise more issues and complicate the recovery of any outstanding charges.
6.	Do you believe that it is appropriate for an insolvent Party to have the balance of its BSCCo Charges set to zero so that it can withdraw from the Code? Please give rationale	No	Charges could be set to zero but the Party should remain within the Code.
7.	Do you believe that the Panel should be given the discretion to decide whether or not Parties with unpaid liabilities should be allowed to withdraw from the Code? Please give rationale	No	Panel should only have discretion to reduce an insolvent Party's monthly charge to zero.
8.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by the Proposed Modification? Please give rationale	Yes	It could complicate the issue of recovery of charges unnecessarily.
9.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by either potential Alternative Modification option 1 or option 2? Please give rationale	<b>Option 1</b> Yes	See response to question 8.
		<b>Option 2</b> Yes	See response to question 8.

	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
10.	Does P127 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	N/A	
11.	Are there any further comments on P127 that you wish to make?	No	

**P127\_ASS\_005 – British Gas Trading**

<b>Respondent:</b>	Mark Manley
<b>No. of BSC Parties Represented</b>	1
<b>BSC Parties Represented</b>	British Gas Trading
<b>No. of Non BSC Parties Represented</b>	
<b>Non BSC Parties represented</b>	
<b>Role of Respondent</b>	

	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
1.	Do you believe Proposed Modification P127 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	No	<p>BGT do not believe the proposed modification better facilitates the Applicable BSC Objectives. Allowing an insolvent Party to withdraw from the BSC with outstanding liabilities accrued from Trading Charges cannot better facilitate the Applicable BSC Objectives.</p> <p>The Modification Proposal proposes that the BSCCo Charge be set to zero for insolvent Parties. BGT do not have any significant concerns with this aspect of the proposal, as it is unlikely to represent a significant proportion of the outstanding liability. BGT's main concern is the change of BSCCo's status as a creditor once the Party has withdrawn from the BSC. After that process has been completed BSCCo become an unsecured creditor as opposed to a secured creditor.</p>
2.	Do you believe either potential Alternative Modification option 1 or option 2 better facilitate the achievement of the Applicable BSC Objectives when compared with the Proposed Modification? Please give rationale and state objective(s)	<b>Option 1</b> No	This allows a BSC Party to withdraw and crystallise their losses without incurring any liabilities that may accrue from future reconciliation runs including Post Final Settlement Runs or Extra Settlement Determinations. Smearing that liability amongst the remaining BSC Parties does not better facilitate the Applicable BSC Objectives.
		<b>Option 2</b> No	If the BSC Party requesting withdrawal from the Code has outstanding liabilities which cannot be paid by the Party or by utilising the credit cover lodged, the Party should not be able to withdraw.

	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
3.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale		BGT believes a potential alternative solution could be developed based on Option 2. Option 2 proposes to allow the Panel to set an exit date for the Party, which factors in the reconciliation cycle. BGT believe this exit date could be conditional on the Party paying all its outstanding liabilities. After the reconciliation run process has been completed and prior to the payment date, the credit cover lodged by the Party could be cashed and used to pay the Parties debts that have accrued from Trading Charges. If the credit cover is sufficient to pay the Parties debt then the original exit date is used. If it is not sufficient then the credit cover is cashed to pay the maximum percentage of the debt possible. The BSC Party will then remain a signatory to the Code with the remaining debt and its BSCCo Charges set to zero.
4.	Do you believe that it is appropriate for an insolvent Party to have its liability for BSCCo Charges terminated? Please give rationale	Yes	From an efficiency perspective it would seem prudent for BSCCo not to invoice an insolvent Party with the knowledge that the invoice will not be paid. In view of the fact that the BSCCo Charges are likely to represent a relatively minor element of any outstanding liability it would be sensible to set the BSCCo Charge to zero. Also any credit posted by a Party can only be utilised to cover Trading Charges and the BSCCo Charge does not constitute a Trading Charge. Therefore the credit posted cannot be used to pay outstanding BSCCo Charges.
5.	Do you believe that an insolvent Party should be allowed to withdraw from the Code? Please give rationale	No	An insolvent Party should only be able to withdraw from the Code if the Party can pay all outstanding Trading Charges.
6.	Do you believe that it is appropriate for an insolvent Party to have the balance of its BSCCo Charges set to zero so that it can withdraw from the Code? Please give rationale	Yes	BGT believe it is appropriate for the BSCCo Charges to be set to zero on the basis that the outstanding Trading Charges are paid prior to withdrawal from the BSC.

	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
7.	Do you believe that the Panel should be given the discretion to decide whether or not Parties with unpaid liabilities should be allowed to withdraw from the Code? Please give rationale	No	<p>BGT do not believe the Panel should be given the additional power necessary to waive BSC Parties liabilities under the BSC. Withdrawal from the Code is a mechanistic process that ensures amongst other things that a BSC Party has paid all outstanding debts. The integrity of this process should be maintained. BGT do not support a subjective approach being developed that allows the Panel the discretion to waive a Parties unpaid liabilities.</p> <p>BGT is opposed to this power being vested in the Panel, however if this approach was approved, BGT would expect as a minimum requirement the Panel being obligated to consult with BSC Parties. On the basis it is BSC Parties who will assume responsibility for the outstanding debt.</p>
8.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by the Proposed Modification? Please give rationale	Yes	BGT believe the ability to recover outstanding debt will be dependent upon the status of BSCCo as a creditor. If an insolvent Party is allowed to withdraw from the BSC and remove their credit cover then the BSCCo will become an unsecured creditor. If the Party remains a BSC signatory and BSCCo hold the credit cover lodged and this can be utilised to offset any outstanding or contingent liabilities.
9.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by either potential Alternative Modification option 1 or option 2? Please give rationale	<b>Option 1</b>	The ability to recoup outstanding and contingent liabilities will be dependent upon BSCCo status as a debtor. If BSCCo remains as a secured debtor then the chances of recovering the debt are increased. If BSCCo become an unsecured debtor then the probability of recovering the liability is reduced.
		<b>Option 2</b>	The ability to recoup outstanding and contingent liabilities will be dependent upon BSCCo status as a debtor. If BSCCo remains as a secured debtor then the chances of recovering the debt are increased. If BSCCo become an unsecured debtor then the probability of recovering the liability is reduced.
10.	Does P127 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	
11.	Are there any further comments on P127 that you wish to make?	No	

**P127\_ASS\_006 – NGT**

<b>Respondent:</b>	<i>Name National Grid Transco</i>
<b>No. of BSC Parties Represented</b>	<i>One</i>
<b>BSC Parties Represented</b>	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant). National Grid</i>
<b>No. of Non BSC Parties Represented</b>	<i>None</i>
<b>Non BSC Parties represented</b>	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant). N/A</i>
<b>Role of Respondent</b>	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state) BSC Party</i>

	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
1.	Do you believe Proposed Modification P127 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	No	We believe that P127 as proposed would not better facilitate the BSC Objectives and specifically objective (d), as it may hinder the BSCCo recouping any outstanding liabilities from an insolvent Party.
2.	Do you believe either potential Alternative Modification option 1 or option 2 better facilitate the achievement of the Applicable BSC Objectives when compared with the Proposed Modification? Please give rationale and state objective(s)	<b>Option 1</b> Yes	This option does better facilitate BSC Objective (d) when compared with the Proposed Modification, as it proposes to reduce the administrative burden on the BSCCo whilst still allowing it the ability of recouping outstanding liabilities. (see answer to Q9)
		<b>Option 2</b> Yes	This option does better facilitate BSC Objective (d) when compared with the Proposed Modification, as it proposes to reduce the administrative burden on the BSCCo whilst still allowing it the ability of recouping outstanding liabilities. (see answer to Q9)
3.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	
4.	Do you believe that it is appropriate for an insolvent Party to have its liability for BSCCo Charges terminated? Please give rationale	Yes	We believe it is appropriate to bring to an end the escalating liabilities in the form of the Base Monthly Charge on an insolvent Party.
5.	Do you believe that an insolvent Party should be allowed to withdraw from the Code? Please give rationale	Yes	Given that the BSC Panel will have discretion over whether Parties will be allowed to withdraw from the code (see Q7), we believe that there will be limited circumstances where liabilities will effectively be written off as bad debt.

	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
6.	Do you believe that it is appropriate for an insolvent Party to have the balance of its BSCCo Charges set to zero so that it can withdraw from the Code? Please give rationale	Yes	Given the relative size of the BSCCo Charges as compared to Trading Charges and that the BSC Panel will be exercising its discretion (see answer to Q5), then this appears to be a pragmatic solution.
7.	Do you believe that the Panel should be given the discretion to decide whether or not Parties with unpaid liabilities should be allowed to withdraw from the Code? Please give rationale	Yes	By allowing the BSC Panel discretion, within general Code guidelines, will negate the need for overly stringent rules being written and allow each case to be considered on an individual basis.
8.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by the Proposed Modification? Please give rationale	Yes	We agree with the rational of the GSMG that the Proposed Modification would not be a viable solution.
9.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by either potential Alternative Modification option 1 or option 2? Please give rationale	<b>Option 1</b> No	This option offers the most direct interpretation of the original proposal whilst preserving the ability to recoup outstanding liabilities.
		<b>Option 2</b> Maybe	This option widens the scope (from option1) for allowing Parties to withdraw and may prejudice the BSCCos ability to recoup outstanding liabilities to a small degree.
10.	Does P127 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	However, we would wish to see an assessment on the materiality of the difference between option 1 & option 2 potential alternatives (see answer to Q9)
11.	Are there any further comments on P127 that you wish to make?	No	

**P127\_ASS\_007 – LE Group**

<b>Respondent:</b>	Paul Chesterman
<b>No. of BSC Parties Represented</b>	9
<b>BSC Parties Represented</b>	LE Group plc, London Electricity plc, Jade Power Generation Ltd, Sutton Bridge Power Ltd, West Burton Power, London Power Networks plc, EPN Distribution Ltd, Seeboard Power Networks plc, Seeboard Energy Ltd,
<b>No. of Non BSC Parties Represented</b>	None that we consider applicable
<b>Non BSC Parties represented</b>	
<b>Role of Respondent</b>	Supplier / Generator / Party Agent / Distribution Business

I can summarise EDF Energy's position on P127 as being: "Relatively indifferent to this issue". However, we would prefer to see a solution where the Base Monthly Charge is waived for the insolvent Party and they are kept bound by all other conditions of the Code as this will provide a more satisfactory means of addressing the recovery of any potential trading liabilities (accrued and contingent liabilities (including Reconciliation Run Charges and Past Notification Error Claims)).

#### **ANNEX 4 TRANSMISSION COMPANY ANALYSIS**

In accordance with paragraph F 2.8 of the Code, please respond to the following questions concerning P127 (including the rationale for each response):

	<b>Question</b>	<b>Response</b>
1	Please outline any impact of the Proposed Modification (and, if applicable, any Alternative Modification) on the ability of the Transmission Company to discharge its obligations efficiently under the Transmission Licence and on its ability to operate an efficient, economical and co-ordinated transmission system.	We believe that the implementation of P127 and possible alternatives (identified by Option 1 & 2 in the consultation) has no impact on the ability of the Transmission Company to discharge its obligations under the Transmission Licence.
2	Please outline the views and rationale of the Transmission Company as to whether the Proposed Modification (and, if applicable, any Alternative Modification) would better facilitate achievement of the Applicable BSC Objectives.	We believe that P127 as proposed would not better facilitate the BSC Objectives as it may hinder the BSCCo recouping any outstanding liabilities from an insolvent Party. However, we believe that the possible alternatives (option 1, 2 and 3 identified in the consultation) may better facilitate BSC Objective (d), as they propose to reduce the administrative burden on the BSCCo whilst still allowing the ability of recouping outstanding liabilities.
3	Please outline the impact of the Proposed Modification (and, if applicable, any Alternative Modification) on the computer systems and processes of the Transmission Company, including details of any changes to such systems and processes that would be required as a result of the implementation of the Proposed Modification (and, if applicable, any Alternative Modification)	There is no direct impact on our systems and processes as a result of the proposed modification or possible alternatives. We do not believe that there is a specific lead-time required for us to implement P127.
4	Please provide an estimate of the development, capital and operating costs (broken down in reasonable detail) which the Transmission Company anticipates that it would incur in, and as a result of, implementing the Proposed Modification (and, if applicable, any Alternative Modification).	None identified.
5	Please provide details of any consequential changes to Core Industry Documents that would be required as a result of the implementation of the Proposed Modification (and, if applicable, any Alternative	None identified

	Modification).	
6	Any other comments on the Proposed Modification (and Alternative Modification if applicable).	None.

**ANNEX 5 BSC AGENT IMPACT ASSESSMENTS**

None.

**ANNEX 6 PARTY IMPACT ASSESSMENTS**

Name: Ian Henderson  
 Organisation: Metering Services (Aquila)  
 Date: 4-7-03

1. What impact, if any, will the Proposed Modification have on your organisation?

This proposed modification will impact on us in several ways through commercial interests and through our obligations to settlements.

If a Supplier that is party to the code is made insolvent and continues to remain a party to the code, as NHHDC and NHHDA we are obliged to continue acting as the Suppliers agent. This is so even though there may be outstanding charges and the Supplier is unable to pay these or any further charges incurred, therefore accruing even more debt and increasing the liability to us (NB these charges may not be fully recovered).

If an insolvent Supplier, is allowed to withdraw from the code, further consideration to the impact on settlements should be given. It could be argued that as a Supplier is no longer a party to the Code, our contract to operate as NHHDC and NHHDA becomes void and there is no longer an obligation to carry out the tasks that go hand in hand with acting as the Suppliers Agent.

Further clarification is sought regarding these circumstances and the obligations Agents have to an insolvent Supplier and settlements. Consideration should be given to the commercial aspects of a business as well as the settlement aspect, as in a more 'normal' industry, a service provider could simply cease to provide the service to the defaulting debtor until accrued charges have been paid.

2. What implementation timescale, if applicable, would your organisation require to implement the changes associated with the Proposed Modification?

As there are no known changes to NHHDC / NHHDA systems and procedures a minimum amount of notice is required.

3. If this Modification Proposal is not applicable to your organisation, please indicate why (e.g. proposed changes do not apply to Party Agents).

This Modification Proposal does not directly impact NHHDC /NHHDA but does have indirect consequences as discussed in previous answers. Defined procedures are required to clarify the obligations of Supplier Agents in all areas associated with Metering Systems (Registration, reading, processing incoming data flows etc)

4. Any other comments:

<b>Clare Talbot</b> National Grid	<b>1.</b> What impact, if any, will the Proposed Modification have on your organisation? <b>Limited impact identified.</b>
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	<p>2. What implementation timescale, if applicable, would your organisation require to implement the changes associated with the Proposed Modification? <b>No specific implementation timetable required.</b></p> <p>3. If this Modification Proposal is not applicable to your organisation, please indicate why (e.g. proposed changes do not apply to Party Agents). <b>There is no direct impact on our systems and processes as a result of the proposed modification or possible alternatives.</b></p>
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## **ANNEX 7 COST BENEFIT ANALYSIS**

None undertaken.

## **ANNEX 8 CORE INDUSTRY DOCUMENT OWNER IMPACT ASSESSMENTS**

None undertaken.

## **ANNEX 9 PROPOSED TEXT TO MODIFY BSCCO MEMORANDUM AND ARTICLES OF ASSOCIATION**

None included.

## **ANNEX 10 TERMS OF REFERENCE**

### **Assessment Procedure (version 1.0)**

Modification Proposal P127 will be considered by the Governance Standing Modification Group (GSMG) in accordance with the GSMG Terms of Reference.

P127 – Optional De-Registration by Insolvent Party

- 1.1 The Modification Group will carry out an Assessment Procedure in respect of Modification Proposal P127 pursuant to section F2.6 of the BSC.
- 1.2 The Modification Group will produce an Assessment Report for consideration at the BSC Panel Meeting on 11 September 2003.
- 1.3 The Modification Group shall consider and/or include in the Assessment Report as appropriate:
  - whether or not removing the Base Monthly Charge for insolvent Parties better facilitates the Applicable BSC Objectives;
  - whether alleviating the Default status of a BSC Party would be sufficient to enable them to withdraw from the Code;
  - the circumstances under which insolvent Parties could be allowed to withdraw from the Code;
  - whether the criteria for withdrawing from the Code for Parties not in Default should be different for insolvent Parties;
  - the consequences of allowing an insolvent Party to withdraw from the Code; and
  - any alternatives to withdrawal as a means to address the perceived defect in the Code.

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**END OF DOCUMENT**