



New HoldCo's Articles of Association

Background

ELEXON Ltd (as the Balancing and Settlement Code Company) is unable to pursue new business development opportunities as it is precluded from doing so under Section C 1.2.2 of the BSC.

Issue 40 was raised by E.ON UK in March 2011 in order to explore this matter.

The Panel subsequently established an Issue 40 Group with an independent chairman to consider options for appropriate governance and funding regimes that protect the BSC and enable ELEXON to pursue appropriate new business development opportunities.

ELEXON presented the findings of the Issue 40 Group to the BSC Panel in September 2011. The Issue 40 Report is available from the ELEXON website at:

http://www.elexon.co.uk/ELEXON%20Documents/Issue_40_Final_Report.pdf

During its discussions, one Panel member requested that the most recent draft of New HoldCo Articles be circulated to the Issue 40 Group for information. The Panel agreed that this draft should be made available for information.

Purpose of this Document

The attached summary of New HoldCo's Articles of Association was developed as an early internal working document, to illustrate how the typical corporate governance provisions of a company limited by guarantee might look in the context of ELEXON's New HoldCo proposal. As such, the focus is limited to fairly generic provisions around the purpose, membership and directorship of the company.

At the time these were drafted (February 2011) ELEXON had not yet developed its thinking on any of the more complex governance matters, such as any specific legal or financial protections or limitations around New HoldCo's relationship with BSCCo, or the extent to which such provisions might have to be included in New HoldCo's Articles and/or the BSC. ELEXON did subsequently develop proposals in these areas in the lead up to, and throughout, the Issue 40 process which were discussed by the Issue 40 Group. However, while these proposals are captured in the Issue 40 Report, these attached draft Articles have not, as yet, been updated to reflect this latest thinking.

Attached: *Summary of New HoldCo's Articles of Association*



Summary of New HoldCo's Articles of Association

Introduction

It is intended that the corporate governance of New HoldCo will conform to the UK Corporate Governance Code, to the extent relevant. Such governance will be set out in the Articles of Association which will be publicly available. Articles of Association for a company limited by guarantee typically set out governance relating to:

- (i) members (and their eligibility), their representatives, proceedings at their meetings, and their resignation;
- (ii) directors, their appointment, proceedings at their meetings, resignation and removal;
- (iii) administrative matters such as record keeping, company seal, etc.

This summary focuses on (i) and (ii) although it does not go into the detail on more routine matters such as appointment of proxies, adjournment procedures etc.

Purpose of New HoldCo

The principal purpose of New HoldCo will be:

- the promotion, development and implementation of innovation, cost efficiency, improvements and rationalisation through the provision of regulated and unregulated services to the utilities sector for the benefit of industry, consumers, regulatory bodies and other legal authorities.

Members

Membership Eligibility

- 1) No minimum or maximum number of Members.
- 2) Any Eligible Member may apply for membership by submitting a membership application form. An Eligible Member (other than New HoldCo or a subsidiary thereof) is any person who is:
 - a. a holder of a licence issued under the Electricity Act 1989;
 - b. a holder of a licence issued under the Gas Act 1986;



- c. a party to a gas or electricity industry code;
- d. an organisation established to represent the interests of consumers; and
- e. any other person or class of persons recommended by the Board from time to time, subject to the ratification by way of an ordinary resolution of the Members,

provided that in each case such person shall not be a competitor of New HoldCo or any of its subsidiaries.

- 3) Where a corporate group has more than one Eligible Member, it is entitled to the corresponding number of memberships but in aggregate is entitled to only one vote.
- 4) Membership is non-transferable.

Members' Representatives

- 5) Applicants to be Members are required to nominate an individual to be their representative (Member's Representative) when performing duties as Members including attendance at AGM and other General Meetings.
 - (i) The individual is expected to have sufficient knowledge of the energy industry and skills to contribute to and to perform the duties expected of a Member. Therefore the Member's Representative is required to be a senior manager of the Eligible Member.
 - (ii) Where Members change their Member's Representative, they are required to nominate an individual as a replacement who satisfies the foregoing.

Application Process

- 6) Provided the application or change of Member's Representative procedure has been complied with (and the proposed Member's Representative complies with the requirements), the application is successful and the Board shall appoint the applicant as a Member as soon as reasonably practical.

Resignation and Removal of Members

- 7) Any Member may resign by serving 3 months written notice.
- 8) If any Member ceases to satisfy the requirements of an Eligible Member, its membership shall cease at the same time as the Member becomes no longer eligible.
- 9) The Board can remove a Member by written notice if in the opinion of the Board (in its absolute discretion) the Member:
 - (i) has materially and/or persistently failed to act in accordance with the Articles;
 - (ii) has provided materially inaccurate or misleading information to the Company;



- (iii) is responsible for any act or omission likely to bring or has brought the Company into disrepute;
- (iv) is insolvent.

Duties of Members

10) Members are:

- (i) to further the objects of the Company;
- (ii) to observe the Articles;
- (iii) not to use their position as a Member or use any information received as a Member to further their private interests nor to frustrate nor to influence policy decision or actions of the Company in an improper manner.

11) Liability of Members is limited to £1 on a winding up.

12) No income or property of New HoldCo may be distributed to Members.

13) No Member is entitled to receive any fees or expenses for acting as a Member.

Provision of Information to Members

14) New HoldCo will keep Members informed of New HoldCo's activities, progress and performance by virtue of:

- (i) the issue of a half yearly statement of performance;
- (ii) the issue of an annual report and financial statements;
- (iii) an AGM which will include presentations on general and financial performance;
- (iv) any other Members' meetings which from time to time the Board may consider necessary or desirable.

15) Members to treat information as confidential (including once they cease to be a Member).

Members' General Meetings

16) AGM to be held within 15 months of previous AGM. First AGM to be held within 6 months of accounting reference date.

17) Board can call a General Meeting.

18) Members can call a General Meeting in accordance with the Companies Act 2006.

19) 21 working days notice for AGM, 14 working days notice for General Meeting, although shorter notice is permitted if all Members agree (AGM) or if the majority of Members agree (General Meeting).



- 20) Quorum of 2 persons entitled to attend and vote.
- 21) Adjournment procedures etc.
- 22) First Chairman of New HoldCo to be appointed for a term of 3 years. Chairman would not concurrently occupy the role of BSCCo Chairman. The outgoing chairman may be re-appointed by the Board one or more times. The Board shall appoint an individual to fill a vacancy for chairman as nominated by the Nominations Committee and then approved by the Members in General Meeting.
- 23) Voting by way of show of hands (unless poll demanded prior to show of hands). Chairman can demand a poll. Poll includes votes in person and by proxy.
- 24) Members to have one vote whether in show of hands or poll.
- 25) Chairman to have additional or casting vote.
- 26) Appointment of Proxies etc.

Directors

- 27) Board to comprise Executive Directors, and Non-Executive Directors.
- 28) Board to comprise not less than 7 and not more than 15 Directors provided that (excluding the Chairman) the number of Non-Executive Directors is greater than the number of Executive Directors.

Executive Directors

- 29) The Board shall include the following executive directors:
 - (i) Chief Executive;
 - (ii) such other employees or officers as are warranted by the size, nature and organisation structure, as appointed by the Board having been nominated by the Nominations Committee.

Non Executive Directors

- 30) The Chairman shall be a non-executive director. Additionally, the Board shall include non-executive directors recommended by the Board and approved by the Members.
- 31) Only individuals recommended by the Board are eligible for election as non-executive directors.
- 32) The Board may only recommend individuals who have been nominated by the Nominations Committee.
- 33) The Nominations Committee shall perform its duties in accordance with its terms of reference.
- 34) The Nominations Committee shall be a committee of the Board comprising:



- (i) the Chairman;
 - (ii) the Chief Executive; and
 - (iii) the recognised Senior Independent Director or other director appointed by resolution of the Board.
- 35) The Nominations Committee shall operate by majority decision.
- 36) From time to time the Nominations Committee shall invite the Members to propose their representatives (a "Member Candidate") to act as non-executive directors. In each such proposal the Members must specify how each individual satisfies the relevant Eligibility Criteria. The Nominations Committee will review the applications against the relevant Eligibility Criteria and, in its sole discretion, it may nominate a Member Candidate to the Board.
- 37) From time to time, the Chairman may propose individuals to the Nominations Committee, who are not Member's representative but in the Chairman's view satisfy the relevant Eligibility Criteria. The Nominations Committee shall review any applications received against the relevant Eligibility Criteria and in its sole discretion it may nominate such candidates to the Board.
- 38) The Eligibility Criteria shall include:
- (i) if the individual is a Member Candidate he or she shall:
 - a. demonstrate sufficient knowledge and experience of the energy industry and skills necessary to effectively perform the role and duties expected of a non-executive director;
 - b. be an executive Director of the Member such person represents.
 - (ii) If the individual is not a Member Candidate he or she shall:
 - a. demonstrate sufficient knowledge and experience of the energy industry (or other relevant area of expertise) and skills necessary to effectively perform the role and duties expected of a non-executive director.
- 39) In nominating directors:, the Nominations Committee shall adopt the following principles:
- (i) it shall have regard to the interests of Members and consumers when nominating candidates;
 - (ii) it shall nominate candidate directors who are broadly reflective of the focus of New HoldCo's business objectives, the range of industry, community and other stakeholder perspectives served by New HoldCo;
 - (iii) it shall ensure that the composition of the Board contains a balance of different types of person interested in the activities of New HoldCo such that no one type of person is able by itself to control or dominate the activities of New HoldCo.



- 40) Individuals recommended by the Board shall be appointed as Directors and their appointment shall be subject to ratification by way of an ordinary resolution of the Members at the next AGM.
- 41) The Board can appoint an individual as a director to fill a vacancy or be an additional director, who will retire at the next AGM and be eligible for re-election.

Director's General Authority

- 42) The Board is responsible for management of the Company's overall business, subject to the Articles, and may exercise all the powers of the Company, including in particular where a profit has been created by a subsidiary, the discretion to allocate that profit within the group as it sees fit provided it is in a manner consistent with the Companies aims.
- 43) The Board may delegate some or all of those powers to Directors, individuals or committees on such terms and conditions and such restrictions as the Board thinks fit (and those individuals or committees, other than the Nominations Committee, may also delegate).
- 44) Directors can appoint alternate directors.

Directors' Board Meetings

- 45) 7 days notice of Board Meetings (save for urgent business).
- 46) Quorum can be fixed from time to time by a meeting of the Directors but otherwise is 5 provided not less than 2 are Members' Directors where there are 2 or more Members' Directors.
- 47) Decisions by majority if a Board Meeting, by unanimity if a written resolution.
- 48) Any 2 Directors can call a Board Meeting.
- 49) Board Meetings can occur when Directors can communicate with each other (i.e. need not only be meetings in person).
- 50) Chairman to chair the meeting.
- 51) Chairman to have second or casting vote.

Director's Interests

- 52) Conflict of interest, affected Director not to count in quorum nor to vote. If unclear then decision of Chairman is final.



53) Procedure re Director's interests, to include ability for the Board to resolve to allow director to vote in respect of a declared conflict issue.

Remuneration of Directors

54) No Executive Director or Member Director to receive a fee or other remuneration in respect of Director's duties.

55) Remuneration of Public Directors to be determined by the [Board] in its absolute discretion. Expenses properly and reasonably incurred to be repaid.

Retirement and Removal of Directors

56) One third of Directors to retire at each AGM but shall be eligible for re-election by ordinary resolution unless the Nominations Committee notifies in advance that the relevant eligibility criteria are no longer satisfied. Initially Directors will be selected for retirement by lottery so that the one third retirement policy can be established.

57) Standard circumstances of removal of director e.g. bankruptcy, resignation, prohibited by law, absent from meetings for 6 months.

58) A Director can be removed if 75% of directors notify him that he is required to resign.

59) Members may propose in writing to replace a Members' Director with a different individual in which case the Members will propose the new individual to the Nominations Committee and the Nominations Committee will notify all Members of the proposed change. If the Nominations Committee nominates and the Board recommends the individual and Members have not objected to the notification, then the replacement will become the Members' Director.

60) Members can remove any Director by ordinary resolution at a General Meeting where the Director has the opportunity to speak.