

MODIFICATION P284

DRAFT ALTERNATIVE LEGAL TEXT

SECTION C: BSCCO AND ITS SUBSIDIARIES (version 14.0)

Amend paragraph 3.1.1 to read as follows:

3. POWERS AND FUNCTIONS OF BSCCO

3.1 General

3.1.1 Without prejudice to paragraph 1.2.2, BSCCo shall have the following powers, functions and responsibilities:

- (a) to enter into, manage and enforce contracts with service providers (as BSC Agents) for the supply of the services required by BSC Service Descriptions, and negotiate and agree amendments to such contracts, as further provided in Section E;
- (b) to advise the Panel and keep it advised as to and in respect of the matters which it is necessary or appropriate that the Panel should consider in order to discharge the Panel's functions and responsibilities in accordance with the Code;
- (c) to provide or arrange the provision of such facilities, resources and other support as may be required by the Panel to enable the Panel or any Panel Committee or Workgroup to discharge its functions and responsibilities under the Code;
- (d) to provide secretarial and administrative services in connection with meetings of the Panel and Panel Committees and Workgroups, including the convening and holding of such meetings and taking and circulation of minutes;
- (e) to provide and make available to Parties such facilities, services and information in connection with the implementation of the Code as the Code may provide or the Panel may require;
- (f) to provide or arrange the provision of facilities, resources and other support in connection with the procedures for modification of the Code in accordance with Section F;
- (g) to enter into contracts (in terms complying with any applicable provisions of Section B) of employment or other engagement with persons from time to time to be appointed as Panel Chairman or Panel Members under Section B2.5;
- (h) to indemnify against liability; and, if relevant, to reimburse the expenses of, Panel Members, members of Panel Committees, members of Workgroups and others as provided in the Code or as otherwise required in BSCCo's discretion in connection with any BSC Agent Contract;

- (i) to enter on behalf of all Parties into Accession Agreements with new Parties in accordance with Section A2.2;
- (j) to act as BSC Agent for the purposes of the Master Registration Agreement in accordance with Annex K-1;
- (k) to act as shareholder of the BSC Clearer in accordance with paragraph 7;
- (l) to receive, collect and hold such data and information, and to prepare and maintain such books and records, as may be required under the Code or reasonably necessary to enable BSCCo to comply with its functions and responsibilities under the Code; and to provide data and information held by it to the Panel upon request and to other persons in accordance with any express provision of the Code;
- (m) without prejudice to the generality of paragraph (l), where it is not the function of a BSC Agent to do so, to maintain records of the extent to which Parties have satisfied requirements of the kind referred to in Section A4.5.3, and to provide details thereof to BSC Agents and other persons as required for the purposes of the Code;
- (n) to monitor whether any Party is, or with the lapse of time or giving of notice would be, in Default (in accordance with Section H3), and to give to any Party any notice the giving of which will result in that Party being in Default (but not for the avoidance of doubt to give any notice consequent upon a Party's being in Default unless expressly authorised to do so by the Panel or by a provision of the Code);
- (o) to act as the Performance Assurance Administrator;
- (p) to prepare and/or (as the Panel may require) assist the Panel to prepare the Annual BSC Report for each BSC Year in accordance with Section B6.1;
- (q) to make recommendations to the Panel as to possible Modification Proposals in the circumstances mentioned in paragraph 3.8.8 and Section F2.1.1(d)(ii) and (iii);
- (r) to the extent provided in and in accordance with the policy from time to time established by the Panel, to act as a point of contact for persons from other countries interested in, and to explain to such persons, the arrangements for and developments in wholesale trading of electricity in Great Britain and/or Offshore, and to participate in institutional comparative discussions of such arrangements and developments in other countries;
- (s) to provide Profile Administration Services (with the consent of the Panel) and to enter into, manage and (subject to the Code) enforce contracts with service providers for the supply of Profile Administration Services in accordance with Section C9; ~~and~~

(t) in conjunction with the other code administrators identified in the Code Administration Code of Practice, to maintain, publish, review and where appropriate (but subject always to the approval of the Authority) amend the Code Administration Code of Practice; and

(u) to delegate responsibility for performance of the powers, functions and responsibilities specified in this paragraph 3.1.1 and otherwise provided for in the Code, to the BSC Services Manager (save in respect of paragraph (k) and its obligations and responsibilities under Section E, paragraph 4).

Amend paragraph 4.6 to read as follows:

4.6 Chief Executive

4.6.1 After consultation with the Panel, the Board ~~shall~~may appoint, and may from time to time remove, reappoint or replace, a person, not being a Director, to be the Chief Executive of BSCCo.

4.6.2 Subject to paragraph 4.6.1, Tthe person appointed as Chief Executive shall be employed or otherwise engaged by BSCCo on such terms as the Board shall decide.

4.6.3 Subject to paragraph 4.6.1, Tthe Chief Executive shall not be a Director but shall be entitled to receive notices of and to attend and speak (but not to vote) at all meetings of the Board, and (if requested by the Chairman of the Board) shall be required to attend such meetings, provided that the Board may require him to be absent from any part of a meeting at which any matter concerned with his employment or engagement by BSCCo is to be considered.

4.6.4 Subject to paragraph 4.6.1, Tthe Board shall delegate to the Chief Executive authority to conduct the day to day business of BSCCo.

Insert new paragraph 7.1.5 to read as follows:

7. BSC COMPANIES

7.1 General

7.1.5 Without prejudice to the generality of paragraph 7.1.1, a Subsidiary in which BSCCo is permitted to hold shares in accordance with paragraph 3.4.5(b)(ii) may discharge any of its powers, functions and responsibilities under the Code through (and by delegation to) the BSC Services Manager.

Amend paragraph 7.5.3 to read as follows:

7.5 Directors and secretary

7.5.3 Subject to paragraph 4.6.1, tThe person who is for the time being Chief Executive of BSCCo shall act as chief executive of each Subsidiary of BSCCo, under such terms of reference as the board of directors of such Subsidiary may determine.

SECTION E: BSC AGENTS (version 5.0)

Amend paragraph 1.1.1 to read as follows:

GENERAL

1.1 Introduction

1.1.1 This Section E sets out:

- (a) requirements that certain services be provided by BSC Agents;
- (b) the role of BSCCo in contracting with BSC Agents; ~~and~~
- (c) provisions relating to the relationship between BSCCo, Parties, and BSC Agents; and
- (d) provisions relating to the BSC Services Manager.

Insert new paragraph 4 to read as follows:

4. BSC SERVICES MANAGER

4.1 General

4.1.1 Except as expressly stated in this paragraph 4, the preceding provisions of Section E shall not apply to the BSC Services Manager or the BSC Services Manager Contract.

4.1.2 In this paragraph 4 references to Parties do not include BSCCo or BSC Clearer.

4.2 Appointment

4.2.1 BSCCo may, from time to time, appoint a person to act as its agent for the purposes of discharging some or all of BSCCo's powers, functions and responsibilities in accordance with Section C1.2 and as otherwise specified in the Code (the "BSC Services Manager"), provided that (notwithstanding the provisions of Section F) any amendments to the Code which seek to amend this paragraph 4.2.1 or paragraph 4.2.2 shall require the prior approval of the Board.

4.2.2 Without prejudice to paragraph 4.2.1, the BSC Clearer may discharge any of its powers, functions and responsibilities under the Code through (and by delegation to) the BSC Services Manager.

4.2.3 Subject to the provisions of this paragraph 4, BSCCo may do anything necessary for, or reasonably incidental to, the performance by the BSC Services Manager of the services under the relevant BSC Agent Contract ("BSC Services Manager Contract"), including the provision of such guarantees, indemnities or other assurances to or for the benefit of the BSC Services Manager or others under or in

connection with any BSC Services Manager Contract as BSCCo considers appropriate.

4.2.4 Subject always to paragraphs 4.1.1 and 4.2.1, for the purposes of the Code:

- (a) the BSC Services Manager shall be regarded as a BSC Agent;
- (b) the BSC Services Manager Contract shall be regarded as a BSC Agent Contract;
- (c) no person (or any Relevant Affiliate of such person) may perform the roles of the BSC Services Manager and any other BSC Agent at the same time; and
- (d) a Party (and any Affiliate thereof) or a BSC Company shall not be appointed as the BSC Services Manager.

4.2.5 Subject to any contrary provision in the Code, BSCCo or relevant BSC Company (as the case may be) may in its absolute discretion grant or transfer such rights or interests held by BSCCo or relevant BSC Company (in their capacity as BSCCo or relevant BSC Company) on such terms as those entities deem appropriate to the BSC Services Manager (or otherwise make available the benefit of such rights or interests) to enable the BSC Services Manager to discharge its powers, functions and responsibilities under the Code.

4.2.6 For the purposes of the Code, each Party, the Panel and Panel Committees acknowledge and agree that the discharge of BSCCo's functions and responsibilities or the exercise of BSCCo's rights in accordance with the Code by the BSC Services Manager shall be treated as if such functions and responsibilities or rights had been discharged or exercised by BSCCo.

4.2.7 BSCCo shall, in its absolute discretion, be entitled to authorise the BSC Services Manager to act as agent, make any commitment and incur liabilities on behalf of BSCCo (including without limitation entering into contracts or other arrangements) to enable the BSC Services Manager to perform its functions and responsibilities subject to and in accordance with this paragraph 4 and the Code generally and in accordance with the BSC Services Manager Contract.

4.3 Role of BSCCo

4.3.1 Subject always to, any provision to the contrary in this paragraph 4, paragraph 4.2.1 and paragraph 4.3.2, the provisions of paragraphs 1.3, 1.5, 1.6 and 2 shall apply to the BSC Services Manager and the BSC Services Manager Contract.

4.3.2 BSCCo shall ensure that at all times it has sufficient resources (which in this paragraph 4.3.2 does not mean financial resources) to enable it to manage and administer any BSC Services Manager Contract and where it believes, from time to time, that it requires additional resources to meet its requirements it shall take such steps and procure such resources as are necessary as soon as is reasonably practicable.

4.4 Initial BSC Services Manager Contract

4.4.1 It is acknowledged that in respect of any initial contract between BSCCo and the BSC Services Manager (“**Initial BSC Services Manager Contract**”) the provisions of paragraphs 2.3 and 2.7 shall not apply, provided that, notwithstanding any provision of Section F, paragraph 3, the Authority may, in its discretion, approve the creation of any new BSC Service Description related to the Initial BSC Services Manager Contract and/or the process to be adopted for such approval.

4.4.2 BSCCo shall, prior to the execution of any Initial BSC Services Manager Contract:

- (a)** without prejudice to paragraph 4.4.3, establish a statement of contract principles, to an appropriate level of detail to reasonably inform the Panel and Parties, by which BSCCo shall be guided in agreeing the terms of any Initial BSC Services Manager Contract (“**the Initial BSC Services Manager Contract Principles**”), provided that in doing so BSCCo shall not be obliged to disclose confidential information and/or information of a commercially sensitive nature;
- (b)** conduct a consultation with the Panel and Parties on the Initial BSC Services Manager Contract Principles and it shall have due regard to any representation made and not withdrawn during such consultation; and
- (c)** submit the terms of any proposed Initial BSC Services Manager Contract to the Authority and seek the Authority’s confirmation that it is satisfied that such terms fulfil all of the BSC Services Manager Criteria, and in the absence of such confirmation BSCCo shall not execute any Initial BSC Services Manager Contract.

4.4.3 The Initial BSC Services Manager Contract Principles shall include principles as to at least the following matters:

- (a)** the principles governing the pricing of services under the contract;
- (b)** liability and limitations or exclusions of liability for breach of the contract;
- (c)** the ownership of Intellectual Property Rights;
- (d)** the grounds for termination of the contract;
- (e)** the treatment of assets; and
- (f)** the principles governing the term of the contract.

4.5 Relationship between Parties and BSC Services Manager

4.5.1 The provisions of paragraphs 3.1.1, 3.2.1 and 3.3 shall apply to the BSC Services Manager and the BSC Services Manager Contract, subject to, and in accordance with, the BSC Services Manager Contract.

Section X-1 Definitions (version 52.0)

Amend Annex X-1 to read as follows:

“BSC Agent” means the person or persons for the time being appointed for the purposes of providing the services specified (or as may be specified) in a BSC Service Description, ~~as~~ and as otherwise described in Section E;

“BSC Services Manager” means any person for the time being appointed by BSCCo for the purposes of providing the services specified in Section E, paragraph 4;

“BSC Services Manager Criteria” means the pre-requisite criteria set out in the Authority’s open letter of 30 April 2012 entitled “Potential expansion of role of Elexon”, namely:

(i) Parties should benefit from any diversification;

(ii) the arrangements should not place disproportionate risk on Parties;

(iii) standards of service under the BSC should be maintained; and

(iv) the BSC Service Manager’s BSC role should not give it any undue competitive advantage in a contestable activity.

“Initial BSC Services Manager Contract has the meaning given to that term in Section E, paragraph 4.4.2(a)

Principles”

“Relevant Affiliate” means, in relation to any person, any holding company of that person, any subsidiary of that person or any subsidiary of a holding company of that person, in each case within the meaning of section 1159 of the Companies Act 2006;