

Consultation for Modification Proposal P127: Optional De-registration of Insolvent Party

A consultation document developed on behalf of the Governance Standing Modification Group.

For Attention of: BSC Parties and all other interested parties.

Date of Issue: 30 June 2003

Responses Due: 17:00 on Monday 7 July 2003 (To: Modifications@elexon.co.uk)

1. INTRODUCTION

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" from the Balancing and Settlement Code (the 'Code'), to allow those responsible for managing the insolvency process to bring an end to escalating liabilities.

When a Party enters a process of formal insolvency it is in Default of the Code (Section H3.1.1(g)(ii)). A Party in Default of the Code (the 'Defaulting Party') is unable to withdraw from the Code (Section A5.1.3(e)). 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 monthly liabilities. BSCCo continues to invoice insolvent Parties for the Base Monthly Charge in the knowledge that in some instances the amount is unlikely to be paid.

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. However, P127 seeks to allow insolvent Parties to "de-register" voluntarily (which has been subsequently clarified by the Proposer to mean "withdraw from the Code", pursuant to Section A5)¹. The Proposer believes the withdrawal should be voluntary, 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 Charge². 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, 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) is 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 should be submitted to a 3 month Assessment Procedure, to be undertaken by the GSMG. The Panel agreed that if possible, the timetable should be shortened, such that the P127 Assessment Report is presented to the Panel before its meeting on 11 September 2003.

¹ The Proposer is also open to further suggestions as to how the defect may be addressed.

² Clarified by the Proposer, subsequent to the submission of the Modification Proposal.

2. MODIFICATION GROUP DISCUSSION

At its first meeting on 18 June 2003, the GSMG discussed the issues raised in the P127 IWA. In considering the issues associated to P127, the GSMG agreed that BSCCo’s ability to recoup accrued and contingent liabilities (including Reconciliation Run charges and Past Notification Error Claims) must be protected with the introduction of any solution, and that the £250 Base Monthly Charge is of lesser importance.

The GSMG considered the potential solutions to the defect identified in P127 that were documented in the IWA. The GSMG agreed that it would be appropriate to find a solution that allowed the Panel to reduce an insolvent Party’s BSCCo Charges balance to zero, in certain circumstances, and allow the Party to withdraw from the Code subject to satisfaction of a number of requirements.

The circumstances under which Parties are currently not allowed to withdraw from the Code include:

- Trading Charges (pursuant to Section T) for which they are liable have not been paid;
- BSCCo Charges (pursuant to Section D) for which they are liable have not been paid; and
- Being in Default of the Code (pursuant to Section H3.1).

2.1 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 by the Proposer in the Modification Proposal. The GSMG agreed that allowing an insolvent Party to withdraw from the Code at any time would not be a viable solution, as it may hinder BSCCo from recouping the insolvent Party’s accrued or contingent liabilities.

2.2 Potential Alternative Modification

The GSMG discussed a number of potential solutions to address the defect identified in the Modification Proposal. The GSMG considered a number of factors that should be considered when assessing whether a Party should be allowed to withdraw from the Code, and for simplicity these are illustrated within this consultation document as two separate options, which the GSMG may decide could form an Alternative Modification.

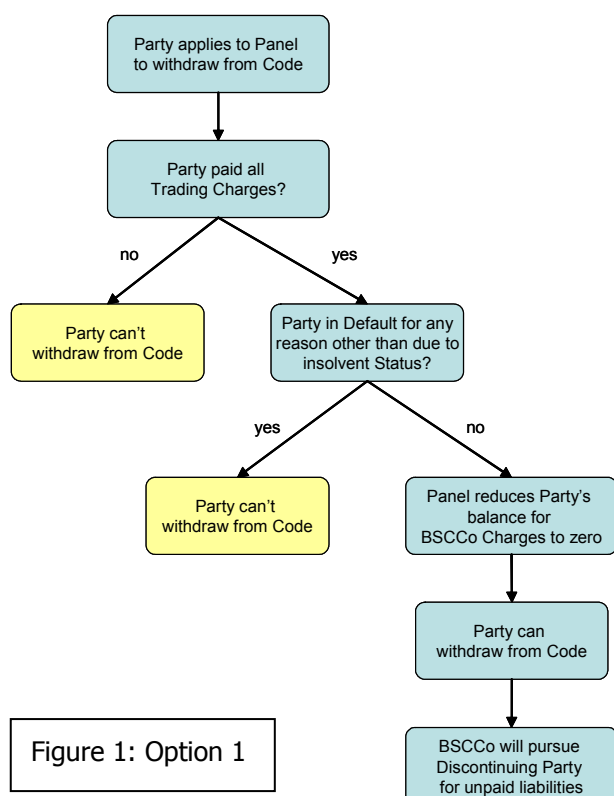


Figure 1: Option 1

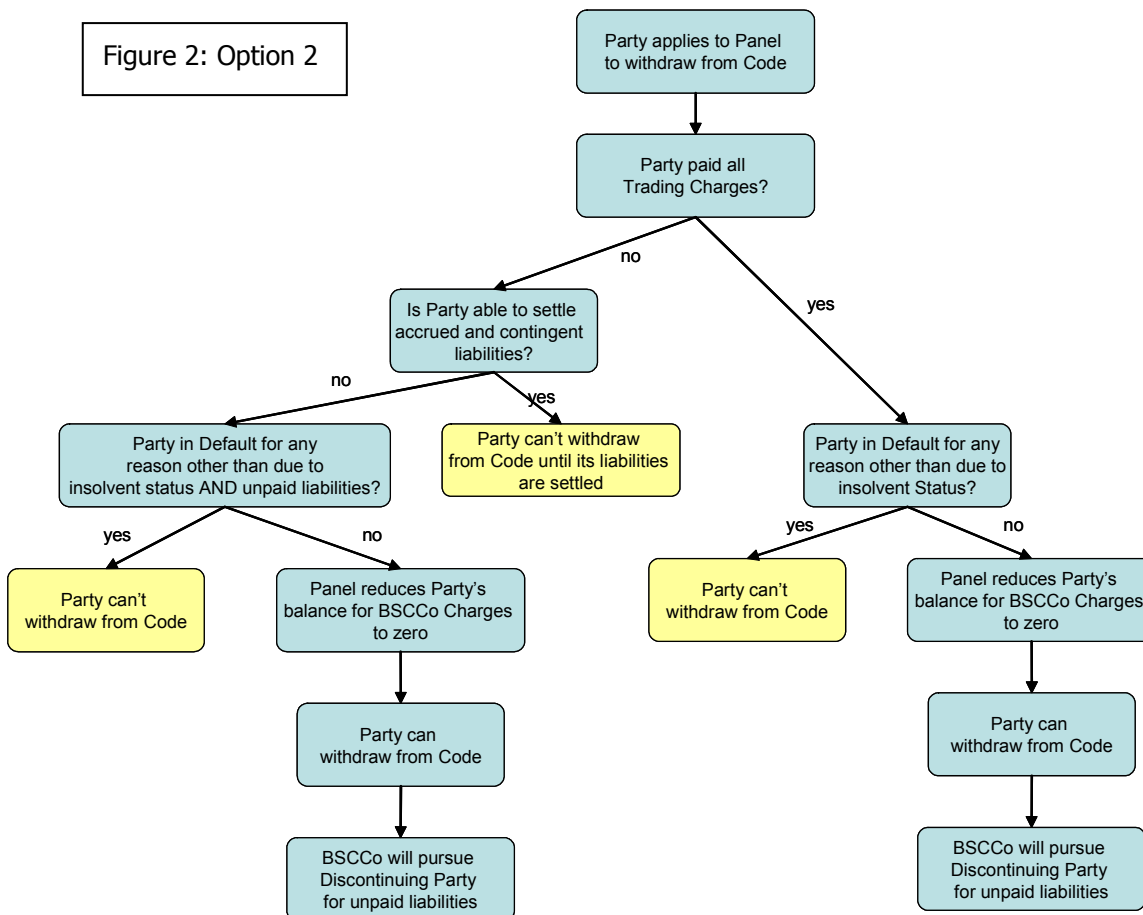
The GSMG noted that Letters of Credit do not cover BSCCo Charges. They also noted that BSCCo Charges are comparatively smaller amounts of money than Trading Charges.

Figure 1 outlines 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, and the only reasons for the Party’s Default was the unpaid charges (whether Trading Charges or BSCCo Charges) and/or as a result of its insolvency, 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 (other than BSCCo Charges).

Figure 2 (shown below) outlines the process advocated in option 2. Option 2 would allow, upon application by the Party, the Panel to terminate the Party’s liability to the Base Monthly Charge, and set the balance of BSCCo Charges to zero; This effectively rights 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, then they may withdraw from the Code.

BSCCo would continue to pursue the recovery of accrued and contingent liabilities that would be outstanding.



The GSMG are still considering these points and would like to seek views in order to reach a conclusion. Views are sought on what market participants believe should be the solution for the points raised above and the rationale for this.

In both options identified above, reducing the insolvent Party’s balance of outstanding BSCCo Charges to zero and terminating its liability to them for the period they remain a party to the Code, will effectively reduce the administrative burden on BSCCo in producing and following up the payment of invoices that are unlikely to be settled.

3. CONSULTATION

This consultation seeks respondent’s views on the issues raised by P127 and in particular, whether the Modification Proposal better facilitates achievement of the Applicable BSC Objectives, together with views on the Proposed Modification and two options which could form an Alternative Modification.

For information the Applicable BSC Objectives are;

- (a) The efficient discharge by the Transmission Company of the obligations imposed under the Transmission Licence;
- (b) The efficient, economic and co-ordinated operation by the Transmission Company of the Transmission System;
- (c) Promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity;
- (d) Promoting efficiency in the implementation and administration of the balancing and settlement arrangements.
- (e) without prejudice to the foregoing objectives and subject to paragraph 3A, the undertaking of work by BSCCo (as defined in the BSC) which is:
 - (i) necessary for the timely and effective implementation of the proposed British Electricity Trading and Transmission Arrangements (BETTA); and
 - (ii) relevant to the proposed GB wide balancing and settlement code; and does not prevent BSCCo performing its other functions under the BSC in accordance with its objectives.

Views are sought on:

- The principle of terminating insolvent Parties' liability for BSCCo Charges
- The principle of reducing insolvent Parties' BSCCo Charges balance to zero
- The principle of allowing a Party with accrued and/or contingent liabilities to withdraw from the Code
- Whether or not the Proposed Modification and/or two options for an Alternative Modification better facilitate the achievement of the Applicable BSC Objectives
- Any alternative solutions that the Modification Group has not identified that should be considered
- Whether or not the Panel should be given the discretion to decide whether Parties with unpaid liabilities should be allowed to withdraw from the Code
- Whether or not BSCCo's ability to recoup accrued and contingent liabilities from insolvent Parties would be protected in the Proposed Modification and/or two options for an Alternative Modification

You are invited to provide a response in respect of the questions on the attached pro forma.

Please send your responses entitled 'P127 Assessment Consultation 1' by 17:00 on Monday 7 July 2003 to the following email address: Modifications@elexon.co.uk

Any queries on the content of the consultation pro-forma should be addressed to Rachel Lindstrom-Thomas (020 7380 4020) email address Rachel.Lindstrom@elexon.co.uk.