

Consultation Responses and Elexon comments

BSC Changes to implement Elexon's ownership change

E L E X O N

This document contains an extract of the ScottishPower responses to the informal Consultation that was issued on 5 September 2023, with responses invited by 4 October 2023. These responses were outside the scope of the consultation in that they relate to provisions of the Code and Articles that we do not believe are impacted by the change of ownership. We are therefore responding to these separately.

Redlined Legal Text

BSC Section C 'BSCCo and its Subsidiaries'		
Location	Comment	Elexon comments
Clause 3.4.3	"Enter into any borrowings in a cumulative aggregate principal amount exceeding £10,000,000" – please could Elexon confirm how the £10m cap has been established?	The purpose of the cap is to give Elexon some flexibility to raise finance by borrowing. The concept and value of the cap were set as part of the NETA process and we have been unable to find any discussion of the rationale for why this was set at £10m from any of the documentation that is still available.
Clause 5.2.4	"A Party may not make a claim against BSCCo in respect of an actionable breach if the amount of the Party's loss resulting from such breach is less than £50,000" – please can Elexon provide further clarity on the definition of "party" and "party's" for the purposes of this clause?	A Party is defined in X-1 as "a person who is for the time being bound by the Code by virtue of being a party to the Framework Agreement" i.e. any BSC Party
Clause 7.1.1	This clause deals with the discharge of powers, functions, and responsibilities. In order to consider whether this clause meets the intended policy objective, it would be helpful to understand the group structure of Elexon. Can this information please be provided?	Elexon has 3 wholly owned subsidiaries: <ul style="list-style-type: none">- Elexon Clear Limited (defined as the BSC Clearer in the Code)- EMR Settlement Limited (EMRS) which is a ring fenced subsidiary that provides settlement services for the CFD and CM schemes. Due to ring fencing, this company could not discharge any BSCCo functions

BSC Section C 'BSCCo and its Subsidiaries'

		- BSC Co Limited – this is a dormant name protection company
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Elexon's Articles of Association

Location	Comment	Elexon comments
Quorum for Directors Meetings	What is the intended Quorum for Director meetings? From the draft articles, we understand that, per Table A, unless specified otherwise, the default quorum for director meetings shall be two. As above, we are unclear how this ties in with the board composition provisions set out in the Code.	<p>It is correct that the quorum for Board meetings is two. The quorum sets out the minimum number of directors who may be present in order for a board meeting to be validly constituted. This means that board meetings can go ahead even without all directors present. The board composition requirements regulate the composition of the board as a whole. Please also note:</p> <ul style="list-style-type: none"> - In order for a board meeting to be valid, all directors must be given notice of the meeting - Elexon's annual report and financial statements, which are available on Elexon's website and Companies House, provide a breakdown setting out attendance of directors at board meetings. Non-attendance is very rare

We also understand that Scottish Power raised the following query with DESNZ:

- **Insurance** (as any requirements for prospective shareholders to arrange insurance needs to be addressed in advance of transaction completion and if not at least understand what the arrangements are):
 - Is there an individual or a team within Elexon who has responsibility for their insurance arrangements? Is the expectation that they will continue to manage their own insurances
 - Is there a broker appointed for the arrangement of the necessary insurance policies? If so, who?
 - Are there any break clauses in their existing insurance policies related to change of ownership?

Elexon's answer is as follows: We can confirm that Elexon operates completely independently from its current shareholder. Consequently, NGESO has no responsibility for including Elexon within its insurances and, as per the protections provided by company law and through the BSC, NGESO has no risks through its ownership of Elexon that

require insurance. This position will not change following the change of ownership. Each new shareholder will hold no more than 1/13th of Elexon and, through the restrictions in the BSC, will exercise no control over Elexon. Elexon manages its own insurances and shareholders will therefore have no need to arrange insurance on Elexon's behalf after the change of ownership.

In terms of your questions:

- As a small company, Elexon does not have a dedicated insurance team. Insurance renewals are managed by Elexon's company secretariat and finance teams
- Elexon has appointed Cass Stephens Insurances Limited as its insurance broker
- There are no break clauses in relevant insurance policies