
BSC Party Applicant Suitability Checks

BSC Panel Meeting

Date of meeting	11 January 2024
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Paper number	346/05
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Purpose of paper	Decision
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Classification	Public
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Document version	v1.0
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Summary	This paper updates the Panel, and seeks its view on our investigations into conducting additional checks on persons of significant managerial responsibility or control of a company applying to the BSC as part of the BSC Market Entry processes, to provide increased levels of assurance to BSC Parties.
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1. Background

- 1.1 BSC Section A 'Parties and Participation' sets out the provisions and requirements of Parties acceding to and withdrawing from the BSC. More specifically, [Section A2.1.1](#) gives any person the right to become a BSC Party as long as they comply with the accession process set out in [Section A2.2](#) of the Code.
- 1.2 Before a new Party accedes to the BSC, Elexon verifies the director that has signed the accession agreement through Companies House (or another country's equivalent, where the applicant is established in that country), to ensure the accession agreement is signed by an appropriate member of the company.
- 1.3 However, Elexon does not carry out extensive checks on persons of significant managerial responsibility or control within the company. Furthermore, where the party is established outside of the UK, it is often challenging to carry out checks on these persons.
- 1.4 Whilst the Transmission Licence requires the Code to include provisions relating to the accession of new parties, it explicitly leaves it to the BSC to stipulate conditions that must be fulfilled on accession.
- 1.5 Under the current provisions of the BSC, the Code does not provide any discretion to ask any further questions to seek assurance, impose any conditions or ultimately refuse accession to any applicant that has a director who has previously been involved with another BSC Party or have previously exhibited bad behaviours in a business capacity.
- 1.6 This could pose a risk to existing BSC Parties, who could ultimately bear the costs incurred by a Party who is not compliant with the BSC.

2. What have we done?

- 2.1 At the [May 2023 Panel meeting](#), an action was raised on Elexon to assess whether it can provide more assurance via the Market Entry processes by assessing the suitability of persons of significant managerial responsibility or control. Elexon engaged with Ofgem to understand the checks Ofgem conducts on parties applying for an Ofgem licence, and whether Elexon could adopt these procedures.
- 2.2 Elexon learned that Ofgem carries out risk assessment checks of persons of 'Significant Managerial Responsibility or Influence' (SMRI) to deem whether they are fit to be responsible for an energy company. Whilst Elexon already makes a note of individuals whom Ofgem has deemed to be unfit, typically these findings only apply to persons who have tried to apply or are the SMRI of a company role that requires an Ofgem licence.

- 2.1 Parties registering in roles that require a licence are also able to accede to the BSC before attaining one and will therefore not have undergone any of Ofgem's checks prior to acceding. Elexon also manages Party roles, such as Non-Physical Traders and Interconnector Users, which do not require a licence from Ofgem and would therefore never undergo any checks by Ofgem that we could rely on.
- 2.2 Elexon has also reviewed BSC Section A 'Parties and Participation', to understand the implications of imposing checks on persons of significant managerial responsibility or control of companies applying to the BSC.

3. Our proposal

- 3.1 Following our discussions with Ofgem and our own internal assessments, Elexon believes it would be beneficial to implement our own checks prior to Parties acceding to the BSC, to mitigate the risk of unfit persons of significant managerial responsibility or control entering the market. Practices we could implement include:
- a) In-depth checks using Companies House to check for unfavourable business activity such as previous insolvency cases, charges and ensuring the company accounts and confirmation statements are up-to-date for companies within the United Kingdom.
 - b) The use of organisations who specialise in the supply of business information and research to check for previous favourable or unfavourable business activities, which can be used for companies both in the UK and internationally.
 - c) Introducing clear questions within the accession form to ascertain more details of the persons of significant managerial responsibility or control of new Parties and whether they could pose any risk to industry. Examples of questions to be included are listed in the Appendix 1. This would then be cross-checked by Elexon prior to approving any accessions and escalated to the Panel for review where necessary.
 - d) Introducing a discretionary power for the Panel to assess any unfavourable disclosures or findings and impose mechanisms to deal with those. For instance, denying or deferring a Party's accession.
 - e) Maintaining an internal record of persons of significant managerial responsibility or control of BSC Parties that have previously had resolutions set by the Panel, so that we are able to cross-check and consider their previous business activities and their suitability to re-enter the market.
- 3.2 Introducing the aforementioned methods would require amendments to the BSC and/or subsidiary documents to ensure transparency and to ensure that each Party/Applicant is treated equally, including amendments to [Section A2.2](#) which details the accession procedure and [Section A3.1](#) and [BSCP 65: Registration of Parties and Exit Procedures](#) to clearly list the required Party/Applicant Details.
- 3.3 As Section A3.2.2 already requires Parties to notify Elexon if there is any change in Party Details, this would help to ensure that both incoming Parties as well as established Parties abide by any new requirements.

4. Recommendations

- 4.1 We invite the Panel to:
- a) **COMMENT** on the appropriateness of Elexon conducting director suitability checks; and
 - b) **DETERMINE** whether a Modification to the BSC should be raised to allow imposing checks on the directors of new Parties, and whether the Panel would be comfortable to act as the Proposer for this Modification.

Appendices

Appendix 1 – Additional accession form questions

For more information, please contact:

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Appendix 1

Additional accession form questions:

Please note this list provides examples of questions we could ask potential applicants. This list is not exhaustive and is open to suggestion by the Panel.

1. Please provide details of the form of legal entity of your company. e.g. private limited company, public limited company, limited liability partnership, partnership, other (Please specify).
2. If you are established as a partnership or LLP, please list the name of each partner.
3. Please provide a list of all directors/Individuals with significant control of the company.
4. For businesses registered outside the UK, is your organisation registered with the appropriate professional or commercial register in the country the organisation was established?
 - If so, please provide the relevant details of how to access the database, including the registration number of your company.
5. Does the applicant have an ultimate holding company?
 - If so please provide details of the holding company, including full name, registration number and country of registration.
 - Please also provide details of the ultimate holding company directors
6. Does the applicant have a parent undertaking?
 - If so, and if different from the ultimate holding company, please provide details and director details.
7. Are any of the persons named in the application bankrupt or the subject of insolvency or winding-up proceedings?
8. Do any of the persons named in the application have any relevant criminal convictions in any jurisdiction such as fraud, corruption or money laundering?
 - If so, please provide details.
9. Are any of the persons named in the application disqualified to any extent from acting in connection with the affairs of a company in any jurisdiction?
 - If yes, please provide details.
10. Are any persons named in the application linked to any other company who has been expelled from the BSC or in Section H Default?
 - If so, please provide details.