

## P281 – PROPOSED LEGAL TEXT

### SECTION B: THE PANEL (Version 18.0)

*Amend paragraph 2.1 to read as follows:*

#### 2.1 Appointment of Panel Chairman

- 2.1.1 The Panel Chairman shall be a person ~~appointed-nominated~~ by the ~~Authority~~Panel, which may follow such procedures as it shall determine for the selection of the person so ~~appointed-nominated, and approved by the Authority.~~
- 2.1.2 Subject to paragraph 2.1.3, a person shall be appointed as Panel Chairman where the Authority has given notice to the Panel Secretary of ~~such appointment~~its approval, with effect from the later of the date ~~of such appointment~~ specified in such notice and the date on which such notice is given.
- 2.1.3 A person shall not be appointed as Panel Chairman until and unless that person has entered into an agreement in writing with BSCCo setting out terms as to his remuneration and benefits (determined in accordance with paragraph 2.11.3) and any related matters.
- 2.1.4 A person shall be removed from and shall cease to hold the office of Panel Chairman:
- (a) subject to paragraph 2.1.6 and 2.1.7, upon expiry of his term of office; or
  - (b) in the circumstances in paragraph 2.7.4(b) or 2.7.4(d).
- 2.1.5 The Panel Secretary shall send ~~a copy of any notice under paragraph 2.1.2~~ to all Panel Members and all Parties:
- (a) a notice setting out the identity of the person nominated by the Panel under paragraph 2.1.1; and
  - (b) a copy of any notice under paragraph 2.1.2.
- ~~promptly upon receiving such notice.~~
- 2.1.5A The notice referred to in paragraph 2.1.5(a) shall be sent promptly following the Panel's nomination and the notice referred to in paragraph 2.1.5(b) shall be circulated promptly upon receipt.
- 2.1.6 The term of office of the Panel Chairman shall be three years from the date of his appointment, provided that this shall not prevent a person holding that office from re-appointment to that office.
- 2.1.7 If, at the expiry of the term of office or upon the resignation of a person appointed as Panel Chairman, no other person has been appointed to that office, that person shall (if willing to do so) continue in office as Panel Chairman until such time as another person is so appointed.

### SECTION C: BSCCO AND ITS SUBSIDIARIES (Version 14.0)

#### 4. MANAGEMENT OF BSCCO

*Amend paragraph 4 to read as follows:*

##### 4.1 Board of Directors

- 4.1.1 The Board shall comprise five Directors as follows:
- (a) the person who is Panel Chairman for the time being, who shall be Chairman of the Board; and
  - (b) ~~two~~ four persons who are Industry ~~Panel Members~~ Directors, nominated in accordance with paragraph 4.2; ~~;~~
  - ~~(c) two persons nominated by the Panel Chairman in accordance with paragraph 4.3.~~
- 4.1.2 The business and proceedings of the Board shall not be invalidated by reason of there being at any time fewer than the numbers of Directors provided for in paragraph 4.1.1 by reason of any casual vacancy.
- 4.2 Industry Directors**
- 4.2.1 ~~Trading Parties may nominate four persons as Industry Directors by election in accordance with Annex C-1. The Panel shall decide upon the Industry Panel Members who are to be Directors of BSCCo subject to and in accordance with this paragraph 4.2.~~
- 4.2.2 A person nominated as an Industry Director under paragraph 4.2:
- (a) shall hold office for a term not exceeding three years, but shall be eligible for re-appointment on expiry of such term; or
  - (b) may resign or be removed from office in accordance with the provisions of the Articles of Association of BSCCo.
- ~~4.2.2 Whenever (upon a vacancy arising pursuant to paragraph 4.2.4) a requirement arises for a Director(s) to be nominated from among Industry Panel Members, the Panel shall consider and resolve upon which of them shall be so nominated, provided that:~~
- ~~(a) if any Panel Member shall so require, the Panel shall resolve separately and by secret ballot, in relation to each Industry Panel Member, whether he shall be nominated;~~
  - ~~(b) if the Panel does not resolve to nominate at least the number (one or two as the case may be) of Directors which are to be nominated, the Chairman shall decide which Industry Panel Member(s) (in addition to any nominated by the Panel) shall be nominated as Director(s);~~
  - ~~(c) if the Panel resolves to nominate more than the number (one or two as the case may be) of Directors which are to be nominated, the Chairman shall decide which of the Industry Panel Member(s) so resolved upon shall be nominated as Director(s).~~
- ~~4.2.3 An Industry Panel Member shall not vote upon a proposal that he be nominated as Director.~~
- ~~4.2.4 An Industry Panel Member appointed as Director shall hold the office of Director until:~~
- ~~(a) his term of office as Panel Member expires in accordance with Section B2.7.3; provided that he shall be eligible for re-appointment but shall not automatically continue to hold the office of Director by virtue of re-appointment as a Panel Member; or~~

~~(b) if earlier, he ceases to hold office as a Panel Member pursuant to Section B2.7.4(b), (c) or (d); or~~

~~(c) he ceases to hold office in accordance with the provisions of the Articles of Association of BSCCo.~~

#### ~~4.3~~ **Other Directors**

~~4.3.1 The Panel Chairman shall decide, after consultation with the Panel, upon the person or persons to be nominated from time to time as Director(s) under paragraph 4.1.1(c), and shall notify the Panel Secretary of his decision.~~

~~4.3.2 A person appointed as Director under paragraph 4.1.1(c):~~

~~(a) shall hold office for a term not exceeding two years, but shall be eligible for re-appointment on expiry of such term;~~

~~(b) may resign or be removed from office in accordance with the provisions of the Articles of Association of BSCCo.~~

#### **4.34 Expenses and remuneration**

~~4.34.1~~ Each Director shall be entitled to be reimbursed by BSCCo for the reasonable costs and expenses (including travel and accommodation costs) properly incurred by such Director in attending meetings of or otherwise in the conduct of the business of the Board.

~~4.4.2 In addition to reimbursement under paragraph 4.4.1, any Director appointed under paragraph 4.1.1(c) shall be entitled to be paid by BSCCo such remuneration and benefits as may be determined by the Panel Chairman after consultation with the Panel.~~

~~4.34.23~~ ~~Except as provided in paragraph 4.4.2, n~~ No Director shall be entitled (in that capacity) to be paid any remuneration or benefits other than his costs and expenses in accordance with paragraph 4.34.1.

~~4.34.43~~ The secretary of BSCCo shall not be entitled to remuneration in that capacity, but without prejudice to the terms on which he is employed by BSCCo.

~~4.4.5 The remuneration and benefits payable to a Director pursuant to paragraph 4.4.2 shall be disclosed in the Annual BSC Report.~~

#### **4.45 Indemnity**

~~4.54.1~~ The Directors of BSCCo shall be indemnified by BSCCo as and to the extent provided in the Articles of Association of BSCCo.

#### **4.65 Chief Executive**

~~4.65.1~~ After consultation with the Panel, the Board shall appoint, and may from time to time remove, reappoint or replace, a person, not being a Director, to be the Chief Executive of BSCCo.

~~4.65.2~~ The person appointed as Chief Executive shall be employed or otherwise engaged by BSCCo on such terms as the Board shall decide.

~~4.65.3~~ The 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.

- 4.65.4 The Board shall delegate to the Chief Executive authority to conduct the day to day business of BSCCo.

#### **4.76 Proceedings of the Board**

- 4.76.1 Subject to the provisions of the Code, proceedings of the Board shall be conducted and governed in accordance with the requirements contained in the Articles of Association of BSCCo.

*Amend paragraph 7.5.4 to read as follows:*

- 7.5.4 Each director of a Subsidiary shall be entitled to be reimbursed by BSCCo for the reasonable costs and expenses (including travel and accommodation costs) properly incurred by such director in attending meetings or otherwise in the conduct of the business of the board of directors of the Subsidiary and not otherwise reimbursed under paragraph 4.43.1.

*Amend paragraph 8.2.4 to read as follows:*

- 8.2.4 The functions of, and the things done by, BSCCo under and pursuant to this paragraph 8 shall be considered to be functions under and things done pursuant to the Code for the purposes of paragraphs 3.4.1, 3.4.2, 4.43, 4.54, 4.65, 5.1 and 5.3 and Sections D2, H4.2 and H4.3 (but subject to paragraph 8.2.1(f) above), H4.5, H4.6, H4.7 (for the purposes of which BSCCo Materials and BSC Systems shall be construed taking account of BETTA Support Work), H4.9, H4.10.2, H6, H7 and H9 but not for the purposes of any other provision of the Code (including paragraph 1.3) which applies or refers directly or indirectly to the functions of BSCCo; and the Panel shall have no duties or responsibilities in relation to BETTA Support Work and (except as provided in paragraph 8.2.3) BSCCo shall owe no duties to the Panel or to any Party or Parties generally in the carrying out of such functions.

*Insert new Annex C-1 at the end of Section C to read as follows:*

### **ANNEX C-1: ELECTION OF INDUSTRY DIRECTORS**

#### **1 GENERAL**

##### **1.1 Introduction**

- 1.1.1 This Annex C-1 sets out the basis for the election of Industry Directors for the purpose of Section C4.2.1.

- 1.1.2 Subject to paragraph 4, the election of Industry Directors shall be conducted over a two year electoral cycle (the "electoral cycle"). In each year during an electoral cycle (an "election year"):

- (a) the term of office of two Industry Directors shall expire (being either the two Industry Directors elected by Supplier Constituencies or the two Industry Directors elected by generator Constituencies); and
- (b) two candidates shall be elected to hold office as Industry Directors with effect from [ ] in that election year.

1.1.3 For the purposes of an election under paragraph 1.1.2, references to Trading Parties are to persons who are Trading Parties as at [ ] in the election year.

1.1.4 For the purposes of this Annex C-1, a "trading party group" means a Trading Party and every Affiliate of that Trading Party.

1.1. BSCCo shall administer each election of Industry Directors pursuant to this Annex C-1.

## 1.2 Election timetable

1.2.1 BSCCo shall not later than [ ] in an election year prepare and circulate to all Trading Parties an invitation to nominate candidates and a timetable for the election, setting out:

(a) the date by which nominations of candidates are to be received, which shall not be less than 3 weeks after the timetable is circulated;

(b) the date by which BSCCo will circulate a list of candidates and voting papers;

(c) the date by which voting papers are to be submitted, which shall not be less than 3 weeks after the date for circulating voting papers;

(d) the date by which the results of the election will be made known, which shall not be later than [ ] in the election year.

1.2.2 If for any reason it is not practicable to establish an election timetable in accordance with paragraph 1.2.1, or to proceed on the basis of an election timetable which has been established, BSCCo may establish a different timetable, or revise the election timetable, by notice to all Trading Parties, provided that such timetable or revised timetable shall provide for the election to be completed before [ ] in the election year.

1.2.3 A nomination or voting paper received by BSCCo later than the respective required date under the election timetable (subject to any revision under paragraph 1.2.2) will be disregarded in the election.

## 2. CONSTITUENCIES

2.1.1 For the purposes of this Annex C-1, the electoral constituencies that shall nominate and vote for each of the four Industry Directors shall be as follows:

(a) Large Suppliers;

(b) Small Suppliers;

(c) Large Generators;

(d) Small Generators.

2.1.2 Subject to paragraphs 2.1.3 and 2.1.4, BSCCo shall, not later than [ ] in the first year of an electoral cycle, allocate each eligible (in accordance with paragraph 1.1.3) Trading Party to a Constituency as follows:

(a) in respect of a Trading Party's participation capacity:

(i) Suppliers shall be allocated to a Supplier Constituency; and

(ii) generators shall be allocated to a generator Constituency;

- (b) in respect of a Trading Party's market share (and subject to paragraphs 2.1.3 and 2.1.4):
- (i) a Supplier or a generator shall be allocated to the Large Supplier or Large generator Constituency where its Main Funding Share equals or exceeds the Constituency Threshold as at [date]; and
  - (ii) a Supplier or a generator shall be allocated to the Small Supplier or Small Generator Constituency where its Main Funding Share is less than the Constituency Threshold as at [date].
- 2.1.3 Where a Trading Party is part of a trading party group then the allocation, under paragraph 2.1.2(b), shall be determined by aggregating the Main Funding Shares of all Trading Parties in that trading party group that:
- (a) have the same participation capacity (being either Suppliers or generators); and
  - (b) are eligible under paragraph 1.1.3.
- 2.1.5 The Panel shall, from time to time, determine the constituency threshold referred to in paragraph 2.1.2(b) (the "**Constituency Threshold**") provided that, as from the Relevant Implementation Date of Modification Proposal P281, the Constituency Threshold shall be 5%. For the avoidance of doubt the Panel may determine different Constituency Thresholds for each participation capacity.
- 2.1.6 BSCCo shall, within 1 week of having determined the Constituencies under paragraph 2.1.2, notify each Trading Party of the Constituency to which it has been allocated.

### 3. CANDIDATES

#### 3.1 Nominations

- 3.1.1 Nominations for candidates shall be made in accordance with the election timetable.
- 3.1.2 Subject to paragraph 3.1.3, each Trading Party (or, where a Trading Party forms part of a trading party group, that trading party group) may, by giving notice to BSCCo, nominate one candidate to be an Industry Director during each electoral cycle. For the avoidance of doubt, a trading party group that has been allocated to two Constituencies under paragraph 2.1.3 shall only be entitled to nominate one candidate during each electoral cycle.
- 3.1.3 If a Trading Party (or trading party group) nominates more than one candidate:
- (a) during an election year:
    - (i) BSCCo shall endeavour to contact the Trading Party (or, where applicable, those Trading Parties within a trading party group that have nominated candidates) to establish which candidate that Trading Party (or trading party group) wishes to nominate;
    - (ii) if BSCCo is unable to do so it will select at random one of the nominations submitted and the others will be disregarded;
  - (b) during an electoral cycle, BSCCo shall disregard any candidates nominated by that Trading Party (or trading party group) during the second election year of that electoral cycle and shall so notify the applicable Trading Party.

### **3.2 List of candidates**

- 3.2.1 BSCCo shall draw up a list of the nominated candidates for each Constituency and circulate the list to all Trading Parties in that Constituency by the date specified in the election timetable.
- 3.2.2 The list shall specify the Trading Party by whom each candidate was nominated and any affiliations which the candidate may wish to have drawn to the attention of Trading Parties.
- 3.2.3 If, in any Constituency, only one candidate has been nominated, no further steps in the election shall take place and such candidate(s) shall be treated as nominated and paragraph 4.2.3 shall apply in relation to such candidate(s).

## **4. VOTING**

### **4.1 Voting papers**

- 4.1.1 Voting papers shall be submitted in accordance with the election timetable.
- 4.1.2 In respect of each Constituency, only one Trading Party (the "voting" Trading Party) in a trading party group may submit voting papers.
- 4.1.4 If more than one Trading Party in a trading party group submits voting papers in the same Constituency:
- (a) BSCCo shall endeavour to contact each of such Trading Parties to establish which of them is to be the voting Trading Party;
  - (b) if one of such Trading Parties is confirmed as the voting Trading Party by each of the Trading Parties which BSCCo contacts, that Trading Party will be the voting Trading Party;
  - (c) otherwise, BSCCo shall select at random one of such Trading Parties to be the voting Trading Party and the others will be disregarded.

### **4.2 Voting**

- 4.2.1 Each Trading Party submitting a voting paper in accordance with paragraph 4.1 shall have one vote.
- 4.2.2 The successful candidate in each Constituency shall be the candidate that receives the most votes in that Constituency.
- 4.2.3 BSCCo will determine which candidates are elected and announce the results of the election in accordance with the election timetable.
- 4.2.4 A Trading Party may by notice to BSCCo require that the BSC Auditor scrutinise the conduct of the election, provided that such Trading Party shall bear the costs incurred by the BSC Auditor in doing so unless the BSC Auditor recommended that the election results should be annulled.

## **5. TRANSITIONAL ARRANGEMENTS**

**5.1** In respect of the first Board elections to be held following the Relevant Implementation Date of P281, the following shall apply:

- (a) the elections for all four Constituencies shall be scheduled for the same date as the first Panel elections (under Section B2.2) after the Relevant Implementation Date; and
- (b) the term of office for the Industry Directors to be elected by the [ ] Constituencies shall be two years but in each subsequent election shall be three years.

### **ANNEX X-1: GENERAL GLOSSARY (Version 53.0)**

*Insert the following new definitions in alphabetical order:*

<b><u>"Constituency":</u></b>	<u>means each of the electoral constituencies, for the purposes of nominating and voting for Industry Directors, described in paragraph 2.1.1 of Annex C-1;</u>
<b><u>"Constituency Threshold":</u></b>	<u>Has the meaning given to that term in paragraph 2.1.5 of Annex C-1;</u>
<b><u>"Industry Director":</u></b>	<u>means a director of BSCCo appointed pursuant to Section C4.2;</u>
<b><u>"Large Generator":</u></b>	<u>means, for the purposes of electing an Industry Director to the BSCCo Board, the large generator Constituency determined in accordance with paragraph 2 of Annex C-1;</u>
<b><u>"Large Supplier":</u></b>	<u>means, for the purposes of electing an Industry Director to the BSCCo Board, the large Supplier Constituency determined in accordance with paragraph 2 of Annex C-1;</u>
<b><u>"Small Generator":</u></b>	<u>means, for the purposes of electing an Industry Director to the BSCCo Board, the small generator Constituency determined in accordance with paragraph 2 of Annex C-1;</u>
<b><u>"Small Supplier":</u></b>	<u>means, for the purposes of electing an Industry Director to the BSCCo Board, the small Supplier Constituency determined in accordance with paragraph 2 of Annex C-1;</u>