



CENTILL ATTORNEYS

Strategic Guide for DisCos – Transition to State Electricity Market

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Effective 2024, NERC commenced the issuance of its order on the Transfer of Regulatory Oversight of the Electricity Market in States from Nigerian Electricity Regulatory Commission to the State Electricity Regulatory Commission (the "Order"). It began with Enugu State and more recently, Lagos State and Ogun State.

DisCos being the most affected by the Order is expected to commence certain workstreams to not only be in compliance with the Order, the State Electricity Law (the "Law") and the Electricity Act, 2023 (as amended) [the "Act"] but also seamlessly continue its operations despite the transition.

This guide is therefore to give a broad overview of fundamental workstreams that needs to be commenced as well as key structures to be put in place for seamless operations.



As a background, the Order is an outcome following the passage of the Act and the amendment of the 1999 Constitution of the Federal Republic of Nigeria (as amended) [the “Constitution”]. These legislations provided the foundation towards the enactment of the Law and the creation of State Electricity Markets.



While the Constitution paved way for the enactment of the Law and creation of State Electricity Markets, the Act corroborates this medium by setting parameters to transition from **National Electricity Market to the State Electricity Market**. This is the basis upon which the Order has so far been issued by NERC. Necessary considerations will now be given to specific actions to be put in place further to the transition. In doing this, our focus is premised on the understanding that the affected DisCo is covered by two (2) States. This is because, with this test case, the same can be implemented even for a DisCo covered under five States.

Legal and Regulatory Framework



Review of DisCo's current corporate profile to confirm its current structure

Review of DisCo's contractual register to ascertain all existing contracts which it has obligations.

Review of DisCo's non-technical assets and materials to confirm their existence and location.

Review of DisCo's staff (full time, temporary and outsourced) demography and classify staff under the respective district operations

Develop list and registers of all items reviewed.

Incorporation of DisCo SubCo 1 & DisCo SubCo 2 (DisCo to reserve two names with CAC and incorporate the companies).


TRANSFER OF REGULATORY AUTHORITY TO STATE ELECTRICITY REGULATORY COMMISSION

Commercial Framework

- Review of DisCo's customers and classify them into respective bands and district.
- Review of payment history of customers and identify outstanding debts and or obligations by the identified customers.
- Review of DisCo's outstanding obligations to customers in terms of refund of energy tokens.
- Review of DisCo's billing and collections in accordance with respective districts to confirm their true positions.
- Review of DisCo's financial statements and or management account to confirm it is a true and fair representation of its state of affairs.
- Review of metering assets installed under DisCo's franchise area and categorize them under districts/zones and customers.
- Review of connection points of customers and map them based on the feeder and DT connection.
- Develop registers and list of all items reviewed.



Technical Framework



Review of all DisCos technical assets and materials to confirm their existence and location.

Review of the transmission stations under DisCos network, the respective injection substations they feed and all other feeder connections radiating from the injection substations. They should be classified according to locations/States/Zones.

Review of energy received from the grid and shared across DisCos districts/zones/state coverage.

Delineation of DisCo technical boundaries district by district, zone by zone, State by State and clearly showing via a map the start and end of feeder lines within a district/zone/state.

Develop list and registers of all items reviewed

TRANSFER OF OPERATIONS TO DISCO SUBCO 1 & DISCO SUBCO 2

Upon incorporation and setup of DisCo SubCo 1 & DisCo SubCo 2



Transfer/Novation of all rights and liabilities in DisCo in respect of operations for all districts/zone/states under DisCo under each State to DisCo SubCo 1 and DisCo SubCo 2 . This will cover all items reviewed and registers/items/lists developed under the legal, commercial and technical framework.



Apply for license as a distribution licensee under SERC.



Novation of contract of employments of all staff under all districts/zones under each State to their respective SubCo, in this case DisCo SubCo 1 and DisCo SubCo 2.



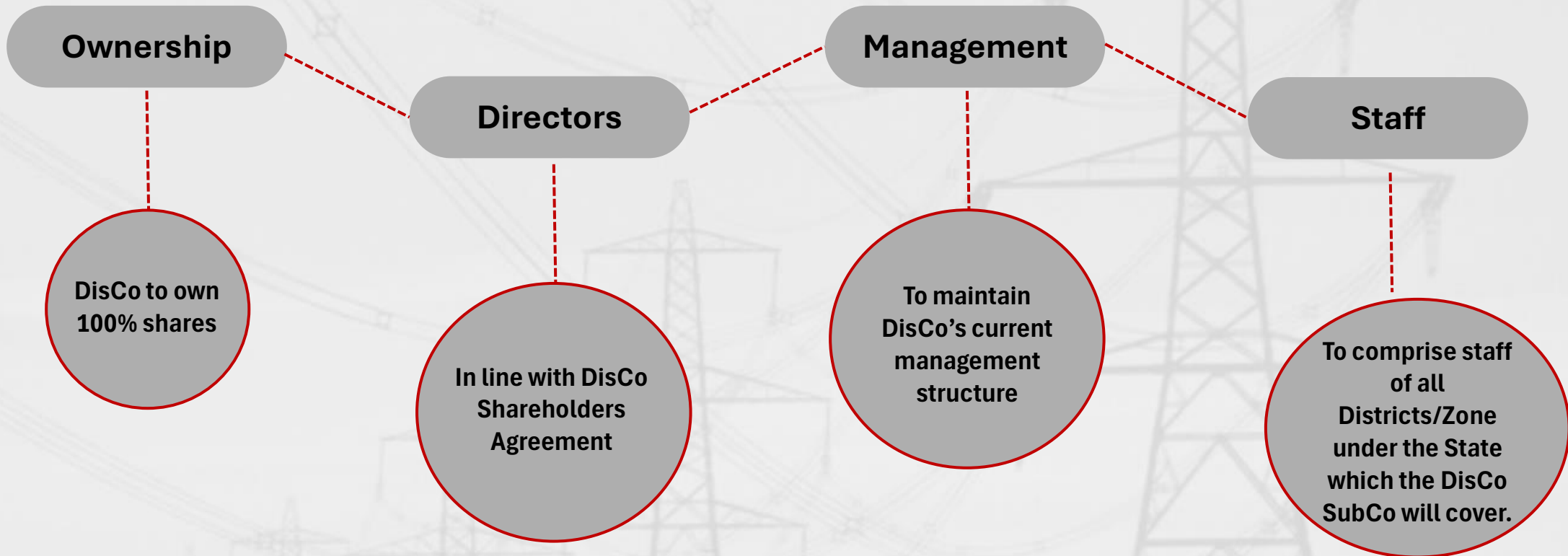
Separation of metering, billing, finance and IT systems to ensure that the DisCo SubCo 1 & DisCo SubCo 2 operate differently.



Engage NBET, NERC and TCN regarding the capacity share from the grid to DisCo SubCo 1 and DisCo SubCo 2.



Corporate Structure of DisCo SubCo 1 & DisCo SubCo 2



- ❖ Commercial, Finance and IT Systems: To be run independently of by each SubCo
- ❖ DisCo to novate Industry Agreements to DisCo SubCo 1 & DisCo SubCo 2. In the alternative, the DisCo SubCos to enter new Industry Agreements such as Vesting Contract, Market Participation Agreement, Transmission Use of System Agreement, Grid Connection Agreements etc.
- ❖ DisCo SubCo 1 & DisCo SubCo 2 to comply with NERC regulations as applicable.

OPERATIONS OF DISCO SUBCO 1 & DISCO SUBCO 2

1

Intra-state and Inter-state market transactions: This will apply where **DisCo SubCo (1 or 2)** performs operations within the State and vice versa. As such, where it procures power from a plant in State (without using the TCN lines), it is deemed as carrying out intra-state transaction. The following (in the short, mid and long term) is envisaged to occur and **DisCo SubCo (1 & 2)** will need to comply with.

2

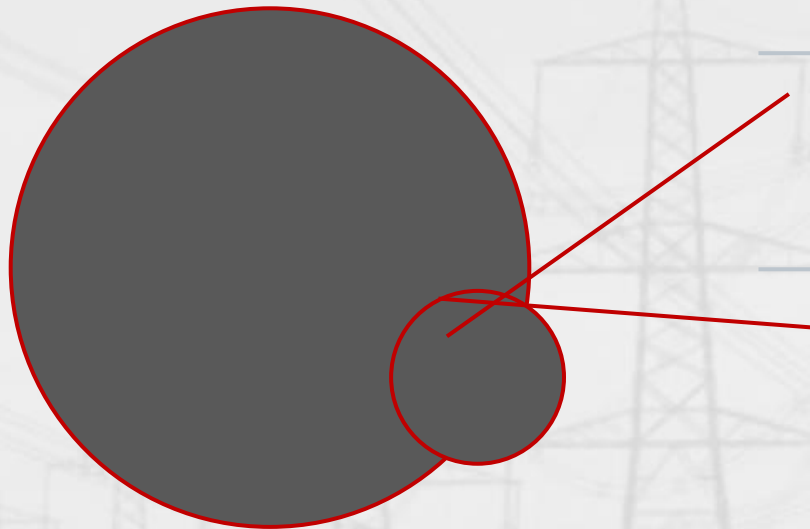
Short – Mid Term	Long Term
Reliance on Grid supply save for existing embedded generation arrangement.	Utilisation of electricity supply generated within the State
Utilisation of Meter Asset Providers licensed by NERC	Utilisation of Meter Asset providers licensed by SERC
Major reliance on tariff methodology prescribed by NERC	Major reliance on tariff methodology prescribed by SERC

3

- Identification of applicable market transactions with a view to identifying their compliance requirements.
- Legal & Regulatory Department of the DisCo SubCo 1 & DisCo SubCo 2 should provide constant advisory and guidance on applicable compliance requirements affecting market transactions that the respective SubCos undertakes.
- Constant engagement and liaison with officials from SERC and NERC to ensure a seamless regulatory environment when conducting business.
- The DisCo SubCo 1 & DisCo SubCo 2 will operate independently across all functions including but not limited to finance, technical, commercial, legal, regulatory etc.

OPERATIONS UNDER SERC TRANSFER SCHEME – DISCO SUBCOS

Under most State Electricity Laws, especially Lagos State Electricity Law, 2024, after a specified period following its enactment, the SERC should commence a transfer scheme for the disaggregation of distribution business from supply business. As such, where this occurs, the DisCo SubCo will further be disintegrated and a new subsidiary formed to undertake the supply aspect of its business.

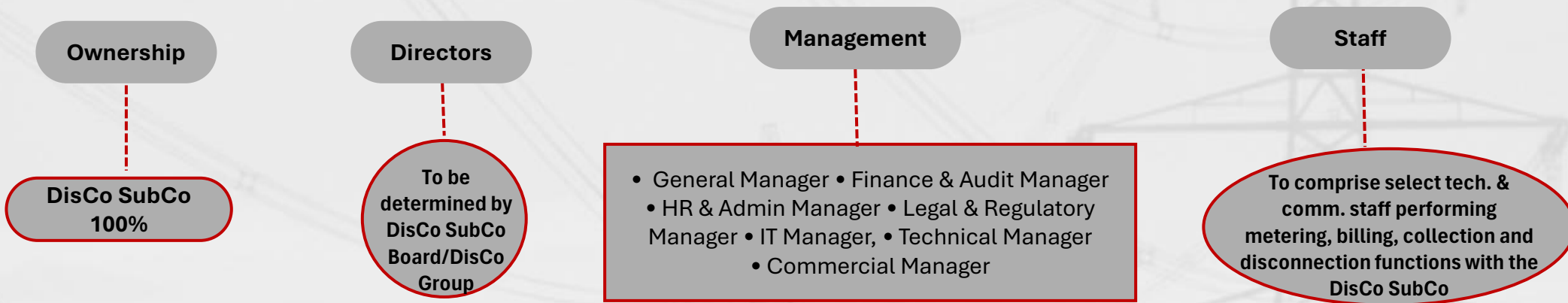


In preparation for the envisaged disaggregation, the DisCo SubCos (1&2) should each undertake the following:

- Incorporate a DisCo Supply SubCo that will undertake the supply business within the State Electricity Market.
- The DisCo SubCos HR to review staff list with a view to identifying workforce that are involved in the metering, billing, collection and disconnection functions of the business across all districts/zone within their network.

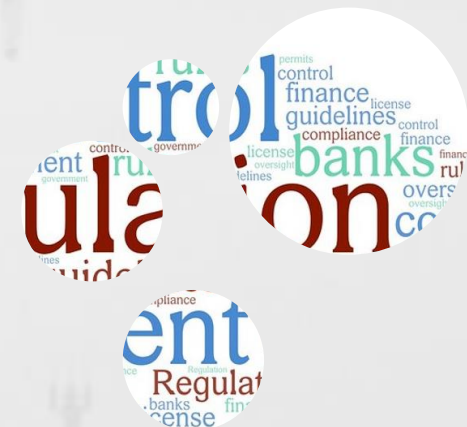
OPERATIONS UNDER SERC TRANSFER SCHEME – DISCO SUBCOS

❖ Set up the corporate structure of the DisCo Supply SubCos as follows:



❖ Implement the metering, billing and collection franchising model and enter a Franchise Agreement with the DisCo SubCo for its implementation.

❖ Submit the Franchise Agreement to the SERC for approval in line with the Law.



DisCo SubCo 1 & DisCo SubCo 2 will each incorporate a Supply SubCo and implement the structure detailed here. As such, DisCo Supply SubCo 1 & DisCo Supply SubCo 2 will be incorporated.

OPERATIONS UNDER LERC TRANSFER SCHEME – DISCO SUBCO



➤ Once the transfer scheme for the disaggregation of DisCo SubCo (1 or 2) is to be implemented by the SERC, the following will then apply:

DisCo Supply SubCo will be nominated as the subsidiary to assume the role of the supply licensee within DisCo SubCo’s network.

DisCo Supply SubCo will apply for the supply license under SERC.

Once the supply license is granted, DisCo Supply SubCo will continue its operations independently but in similar fashion as it was doing under the franchising arrangement. This will eliminate any form of disruption in operations.

DisCo SubCo and the DisCo Supply SubCo will jointly perform all the obligations detailed in the transfer scheme.

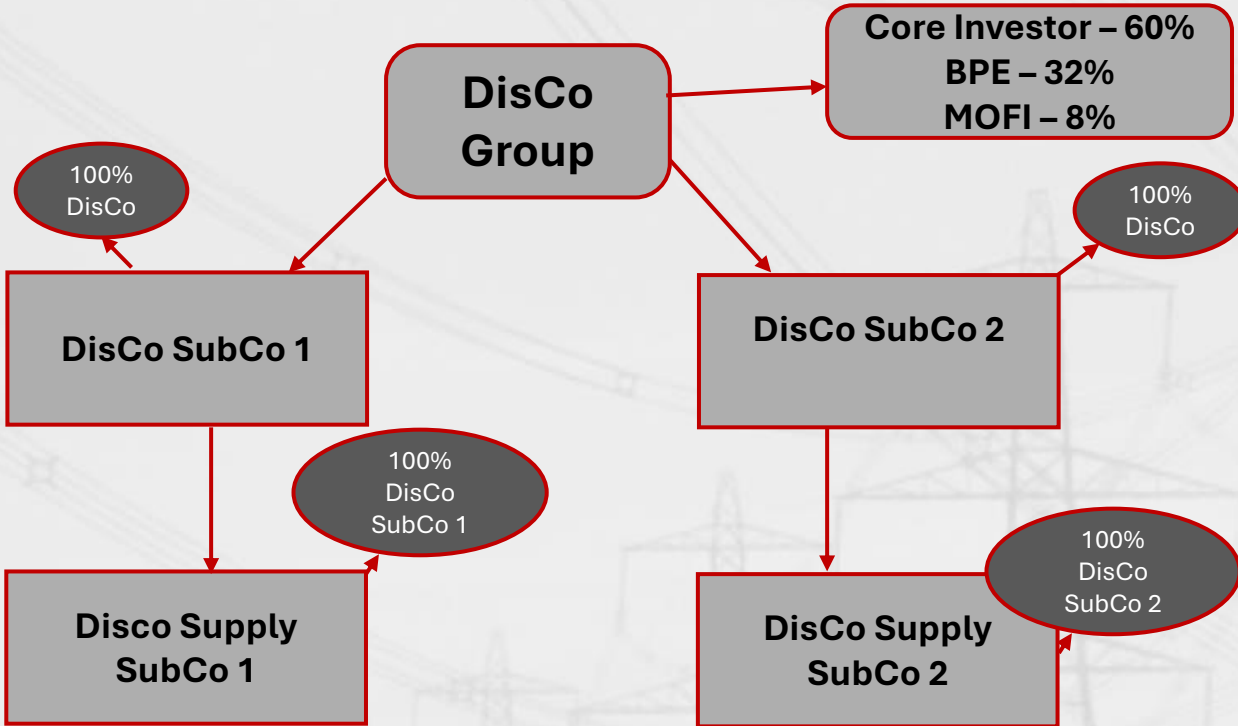
The franchise agreement will then be terminated by DisCo SubCo and DisCo Supply SubCo.

➤ Novation of contract of employments of all identified staff performing the supply licensee functions under all DisCo SubCos districts/zones to DisCo Supply SubCos.



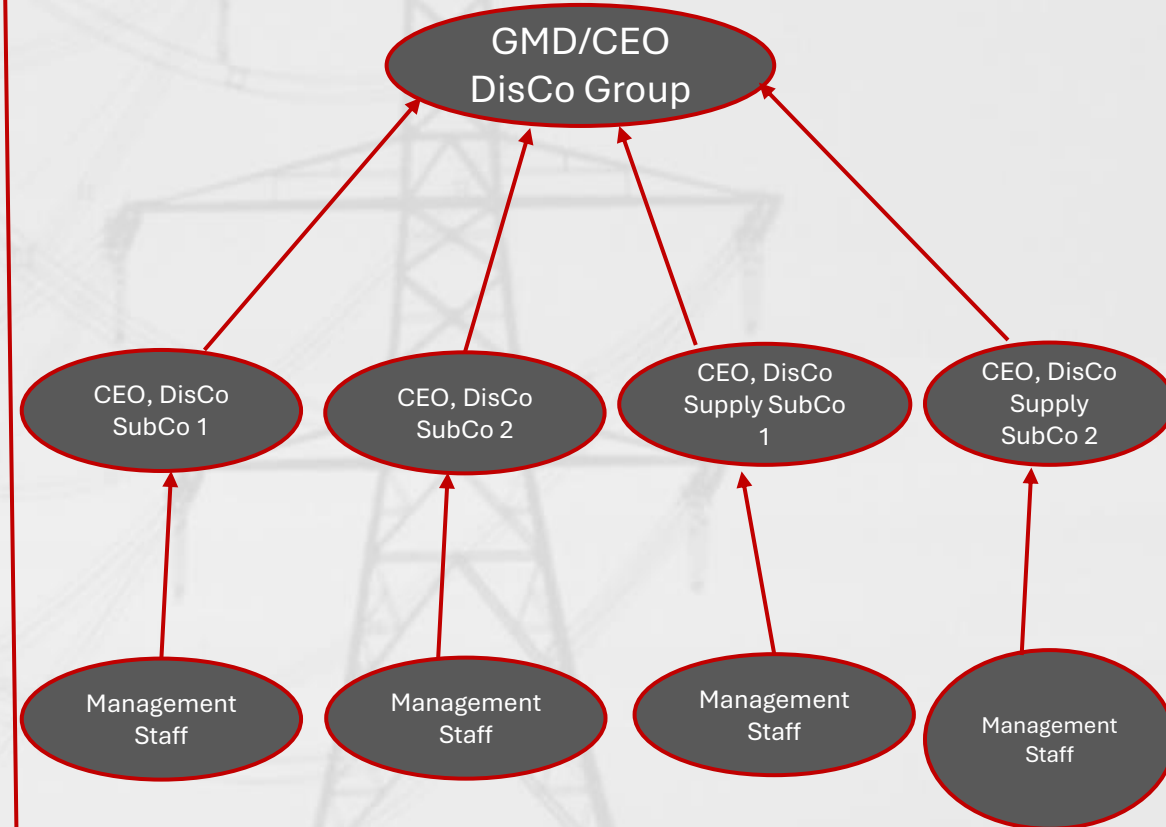
CORPORATE STRUCTURE OF DISCO GROUP

Where both State Electricity Market is functional for DisCo SubCo 1 & DisCo SubCo 2 – Ownership Structure



- All subsidiaries will operate independently
- DisCo Group owning 100% of DisCo SubCo 1 and DisCo SubCo 2 will direct the affairs in terms of administrative and governance framework as well as that of the Supply SubCos.
- They will have separate reporting requirements but will put in place a consolidated group account in line with IFRS.

Reporting/Governance Structure for DisCo Group



CORPORATE STRUCTURE OF DISCO GROUP

Board Structure of DisCo Group & Subsidiaries

DisCo Group Board

To comprise 7 directors. Six A directors from the Core Investor and One B director representing BPE & MOFI jointly

The Board will comprise committees including Finance, Strategy and Technical, Audit, Legal and Regulatory, HR & Admin etc.,

DisCo SubCo 1 Board

To comprise 7 directors in line with the Shareholders Agreement

The Board will comprise committees including Finance, Strategy and Technical, Audit, Legal and Regulatory, HR & Admin etc.,

DisCo Supply SubCo 1 Board

To comprise at least three (3) directors

The Board will comprise committees including Finance, Strategy and Technical, Audit, Legal and Regulatory, HR & Admin etc.,

- *The directors for all subsidiaries that form part of the DisCo Group will be nominees of the shareholders/board of the DisCo Group*

CORPORATE STRUCTURE OF DISCO GROUP

Board Structure of DisCo Group & Subsidiaries

DisCo SubCo 2 Board

To comprise 7 directors in line with the Shareholders Agreement

The Board will comprise committees including Finance, Strategy and Technical, Audit, Legal and Regulatory, HR & Admin etc.,

DisCo Supply SubCo 2 Board

To comprise at least three (3) directors

The Board will comprise committees including Finance, Strategy and Technical, Audit, Legal and Regulatory, HR & Admin etc.,

- *The directors for all subsidiaries that form part of the DisCo Group will be nominees of the shareholders/board of the DisCo Group*

PROGRAM IMPLEMENTATION TIMELINE

S/N	Action	Timeline	Remark
1.	Review Workstreams under Legal, Regulatory, Commercial and Technical Framework	TBD	All documents, registers and list of items should have been developed by this date.
2.	Incorporation of DisCo SubCo 1 & DisCo SubCo 2	TBD	The DisCo SubCos should have been incorporated by this date.
3.	Submission of Application to SERC to license DisCo SubCo 1 & DisCo SubCo 2 respectively as a distribution licensee operating under the State Electricity Market	TBD	The application should have been submitted by this date.
4.	Legal and Contractual Documentation for the Transfer of rights, employees and liabilities from the DisCo to DisCo SubCo 1 & DisCo SubCo 2	TBD	This documentation should have been concluded by this date.
5.	Separation of DisCo billing, metering, IT, financial, collections, technical etc. systems to recognise the distinct operations of DisCo SubCo 1 from DisCo SubCo 2	TBD	By this date, DisCo SubCo 1 & DisCo SubCo 2 operations should run independently and not co-mingled.

PROGRAM IMPLEMENTATION TIMELINE

S/N	Action	Timeline	Remark
6.	Incorporation of DisCo Supply SubCo 1 & DisCo Supply SubCo 2	TBD	The SubCos should have been fully incorporated by this date
7.	Review workstreams to identify workforce that will operate under DisCo Supply SubCo 1 & DisCo Supply SubCo 2	TBD	This process should be completed by this date.
8.	Preparation of Franchise Agreement to be entered by DisCo Supply SubCo 1 & DisCo Supply SubCo 2	TBD	The draft Franchise Agreement should be ready by this date
9.	Submission of Franchise Arrangement Application to the SERC for approval	TBD	The application should be submitted for approval to the SERC by this date.
10.	Transfer Scheme for disaggregation of DisCo SubCo 1 & DisCo SubCo 2 SERC	TBD	Where the scheme is implemented, the novation of employment contracts of staff under DisCo SubCos to DisCo Supply SubCos should be effected and the DisCo Supply SubCos (1 & 2) presented as the subsidiary to be licensed as the supply licensee to undertake the supply business in the franchise network of DisCo SubCos.

TBD: The timeline will be populated in line with the deadline specified in the Order and the process involved for each action item



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