



# **Energy Holdings (No 3) Limited (in creditors' voluntary liquidation and subject to a Company Voluntary Arrangement)**

Liquidators' report to members and creditors for the year to 30 December 2008 pursuant to Section 105 of the Insolvency Act 1986 and Supervisors' report pursuant to Rule 1.26(2) of the Insolvency Rules 1986 for the year to 31 March 2009

7 July 2009

ADVISORY

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## Glossary of terms

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	<b>Glossary</b>
<b>ACT</b>	Advance Corporation Tax
<b>Conduit Companies</b>	TXUAC, TEG, TEG HO and EH3
<b>CVA</b>	Company Voluntary Arrangement
<b>EGO BV</b>	Energy Group Overseas BV
<b>EH2</b>	Energy Holdings (No2) Limited
<b>EH3</b>	Energy Holdings (No3) Limited
<b>EH4</b>	Energy Holdings (No4) Limited
<b>GEF LLC</b>	Global Energy Finance LLC
<b>HMRC</b>	HM Revenue & Customs
<b>Holding Companies</b>	TXUEL and its subsidiaries, excluding Operating companies
<b>KPMG</b>	KPMG LLP
<b>Operating Companies</b>	TXUEG and its subsidiaries
<b>PPA</b>	Power Purchase Agreements
<b>TEG</b>	The Energy Group Limited
<b>TEG HO</b>	TEG Head Office Limited
<b>TXUAC</b>	TXU Acquisitions Limited
<b>TXUEG</b>	TXU Europe Group Plc
<b>TXUEL</b>	TXU Europe Limited
<b>TXUEL Group</b>	TXU Europe Limited and its subsidiaries, being the Holding Companies and Operating Companies

## Basis of preparation

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- This Report has been prepared by Jeremy Spratt and Jim Tucker, in their capacity as Joint Liquidators of EH3 and Joint Supervisors of its CVA, solely to comply with their statutory duty to report to members and creditors under Section 105 of the Insolvency Act 1986 and Rule 1.26(2) of the Insolvency Rules 1986, to provide an account of their acts and dealings and of the conduct of the liquidation and the CVA, and for no other purpose. It is not suitable to be relied upon by any other person, or for any other purpose, or in any other context.
- This Report has not been prepared in contemplation of it being used, and is not suitable to be used, to inform any investment decision in relation to the debt of or any financial interest in EH3 or other companies in the TXUEL Group.
- Any estimated outcomes for creditors included in this Report are illustrative only and cannot be relied upon as guidance as to the actual outcomes for creditors.
- Any person who chooses to rely on this Report for any purpose or in any context other than under Section 105 of the Insolvency Act 1986 and/or Rule 1.26(2) of the Insolvency Rules 1986 does so at its own risk. To the fullest extent permitted by law, the Liquidators and Supervisors assume no responsibility and accept no liability in respect of this Report to any such person.
- Jeremy Spratt and Jim Tucker are authorised to act as insolvency practitioners by the Institute of Chartered Accountants in England & Wales.
- The appointments of the Joint Liquidators and Supervisors are personal to them and, to the fullest extent permitted by law, KPMG assumes no responsibility and accepts no liability to any person in respect of this Report or the conduct of the liquidation or the CVA.

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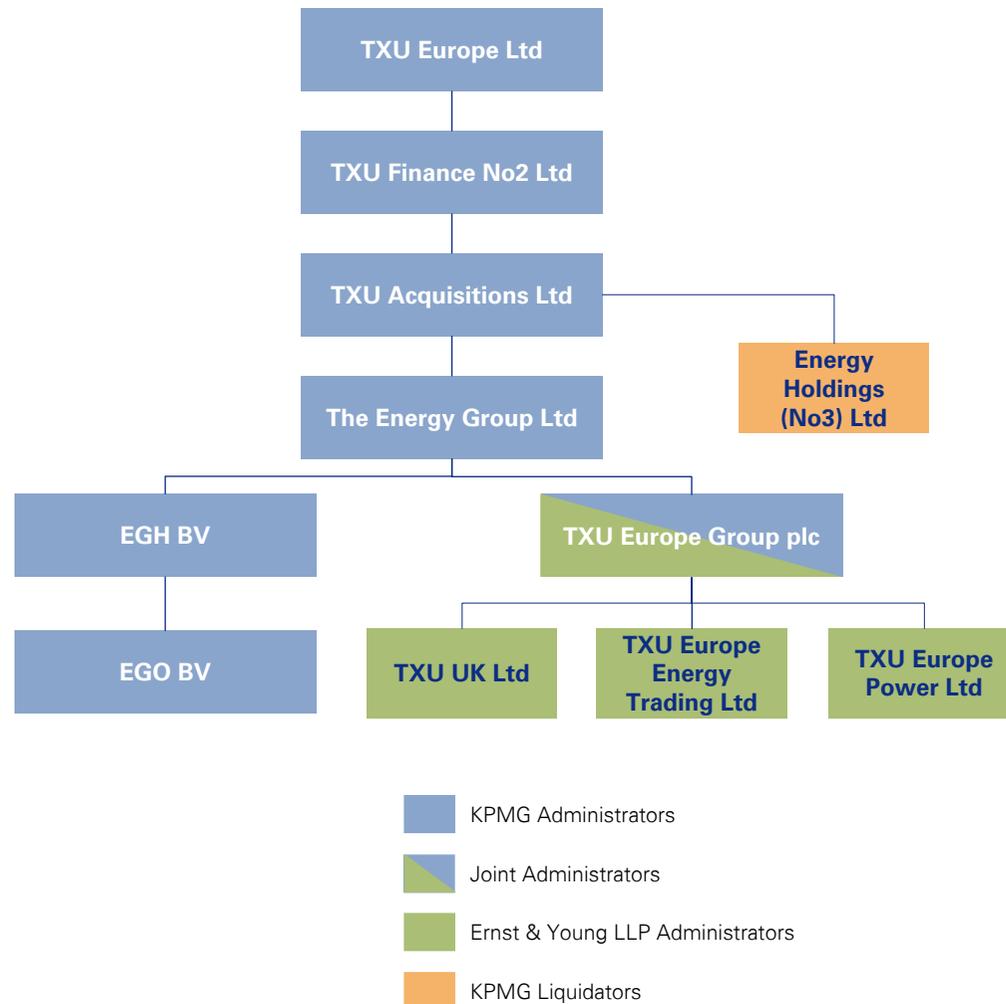
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# Introduction and background

## Simplified group structure



## Introduction

- This report is prepared pursuant to Section 105 of the Insolvency Act 1986 and Rule 1.26(2) of the Insolvency Rules 1986. Its purpose is to provide the members and creditors of EH3 with an account of the acts and dealings of the Joint Liquidators and the conduct of the liquidation for the period to 30 December 2008, to update them on material events which have taken place subsequently and to provide an update on the CVA for the year to 31 March 2009.

## Background

- The High Court appointed KPMG partners as Administrators of TXUEL, TXUAC and TEG and (jointly with partners in Ernst & Young) TXUEG on 19 November 2002. Partners in KPMG were subsequently appointed administrators/liquidators to other subsidiaries of TXUEL. The shareholders of EH3 placed it into voluntary liquidation on 30 December 2002. At the creditors' meeting held on 8 January 2003, Jeremy Spratt and Jim Tucker of KPMG were appointed as Liquidators of EH3.
- The Administrators of TXUEG and certain of its subsidiaries proposed CVAs on 10 January 2005. These were approved by creditors and members on 28 January 2005. The Joint Administrators/Liquidators of TXUEL and certain of its subsidiaries, including EH3, proposed interlocking CVAs on 11 March 2005. These proposals were approved at meetings of creditors and members held on 31 March 2005.
- Applications were subsequently made to Court by two creditors of EH3 and EGO BV for their CVAs to be set aside on the grounds of unfair prejudice and/or material irregularity at or in relation to the meeting of creditors. The applicants also sought the removal of the Liquidators as liquidators of EH3 and of the Administrators of EGO BV. These applications were heard in August 2005 and were dismissed in their entirety.
- A copy of the information available to creditors and members of EH3 is available at [www.txuinfo.co.uk](http://www.txuinfo.co.uk). That information includes a report by the Administrators of TXUEL and certain subsidiaries dated 22 January 2009 and the CVA proposals issued by EH3, TXUEL and other subsidiaries of TXUEL.

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## Progress during the year and recent developments

### Realisations and assets

- EH3 has now received payment in full of its claim of £176.5 million against TXUEG, the final dividend of £20.4m being received in April 2008. Statutory interest is not payable under the terms of the CVA and accordingly no further funds will be received from TXUEG.
- EH3 has claims against EH4, EGO BV and EH2 totalling £232.4 million. Until the purported claim of Gold Fields Mining LLC ("GFM"), detailed below, has been finally determined further distributions are unlikely from these companies.
- EH3 has previously received £5.8m in consideration of the sale of surplus ACT. A further £253,905 was received in June 2009 and a small further payment may become due.
- EH3 received £290,000 in February 2008 in consideration for the sale of capital losses.
- Other significant receipts in the period include gross bank interest of £1,188,031 and a tax refund of £116,326 in respect of tax paid in the year ended December 2007.

### Agreed creditor claims

- The following claims have been received and agreed pursuant to the CVA.
- These have been valued as at 19 November 2002 and 7 January 2005 as required for the purposes of the CVA.

Agreed claims		
	19 November 2002 £m	7 January 2005 £m
Guarantee creditors in relation to EGO BV bonds	329.8	335.1
Swap transaction	19.4	21.6
Intercompany creditors	270.0	267.1
Pensions claims	5.2	6.0
<b>Total</b>	<b>624.4</b>	<b>629.8</b>

## Progress during the year and recent developments

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### Other creditor claims

- In July 2007 the Joint Supervisors received a claim form submitted by GFM in respect of alleged present, future and contingent liabilities in excess of US\$ 223 million. The Joint Supervisors notified GFM that its claim was time barred in accordance with the terms of the CVA, and declined to adjudicate on it on that basis. GFM subsequently issued proceedings. The Court held, both at first instance and on appeal that the claim was not time barred and the Joint Supervisors were ordered to adjudicate GFM's claim.
- The Joint Supervisors have accordingly entered into a dialogue with GFM in order to ascertain further details concerning their claim. At the same time GEF LLC (a fellow subsidiary of EH3) commenced proceedings in the US regarding the source documents on which GFM base their claim. Until such time as the GFM claim has been dealt with it is not possible to make any further distributions to creditors.
- In the event that the GFM claim is adjudicated as being admissible in part or in full previous distributions to creditors cannot be disturbed. GFM will however be entitled to a 'catch up' distribution out of EH3's remaining assets.
- The reserve of £191,198 in respect of the potential liability for National Insurance contributions on distributions made on pensions claims has been released following HMRC's agreement that EH3 is not liable.
- EH3, as the former holding company for the TXU Group, operated an Employee Benefit Trust. The Trustees of the Scheme have advised that they may have a claim against EH3 and we have been in correspondence with the Trustees in this regard. It is not expected that any claim arising will be material.

### Fees

- A detailed analysis of the Liquidators and Supervisors time costs is set out at Appendix 1. The remuneration of the Liquidators and their advisors has been approved by the Creditor/Liquidation Committees for the period to 31 March 2008. During the year, legal fees of £1,490,845 have been paid, the majority of which relate to the GFM claim.

### Distributions to creditors

- The total amount distributed to external creditors of EH3 to date is £183.7 million (this equates to 51.3 pence to 55.1 pence in the £). It will not be possible to make any further payments to creditors until the GFM claim has been finally determined.

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## **Capital losses**

EH3 was the beneficial owner of a considerable amount of unrealised capital losses arising from its ownership of EH4. By implementing an internal reorganisation it became possible to crystallise the losses and sell them. The quantum of the loss has now been agreed by HMRC. A proportion of the capital losses were sold unconditionally to third parties and any profits generated by the sale were due to EH3. £6.4 million of the consideration received was paid to EH3 in the periods to 29 December 2007 with a further amount of £290,000 received in February 2008.

## **Tax compliance**

HMRC is no longer entitled to raise an enquiry into the corporation tax returns for periods to 29 December 2006 and these periods are therefore effectively agreed.

The return and computation for the year ended 29 December 2008 has recently been submitted and will generate a repayment of withholding tax of £230,000 as a result of group relief being claimed to cover taxable profits. HMRC has until 29 December 2010 to raise enquiries into this return and 29 December 2009 to raise enquiries into the return for the year ended 29 December 2007.

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## Liquidators' remuneration

Time costs for the period 31 December 2007 to 30 December 2008						
	Partner/Director Hours	Senior Manager/Manager Hours	Assistant Hours	Total Hours	Total costs £	
Project management and statutory matters	36	74	18	128	41,851	
Creditors reporting and liaison	63	6	4	73	34,958	
Tax	5	5	2	12	5,011	
Third party creditors, overseas assets and subsidiaries	291	74	-	365	138,379	
CVA	16	2	-	18	7,256	
<b>Total</b>	<b>411</b>	<b>161</b>	<b>24</b>	<b>596</b>	<b>227,455</b>	
Time costs previously reported (period 31 December 2002 to 30 December 2007)	-	-	-	-	2,752,283	
Less fees already paid	-	-	-	-	2,843,779	
<b>Time costs outstanding</b>	-	-	-	-	<b>135,959</b>	

Source: Liquidators' records

- To date, remuneration has been drawn, with the authorisation of the EH3 Liquidation Committee, in the sum of £2,843,779 plus VAT.
- In addition, a fee of £1,070,000 sanctioned by the Liquidation Committee has been paid to KPMG Tax in respect of the sale of the capital losses.

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# Energy Holdings (No 3) Limited

Receipts and payments account				
£	Liquidation		CVA	
	30 December 2007 to 30 December 2008	30 December 2002 to 30 December 2008	1 April 2008 to 31 March 2009	31 March 2005 to 31 March 2009
<b>Receipts</b>				
Distributions from TXUEG CVA	20,367,615	176,528,669		
Tax equalisation receipts		11,900,511		
Surrender of ACT		5,830,003		
Bank interest gross	1,188,031	4,920,874		
Capital loss sale	290,000	6,690,000		
Intercompany receivables		139,265,517		
Proceeds of settlement with TXU Corp		7,657,171		
Interim funding provided		1,471,485		
PPA contribution		2,363,078		
Corporation tax refunds	116,326	616,861		
Other receipts	(445)	325,999		
Transfer from liquidator			nil	319,036,686
	<b>21,961,526</b>	<b>357,570,170</b>	<b>NIL</b>	<b>319,036,686</b>
<b>Payments</b>				
Transfer to supervisor		319,036,686		
Group relief		1,223,825		
Tax on interest deducted at source	230,898	861,711		
Office holders' fees	254,461	2,854,076		
Consultants' fees		210,110		
Legal fees <sup>(a)</sup>	1,490,845	1,653,132		
Other costs	1,804	127,474		
VAT	16,358	26,286		
Tax fees		1,070,000		
Repayment of tax equalisation		3,080,432		
Distribution to external creditors				183,724,768
Distribution to connected companies				135,311,905
Net interest on disputed claims				13
	<b>1,994,367</b>	<b>330,143,733</b>	<b>nil</b>	<b>319,036,686</b>
<b>Balance in hand</b>	<b>19,967,160</b>	<b>27,426,437</b>	<b>NIL</b>	<b>NIL</b>

Note: (a) Excludes the legal costs associated with the unfair prejudice action which have, to date, been met by TXUEL and TEG. EH3 will be required to bear approximately £640,000 of costs not recovered from the applicants.

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