



HERBERT
SMITH
FREEHILLS

TXU EUROPE GROUP PLC

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE ENERGY TRADING LIMITED

(in Administration and subject to a company voluntary arrangement)

TXU EUROPE POWER LIMITED

(in Administration and subject to a company voluntary arrangement)

TXU UK LIMITED

(in Administration and subject to a company voluntary arrangement)

EASTERN ELECTRICITY HOLDINGS LIMITED

(in Administration and subject to a company voluntary arrangement)

TXU EUROPE MERCHANT PROPERTIES LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE MERCHANT GENERATION LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE POWER DEVELOPMENT LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE (PARTINGTON) LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE POWER PRODUCTION SERVICES LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU (UK) HOLDINGS LIMITED

(in Administration and subject to a company voluntary arrangement)

ENERGY HOLDINGS (NO. 6) LIMITED

(in Administration and subject to a company voluntary arrangement)

ANGLIAN POWER GENERATORS LIMITED

(in Administration and subject to a company voluntary arrangement)

PETERBOROUGH POWER LIMITED

(in Administration and subject to a company voluntary arrangement)

TXU EUROPE POWER SERVICES LIMITED

(in Administration and subject to a company voluntary arrangement)

TXU DIRECT SALES LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE LEASING (4) LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE (BLADE) LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE (BLADE NO. 2) LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE TRADING LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE NATURAL GAS (TRADING) LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU FINLAND HOLDINGS LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU GERMANY LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE OVERSEAS FINANCE LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE LEASING (5) LIMITED

(in Liquidation and subject to a company voluntary arrangement)

PRECIS (2264) LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE RENEWABLE GENERATION LIMITED

(in Liquidation and subject to a company voluntary arrangement)

EASTERN GROUP FINANCE LIMITED

(in Liquidation and subject to a company voluntary arrangement)

**NOTICE OF MODIFICATION TO COMPANY
VOLUNTARY ARRANGEMENTS
(dated 10 January 2005 under Part I of the
Insolvency Act 1986)**

MODIFICATION DATE: 1 SEPTEMBER 2021

Herbert Smith Freehills LLP

TABLE OF CONTENTS

Clause	Headings	Page
PART A	4
1.	BACKGROUND INFORMATION	4
2.	UNCLAIMED DISTRIBUTIONS	4
3.	THE THIRD PARTIES (RIGHTS AGAINST INSURERS) ACT 1930.....	5
4.	MODIFICATION PROCESS.....	6
PART B	TEXT OF MODIFICATIONS MADE TO COMPANY VOLUNTARY ARRANGEMENTS	7
1.	DEFINITIONS AND INTERPRETATION.....	7
2.	MODIFICATIONS.....	7

PART A

1. BACKGROUND INFORMATION

- 1.1 Terms defined in the company voluntary arrangements between each CVA Company and its CVA Creditors (issued on 10 January 2005 and approved by the creditors and the members of each of relevant CVA Companies at meetings held on 28 January 2005) shall, unless the context otherwise requires, have the same meaning when used herein.
- 1.2 The CVA Companies entered into the CVAs in order to, amongst other things:
 - 1.2.1 compromise numerous disputes between each of the CVA Companies; and
 - 1.2.2 create a mechanism to distribute the assets of the CVA Companies to the CVA Creditors.
- 1.3 Each CVA is in an identical form¹.
- 1.4 The termination of the CVAs has been delayed by the emergence of (i) asbestos related liabilities; and (ii) pension related liabilities, at TXU UK and thus uncertainty over the level of the ultimate liabilities of TXU UK Limited (in administration and subject to a company voluntary arrangement) ("**TXU UK**").
- 1.5 However, in March 2021, following an application to Court by the Joint Administrators of TXU UK and the Supervisors of its CVA, the Court ordered that, pursuant to the terms of the CVA, the Supervisors may proceed to make a final Distribution no earlier than 5pm on 30 March 2021 without being obliged to reserve for potential claims which could be brought against TXU UK in the future ("**Potential Future Claims**").
- 1.6 Further, on 1 September 2021, the Office Holders of TXU Europe Group plc (in liquidation and subject to a company voluntary arrangement) ("**TXUEG**"), TXU UK and TXU Direct Sales Limited (in liquidation and subject to a company voluntary arrangement) settled the dispute relating to mistaken payments following the decision of Mr Justice Newey in Re TXU Europe Group Plc [2011] EWHC 2072 (Ch).
- 1.7 The Supervisors of TXUEG and of the twenty-seven other CVA Companies are now in a position to make a final Distribution to all CVA Creditors of those CVA Companies and thereafter to terminate all of those CVAs.
- 1.8 The Supervisors of the CVA Companies are satisfied that:
 - 1.8.1 all CVA Claims submitted in those CVAs are Allowed CVA Claims;
 - 1.8.2 they are now in a position to make a final Distribution to the CVA Creditors of the CVA Companies;
 - 1.8.3 following such distribution and resolution of any Disputed Claims, the CVAs in respect of the CVA Companies should be terminated; and
 - 1.8.4 following the termination of the CVAs of those CVA Companies, the relevant Office Holders should seek their discharge from office and the CVA Companies be dissolved, other than TXUEG (as detailed below).

2. UNCLAIMED DISTRIBUTIONS

- 2.1 Clause 21.5.3 of the CVA provides that any Unclaimed Distribution which remains unclaimed after one year is deemed to be part of the general assets of the relevant CVA Company and the relevant creditor is deemed to have waived any rights to such distribution. The CVA Supervisor is obliged to transfer funds in respect of those Unclaimed Distributions to an account nominated by the relevant Office Holder and such funds then form part of the general assets of the relevant CVA Company. Therefore, the Supervisors

¹ The CVAs of all CVA Companies other than TXU UK Limited and TXU Direct Sales Limited were modified in 2012 following the decision of Mr Justice Newey

- are obliged to hold funds in respect of Unclaimed Distributions for a one year period from the relevant Distribution Date.
- 2.2 The Supervisors estimate the amount available for distribution to third parties in the final Distribution of the CVA Companies will be approximately £54.8m. The Supervisors are of the view that it is likely that Unclaimed Distributions in connection with the final Distribution will be no more than £250,000.
- 2.3 As set out at paragraph 1.7 above, the Office Holders of the CVA Companies intend to terminate the CVAs shortly after the payment of the final Distribution.
- 2.4 Therefore, in order to protect the interests of those creditors who hold Unclaimed Distributions at the time when the CVAs are terminated, the Office Holders of the CVA Companies propose that Clause 21.5.3 of the CVA is modified so that any funds held by the Supervisors of the CVA Companies in respect of Unclaimed Distributions in connection with the final Distribution be transferred to a ring-fenced account of the Joint Liquidators of TXUEG to be held on trust by TXUEG (the "**Account**") for the benefit of those parties entitled to such distributions.
- 2.5 The CVA currently provides at Clause 36.4 that if, on termination of the CVA, a distribution within the estates of all of the CVA Companies would result in less than £250,000 (or such other amount as the Office Holders of each CVA Company agree) being available for distribution and the CVA Supervisors determine it would be uneconomical to make such distribution (after reserving for any costs necessary to dissolve the CVA Companies or otherwise liquidate them) the balance of assets will be donated to Aspire (registered charity number 1075317).
- 2.6 Therefore, the CVA modifications will provide that after the expiry of one year from the date of the final Distribution, any funds which remain unclaimed in the Account be transferred to Aspire (registered charity number 1075317) provided that the total amount of such funds is less than £250,000. The liquidation of TXUEG will then be brought to an end ("**Distribution Modification**").
- 2.7 This will ensure that the termination of the CVAs of the CVA Companies does not prejudice those creditors entitled to a distribution but which have not yet cashed cheques in respect of such distribution provided that they take action to encash their cheques within one year from the date of the final distribution.
3. **THE THIRD PARTIES (RIGHTS AGAINST INSURERS) ACT 1930**
- 3.1 The Third Parties (Rights Against Insurers) Act 1930 (the "**1930 Act**") applies to TXU UK because the making of the administration order and the incurring of liability of TXU UK (the exposure to asbestos) occurred prior to the commencement date of The Third Parties (Rights Against Insurers) Act 2010. The 1930 Act provides that the rights of TXU UK against its insurers (in relation to an asbestos claim from a former EEB employee ("**Employee**")) transferred to and vested in the Employee at the point when TXU UK went into administration in 2002. Therefore, the right to bring a claim against the insurer for the insured portion of an Employee's claim transferred to the Employee in 2002 (and belongs to the Employee rather than to TXU UK).
- 3.2 The CVA is limited to the Employee's right to recover the uninsured portion of his claim from TXU UK. Whilst the CVA does not affect the Employee's rights to pursue the insurer for the insured portion of his claim pursuant to the 1930 Act, the CVA does not contain any express provisions to reflect this position. Therefore, the Office Holders of TXU UK are of the view that the CVA should be modified to include express wording to clarify that the terms of the CVA shall not affect the rights of any CVA Creditor to bring or continue legal proceedings against TXU UK and to obtain a judgment against TXU UK for the sole

purpose of making a claim against an insurer of TXU UK by virtue of the 1930 Act and such provision shall continue to apply following termination of the CVA .

4. **MODIFICATION PROCESS**

4.1 Clause 34.1 of the CVAs provides as follows:

"The Office Holder of each CVA Company will have the power at any time after the Implementation Date after consultation with the relevant creditors' committee, without reference to the CVA Creditors or the CVA Supervisors, if they consider it expedient to do so and if it is in the best interests of the CVA Creditors, to modify the provisions of the CVA provided such modifications do not materially alter the effect or economic substance of the CVA in relation to that CVA Company. The Office Holders shall inform the CVA Creditors of any such modifications and such modifications shall be binding on the CVA Creditors and the CVA Supervisors and the CVA shall be modified accordingly in respect of that CVA Company."

4.2 The Office Holders consider that amending clause 21.5.3 of the CVAs to provide that the Supervisors be permitted to transfer any funds held in respect of Unclaimed Distributions to the Account for the benefit of those entitled to the distribution and then donate any balance to charity after one year from the date of the final Distribution, will change neither the effect nor the economic substance of the CVAs as all amounts will have been distributed and nothing will remain due to be done under the relevant CVA other than terminate it. Similarly, the Office Holders consider that including a provision in the TXU UK CVA which clarifies that nothing in the CVA shall be construed as releasing or otherwise affecting the rights of a CVA Creditor to bring or continue legal proceedings against TXU UK and to obtain a judgment against TXU UK for the sole purpose of making a claim against an insurer of TXU UK, will change neither the effect nor the economic substance of the CVA as this simply clarifies the legal position.

4.3 The Office Holders of each of the CVA Companies have (i) consulted with their respective creditors' committees (being the creditors' committee of TXUEG) and (ii) determined that that it is in the best interests of its CVA Creditors and expedient to modify each CVA as set out below. The amendments proposed to be made to each of the CVAs set out herein are necessary in order to terminate the CVAs in a timely manner whilst protecting the interests of any party with an Unclaimed Distribution.

4.4 Under clause 34.1 of the CVA the Office Holders are required to inform CVA Creditors of any such modification which shall be binding on CVA Creditors and the CVA Supervisor. This document constitutes notice to CVA Creditors of those modifications.

PART B

TEXT OF MODIFICATIONS MADE TO COMPANY VOLUNTARY ARRANGEMENTS

1. DEFINITIONS AND INTERPRETATION

Terms defined in the CVAs shall, unless otherwise defined in this document, bear the same meaning when used in this document.

2. MODIFICATIONS

2.1 Clause 21.5 (Specific provisions relating to Unclaimed Distributions)

2.1.1 The following wording shall be added at the end of Clause 21.5.1:

"Any Unclaimed Distributions in such account at the date of termination of a CVA shall be transferred from the account of the relevant CVA Supervisor to a ringfenced account held by the Joint Liquidators of TXUEG nominated by the relevant Office Holder to be held on trust by TXUEG for the benefit of those parties entitled to such Unclaimed Distributions in accordance with the terms of the CVA immediately prior to its termination ".

2.1.2 Clause 21.5.2 shall be deleted in its entirety and replaced with the following:

"Any Unclaimed Distribution and any interest thereon shall, subject to Clause 21.5.3, be held solely for the purpose of making payment to the CVA Creditor who has failed to claim such Unclaimed Distribution and shall be released to such CVA Creditor upon his presentation of proof reasonably acceptable to the CVA Supervisor (or the Joint Liquidators of TXUEG) in accordance with Clause 21.5.1) of his entitlement, together with any interest (net of tax and charges payable thereon) earned on the relevant amount."

2.1.3 Clause 21.5.3 shall be deleted in its entirety and replaced with the following:

"Any Unclaimed Distribution shall be deemed unclaimed property at the expiration of one year from the relevant Distribution Date; and the holder of such Unclaimed Distribution shall, from that time, waive his rights thereto. The funds resulting from such waived Unclaimed Distributions (including any interest earned on such amount (net of tax or charges payable thereon)), shall be donated to Aspire (registered charity number 1075317) provided that the aggregate amount of funds donated to Aspire pursuant to this Clause 21.5.3 shall not exceed £250,000."

2.1.4 A new Clause 21.5.4 shall be inserted as follows:

"In relation to any Unclaimed Distributions deposited with TXUEG in accordance with Clause 21.5.1 and held or distributed by TXUEG in accordance with Clauses 21.5.2 and 21.5.3, the following provisions shall apply:

- (A) the Joint Liquidators of TXUEG shall have no duties or responsibilities in relation to Unclaimed Distributions other than those expressly set out herein;
- (B) the Joint Liquidators of TXUEG will not incur any personal liability in connection with the receipt or payment of any Unclaimed Distribution;
- (C) the Joint Liquidators of TXUEG may perform their duties through agents and employees and shall be entitled to rely upon any communication, instrument, document or information (whether provided in writing or orally) considered by them to be genuine and correct and shall be entitled to rely upon the advice of or information obtained from any professional advisor or other person instructed by them, considered by them in good faith to be competent;

- (D) the Joint Liquidators of TXUEG shall not assume any duty or responsibility to any CVA Creditor as a result of the operation of Clauses 21.5.1 to 21.5.3 of each CVA other than those expressly set out herein;
- (E) Save for gross negligence or wilful default, neither the Joint Liquidators of TXUEG nor any of its members, employees or agents shall incur any personal liability to any CVA Creditor as a result of the operation of Clauses 21.5.1 to 21.5.3 of each CVA; and
- (F) Clause 21.6.3 and 21.6.5 of each CVA shall apply to any Unclaimed Distribution held by TXUEG as though references to the "CVA" were to a "CVA as terminated in accordance with its terms" and references to the "CVA Supervisors" were references to "Joint Liquidators of TXUEG".

2.1.5 A new Clause 21.5.5 shall be inserted as follows:

"The provisions of Clause 21.5 (Specific provisions relating to Unclaimed Distributions) shall survive a termination of the CVA pursuant to Clause 36.2 (Termination of the CVAs)."

2.2 Clause 33.8 [the CVA of TXU UK only]

2.2.1 The following wording shall be included as a new Clause 33.8:

"Nothing in this Clause 33 (Releases) or elsewhere in the CVA shall be construed as releasing or otherwise affecting the rights of a CVA Creditor to bring or continue legal proceedings against TXU UK and to obtain a judgment against TXU UK for the sole purpose of making a claim against an insurer of TXU UK pursuant to the Third Party (Rights Against Insurers) Act 1930. This Clause 33.8 shall survive a termination of the TXU UK CVA pursuant to Clause 36.2 (Termination of the CVAs)."

2.3 This amendment to the CVAs shall be governed in accordance with English law and the provisions of Clause 38 (*Governing Law*) of each of the CVAs shall apply as though set out herein in full.

Issue date: 1 September 2021



.....
Alan Bloom

Joint Liquidator/Joint Administrator and Joint Supervisor

For and on behalf of

TXU EUROPE GROUP PLC (in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE ENERGY TRADING LIMITED (in Administration and subject to a company voluntary arrangement)

TXU EUROPE POWER LIMITED (in Administration and subject to a company voluntary arrangement)

TXU UK LIMITED (in Administration and subject to a company voluntary arrangement)

EASTERN ELECTRICITY HOLDINGS LIMITED (in Administration and subject to a company voluntary arrangement)

TXU EUROPE MERCHANT PROPERTIES LIMITED (in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE MERCHANT GENERATION LIMITED (in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE POWER DEVELOPMENT LIMITED (in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE (PARTINGTON) LIMITED (in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE POWER PRODUCTION SERVICES LIMITED (in Liquidation and subject to a company voluntary arrangement)

TXU (UK) HOLDINGS LIMITED (in Administration and subject to a company voluntary arrangement)

ENERGY HOLDINGS (NO. 6) LIMITED (in Administration and subject to a company voluntary arrangement)

TXU DIRECT SALES LIMITED (in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE LEASING (4) LIMITED (in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE (BLADE) LIMITED (in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE (BLADE NO. 2) LIMITED (in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE TRADING LIMITED (in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE NATURAL GAS (TRADING) LIMITED (in Liquidation and subject to a company voluntary arrangement)

TXU FINLAND HOLDINGS LIMITED (in Liquidation and subject to a company voluntary arrangement)

TXU GERMANY LIMITED (in Liquidation and subject to a company voluntary arrangement)



TXU EUROPE OVERSEAS FINANCE LIMITED (in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE LEASING (5) LIMITED (in Liquidation and subject to a company voluntary arrangement)

PRECIS (2264) LIMITED (in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE RENEWABLE GENERATION LIMITED (in Liquidation and subject to a company voluntary arrangement)

As agent and without personal liability



.....
David Pike

Joint Administrator/Joint Liquidator and Joint Supervisor

For and on behalf of

ANGLIAN POWER GENERATORS LIMITED (in Administration and subject to a company voluntary arrangement)

PETERBOROUGH POWER LIMITED (in Administration and subject to a company voluntary arrangement)

TXU EUROPE POWER SERVICES LIMITED (in Administration and subject to a company voluntary arrangement)

EASTERN GROUP FINANCE LIMITED (in Liquidation and subject to a company voluntary arrangement)

As agent and without personal liability