

## **Notice to creditors under the company voluntary arrangement**

On 6 August 2012, upon the application of the former joint administrators of TXUEG and the joint administrators or joint liquidators of each other company listed in Annex 1 of the Order attached below, the High Court made an order that the Office Holders of the CVA Companies (except for TXU UK Limited ("TXU UK")), are entitled under clause 34.1 of the company voluntary arrangement ("CVA"), to modify the terms of the CVA so as to add a new clause 21.7A in the CVA to enable the payment of inter-company indebtedness pursuant to the distribution model (the "CVA Modification").

### ***Purpose of the CVA Modification***

Pursuant to Clause 34.1 of the CVA, the Office Holders have the power to modify the CVA after consultation with the relevant Creditors' Committee without seeking general creditor consent, where:

- the Office Holders believe that it is expedient to do so;
- it is in the best interest of the CVA creditors to do so; and
- the modification does not materially alter the effect or the economic substance of the CVA.

As a result of the High Court's decision in *Re TXU Europe Group Plc* [2011] EWHC 2072 (Ch) ("*Re TXUEG*"), the High Court directed that the CVA supervisors of TXUEG were not entitled to make a payment to The Energy Group Limited ("TEG") pursuant to clause 21.7 of the CVA as such a payment would amount to a distribution within the meaning of section 829(1) of the Companies Act 2006 and would be unlawful.

The decision in *Re TXUEG* affected the ability of the mechanics within the CVA document to give effect to the CVA proposal documents.

The purpose of the CVA modification is therefore to enable the Office Holders to modify the terms of their respective CVAs pursuant to clause 34.1 of the CVA to enable the payment of the inter-company indebtedness pursuant to the distribution model which would, but for the decision in *Re TXUEG*, be payable to TXUEG (and subsequently to TEG), thereby giving effect to the commercial agreements previously agreed by the parties in the original CVA proposal documents.

### ***CVA Companies not subject to the CVA Modification***

TXU UK is not a party of the CVA Modification.

TXU UK has paid 100p in the pound on the principal amounts of Allowed CVA claims made against it under its CVA. However, TXU UK's Office Holders are aware that TXU UK may have future liabilities in respect of asbestos related claims. TXU UK's Office Holders are currently considering their options with regards to this.

In addition, although TXU Direct Sales Limited ("Direct Sales") (a subsidiary of TXU UK) is party to the CVA Modification, the Office Holders do not intend to modify Direct Sales' CVA until the position of potential future asbestos related liabilities in TXU UK is resolved.

### ***Impact of the 6 August 2012 Court order over the subsequent distributions under the CVA***

As notified to creditors, the seventh distribution to CVA creditors took place on 23 September 2009.

The Office Holders consider that, except for the position of TXU UK and its effect on Direct Sales, the CVA Modification would not in any way prejudice the CVA Creditors of any company. This is because:

- No CVA Creditor of any company will be worse off in relation to distributions out of the CVA to date, or in relation to any further distribution;
- The CVA Supervisors believe that there are no creditors of any company who have not already come forward. This is because the CVA Supervisors of the CVA Companies have already advertised extensively for creditors on two separate occasions, where advertisements were placed in a number of newspapers with a view to informing the general public of the CVAs and inviting those persons who might have claims against one of the CVA Companies to lodge a Notice of Claim; and
- there have been no new claims submitted against any company since January 2007.

The CVA will continue until the CVA Supervisors have completed its implementation in accordance with the terms set out in Clause 36 of the CVA Proposal Documents. The Office Holders are currently unable to estimate when they will be in a position to pay an eighth and final distribution but will endeavour to ensure that matters are concluded as soon as reasonably practicable.

A copy of the Order is available on the homepage of the website.