



## **Corporate Governance and Insolvency Act 2020 ('CIGA')**

UNC Modification 0743

# The New Legislation

- A new piece of legislation has been enacted from 26<sup>th</sup> June 2020 called the **Corporate Governance and Insolvency Act 2020** ('CIGA') and that this legislation affects Transporters' rights to terminate a shipper under the UNC. Whilst the CIGA was brought in quickly (as it contains some Covid19 related measures) the relevant change that directly has the above effect is permanent.

*The operative provision of CIGA is section 14:*

<https://www.legislation.gov.uk/ukpga/2020/12/section/14/enacted>

# Impact on UNC

Under UNC TPD V4.3.1 (extract on next slide) Transporters can deem a Shipper to be in a “User Default” and terminate the User if the User has an administrator or receiver appointed. However, the CIGA provisions make ineffective any contractual right suppliers may have to terminate contracts if their customers enter into an insolvency process. The direct impact for the UNC is that the CIGA takes away that right from the Gas Transporters, meaning **Gas Transporters must continue to supply services to a User who has gone into administration.**

Whilst there is no legal requirement to change the UNC to reflect the new law, it is not desirable to have a UNC clause that the law doesn't allow Transporters to enforce.

MOD 0743 has therefore been raised by National Grid on 6<sup>th</sup> November 2020 to look at changes to UNC in light of the change in legislation.

# UNC TPD V4.3 (proposed text)

## 4.3 Termination

*Amend paragraph V4.3.1(e) as follows:*

“(e) **save if and to the extent the provisions of section 233B of the Insolvency Act 1986** apply, where:

*Amend paragraph V4.3.3 as follows:*

“Upon the occurrence of a User Default, and at any time after such occurrence at which the User Default is continuing the Transporter may **(subject to the provisions of section 233B of the Insolvency Act 1986)** give notice ("Termination Notice") to the Defaulting User to the effect that the User shall cease to be a User of or in relation to its System(s) with effect from the date (which may be any date on or after the date on which the notice is given) specified in the notice.”

*Amend paragraph V4.3.5(b) as follows:*

“(b) **(subject to the provisions of section 233B of the Insolvency Act 1986)** the receiver, administrator, trustee-in-bankruptcy or foreign insolvency practitioner (as appropriate) fails to provide adequate assurances to National Grid NTS in compliance with the principles established in Section X and the Energy Balancing Credit Rules (such assurances not to exceed a legal and binding commitment by the receiver, administrator, trustee-in-bankruptcy or foreign insolvency practitioner (as appropriate), to pay to National Grid NTS all Energy Balancing Debt accruing from (and including) the date of appointment of the receiver, administrator, trustee-in-bankruptcy or foreign insolvency practitioner (as appropriate), as soon as reasonably practicable after being appointed (but for the avoidance of doubt not within two Business Days of its appointment).”

# Energy Balancing

**UNC TPD X4.2** Before National Grid NTS shall take the action envisaged by paragraph 4.1 - (Termination Notice) National Grid NTS shall convene a meeting of the Energy Balancing Credit Committee as soon as reasonably practicable following the failure of the receiver, administrator, trustee-in-bankruptcy or foreign insolvency practitioner (as appropriate) to provide those assurances referred to in Section V4.3.5(b) and shall consult with the Energy Balancing Credit Committee to determine whether National Grid NTS should be obliged to issue the Termination Notice, pursuant to paragraph 4.1, or whether National Grid NTS should defer taking such step.

# Energy Balancing Credit Rules

Section 3.4. National Grid Gas NTS may ignore a request to return funds if the User was in administration, receivership or default.

**(Propose retain this statement within 3.4 to allow security to be utilised if company is in administration/receivership post cessation)**

Section 7 – Appointment of an Insolvency Practitioner - Where an Insolvency Practitioner is appointed, they have two Business Days to provide an undertaking. Should the IP (as detailed in Section V4.3.5(b)) fail to provide an undertaking within two Business Days of its appointment, an emergency meeting of the EBCC shall be convened to determine if a Termination Notice should be issued.

**(Propose removal of strikethrough wording)**