

Nos. 7942 and 7945 of 2008 and No. 429 of 2009

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
COMPANIES COURT

Before the Honourable Mr Justice David Richards

Monday the 19<sup>th</sup> day of May 2014



IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)

IN THE MATTER OF LEHMAN BROTHERS LIMITED (IN ADMINISTRATION)

IN THE MATTER OF LB HOLDINGS INTERMEDIATE 2 LIMITED (IN ADMINISTRATION)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

BETWEEN

(1) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)

(2) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS LIMITED (IN ADMINISTRATION)

(3) THE JOINT ADMINISTRATORS OF LB HOLDINGS INTERMEDIATE 2 LIMITED (IN ADMINISTRATION)

Applicants

-and-

(1) LEHMAN BROTHERS HOLDINGS, INC (a company incorporated in the State of Delaware, USA)

(2) LYDIAN OVERSEAS PARTNERS MASTER FUND LIMITED

Respondents



ORDER

**UPON THE APPLICATION** of Anthony Victor Lomas, Steven Anthony Pearson Derek Anthony Howell, Paul David Copley and Russell Downs of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT ("**PwC**") (the "**LBIE Administrators**"), Anthony Victor Lomas, Steven Anthony Pearson, Michael John Andrew Jervis, Derek Anthony Howell and Dan Yoram Schwarzmann of PwC (the "**LBL Administrators**") and Anthony Victor Lomas, Derek Anthony Howell, Michael John Andrew Jervis, Steven Anthony Pearson and Dan Yoram Schwarzmann of PwC (the "**LBHI2 Administrators**") dated 14 February 2013 (the "**Joint Application**") and as amended by order dated 27 March 2013

**AND UPON READING** the List of Issues, the Statement of Agreed Facts and the Chronology

**AND UPON READING** the written submissions filed on behalf of the LBIE Administrators, the LBL Administrators, the LBHI2 Administrators, Lehman Brothers Holdings, Inc. ("**LBHI**") and Lydian Overseas Partners Master Fund Limited ("**Lydian**")

**AND UPON HEARING** Leading Counsel for the LBIE Administrators, for the LBL Administrators, for the LBHI2 Administrators, for LBHI and for Lydian

**IT IS HEREBY DECLARED** that:

- (i) The claims of LB Holdings Intermediate 2 Limited ("**LBHI2**") under its subordinated loan agreements with Lehman Brothers International (Europe) ("**LBIE**") are subordinated to provable debts, statutory interest and non-provable liabilities, all of which (other than the claims of LBHI2 under its subordinated loan agreements and statutory interest thereon, if any) must be paid in full before (a) LBHI2 is entitled to prove and require the LBIE Administrators to admit such proof in respect of its claims under its subordinated loan agreements with LBIE and (b) such claims are available for insolvency set-off resulting from the giving of notice by the LBIE Administrators, on 4 December 2009, that they proposed to make a distribution to LBIE's unsecured creditors.

- (ii) Creditors of LBIE whose provable contractual or other claims are denominated in a foreign currency, the amount of which was converted into sterling as at the date of the commencement of the administration of LBIE for the purpose of proving a debt, are entitled to claim against LBIE for any currency losses suffered by them as a result of a decline in the value of sterling as against the currency of the claim between the date of the commencement of the administration of LBIE and the date or dates of payment or payments of distributions to them in respect of their claims, giving such credit, if any, as may be required, for benefits received under the insolvency regime (as to which no declaration is made) (such claim a "**currency conversion claim**").
- (iii) Currency conversion claims rank in LBIE's administration as non-provable liabilities, payable only after the payment in full of all proved debts and statutory interest on those debts.
- (iv) If the administration of LBIE is immediately followed by a liquidation, any interest in respect of the period of the administration which has not been paid before the commencement of the liquidation will not be provable as a debt in the liquidation, nor will it be payable as statutory interest under either rule 2.88 of the Insolvency Rules 1986 (the "**Rules**") or section 189 of the Insolvency Act 1986 (the "**Act**").
- (v) Those creditors of LBIE entitled to interest on their provable debts otherwise than under rule 2.88(7) of the Rules or section 189 of the Act will be entitled to claim in a liquidation of LBIE, which immediately follows the administration, for interest which accrued due during the period of the administration, as a non-provable claim against LBIE, payable after the payment in full of all proved debts and statutory interest on such debts.
- (vi) The obligation of members to contribute under section 74(1) of the Act extends to provide for proved debts, such statutory interest on those debts as is payable under section 189 of the Act, and non-provable liabilities.

- (vii) Neither the contributory rule (that is, the rule that a contributory of a company in liquidation cannot recover anything in respect of the claims he may have as a creditor until he has fully discharged his obligations as a contributory) nor the equitable rule in *Cherry v Boulton* has any application in an administration (including the administration of LBIE) so as to permit the administrator to refuse to admit a proof of debt by a member or to refuse to pay dividends on such proof on the grounds that, if the company went into liquidation, the member would or might become liable to calls under section 74(1).
- (viii) Subject to (ix) below, LBIE, acting by its administrators, will be entitled to lodge a proof in a distributing administration or a liquidation of Lehman Brothers Limited ("LBL") or LBHI2 in respect of those companies' contingent liabilities under section 74(1) of the Act. The valuation of such claims would be a matter of estimation under the provisions of the Rules.
- (ix) In the administration of LBIE, the contingent liabilities of LBL and LBHI2 as contributories are the subject of mandatory insolvency set-off against such claims of LBL and LBHI2 as creditors of LBIE as are provable, save that nothing in this declaration determines whether or the extent to which the claims of LBHI2 under its subordinated loan agreements with LBIE have been or are to be included in the mandatory set-off account.
- (x) Subject to (ix) above, in a future distributing administration or liquidation of LBL or LBHI2, any claims of those companies respectively as creditors of LBIE will be the subject of mandatory set-off against the provable claims of LBIE in respect of those companies' contingent liabilities as contributories, save that nothing in this declaration determines whether or the extent to which the claims of LBHI2 under its subordinated loan agreements with LBIE are to be included in the mandatory set-off account.

AND IT IS HEREBY ORDERED that:

1. Costs

There be no order as to costs save that the costs of the LBIE Administrators, the LBL Administrators and the LBHI2 Administrators be paid as expenses of their respective administrations.

**2. Permission to appeal**

- (a) The LBIE Administrators have permission to appeal against the declarations recorded in paragraphs (iv) and (vii) above.
- (b) The LBHI2 Administrators and LBHI have permission to appeal against the declarations recorded in paragraphs (i), (ii), (iii), (v), (vi), (viii), (ix) and (x) above.
- (c) The LBL Administrators have permission to appeal against the declarations recorded in paragraphs (ii), (iii) and (vi) above.

AND IT IS ORDERED

2. SERVICE OF THIS ORDER

THE LBIE ADMINISTRATORS SHALL SERVE THIS ORDER



## Reasons for allowing or refusing permission to appeal and information concerning routes of appeal

The judge must complete this form on allowing or refusing an application for permission to appeal at a hearing or trial

Title of case/claim

Case/claim no

Heard/tried before (insert name of Judge)

Date of hearing/trial

Nature of hearing/trial

Result of hearing/trial

The judgment/order is  Final  Not final

An appeal lies from this judgment/order to the Court of Appeal

OR

No appeal lies from this judgment/order

Claimant's/defendant's application for permission to appeal  Allowed  Refused



continued over the page

Brief reasons for decision to allow or refuse appeal  
(to be completed by the Judge):

All the issues exclusively involve points of law, in many cases difficult and complex, on which there can reasonably be differing views. The issues involve very large sums in this case, and many of them will or could arise in other administrations or liquidations. There is only one issue on which I find it difficult to say that there is a reasonable prospect of a successful appeal (the application of the contributory rule or the rule in *Cherry v Boulton* in an administration) but it would be wrong to refuse permission on that issue while granting it on the others, particularly because it is closely linked with other issues.

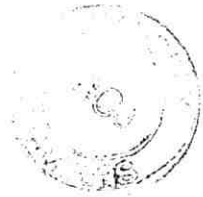
If refused

An application for permission to appeal may be made to the Court of Appeal

Judge's signature

David Richards

**Note:** The appellant must file a copy of this completed form at the appeal court with the appellant's notice when issuing the appeal.



Handwritten notes on the left margin: "L. MINT. ANDREW. POLE / CHMITS. 921. 900. UK" and "L. MINT. ANDREW. POLE / CHMITS. 921. 900. UK".

Nos. 7942 and 7945 of 2008 and No. 429 of 200

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION

COMPANIES COURT

MR JUSTICE DAVID RICHARDS 19<sup>th</sup> MAY 2014

IN THE MATTER OF LEHMAN BROTHERS  
INTERNATIONAL (EUROPE) (IN  
ADMINISTRATION) AND OTHERS  
AND IN THE MATTER OF THE INSOLVENCY ACT  
1986

BETWEEN

- (1) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)
- (2) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS LIMITED (IN ADMINISTRATION)
- (3) THE JOINT ADMINISTRATORS OF LB HOLDINGS INTERMEDIATE 2 LIMITED (IN ADMINISTRATION)

Applicants

-and-

LEHMAN BROTHERS HOLDINGS, INC

Respondent

ORDER

THE PARTIES AGREE TO + SEND COPIES FOR SERVICE TO:

MERRYS LINKLINDERS LLP

ONE SILK STREET

LONDON EC2Y 8HQ

REF: RWA / COWA

Solicitors for the LBIE Administrators