

**IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
COMPANIES COURT**

**No. 7942 of 2008**

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

**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

**BETWEEN:**

- (1) ANTHONY VICTOR LOMAS**
- (2) STEVEN ANTHONY PEARSON**
- (3) PAUL DAVID COPLEY**
- (4) RUSSELL DOWNS**
- (5) JULIAN GUY PARR**

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

Applicants

- and -

- (1) BURLINGTON LOAN MANAGEMENT LIMITED**
- (2) CVI GVF (LUX) MASTER S.A.R.L.**
- (3) HUTCHINSON INVESTORS LLC**
- (4) WENTWORTH SONS SUB-DEBT S.A.R.L.**
- (5) YORK GLOBAL FINANCE BDH, LLC**
- (6) GOLDMAN SACHS INTERNATIONAL**

Respondents

---

**GOLDMAN SACHS INTERNATIONAL'S  
GROUNDS OF APPEAL**

---

1. The Judge erred in concluding that the expression “*cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant*” in the definition of “*Default Rate*” in the ISDA Master Agreement is the cost which the relevant payee is or would be required to pay in borrowing the relevant amount under a loan transaction. In particular, the relevant expression also encompasses:
  - (1) The cost of entering into a transaction to raise equity funding to fund the relevant amount; and
  - (2) The cost of any fees paid or charges incurred as a necessary requirement to raise the funding to fund the relevant amount (including professional fees and underwriting charges).
2. The Judge erred in holding that the relevant “*cost*” must be a formally non-discretionary obligation to pay a sum. If there is a commercial requirement to pay a sum in exchange for the relevant funding, or if legal or commercial detriments follow from the failure to make the payment, as is (for example) the case in relation to the fixed dividend payable on preference shares, then this sum is a “*cost...of funding*” for the purposes of the definition of “*Default Rate*”.
3. A party that funds the relevant amount or would have funded the relevant amount from the proceeds of a larger fund-raising transaction may apportion part of that transaction to the relevant amount, and certify the cost of that funding on a pro-rata basis, for the purposes of establishing its “*cost...of funding*” under the definition of “*Default Rate*”. The Judge erred to the extent that he held otherwise at paragraph 154 of the Judgment.
4. GSI accordingly appeals paragraphs (ii), (iii), (vi), (viii), (ix), (x), (xi) and (xii) of the Order dated [x], in relation to Issue 11. It also appeals paragraphs (xiii)-(xv) in relation to Issue 12, to the extent that those paragraphs are inconsistent with the foregoing (and in particular to the extent that they assume that only a cost of borrowing falls within the definition of “*Default Rate*”).