

GLC 74/16



**Waterfall III Application**

**No. 7942 of 2008**

**IN THE HIGH COURT OF JUSTICE**

**CHANCERY DIVISION**

**COMPANIES COURT**

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

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

**BETWEEN:**

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

**Applicants**

**-and-**

**(1) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS LIMITED (IN ADMINISTRATION)**

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

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

**Respondents**

---

**APPLICATION**

---

**TAKE NOTICE** that Anthony Victor Lomas, Steven Anthony Pearson, Paul David Copley, Russell Downs and Julian Guy Parr, in their capacity as the joint administrators of Lehman Brothers International (Europe) (in administration) ("LBIE") (the "Joint Administrators"), all of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, intend to apply to the Judge on:-

Take notice that an appointment to fix a date  
for the Application has been made:

Date: 5/5/16

Time: 11am

In Interview Room 2 Ground Floor Rolls Building  
London EC4A 1NL

Date: ..... 2016

Time: .....

Place: Court , 7 Rolls Buildings, Fetter Lane, London EC4A 1NL

For directions, pursuant to paragraph 63 of Schedule B1 of the Insolvency Act 1986, determining the following issues:

1. Whether the obligations of:

- (i) LB Holdings Intermediate 2 Limited (in administration) ("**LBHI2**"); and/or
- (ii) Lehman Brothers Limited (in administration) ("**LBL**")

to contribute to the assets of Lehman Brothers International (Europe) (in administration) ("**LBIE**") pursuant to Section 74 of the Insolvency Act 1986 ("**Section 74**") include an obligation to contribute to the assets of LBIE to the extent necessary to enable LBIE to pay sums owed to LBHI2 pursuant to three subordinated loan agreements entered into on 1 November 2006 between LBHI2 (as lender) and LBIE (as borrower) (the "**Sub-Debt**").

2. Whether any claim of LBIE against LBHI2 and/or LBL under Section 74 (a "**Contribution Claim**") in respect of the Sub-Debt (a "**Sub-Debt Contribution Claim**") is to be included in the insolvency set-off account in LBIE's administration as against the provable claims of:

- (i) LBHI2; and/or
- (ii) LBL.

3. Whether the value of the Sub-Debt Contribution Claim, for the purposes of proof and set-off, is:

- (i) for the full amount of the Sub-Debt;
- (ii) limited to the estimated value that is applied to LBHI2's claim for the Sub-Debt for the purposes of proof; or

(iii) some other value.

4. To the extent that insolvency set-off has already taken effect, in the administration of LBIE, between LBHI2's claim in respect of the Sub-Debt and LBIE's Sub-Debt Contribution Claim (if any) against LBHI2, what effect (if any) such set-off has on LBIE's ability to make a Sub-Debt Contribution Claim against LBL.
5. In circumstances where insolvency set-off in LBIE's administration took effect on 4 December 2009, whether insolvency set-off in a subsequent distributing administration or liquidation of LBHI2 and/or LBL is of any application in respect of those companies' claims against, and liabilities to, LBIE.
6. In circumstances where insolvency set-off in the administration of Lehman Brothers Europe Limited ("**LBEL**") took effect on 11 July 2012, whether insolvency set-off in a subsequent distributing administration or liquidation of LBL is of any application in respect of LBL's claims against, and liabilities to, LBEL.
7. In light of the fact that LBL owns one ordinary share of \$1 in LBIE, and LBHI2 owns 2 million 5% redeemable Class A preference shares of \$1000 each, 5.1 million 5% redeemable Class B shares of \$1000 each and 6,237,113,999 ordinary shares of \$1 each in LBIE:
  - (i) whether their obligations to contribute to the assets of LBIE pursuant to Section 74 are joint and several, joint, several or otherwise as against LBIE;
  - (ii) whether they are entitled to a contribution or indemnity from one another in respect of:
    - a. any payments made pursuant to any such obligation; and/or
    - b. any set-off pursuant to any such obligation,and, if so, the nature and extent of such right of contribution or indemnity;
  - (iii) whether, in addition to or instead of any right of contribution or indemnity (as referred to in sub-paragraph (ii) above), LBL or LBHI2 are liable to contribute to LBIE's assets to

any amount sufficient for the adjustment of the rights of the contributories among themselves and what the effect of such adjustment is;

- (iv) to what extent any right to contribution or indemnity (as referred to in sub-paragraph (ii)) and/or adjustment (as referred to in sub-paragraph (iii)) above is affected by any other claims which LBHI2 and LBL have against one another or any other party;
- (v) whether the Joint Administrators of LBIE should be directed to assert less than 100% of the Contribution Claim against LBL and/or LBHI2 and, if so, by how much the Contribution Claim should be reduced as against LBL and/or LBHI2 and what factors should the Court take into account in reaching this decision.

8. How, if at all, any claim for a contribution or indemnity as referred to in paragraph 7(ii) above and/or any adjustment as referred to in paragraph 7(iii) above would be affected by the rule against double-proof in circumstances where LBIE had not yet been paid in full in respect of a Contribution Claim.
9. Whether and to what extent LBL is entitled, under the terms of the Service Agreement between LBL and LBIE dated 20 May 2004 or otherwise, to recover from LBIE:
  - (i) sums paid or payable by it to LBIE in respect of a Contribution Claim;
  - (ii) sums claimed by LBL from insolvent members of the [UK ]Lehman group of companies, but not ultimately recovered by LBL from such companies ("**Bad Debt Claims**") ; and
  - (iii) certain (and if so, which) expenses of LBL's administration.
10. If the answer to the issue at sub-paragraph 9(i) above is yes, whether LBL's recharge claim against LBIE in respect of the Sub-Debt Contribution Claim and LBHI2's claim in respect of the Sub-Debt are to be paid *pari passu* and, if not, in what order or priority.
11. Whether and to what extent LBL is entitled, under the terms of the Service Agreement between LBL and Lehman Brothers Europe Limited ("**LBEL**") dated 20 May 2004 or otherwise, to recover from LBEL:

(i) sums paid or payable by it to LBIE in respect of a Contribution Claim;

(ii) Bad Debt Claims claimed by LBL; and

(iii) certain (and if so, which) expenses of LBL's administration.

12. If the answer to the question set out at sub-paragraph 11(i), 11(ii) or 11(iii) above would otherwise be in the affirmative, is it impacted (and if so, to what extent) by any set-off occurring in LBIE's administration as between (i) the Contribution Claim; and (ii) provable claims of LBL against LBIE.


13. Whether the share register of LBIE ought to be rectified:

a) on the basis that LBL did not hold a share in LBIE; or

b) on any other basis;

or LBL should, on any other basis, not have the liabilities of a member of LBIE, notwithstanding its holding of a LBIE share.

**Dated this 22nd day of April 2016**

Signed:  Euan Clarke

Joint Administrators' solicitors: Linklaters LLP

Position held: Partner

The Joint Administrators' address for service is:

Linklaters LLP, One Silk Street, London EC2Y 8HQ

Reference: Tony Bugg / Euan Clarke / Jared Oyston

It is intended to serve this Application on:

**The Joint Administrators of Lehman Brothers Limited (in administration), c/o Dechert LLP**

**The Joint Administrators of LB Holdings Intermediate 2 Limited (in administration), c/o Dentons UKMEA LLP**

**The Joint Administrators of Lehman Brothers Europe Limited, c/o Linklaters LLP, Reference:  
Rory Conway / Matthew Harding**

**IF YOU DO NOT ATTEND, THE COURT MAY MAKE SUCH ORDER AS IT THINKS FIT.**

**No. 7942 of 2008**

**IN THE HIGH COURT OF JUSTICE**

**CHANCERY DIVISION**

**COMPANIES COURT**

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

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

---

**APPLICATION**

---

Linklaters LLP  
One Silk Street  
London EC2Y 8HQ  
(Ref: Tony Bugg / Euan Clarke / Jared Oyston)

Tel: (+44) 20 7456 5469  
Fax: (+44) 20 7456 2222  
Solicitors for the Joint Administrators