

Financial Restructuring & Insolvency

News Alert

Tokyo

BAKER & MCKENZIE

東京青山・青木・粕法律事務所

September 2008

Lehman Brothers Update – 18 September 2008

This alert recaps the key developments in the last 72 hours and sets out preliminary considerations for parties affected by the recent events.

- **On 15 September 2008, Lehman Brothers Holdings Inc., the parent company in the Lehman Group, filed for protection under Chapter 11 of the United States Bankruptcy Code.** Lehman Brothers is headquartered in New York, with regional headquarters in London and Tokyo, and operates in a network of offices around the world. None of the broker-dealer subsidiaries or other subsidiaries of LBHI was included in the Chapter 11 filing and all of the U.S. registered broker-dealers will continue to operate. The directors of certain UK companies including Lehman Brothers International (Europe), Lehman Brothers Holdings Plc, Lehman Brothers Limited and LB UK RE Holdings Limited have taken steps to place those companies into administration and a number of group entities in the UK entered into administration proceedings under the Insolvency Act 1986.
- **On 16 September 2008, Lehman Brothers Holdings Japan Inc and Lehman Brothers Japan Inc commenced civil rehabilitation procedures in the Tokyo District Court under the Japan Civil Rehabilitation Law.** The Tokyo District Court ordered the protection of the companies as of 16 September 2008, pursuant to which the companies are prohibited from payment of obligations based on causes which arose on or before 15 September 2008, with certain exceptions. The Financial Services Agency of the Japanese Government has also issued a business suspension order in relation to LBJ on 15 September 2008. Under the business suspension order, LBJ shall suspend all “financial instrument business” (except for transactions relating to the performance and closing of existing agreements entered into on or before 12 September 2008 and the return of assets deposited by LBJ’s customers) between 15 September 2008 and 26 September 2008. To ensure a fair treatment of all creditors and that the rehabilitation procedures are carried out in an orderly manner, the companies are working with the relevant Japanese regulatory authorities and are in the process of ascertaining their financial positions. The companies will “suspend settlement of existing contracts before its true financial position can be ascertained.”
- **On 16 September 2008, Lehman Brothers Asia Limited, Lehman Brothers Securities Asia Limited and Lehman Brothers Futures Asia Limited suspended their operations including ceasing to trade on the Hong Kong Securities Exchange and Hong Kong Futures Exchange, until further notice.** It is stated in a press release that Lehman Brothers Asset Management Limited will continue to operate on a “business as usual” basis, and that a further notice concerning the retail structured products issued by and/or arranged by any Lehman Brothers group company will be issued as soon as possible.

www.bakernet.com

Baker & McKenzie GJJJ
Tokyo Aoyama Aoki Koma Law Office
(Gaikokuho Joint Enterprise)
The Prudential Tower, 11F
13-10, Nagatacho 2-chome, Chiyoda-ku, Tokyo
100-0014, Japan
Tel: +81 3 5157 2700
Fax: +81 3 5157 2900

This may qualify as “Attorney Advertising” requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Baker & McKenzie's Financial Restructuring and Insolvency Practice

In the current distressed financial markets, businesses face a host of issues across a diverse range of legal areas and jurisdictions. Baker & McKenzie's highly experienced restructuring and insolvency team, through an extensive network of 14 Asia Pacific offices and 70 offices worldwide, is able to guide you through these issues, drawing on our wide-ranging experience in handling all aspects of complex cross-border financial restructurings and insolvency matters.

As the premier cross border restructuring and insolvency law firm during the 1997 Asia Pacific financial crisis, our regional team of over 200 lawyers has advised clients in most of the high-profile and complex cross-border restructurings, recoveries and insolvency matters within the region. Drawing upon experts on a worldwide basis, we can mobilise teams quickly and effectively across borders, time zones, markets and cultures to meet your needs.

Key Contacts:

Shinichiro Abe

T: +81 3 5157 2951

E: shinichiro.abe@bakernet.com

Kazutaka Mizuochi

T: +81 3 5157 2724

E: kazutaka.mizuochi@bakernet.com

Yoshiaki Muto

T: +81 3 5157 2753

E: yoshiaki.muto@bakernet.com

Baker & McKenzie GJB Tokyo Aoyama Aoki Koma Law Office (Gaikokuho Joint Enterprise) is a member firm of Baker & McKenzie International, a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm.

©2008 Baker & McKenzie GJB Tokyo Aoyama Aoki Koma Law Office (Gaikokuho Joint Enterprise)
All rights reserved.

- On 16 September 2008, Barclays Capital, the investment banking division of Barclays Bank PLC, signed an agreement to acquire substantially all of the North American businesses and operating assets of Lehman Brothers Inc., wholly-owned subsidiary of Lehman Brothers Holdings Inc., and certain related assets of Lehman Brothers Holdings Inc. and its affiliates for consideration consisting of assumed liabilities, \$250 million in cash and certain contingent considerations. Barclays also entered into an agreement to acquire the headquarters of Lehman Brothers, located at 745 Seventh Avenue in New York City, as well as its two data centers located in New Jersey for an aggregate of approximately \$1.45 billion. The businesses to be acquired will include Lehman Brothers' Investment Banking, Fixed Income and Equities Sales, Trading and Research operations, as well as certain supporting functions. Approximately 10,000 employees of Lehman Brothers Inc. and Lehman Brothers Holdings Inc. in North America and certain of its subsidiaries will join Barclays upon the closing of the transactions.
- On 16 September 2008, the Hong Kong Securities and Futures Commission issued Restriction Notices on four Lehman Brothers entities in Hong Kong to preserve the assets of the companies and their clients, and to protect the interests of these clients and the investing public. The four entities are Lehman Brothers Asia Limited, Lehman Brothers Securities Asia Limited, Lehman Brothers Futures Asia Limited and Lehman Brothers Asset Management Asia Limited. The restriction notices were issued pursuant to sections 204 and 205 of the Securities and Futures Ordinance. The restriction notice on **Lehman Brothers Asia Limited** restricts it from dealing with clients and its assets. The terms of the restriction notices on the remaining companies contain some permitted exceptions. The restriction notice on **Lehman Brothers Securities Asia Limited** allows the firm to deliver securities to its clients, upon cash payment, for outstanding trades in the last two days. The restriction notice on **Lehman Brothers Futures Asia Limited** allows the firm to contact clients and conduct an orderly close out of their outstanding positions by the end of 16 September 2008. The restriction notice on **Lehman Brothers Asset Management Asia Limited** allows it to continue normal business activities except that it is not permitted to pay out any of its own funds. The SFC will continue to monitor the situation closely and will vary the restriction notices if and when necessary.
- On 17 September 2008, KPMG's Paul Brough, Edward Middleton and Patrick Cowley were appointed as Provisional Liquidators of Lehman Brothers Securities Asia Limited and Lehman Brothers Futures Asia Limited by Order of the High Court of the Hong Kong Special Administrative Region on winding-up petitions presented by the two companies. A release from KPMG states that the Provisional Liquidators' immediate focus is on working with the local management of the two Lehman's entities to understand their current situations, in order that the value in these business units can be preserved, and appropriate strategies identified to deal with them.

Preliminary Considerations

As a preliminary measure, parties seeking to protect their rights or terminate their agreements should ascertain which Lehman Brothers entity is their counterparty and seek appropriate legal advice. Stakeholders and counterparties should check the terms of their contracts to ascertain whether any of the recent events (including the insolvency procedures relating to the wider group in the US, UK and Japan) may trigger any cross-default provisions and thus affect their rights and obligations.

In Japan, investors should continue to pay attention to the progress in the civil rehabilitation procedures for Lehman Brothers Holdings Japan Inc and Lehman Brothers Japan Inc and the actions taken by the Financial Services Agency against Lehman Brothers Japan Inc.