

**ENGLISH HIGH COURT DECISION IN LEHMAN:  
NO JURISDICTION TO SANCTION PROPOSED SCHEME**

31 August 2009

To Our Clients and Friends:

On 14 July 2009, the joint administrators of Lehman Brothers International (Europe) ("LBIE") made an application to the English High Court concerning the jurisdiction of the court to sanction a scheme of arrangement under Part 26 of the Companies Act 2006 dealing with property held on trust by LBIE. The application was heard by Mr. Justice Blackburne on 29 and 30 July 2009.

On 21 August 2009, the High Court handed down its judgment in relation to the application, holding that it has no jurisdiction to sanction a scheme of arrangement under Part 26 which has as its purpose the distribution of property held by a company on trust. In what is a significant setback for the administrators, their proposed scheme to deal with client assets held by LBIE cannot now proceed.

Mr. Justice Blackburne held that where a company holds assets as custodian or trustee (either directly or through third parties) for clients as beneficial owners, it has an obligation to administer the trust according to its terms and to return the property to the client. A scheme of arrangement under Part 26 can be used where a compromise or arrangement is proposed by a company and its creditors (or any class of them). The scheme proposed by the administrators, however, was largely concerned with property held by LBIE on trust for clients and would have involved interference with the property rights of its clients, not just claims in their capacity as creditors of LBIE.

The administrators have indicated that they intend to appeal the decision. In parallel, they will be assessing whether the proposed scheme can be revised to eliminate the jurisdictional issues or whether an alternative approach should be adopted. The administrators have also indicated that they are continuing to return assets through bilateral negotiations.

Please feel free to contact us with any questions.

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