

Lehman Brothers International (Europe) The Administrators' Proposals and First Meeting of Creditors



The administrators of LBIE have today (4 November) released their proposals (although they are dated 28 October 2008) for achieving the purpose of the administration of that company. (Please see http://www.pwc.co.uk/pdf/LBIE_Proposals_28_Oct_2008.pdf.)

Some points to note are as follows:

- These proposals only relate to LBIE. Proposals for the other English companies in administration will, PwC say, be released in due course.
- If you are a creditor of LBIE (see further notes below), then you should receive a copy of the administrators' proposals directly (likely by post addressed to your company secretary). The PwC web-site now contains lists of the names and addresses of all counterparties and trade creditors of whom the administrators say they are presently aware. If you do not receive a letter and your company name is not on either of these lists, but you believe that it is a creditor of LBIE, then you can send relevant information to lbiecreditorclaims@lehman.com.
- The creditors' meeting for LBIE will take place on 14 November 2008 at The O2 centre in London. To attend or be represented at this meeting you must submit your claim and proxy form as detailed in the letter sent to you by the administrators.
- In order to be entitled to vote at the meeting, you must provide to the administrators, not later than noon on Thursday 13 November, details in writing of your claim.
- The creditors' meeting is being held to consider the administrators' proposals and to decide whether a creditors' committee should be formed. The administrators have asked if any creditor wishing to be considered for election to the creditors' committee could notify them of their interest prior to the meeting.
- Creditors will be bound by the administrators' proposals if such proposals are approved by the requisite majority (essentially a majority in excess of 50% in value of the creditors' voting although, to date, details of the value of creditor claims are not yet available).
- Creditors are entitled to propose modifications to the administrators' proposals for consideration at the meeting.
- The administrators' proposal document (sections 2 to 4) sets out the circumstances giving rise to the administrators' appointment, an overview of LBIE's business and structure and the administrators' actions to date in various key areas of LBIE's business.
- Section 5 contains the administrators' proposals. In summary, these are:
 - (i) The administrators will continue to manage and finance LBIE's business, affairs and property from asset realisations in such manner as they consider expedient with a view to achieving a better result for LBIE's creditors as a whole than would be likely if LBIE had been immediately liquidated.
 - (ii) The administrators will identify and return trust property in accordance with the Court Order dated 7 October 2008. The administrators will be looking to have the costs of dealing with trust property borne by those assets.
 - (iii) The administrators may investigate and, if appropriate, pursue any claims that LBIE may have under relevant UK legislation.
 - (iv) The administrators will establish in principle the claims of unsecured creditors for adjudication by a subsequent liquidator or supervisor of a company voluntary arrangement or scheme of arrangement.

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What to do next

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- (v) The administrators may make an application to court for permission to make distributions to unsecured creditors.
 - (vi) A creditors' committee will be established if sufficient creditors are willing to act on it. Where the administrators consider it appropriate, they will seek sanction from the committee to a proposed action rather than convening a meeting of all creditors.
 - (vii) The administrators will consult with the creditors' committee concerning necessary steps to extend the administration beyond the statutory duration of 1 year if an extension is considered advantageous.
 - (viii) The administrators may use one or a combination of "exit route" strategies in order to bring the administration to an end.
 - (ix) The administrators shall be discharged from liability when their appointment ceases in respect of any action of theirs as administrators at a time determined by the court.
 - (x) The administrators' fees will be fixed under the Insolvency Rules by reference to time properly given by the administrators and the various grades of their staff according to their firm's usual charge out rates for work of this nature. It will be for the creditors' committee to fix the basis and level of the administrators' fees and disbursements (or, if no committee is appointed, the general body of creditors will determine these instead).
 - (xi) The primary currency for the administration will be US dollars. The administrators will require creditors to submit their claims in US dollars and dividends will be paid in US dollars in the chosen exit route from the administration.
- Creditors will be asked to vote upon the following matters at the meeting of creditors on Friday, 14 November:
 - (A) The approval of the administrators' proposals for achieving the purpose of administration (as modified, as applicable); and
 - (B) The formation of a creditors' committee.
 - Neither the administrators nor the directors of LBIE are able to provide an accurate list of creditors of LBIE at present. If available at the time, reference will be made to the directors' statement of affairs at the creditors' meeting. If not, the administrators will present as up to date an explanation of the financial position as they are able to and will also make that available to creditors who do not attend by way of the PwC website immediately following the meeting.
 - The administrators say that it is too early to estimate a likely dividend for unsecured creditors.
 - The appendix to the proposals contains some useful questions and answers.
 - Further reports will be provided to creditors of LBIE at 6 monthly intervals.
 - Once approved, the proposals are binding on all creditors, including those not present or represented at the meeting.

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What to do next

1. Check that you have been properly registered as a creditor or counterparty by the administrators. Votes will be calculated according to the amount of a creditor's claim at the date on which LBIE entered administration, less any payments that have been made after that date and any adjustments by way of set-off. A creditor cannot vote in respect of a debt for an unliquidated amount or any debt whose value is not ascertained unless the administrator agrees to put an estimated minimum value on the debt for voting purposes. Also, a secured creditor whose debt is wholly or partly secured is entitled to vote only in respect of the balance (if any) of his debt after deducting the value of the security as estimated by him.
 - NB - a trust or proprietary claim is different to an unsecured claim,
 - set-off is a complex area,
 - figures submitted at this stage are for voting purposes only. Proofs of debt for subsequent dividend purposes will be dealt with in due course.
2. Consider the administrators' proposals and let us know if you have any questions.
3. Consider whether you would be interested in becoming a member of a creditors' committee (although there will only be between 3 and 5 members of this committee).
4. Consider whether you wish to attend the meeting in London or appoint someone to attend on your behalf.
5. Complete and send the appropriate claim and proxy forms, to be in the possession of the administrators by noon (London time) on 13 November 2008.

Please speak to your usual Travers Smith contact if you have any questions or would like assistance in completing the relevant forms.

Disclaimer

Please note that the contents of this memorandum are intended for guidance only and should not be relied upon as legal advice. Clients' circumstances will differ in each case.

**Travers Smith LLP
4 November 2008**

TRAVERS SMITH

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Contacts

BANKING AND CORPORATE RECOVERY



Jeremy Walsh

Partner

jeremy.walsh@traverssmith.com

+44 (0)20 7295 3217



Keith Bordell

Partner

keith.bordell@traverssmith.com

+44 (0)20 7295 3234



James Richards

Partner

james.richards@traverssmith.com

+44 (0)20 7295 3204

FINANCIAL SERVICES AND MARKETS



Margaret Chamberlain

Partner

margaret.chamberlain@traverssmith.com

+44 (0)20 7295 3000



Mark Evans

Partner

mark.evans@traverssmith.com

+44 (0)20 7295 3351

LITIGATION



Andrew King

Partner

andrew.king@traverssmith.com

+44 (0)20 7295 3222



Stephen Paget-Brown

Partner

stephen.paget-brown@traverssmith.com

+44 (0)20 7295 3223

Travers Smith LLP

10 Snow Hill

London EC1A 2AL

T +44 (0)20 7295 3000

F +44 (0)20 7295 3500

www.traverssmith.com