

香港特別行政區政府  
財經事務及庫務局  
財經事務科  
香港夏愨道十八號  
海富中心第一座十八樓



LC Paper No. CB(2)305/08-09(01)  
FINANCIAL SERVICES BRANCH  
FINANCIAL SERVICES AND  
THE TREASURY BUREAU  
GOVERNMENT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION  
18TH FLOOR  
ADMIRALTY CENTRE TOWER 1  
18 HAR COURT ROAD  
HONG KONG

電話 TEL.: 2529 0121

圖文傳真 FAX.: 2527 0790

本函檔號 OUR REF.:

來函檔號 YOUR REF.:

17 November 2008

Clerk to Panel on Administration of Justice  
and Legal Services  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong  
(Attn.: Ms Flora Tai)

Dear Ms Tai,

**Provision of assistance to consumer investors  
in the incident related to Lehman Brothers (LB)' Minibonds**

Thank you for your letter of 22 October 2008 to the Secretary for Financial Services and the Treasury, which asks the Administration to provide information on the relevant issues raised at the Legislative Council Panel on Administration of Justice and Legal Services meeting held on 20 October 2008, namely, the Administration's financial support to the investors under the mediation and arbitration services arrangements for LB-related cases, and the Administration's follow-up actions in respect of the Chief Executive's undertaking to inject funding to the Consumer Legal Action Fund (the Fund), the trustee of which is the Consumer Council, to assist the investors affected by the LB incident to take representative action. I am authorized to provide a response.

The Hong Kong Monetary Authority (HKMA) announced on 31 October 2008 the introduction of the mediation and arbitration services for helping resolve questions of compensation between investors of LB-related products and distributing banks. The services are provided by the Hong Kong International Arbitration Centre. Details of the services are set out in HKMA's press statement enclosed to this letter.

The Commerce and Economic Development Bureau will continue to closely monitor the situation on the use of the Fund which currently has a balance of about HK\$16 million, and will seek the agreement of the Finance Committee of the Legislative Council for injection to the Fund when necessary. The Consumer Council is processing one formal application for assistance under the Fund. It will identify comparatively meritorious cases amongst those LB Minibond investors who apply for assistance under the Fund, which clearly involve mis-selling, for consideration by the Fund to provide legal assistance and initiate legal action. The Consumer Council anticipates that there will be an increasing number of applications for assistance under the Fund, and has therefore prepared to gear up its resources to ensure that upcoming applications can be dealt with fairly and expeditiously.

Yours sincerely,



(Miss Natalie Li)

for Secretary for Financial Services and the Treasury

c.c.

Hong Kong Monetary Authority (Attn.: Mr Sunny Yung)  
Securities and Futures Commission (Attn.: Ms Christine Kung)  
Commerce and Economic Development Bureau (Attn.: Miss Victoria Tse)

## **HKMA announces mediation and arbitration services for Lehman-Brothers-related cases**

The Hong Kong Monetary Authority (HKMA) today (Friday) announced that it has made available mediation and arbitration services for helping resolve questions of compensation between investors in Lehman-Brothers-related products and distributing banks. The service is provided by the Hong Kong International Arbitration Centre (HKIAC). The HKMA will co-ordinate referrals and pay the share of the fee for these services on behalf of

- investors whose complaints in relation to the sale of the products have already been referred by the HKMA to the Securities and Futures Commission (SFC) for it to decide whether to take any further action, or
- investors whose complaint has resulted in a finding against a relevant individual or executive officer by either the HKMA or the SFC.

A spokesperson for the HKMA said that activation of the mediation process required agreement from both the complainant and the bank in question. "Complainants who have been notified of the referral of their cases to the SFC, or of a finding against a relevant individual or executive officer, and who intend to pursue claims of compensation with the relevant bank will be given information on the mediation service and on the procedure for activating it," the spokesperson said. "Mediation is a form of voluntary dispute resolution which involves appointing a neutral mediator, who will bring the two parties together with the aim of settling claims in a speedy, confidential and amicable way, or of narrowing the issues in dispute," the spokesperson said. "The mediator has no powers of adjudication, but has training and experience in helping parties reach a negotiated settlement," the spokesperson added.

If, after mediation, the case remains unresolved, the two parties may agree to appoint an arbitrator with powers to decide the case on the basis of documentary evidence submitted by both parties. The spokesperson stressed that, as with mediation, the initiation of arbitration required the agreement of both parties.

The HKMA spokesperson said that the HKIAC had been appointed to provide the service because of its experience and its reputation for independence and effectiveness. Under the arrangement made with the HKIAC, the cost of each case mediated and/or arbitrated following a referral for investigation by the HKMA to the SFC or a finding against a relevant individual or executive officer by either the HKMA or the SFC would be shared equally by the bank involved and the HKMA, paying on behalf of the complainant. "In cases that have not been referred by the HKMA for investigation by the SFC, or have not resulted in a finding against a relevant individual or executive officer by either the HKMA or the SFC, banks and customers who have agreed to settle cases by mediation may approach the HKIAC direct for mediation and arbitration services," the spokesperson said.

The spokesperson said that the HKMA would shortly be writing to complainants whose complaints had already been referred to the SFC to inform them of the availability of the mediation service, and of the procedures.

A note on the mediation and arbitration processes is attached. Further information may also be found at the websites of the HKMA ([www.hkma.gov.hk](http://www.hkma.gov.hk)) and the HKIAC ([www.hkiac.org](http://www.hkiac.org)). General enquiries about the Scheme may be made through a public enquiries line (tel: 8100 6448), which will open on Monday, 3 November, or the Scheme email ([mediation@hkma.gov.hk](mailto:mediation@hkma.gov.hk)).

Annex 1: [Explanatory note on the Scheme](#)

Annex 2: [Frequently asked questions](#)

For further enquiries, please contact:

Hing-fung Wong, Manager (Press), at 2878 1802 or  
Thomas Chan, Senior Manager (Press), at 2878 1480

Hong Kong Monetary Authority  
31 October 2008

## Lehman Brothers-Related Products Dispute Mediation and Arbitration Scheme

### A. The Scheme

1. The Hong Kong International Arbitration Centre (HKIAC) will administer a Lehman Brothers-Related Products Dispute Mediation and Arbitration Scheme ("the Scheme").
2. The mediation process is a confidential, voluntary, non-binding and private dispute resolution process, in which a neutral person (the mediator) helps the parties to reach a negotiated settlement or to narrow the issues in dispute. Successful settlement through mediation will obviate the need for costly and lengthy litigation.
3. If mediation under the Scheme is not successful, the parties involved may agree to binding arbitration by the HKIAC. A separate person is appointed as arbitrator, using as far as possible a documents-only process. The arbitrator decides the claim and the decision is final.
4. The service is available for helping resolve questions of compensation between investors in Lehman-Brothers-related products and licensed banks. The HKMA will co-ordinate and pay half of the fee for these services on behalf of
  - o investors whose complaints in relation to the sale of the products have already been referred by the HKMA to the Securities and Futures Commission (SFC) for it to decide whether to take any further action, or
  - o investors whose complaint has resulted in a finding against a relevant individual or executive officer by either the HKMA or the SFC.

The other half of the fee will be borne by the bank.

5. For cases not subsidised by the HKMA, and where the bank and the customer have both agreed to settle through mediation, the bank and the customer may approach the HKIAC directly to engage its service. The HKIAC has agreed to offer the same fee as charged under the Scheme. This does not include the cost of the venue and any logistical support.

### B. The Process

1. In cases to be subsidised by the HKMA as set out in Part A above, the complainant and the bank will be reminded of the availability of the mediation service and informed of the procedures.
2. Once the two parties have agreed to mediation, the parties may agree on a mediator from a list to be provided by the HKIAC, or the HKIAC will appoint a mediator from the list, and the mediator once appointed will proceed with mediation.
3. The mediator will commence and conduct the mediation as soon as possible after appointment and will use best endeavours to conclude the mediation within 21 calendar days of appointment.
4. If a settlement agreement is agreed, the mediation process will end. The mediation may also be terminated if the mediator considers that further attempts at mediation are no longer justified or if

either party gives written notification of the termination of the mediation. If a settlement agreement cannot be reached, the parties may consider whether they agree to engage in the arbitration process under the Scheme.

5. If they agree to arbitrate, the parties may agree on an arbitrator from a list to be provided by the HKIAC, or the HKIAC will appoint an arbitrator from the list. The arbitrator will conduct a "documents-only" arbitration under the Scheme, i.e. the arbitrator will decide the claim on the basis of the forms and documents submitted. No legal representation is allowed to act on behalf of either party. The arbitrator will use best endeavours to conclude the arbitration within 21 calendar days, and this award will be binding on both parties.
6. If they do not agree to arbitrate, the option remaining for the parties to seek redress will be through the litigation process in the courts.

### C. The Fees

1. The fees for mediation will be a fixed fee of HK\$11,200 per case, including appointment and mediation fees. The fee for a document-only arbitration will be a fixed fee of HK\$16,200 per case, including appointment and arbitration fees.
2. The fee is normally shared between the parties seeking mediation/arbitration but the HKMA will bear the cost for the customer in all cases that meet the criteria set out in Part A above.

Hong Kong Monetary Authority  
31 October 2008

## Lehman-Brothers-Related Products Dispute Mediation and Arbitration Scheme: Frequently asked questions

### General

#### **1. How do I know if I am eligible for this Scheme?**

You may apply for the Scheme if you have made a complaint to the HKMA against a bank that has sold you a Lehman-Brothers-related product, and the HKMA has completed its review of your complaint and

- o either, the HKMA has referred your complaint to the Securities and Futures Commission (SFC) for it to decide whether to take any further action
  
- o or a finding against a relevant individual or executive officer has been made by either the HKMA or the SFC.

If you are eligible, the HKMA will inform you about the mediation arrangements available. Should you and the bank decide to make use of mediation, the HKMA will pay your share of the mediation fee. The banks that have sold Lehman-Brothers-related products support the Scheme, but whether a bank agrees to mediation will depend on the circumstances of your case.

#### **2. What if the HKMA has yet to refer my case to the SFC, or a finding against a relevant individual or executive officer of the bank has yet to be made?**

If you wish to pursue mediation you should contact the bank to see if it is willing to take part. You may then approach the Hong Kong International Arbitration Centre (HKIAC) (Website: <http://www.hkiac.org>), which will handle the case according to the same procedures and for the same fees as those applicable to the Scheme. You will, however, have to pay your share of the mediation fee. If the HKMA subsequently refers your complaint to the SFC or a finding against a relevant individual or executive officer is made, the HKMA will reimburse your share of the cost.

#### **3. Does this service cover investment products other than minibonds?**

The service is available to investors in all unlisted Lehman-Brothers-related retail structured products distributed by banks in Hong Kong. These products include those listed on the SFC website ([http://www.sfc.hk/sfc/html/EN/general/general/lehman/lehman\\_structure\\_products.html](http://www.sfc.hk/sfc/html/EN/general/general/lehman/lehman_structure_products.html)) and products sold through private placement.

#### **4. Do I need to pay for this service?**

If you meet the criteria described in Q.1 above, the HKMA will pay your share of the cost. The fee for the mediation service is \$11,200 and that for the arbitration service is \$16,200. The fee for each case is divided equally between the two parties (i.e. the claimant and the bank) agreeing to mediation or arbitration.

#### **5. Do I need to open different files for my Lehman-Brothers-related investments with different banks?**

Yes. If you wish to make use of the mediation or arbitration service in relation to more than one bank, you will need to seek a separate mediation or arbitration with each bank. The HKMA will meet your share of the cost for each case for which you meet the criteria set out in Q.1.

**6. Is Hong Kong International Arbitration Centre part of the Government?**

No. The HKIAC is an independent, non-profit-making company. The HKMA has engaged the HKIAC to make available mediation and arbitration services in disputes between investors and distributing banks relating to Lehman-Brothers-Related Products. But the HKMA takes no part in the mediation or arbitration, which is conducted by neutral professionals who are trained in the field.

**7. Mediation, arbitration and litigation seem to be solutions offered for me as an affected investor of Lehman Brothers-related investment products. Which one is better and more suitable for me?**

This is a matter for you to decide taking into account the specific circumstances of your case, your own preferences and the willingness of the other party to take part in mediation or arbitration. If in doubt, you should seek independent legal advice.

**Mediation service**

**8. What is mediation?**

Mediation is a form of voluntary dispute resolution for parties who have been unable to reach a settlement on their own. Both sides of the dispute agree to appoint a neutral mediator, who will bring the two sides together to try to settle a claim in a speedy, confidential and amicable way. The mediator has no powers to decide the dispute, but has training and experience in helping people reach a negotiated settlement. If agreement cannot be reached, the mediator will try to help the two sides narrow the issues in dispute. Mediation can be quicker and less expensive than litigation through the courts, but it requires both parties to agree to take part before the process can begin.

**9. When and how should I apply for this service?**

If you are eligible (see Q.1), the HKMA will inform you about the mediation arrangements available and, should you and the bank decide to make use of mediation, the HKMA will pay your share of the mediation fee.

**10. Activation of the mediation process requires agreement from both the complainant and the bank in question. If my bank does not agree to activate the process, what can I do?**

Mediation is a voluntary process. The two sides of the dispute must each agree to seek mediation before it can begin. The banks that have sold Lehman-Brothers-related products support the Scheme, but whether a bank agrees to mediation will depend on the circumstances of your case.

**11. I have already reached a settlement with my bank on Lehman-Brothers-related investment. Should I apply for mediation service?**

If you have agreed with the bank on a final settlement of your case, then you should not apply for

mediation.

**12. How long does the mediation process take?**

The length of time depends on many factors, including the complexity of the dispute and the willingness of the two sides to come to a settlement. Normally, it should take a few hours – or longer if the case is more complicated.

**13. How long will I have to wait after applying before the mediation takes place?**

This will depend on the number of people wishing to use the service. Once you and the bank have indicated that you agree to take part in mediation, an appointment will be arranged by the HKIAC.

**14. Can I be legally represented during the mediation?**

No. Mediation is a means for the parties to reach resolution by agreement without resorting to arbitration or litigation. There is therefore no legal representation for either party.

**15. Can I have someone to accompany and advise me during the mediation?**

If the other party agrees you may have someone to accompany you during the mediation.

**16. Can I authorise a representative in applying for this service on my behalf?**

You should apply yourself. However, in exceptional circumstances (e.g. ill health or unavoidable absence from Hong Kong) you can authorise a representative to apply for the service on your behalf.

**17. Will I get back my money through the mediation service?**

The aim of mediation is to reach a voluntary and negotiated settlement. Whether settlement can be reached, and if so whether and how much compensation will be involved, will depend on the circumstances of each case.

**18. What is the relationship between mediation and the buy-back proposal?**

There is no formal relationship between the two. However, if you have already accepted a buy-back proposal, any payment the bank has made to you under the buy-back proposal will be taken into account in any eventual settlement of compensation under the Scheme. If you have already agreed to a final settlement through mediation, whether you are able to take part in any buy-back arrangement will depend on the terms of the settlement.

**19. Can I reserve my right to pursue litigation after mediation?**



If you reach a settlement through mediation, the settlement is likely to be final and you will not be able to pursue litigation on matters covered by the terms of the settlement. If mediation does not result in a settlement, the options of arbitration and litigation will remain open. The mediator will explain these options and the procedures for pursuing them at the appropriate time.

## **Arbitration service**

### **20. What is arbitration? How is it different from mediation?**

Arbitration is a form of voluntary dispute resolution whereby both parties to a dispute agree to appoint a neutral arbitrator, who will decide the claim. The Arbitrator's decision will be final and binding on both sides. Like mediation, arbitration requires both parties to agree to take part before the process can begin. Under the Scheme, arbitration will be a documents-only process as far as possible. Arbitration is intended to be quicker and less expensive than litigation through the courts. It is suitable for less complex cases.

### **21. When should I apply for this service?**

You should only apply for this service if you and the bank have taken part in the mediation service but have been unable to reach a settlement. The mediator will explain the options and the arbitration process if your case is suitable for arbitration. It would be best to obtain your own legal advice on whether you should participate in the arbitration scheme as you will be bound by the findings of the arbitrator. As with mediation, the agreement of both parties is required before arbitration can begin.

### **22. How should I apply for this service?**

The mediator will explain the process at the appropriate time.

### **23. How long does the arbitration process take?**

The length of time depends on many factors, including the complexity of the dispute and the willingness of the two sides to come to a settlement. The HKIAC aims to complete arbitration cases under the Scheme within 21 calendar days of all of the necessary documents having been received.

### **24. Can I be legally represented during arbitration under the Scheme?**

The parties may not be legally represented during arbitration.

### **25. Is the outcome of the arbitration processes legally-binding?**

Yes. The Arbitrator's decision will be final and binding on both sides.

### **26. What is the difference between arbitration and litigation?**

Litigation takes place through the courts and does not require the agreement of the parties. Arbitration takes place before an arbitrator and requires the agreement of both sides. An arbitrator is

not a judge but his or her determination of a dispute is final and binding on both sides. Arbitration is a confidential process. It is generally less formal and may be quicker and cheaper than litigation. It is suitable for less complex cases.

**27. Can I reserve my right to pursue litigation after a settlement is reached through arbitration?**

A determination reached by an Arbitrator is final and binding on both sides. You cannot subsequently pursue litigation if you are unhappy with the Arbitrator's decision.

Hong Kong Monetary Authority  
31 October 2008