

財經事務及庫務局局長

香港雪廠街
中區政府合署



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本函檔號 OUR REF.: G10/45C (2008) Pt. 2
來函檔號 YOUR REF.:

1 April 2009

Hon Mrs Regina Ip Lau Suk Yee, GBS, JP
Room 306
West Wing
Central Government Office
11 Ice House Street
Hong Kong

Dear *Regina,*

Bankruptcy of Lehman Brothers Holdings Inc.

I refer to your letter of 24 February 2009. Following the public hearing before the Legislative Council (“LegCo”) Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products (“Subcommittee”) on 24 February 2009, you raised in the letter a number of questions regarding the subsidiaries of Lehman Brothers Holdings Inc. (“Lehman”) in Hong Kong.

As these follow-up questions appear to touch on matters which may arguably be relevant to the Terms of Reference of the Subcommittee, it seems more appropriate for them to be raised and answered through the Subcommittee or its Clerk instead of through separate correspondence between the Administration and individual Members.

Nonetheless, we see merits in early clarification of the questions raised, and in an attempt to help facilitate the process, we have consulted relevant parties including the Official Receiver’s Office (“ORO”) and relevant financial regulators. Based on the information provided by these parties, we set out our response in seriatim below –

- (a) Lehman is not incorporated in Hong Kong. According to the records of the ORO, eight Lehman subsidiaries which are incorporated in Hong Kong are subject to compulsory winding-up.
- (b) Following the Chapter 11 filing by Lehman in the USA, winding-up petitions of the aforesaid eight subsidiaries were presented to the High Court of Hong Kong in September and early October 2008.

Mr. Paul Brough, Mr. Edward Middleton and Mr. Patrick Cowley of KPMG were appointed by the High Court of Hong Kong as Provisional Liquidators of the eight subsidiaries in September and October 2008 upon presentation of the winding-up petitions.

Pursuant to an order appointing the Provisional Liquidators, the Provisional Liquidators are empowered to take possession of the property of the eight subsidiaries and to preserve their assets. Unless otherwise allowed under the order of appointment, any transfer of the assets of the subsidiaries without the sanction of the Court pursuant to section 182 of the Companies Ordinance (Cap. 32) ("the Ordinance") shall be void.

Following the making of winding-up orders of the eight subsidiaries in November 2008, creditors' meetings were held in February 2009, at which creditors voted in favour of Mr. Paul Brough, Mr. Edward Middleton and Mr. Patrick Cowley of KPMG continuing to act as the Liquidators of the eight subsidiaries. We understand that KPMG had applied to the High Court for orders for their formal appointments as Liquidators. The orders were granted on 20 and 23 March 2009.

- (c) As set out in (b) above, pursuant to section 182 of the Ordinance, sanction of the Court has to be sought for any disposition of the property of a company after the presentation of a winding-up petition; otherwise, the transaction shall be void and the liquidators have the right to set aside the transaction.

- (d) According to the ORO, in a winding-up by the court, every creditor shall prove his debt with the liquidators. The duty to examine a proof of debt rests with the liquidators who shall decide on the admission or rejection of a proof. Only provable debts as set out in section 263 of the Ordinance and section 34 of the Bankruptcy Ordinance (Cap. 6) are admissible against a company under liquidation.

According to the regulators, Lehman Minibonds are not issued by any of the eight subsidiaries. We also understand from the Securities and Futures Commission that the custodians for the underlying assets of Lehman-related Minibonds are HSBC Bank plc and/or The Bank of New York Mellon; and that the custodian arrangements may vary from one series to another.

If investors of Lehman-related structured financial products consider they have legitimate claims against any of the eight subsidiaries, they could approach the Liquidators of the Lehman subsidiaries in Hong Kong. The Liquidators will then decide if the claims are legitimate. The investors should seek independent legal advice in this regard.

- (e) According to press reports, the Provisional Liquidators said that the US\$6.7 billion was not a transfer of assets, but comprised investment loans which had been made to Lehman's Japanese arm before the eight subsidiaries were wound up.

As the ORO is not directly involved in the liquidation of the eight subsidiaries, we are not in a position to comment. As explained above, the provisional liquidator/liquidator is tasked with the statutory role of the disposal of assets. If Lehman's creditors in Hong Kong believe they have legitimate claims against any of the eight subsidiaries, they should approach the Liquidators.

- (f) We do not consider amendment to the existing legislation necessary. The Ordinance clearly stipulates the duties of provisional liquidators/liquidators, who are responsible to the Court. Among other duties, the provisional liquidators/liquidators of a company under compulsory liquidation are required to submit periodic liquidators' accounts and progress reports to the Official Receiver ("OR"). The OR monitors the conduct and performance of provisional liquidators/liquidators in compulsory winding up under

section 204 of the Ordinance. In addition, section 206 of the Ordinance provides for summoning of meetings of creditors and contributories for the purpose of determining whether or not an application is to be made to court for the appointment of a committee of inspection comprising creditors and contributories to act with the liquidators. The committee of inspection oversees the work of the liquidators.

For the avoidance of doubt, we would like to make it clear that the Administration's agreement to address your written questions in this instance should not be regarded or otherwise construed as a binding precedent with respect to any individual Member's request(s) for separate responses on issues which fall within the scope of the Terms of Reference of the Subcommittee, whether of the same nature or otherwise.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'K.C. Chan', with a long horizontal flourish extending to the right.

(Professor KC CHAN)
Secretary for Financial Services and the Treasury

c.c. Clerk to LegCo Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products

Clerk to LegCo Panel on Financial Affairs