

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. 374 OF 2009

IN THE MATTER OF THE COMPANIES LAW

AND IN THE MATTER OF LEHMAN BROTHERS EQUITY FINANCE
(CAYMAN) LIMITED (IN VOLUNTARY LIQUIDATION)

PETITION FOR COURT SUPERVISION

OF A VOLUNTARY LIQUIDATION

PURSUANT TO SECTION 124 OF THE COMPANIES LAW

To the Grand Court

The humble petition of Simon Lovell Clayton Whicker of KPMG, 2nd Floor, Century Yard, Cricket Square, Grand Cayman, Cayman Islands and Edward Middleton of KPMG, 8th Floor, Prince's Building, 18 Chater Road, Central, Hong Kong (together, the **Petitioners**), as joint voluntary liquidators of Lehman Brothers Equity Finance (Cayman) Limited (the **Company**), shows that:

1. The Company was incorporated under the Companies Law as an exempt company with registration no. 111251 on 28 June 2001.
2. The prior registered office of the Company was at PO Box 493GT, Fifth Floor, Genesis Building, George Town, Grand Cayman, Cayman Islands. Subsequent to the appointment of joint voluntary liquidators, a resolution was passed to change the Company's registered office to KPMG, 2nd Floor, Century Yard, Cricket Square, Grand Cayman, Cayman Islands

3. The Company has one shareholder, Lehman Brothers Asia Holdings Limited (in liquidation). By a unanimous written resolution dated 6 July 2009, the shareholder resolved that the Company be placed into voluntary liquidation and that the Petitioners be appointed as its joint voluntary liquidators.
4. The Company's register of directors shows that on 6 July 2009 the Company had two directors, David Lam and Kirk Sweeney.
5. By letters to each of the directors dated 20 July 2009, the Petitioners, *inter alia*, (a) explained the requirement for and contents of a Declaration of Solvency by the directors, (b) informed the directors that if they did not swear a Declaration of Solvency by 3 August 2009 then the Petitioners must apply for an order bringing the liquidation under the supervision of the Court, and (c) asked the directors to state their intentions regarding the provision of a Declaration of Solvency within 7 days.
6. No response has been received from Mr Sweeney, but Mr Lam confirmed in an email to the Petitioners' staff on 27 July 2009 that he was unable to provide a Declaration of Solvency.
7. Accordingly, no Declaration of Solvency has been provided to the Petitioners within 28 days of the commencement of the liquidation (or will be provided).
8. The Petitioners therefore respectfully request orders that (a) the liquidation of the Company shall continue under the supervision of the Court, and (b) Simon Lovell Clayton Whicker and Edward Middleton be appointed as Joint Official Liquidators of the Company.

9. Mr Whicker:

- (a) is a qualified insolvency practitioner in the Cayman Islands and meets the residence requirement contained in Regulation 5 of the Insolvency Practitioners' Regulations;
- (b) having made due enquiry, believes that he and KPMG meet the independence requirement prescribed by Regulation 6 of the Insolvency Practitioners' Regulations;
- (c) confirms that KPMG holds a trade and business license which authorises the firm to carry on business as professional insolvency practitioners;
- (d) confirms that he and KPMG are in compliance with the insurance requirement prescribed by Regulation 7 of the Insolvency Practitioners' Regulations, although with reference to the required deductible of not more than US\$100,000, he draws the attention of the Court to the fact that the deductible in KPMG's professional indemnity insurance policy is greater than US\$100,000, but confirms that the firm has sufficient financial resources to cover any difference between its deductible and the US\$100,000 limit, such that there will be no material exposure of the estate by virtue of KPMG's higher deductible; and
- (e) confirms that he consents to act as a Joint Official Liquidator of the Company, if so appointed by the Court.

10. Mr Middleton:

- (a) is a foreign practitioner;

- (b) having made due enquiry, believes that he and KPMG meet the independence requirement prescribed by Regulation 6 of the Insolvency Practitioners' Regulations;
- (c) confirms that he and KPMG are in compliance with the insurance requirement prescribed by Regulation 7 of the Insolvency Practitioners' Regulations, although he draws the attention of the Court to the matters referred to by Mr Whicker; and
- (d) confirms that he consents to act with Mr Whicker as a Joint Official Liquidator of the Company, if so appointed by the Court.

YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:

- (1) The liquidation of the Company continue under the supervision of the Court.
- (2) Simon Lovell Clayton Whicker of KPMG, 2nd Floor, Century Yard, Cricket Square, Grand Cayman, Cayman Islands and Edward Middleton of KPMG, 8th Floor, Prince's Building, 18 Chater Road, Central, Hong Kong be appointed as Joint Official Liquidators of the Company (the **Official Liquidators**).
- (3) The Official Liquidators shall not be required to give security for their appointment.
- (4) The Official Liquidators shall have power:
 - (a) to bring or defend any action, suit, prosecution or other legal proceedings, whether criminal or civil, by way of court process or arbitration, in the name and on behalf of the Company.
 - (b) to take possession of, collect and get in all property or assets (of whatever nature) to which the Company is or appears to be entitled;

- (c) to do all things as may be necessary or expedient for the protection of the Company's assets;
- (d) to do all things (including the carrying on of the business of the Company) as may be necessary or expedient for the beneficial realisation of the property or assets of the Company (including borrowing money);
- (e) to appoint attorneys, solicitors and other professional qualified persons both in the Cayman Islands and elsewhere to assist them in the performance of their duties;
- (f) to appoint agents both in the Cayman Islands and elsewhere to do any business which they are unable to do themselves or which can more conveniently be done by an agent, and to employ and dismiss officers and employees of the Company;
- (g) to exercise any power which is necessary or incidental to the performance of their duties;
- (h) to open and maintain bank accounts in the name of the Company or themselves anywhere in the world as may be necessary for the better performance of their duties;
- (i) to exercise and execute all the powers set out in Part 1 of the Third Schedule of the Companies Law (2007 Revision) without sanction or intervention of the Court and unprejudiced by the generality hereof;
- (j) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the Company and any contributory or alleged contributory or alleged contributory or other debtor or person apprehending liability to the Company, upon receipt of such sums payable at such times and generally on such terms as may be agreed upon, with

power to take securities for the discharge of such debts or liabilities and to give complete discharges in respect of all or such calls debts, or liabilities; and

- (k) to do and execute all such other things as may be necessary for winding-up the affairs of the Company and distributing its assets;

and for the avoidance of doubt the powers bestowed on the Official Liquidators may be exercised by them within and outside the Cayman Islands.

- (5) The Official Liquidators be at liberty to and do pay themselves, their agents, employees, attorneys, solicitors and whomsoever else they may employ or instruct, remuneration and costs in priority to all other debts of the Company.
- (6) The Official Liquidators shall be entitled to receive remuneration for their services by reference to the time properly given by them and their staff in attending to matters arising in the winding-up and the hourly rates and the amount of remuneration shall be determined in accordance with the Insolvency Practitioners' Regulations.
- (7) The Official Liquidators be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties.
- (8) For the avoidance of doubt all payments made pursuant to paragraphs 5 to 7 above shall be made as and when they fall due out of the assets of the Company and shall be expenses in the Liquidation.
- (9) The costs of the Petitioners be paid from the assets of the Company, to be taxed if not agreed.

AND your Petitioners will ever pray, etc.

Dated the 10th day of August 2009.

Campbells

CAMPBELLS
Attorneys-at-law for the Petitioners

Note: It is intended to serve this Petition on Lehman Brothers Equity Finance (Cayman) Limited (in Voluntary Liquidation) at its registered office and to invite the Court to make the order sought without the need for a hearing pursuant to CWR O. 15, r. 5(1).

This Petition is filed by Campbells, Attorneys-at-Law for the Petitioners, whose address for service is that of their Attorneys-at-Law, Fourth Floor, Scotia Centre, P.O. Box 884, George Town, Grand Cayman, Cayman Islands, B.W.I., Tel: 345 949 2648 (Ref: JRM/GM/16380)