

# The Lehman administrations—are we coming to the end? (Re Lehman Brothers International (Europe) (in administration))

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**Restructuring & Insolvency: Over 14 years after the UK Lehman Brothers companies first went into administration, several Lehman companies have successfully applied for further extensions to their administrations for periods ranging between 18 months and three years. The statutory period for administrations is one year, unless extended by the court. It is very unusual for companies to remain in administration for as long as the Lehman companies have and the extension applications were carefully scrutinised, bearing in mind the length of the proposed extensions sought and what has gone before. However, the judge was careful to note that they needed to be viewed in ‘the context of the success of the processes’, a point which has been made previously by judges in relation to the UK Lehman administrations. Written by Rosanna Foskett, barrister at Maitland Chambers.**

*Re Lehman Brothers International (Europe) (in administration) and other companies* [\[2022\] EWHC 2995 \(Ch\)](#)

## What are the practical implications of this case?

This judgment contains a useful summary of the applicable legal provisions in relation to extension applications under paragraph 76 of [Schedule B1](#) to the Insolvency Act 1986 ([IA 1986](#)) and, by reference to recent leading cases (which come from the Lehman and Nortel Networks insolvencies), how the court should exercise its discretion on extension applications. Essentially: the court’s discretion is not circumscribed, but it should be exercised in the interests of the creditors of the company as a whole.

Further, given that eight different companies (each with different concerns, different issues and different factual situations) were making applications, there is much material in the judgment to show what factors were important to the success of the applications. Reading the judge’s evaluation of the evidence that was put before him will be a useful guide for those lawyers and insolvency practitioners involved in advising on and preparing extension applications, particularly substantial and/or complex ones. It may also be useful to insolvency practitioners preparing progress reports in complex administrations where they need to notify creditors of an intention to apply to extend their term of office.

No one objected to the extension applications, but the judge reminds us that the fact that there is not objection from anyone with an economic interest is not determinative. It is a relevant and important factor, but the court will still need to be satisfied that it is appropriate to exercise the discretion to extend for the requested period. Much care is therefore needed in the preparation of evidence and submissions in these applications.

## What was the background?

The Lehman group collapsed in September 2008, precipitating a global financial crisis.

The UK administrations, however, have generally been considered to have been successful. It should be remembered that Lehman is an unusual insolvency in many respects—its size, its length, its complexity and the fact that the principal trading company in Europe, Lehman Brothers International Europe (LBIE), recovered some £27bn and became a distributing administration, paid all admitted creditor claims in full, together with statutory interest at 8% a year and distributed over £335m as surplus to its sole shareholder (another English company in the Lehman group in administration).

It has thrown up a number of knotty legal problems over the years, requiring multiple trips to court, including up to the Court of Appeal and Supreme Court, for answers to some difficult legal questions. Some of the company and insolvency law issues had been unexamined for a century or so before they were reanimated by the Lehman insolvency.

Despite all the progress over more than a decade, there were still some significant issues (significant in terms of value and complexity) that needed to be resolved in the administrations of a number of Lehman companies, which is why the extension applications were made. The key area in the judgment was whether the principal trading company, LBIE, should continue in administration or whether it is time that it be returned to the control of its directors, given that it has paid all admitted creditor claims in full, together with statutory interest and distributed over £335m as surplus to its sole shareholder.

### **What did the court decide?**

The judge noted that he needed to consider all the circumstances on each application and, in particular, whether there were any viable and preferable alternatives to continuing with the administration for the period requested by the administrators.

The LBIE extension application was successful. LBIE was awaiting judgment (and the outcome of possible appeals) in substantial US proceedings, which (depending on the outcome) would realise over US\$450m for LBIE or result in LBIE owing over US\$20m to a creditor which would somehow need to be dealt with. LBIE's position was that it would be best dealt with in administration under the insolvency regime in England and the court was satisfied that this was the case, having weighed the further costs in the balance.

The statutory purpose of LBIE's administration had, for some time, been stated to be the return of the company as a going concern to its directors. The administrators of five of the other companies which made extension applications are pursuing the objective of achieving a better return for creditors than if the company were wound up. Further recoveries for the creditors of those five companies are largely dependent on whether LBIE is successful in the US proceedings referred to above: if it is, further recoveries would flow to the other five companies which all are directly or indirectly entitled to realisations in LBIE's estate. The administrators of those five companies therefore sought to tie the length of their administrations to that of LBIE and the court agreed that that was an appropriate course to enable the achievement of the objective of their administrations.

Two companies in the group applied for orders fixing the time at which the administrators would be discharged from liability under [IA 1986, Sch B1, para 98\(2\)\(c\)](#) once the administrations had ceased. One (which sought no extension to its administration which was to terminate on 30 November 2022) obtained an order fixing the time of discharge. In relation to the other company, the court was not satisfied that it was yet appropriate to make an order but, in order to minimise the costs of having to make another application, the court simply directed that the application be adjourned to be restored for the court to deal with on the papers. The author notes that paras [87]–[88] of the judgment are a particularly useful guide to have in mind when preparing evidence for such applications.

### **Case details:**

- Court: Insolvency and Companies List, Business and Property Courts of England and Wales, High Court of Justice
- Judge: Mr Justice Hildyard
- Date of judgment: 25 November 2022

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