

Lehman Brothers Holdings Inc.

International Protocol Proposal

LEADERSHIP • PROBLEM SOLVING • VALUE CREATION



February 11, 2009



ALVAREZ & MARSAL

Lehman Brothers International Protocol Proposal

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I. International Overview

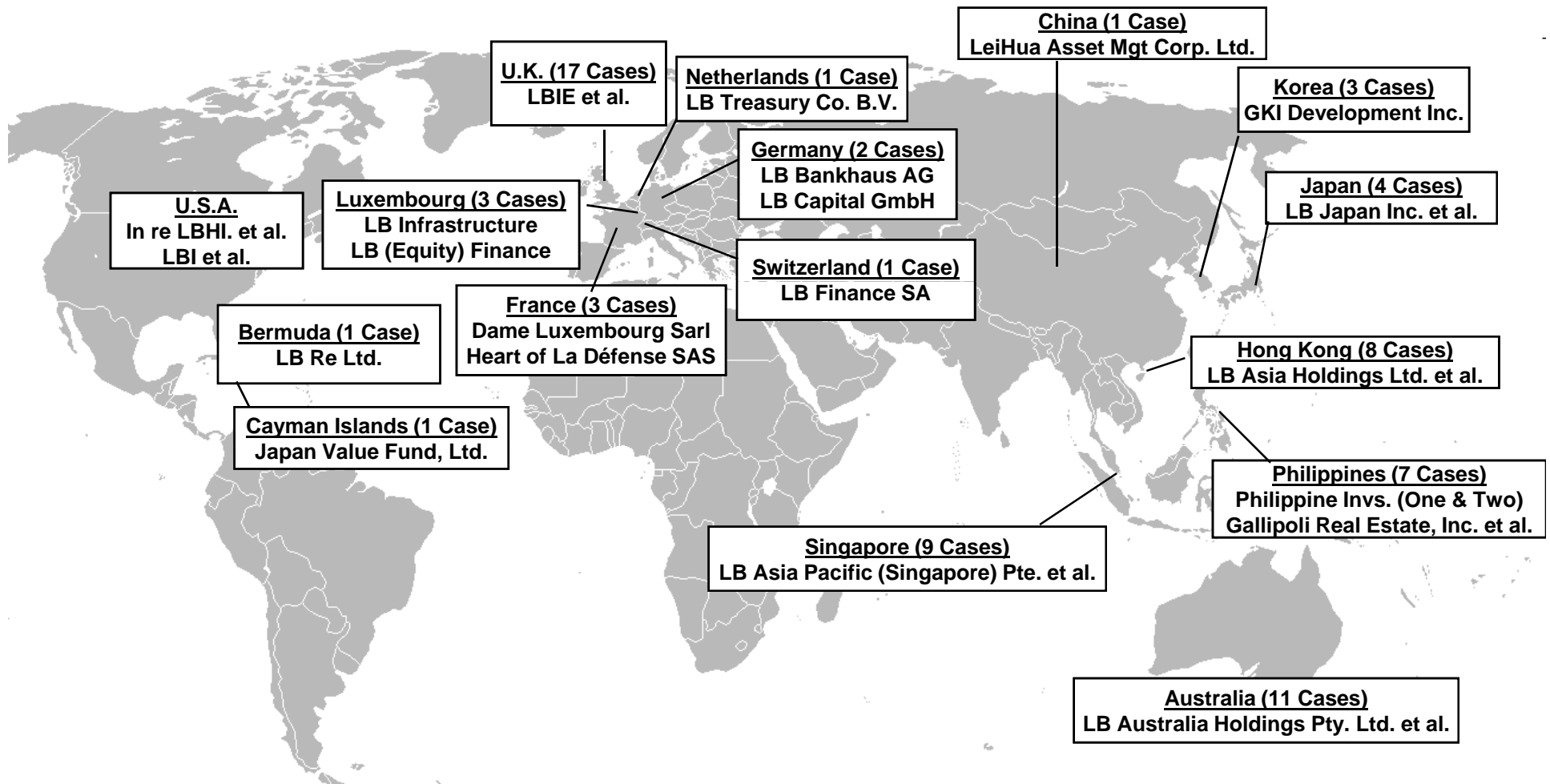
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I. International Overview



I. International Overview

A. Situation Overview

- Lehman Brothers operated in 40+ countries though 650+ legal entities outside of the US
- Lehman Brothers operated as a global firm with a cash management system, an organizational structure, product lines, and operating platforms established on a global basis creating cross-border / cross-entity interdependencies
- Lehman Brothers filing resulted in 75+ proceedings with 16+ administrators exercising multiple roles
- 5 key proceedings cover > 97% of non-US assets
- As of 9/14/08, LBHI had material intercompany receivables against key operating affiliates

I. International Overview

B. Receiver Overview

(\$ billions)

<u>Oversight</u>	9/14 Assets (excl. I/C) ¹			
	# Receivers	# Entities	Receiver Purview	LBHI I/C [A/R / (A/P)]
PwC (UK)	3	185	\$ 191.3	\$ 12.0
Oh-Ebashi (Japan)	1	8	23.2	0.8
PwC (Switzerland)	1	3	17.4	13.5
KPMG (Asia)	2	52	11.9	11.1
CMS (Bankhaus)	1	1	9.9	2.1
PPB (Australia)	1	11	0.5	0.1
Korea (GKI)	1	1	0.2	-
PwC (Bermuda)	1	2	0.1	0.0
M.Jacob/ V.Mendoza (Philippines)	2	2	0.1	-
Houtoff Buruma (Netherlands)	1	1	0.1	(33.3)
KPMG (Netherlands)	1	1	0.0	(5.2)
Non-US (excl. A&M)	15	267	254.8	1.3
A&M (Non-US)	1	389	6.6	9.5
Total Non-US	16	656	\$ 261.3	\$ 10.7

¹ Net Intercompany balance

I. International Overview

C. Summary Timeline

➤ **September**

- Completion of major asset dispositions (Barcap / Nomura)
- Established A&M international ops teams (Asia, Europe, Latin America)
- Identification of entities and assets under purview and identification of operating issues
- Limited administrator interaction

➤ **October**

- Stabilization of operations (resolution of “melting assets”; resource need identification; local board control)
- Established work streams and processes by territory and hiring of local counsel
- Initiation of dialog with key administrators (PwC / KPMG / Oh-Ebashi)

➤ **November**

- Inventoried assets by product category and legal entity
- Communication with key administrators on cooperation, information sharing and fair dealings
- TSA execution with PwC (UK)
- Informal cooperation with KPMG on Japan RE auction process

➤ **December**

- Transitioned assets to US asset disposition teams and resourcing of teams
- Informal working protocols with key administrators and informal cooperation and fair dealings
- Communication with “second layer” administrators

I. International Overview

D. Key Administrator Interaction

- **PwC (UK)**
 - Standing daily team call
 - PwC LBHI liaison
 - Formal TSA
 - Active protocol discussions
 - Information / data sharing
 - Active cooperation
 - UCC representations
- **SIPA Trustee (LBI)**
 - Active protocol discussions
 - Information / data sharing
 - Conversations regarding asset management coordination
- **KPMG (Asia)**
 - Bi-weekly update meetings on proceedings and asset management coordination
 - Active protocol discussions
 - Information / data sharing
 - Shared approach on Lavender real estate assets (Japan)
 - Informal asset management protocol discussions
 - UCC representation expected (W/E 2/20)
- **Oh-Ebashi (Japan)**
 - Limited protocol discussions
 - Limited information sharing / cooperation discussions

I. International Overview

E. Regional Staffing

- Substantial A&M resources are dedicated to non-US efforts:

Europe	<u>FTE's</u>
Managing Directors	2
Staff	20
Lehman	22
	<hr/>
	44
Asia ¹	
Managing Directors	4
Staff	9
Lehman	5
	<hr/>
	18
South America	
Managing Directors	1
Staff	4
Lehman	1
	<hr/>
	6
Total Non-US FTE's:	<div>68</div>

¹ Asia engaged Belrad Group to assist with local RE matters and is adding 4 dedicated RE FTE's

- Counsel retained in 9 jurisdictions

II. Administrator Protocol

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II. Administrator Protocol

A. Shifting Need for a Protocol

➤ First Few Months (Sept-Nov)

- **Situation Overview :**

- “Chaos” from precipitous filings
- “Melting” assets (with international funding and transaction requests)
- No asset or entity inventory
- Loss of accounting systems, operational support, and resources
- Administrator focus on:
 - Entities / assets under administrator control and proceedings protocol
 - Completion of major transactions (Barclays / Nomura sales)
 - Securing systems, information access and control
 - Setting up work streams and processes and securing resources

- **Need:**

- Information and data sharing
- Identification, inventorying and preservation of assets
- Systems and facilities access
- Resource access
- Restitution of misdirected funds

II. Administrator Protocol

A. Shifting Need for a Protocol

➤ Today

- **Situation Overview:**

- Established work streams and processes in each territory
- Inventoried non-US assets by product category and legal entity
- Orderly asset management and disposition process in place
- Access to systems and operational support (TSAs)
- Satisfactory working relationships with most administrators:
 - Significant bilateral administrator interaction
 - Informal agreements on cooperation, data sharing and fair dealings with key administrators
 - Formal Transition Service Agreement (TSA) with PwC on resource allocation, information sharing and cooperation
 - UCC representation in a number of proceedings (Singapore / UK / Australia)

- **Need:**

- Asset preservation rules
- Intercompany claims management and resolution
- Intercompany derivatives settlement
- Proceedings coordination

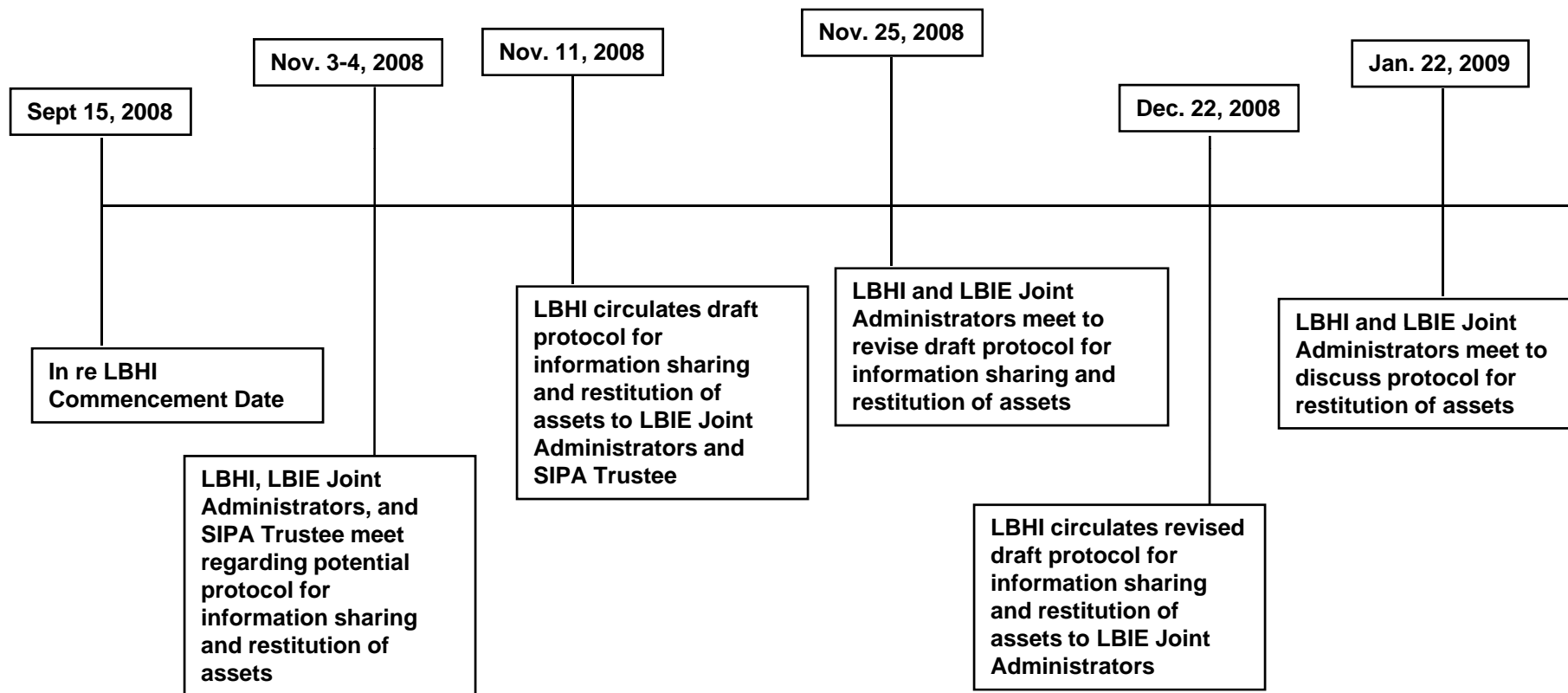
II. Administrator Protocol

B. Attempts to Date

- Draft international protocol shared with key administrators that included the following concepts:
 - Information sharing
 - Cooperation
 - Asset preservation provisions
 - Restitution of misdirected funds
- Protocol shared with PwC (UK), SIPA Trustee (LBI), KPMG (HK & Taiwan), PPB (Australia) and Oh-Ebashi (Japan)
- Multiple drafting sessions with PwC (UK) and SIPA Trustee (LBI) in November 2008
- Several meetings with KPMG, PPB and Oh-Ebashi to discuss merits of a protocol
- Administrator reaction:
 - SIPA Trustee (LBI): Unwilling to entertain a protocol that covers anything other than data and information sharing
 - PwC (UK): Reluctant to set a precedent and concerned about conflict with statutory role
 - KPMG / PPB: Willingness to pursue
 - Oh-Ebashi: Unwilling to entertain protocol

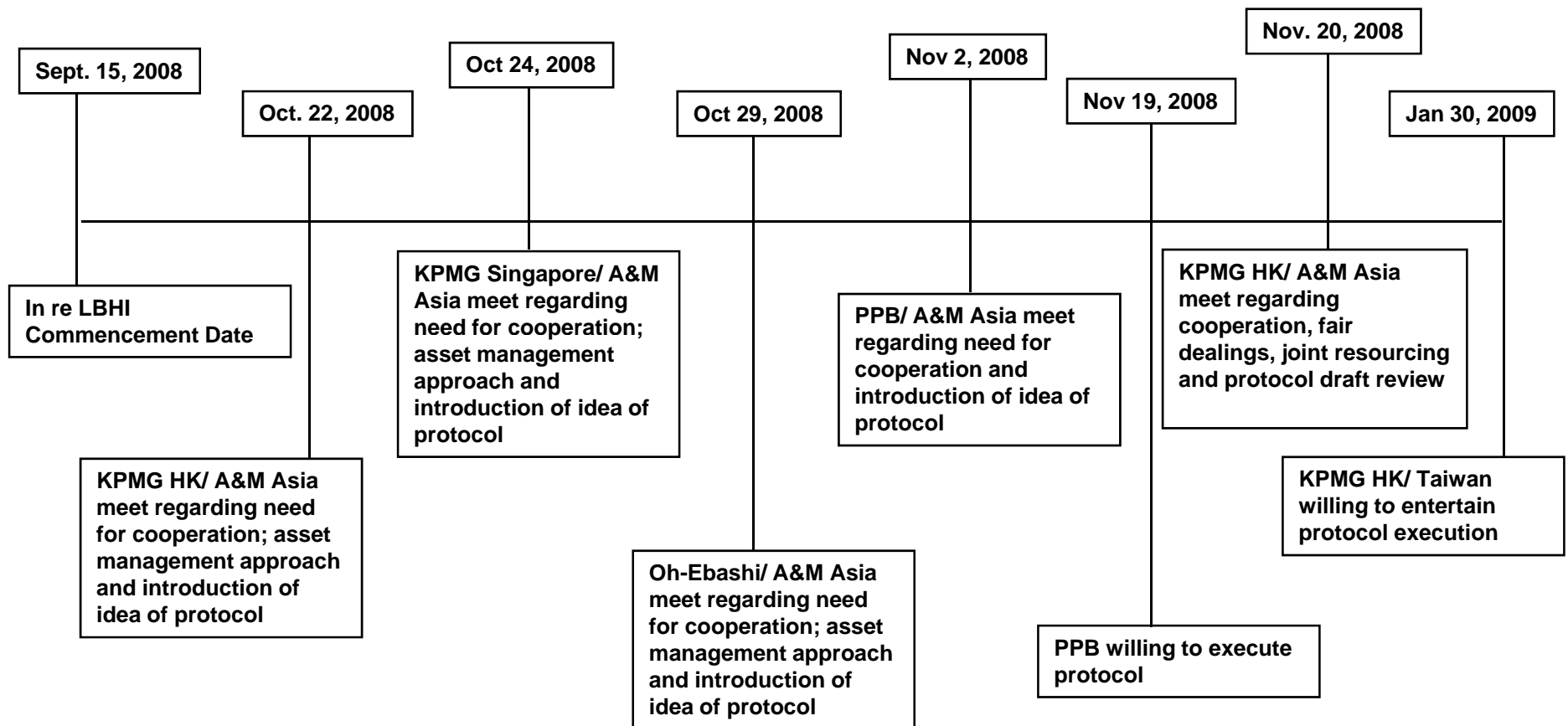
II. Administrator Protocol

➤ Timeline of PwC (UK) and SIPA Trustee (LBI) Protocol Discussions



II. Administrator Protocol

➤ Timeline of KPMG (Asia), PPB and Oh-Ebashi Protocol Discussions



II. Administrator Protocol

C. Key Components of Draft Protocol

1. Ideal Protocol: Universality

- Treats a cross-border case as a single, unified case, "harmonizing" the disruption resulting from separate and multiple precipitous filings
- Based on the premise that without coordination, assets may be wasted, costs and inefficiencies heightened and administration of proceedings lengthened
- In practice, no country adopts an unmodified universality approach, reserving some discretion to protect local interests, independence, sovereignty and authority

2. Compromise: "Modified Universality"

➤ **Communication and Data Sharing**

- Communication among administrators regarding material developments in activities and proceedings
- Information sharing pertaining to assets and liabilities
- Cooperation and information / analysis sharing regarding certain transactions, including pre-filing activities, matters in which multiple debtors have a significant mutual interest and strategy relating to exit from a proceeding
- Court to court communication

II. Administrator Protocol

C. Key Components of Draft Protocol

2. Compromise; “Modified Universality” (continued)

➤ **Asset Preservation**

- Administrators to notify each other of threatened or wasting assets in which another administrator may have interest
- Administrators are to consult other administrators who could have a material interest in assets prior to (i) the sale of assets; (ii) the judicial / non-judicial proceedings against the asset; (iii) the “abandonment” of the asset
- Administrators are to assist each other on asset ownership assessment
- Investments in assets by any debtor will result in “last in, first out” treatment

➤ **Claims Reconciliation**

- Claims should be filed only in the main proceeding in the event that there are two or more ancillary proceedings pending as to the same Debtor
- Coordination in reconciling guaranteed claims with the recovery of direct claims

➤ **Intercompany and Derivatives Claims**

- Establishment of “Procedures Committee” to develop common methodology for (i) intercompany claims admission criteria; and (ii) intercompany derivatives claim valuation
- Good faith disparity resolution

➤ **Other**

- Due notice and rights to appeal
- Coordination of form and timing of plans across multiple proceedings and jurisdictions
- Liaising on matters having significant mutual interest or relate to exit strategy of proceedings
- Due representation

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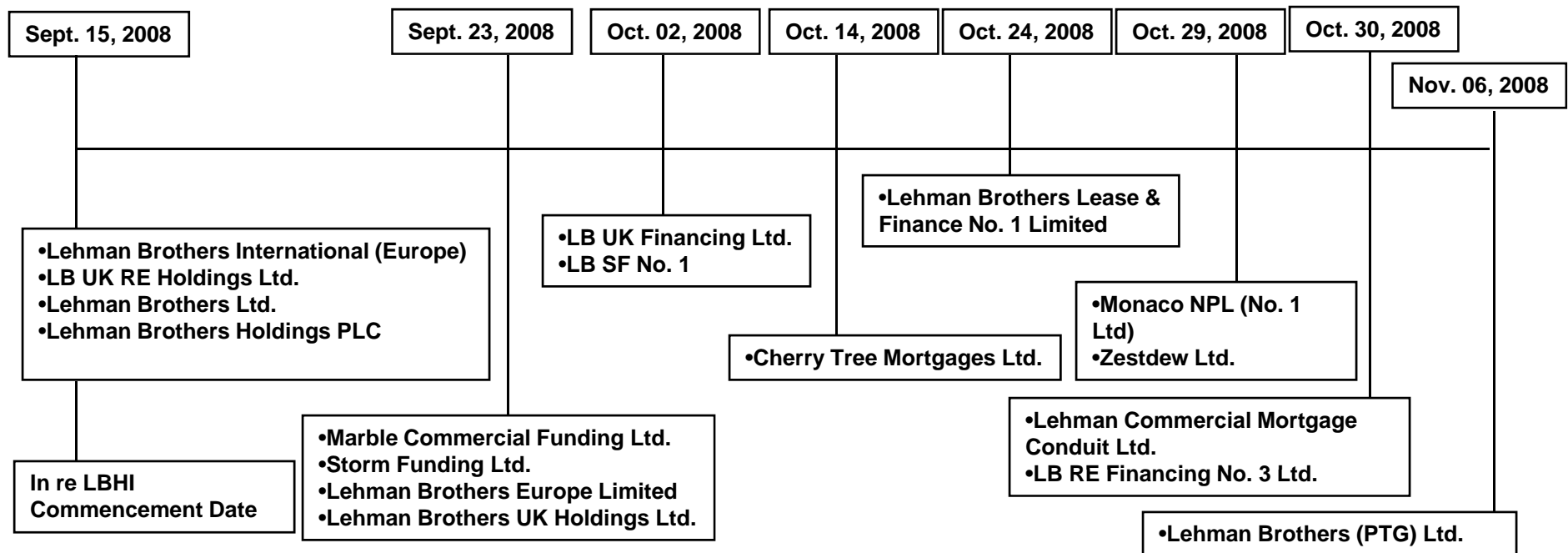
A. Timeline - Proceedings

➤ *In re LBIE et al.*

Tribunal: High Court of Justice, Chancery Division, Companies Court

Applicable Law: Insolvency Act 1986; EC Regulation

Official Representatives: Anthony Victor Lomas, Steven Anthony Pearson, Dan Yoram Schwarzmann, Michael John Andrew Jervis of PricewaterhouseCoopers LLP, Joint Administrators



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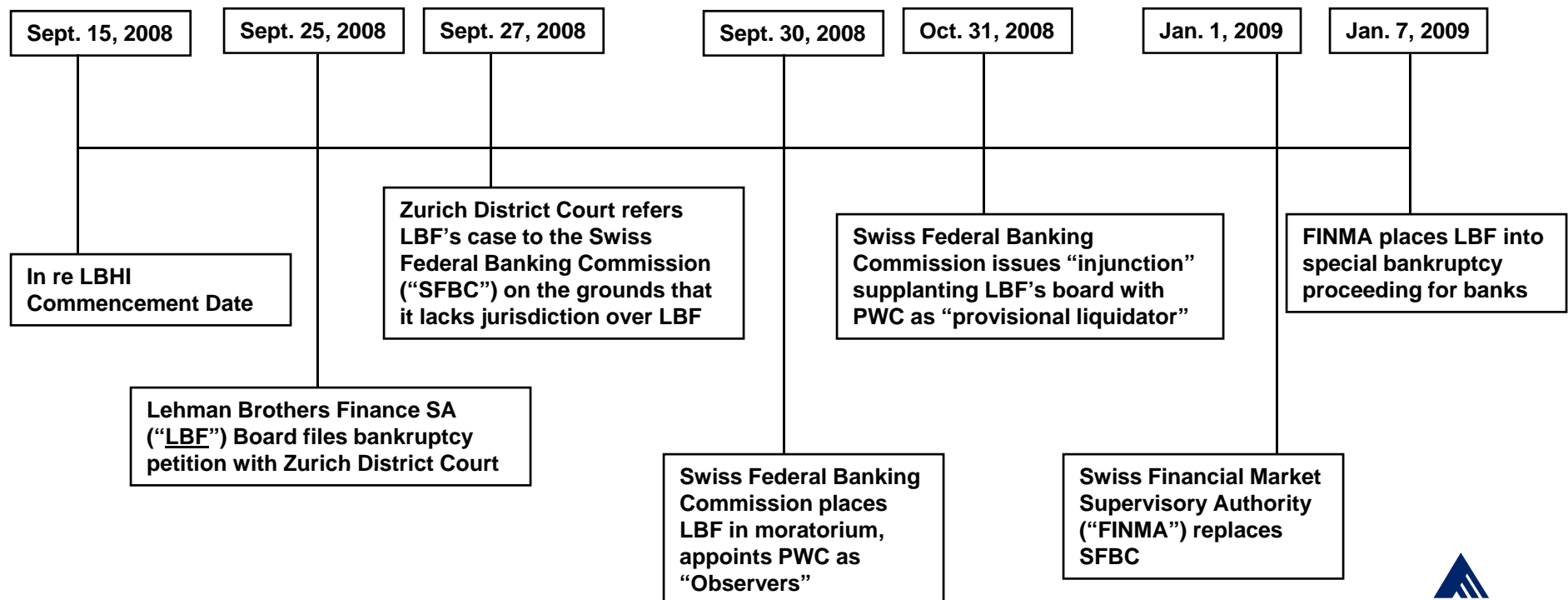
A. Timeline - Proceedings

➤ *In re Lehman Brothers Finance SA a.k.a. Lehman Brothers Finance AG*

Tribunal: Swiss Financial Market Supervisory Authority (FINMA)

Applicable Law: Federal Law on Banks and Savings Banks of 8 Nov. 1934 (Banking Code), section 12, Art. 33 et seq. ("Liquidation of insolvent banks")

Official Representatives: PricewaterhouseCoopers AG, Observers



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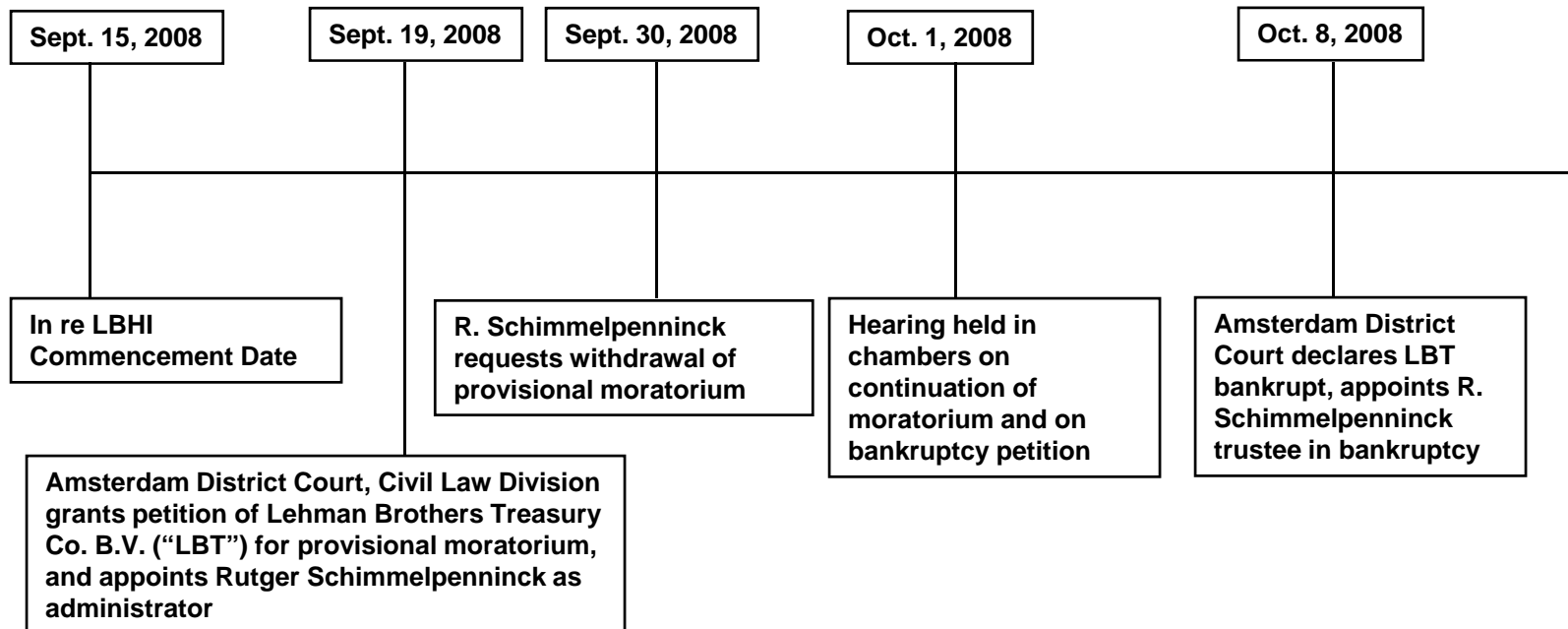
A. Timeline - Proceedings

➤ *In re Lehman Brothers Treasury Co. B.V.*

Tribunal: Amsterdam District Court

Applicable Law: Article 215 of the [Dutch] Bankruptcy Act; EC Regulation

Official Representatives: Rutger Schimmelpenninck of Houthoff Buruma, Trustee (*Curator*)



III. Appendix

A. Timeline - Proceedings

➤ ***In re* Lehman Brothers Bankhaus AG**

Tribunal: Frankfurt am Main Local Court, Insolvency Court

Applicable Law: German Insolvency Code

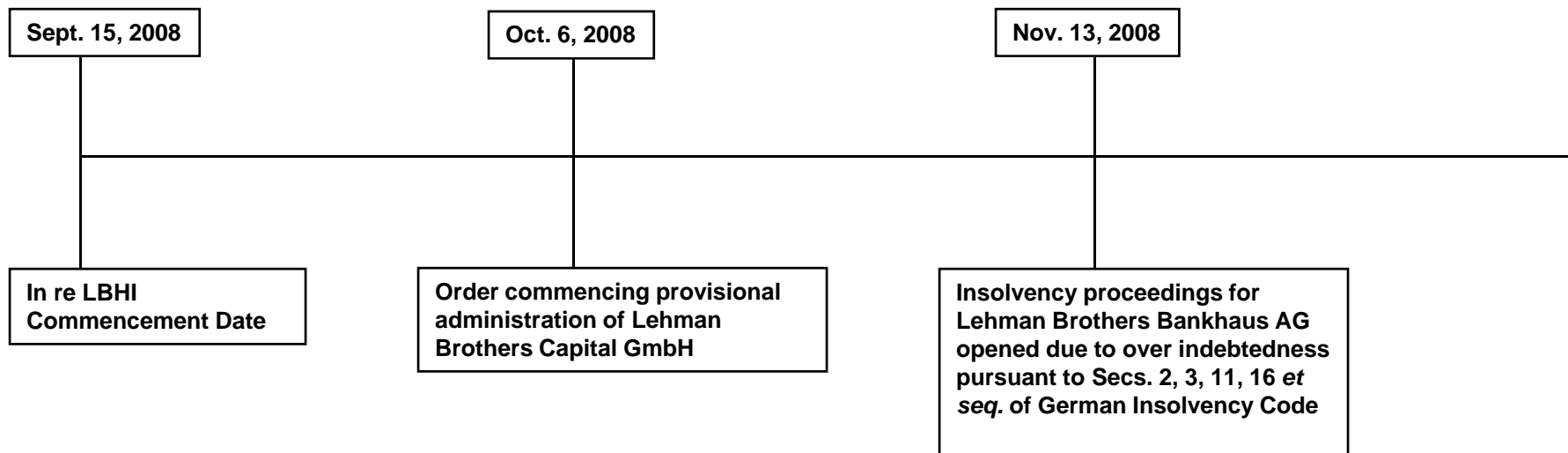
Official Representatives: Michael C. Frege, Insolvency Receiver

➤ ***In re* Lehman Brothers Capital GmbH**

Tribunal: Frankfurt am Main Local Court, Insolvency Court

Applicable Law: German Insolvency Code

Official Representatives: Claudia Jansen, Provisional Administrator



III. Appendix

A. Timeline - Proceedings

➤ ***In re Banque Lehman Brothers***

Tribunal: None

Applicable Law: French Financial and Monetary code, art. L. 613-18

Official Representatives: Alain Bachelot, Provisional Administrator, Counsel to the Banking Commission (Commission Bancaire)

➤ ***In re Dame Luxembourg Sarl and In re Heart of la Défense SAS***

Tribunal: Paris Commercial Court

Applicable Law: Commercial code, art. L. 620-1 *et seq.*

Official Representatives: Debtor-in-possession and Christophe Thevenot, Judicial Administrator

Sept. 15, 2008

In re LBHI
Commencement Date

Banque Lehman
Brothers placed under
control of Provisional
Administrators

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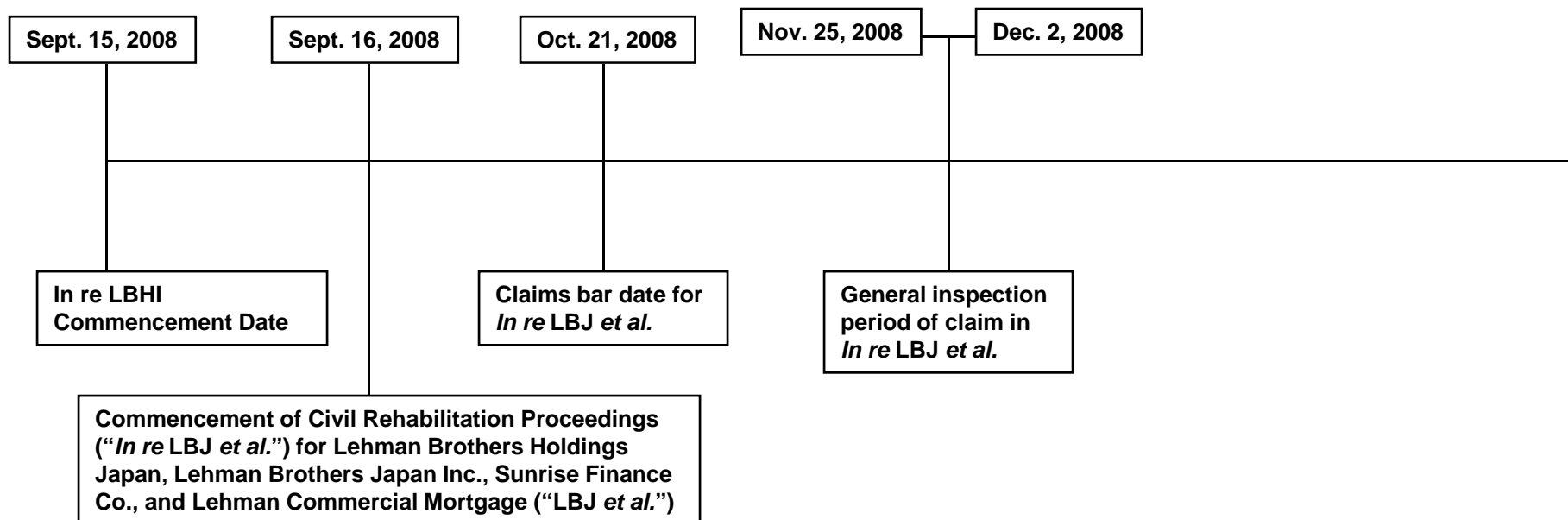
A. Timeline - Proceedings

➤ ***In re Lehman Brothers Holdings Japan et al.***

Tribunal: Tokyo District Court

Applicable Law: Civil Rehabilitation Law (Minji saisei hô Law No 225, 1999)

Official Representatives: Debtors-in-possession, represented by Oh-Ebashi Law Office



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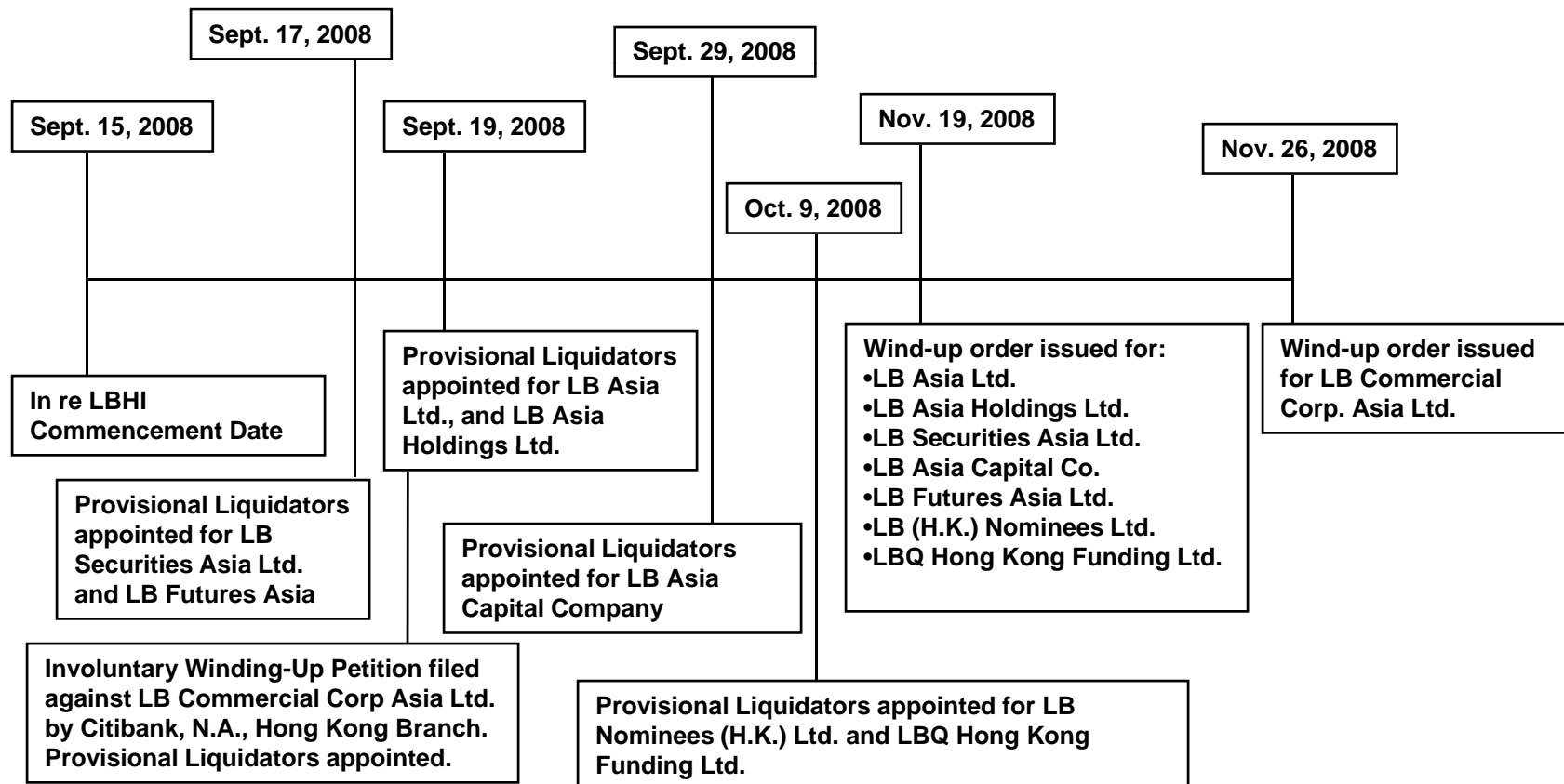
A. Timeline - Proceedings

➤ ***In re Lehman Brothers Asia Holdings et al.***

Tribunal: High Court of the Hong Kong Administrative Region, Court of First Instance

Applicable Law: Hong Kong Companies Ordinance, Cap. 32, L.H.K. (1999).

Official Representatives: Edward Simon Middleton and Patrick Cowley of KPMG, Provisional Liquidators



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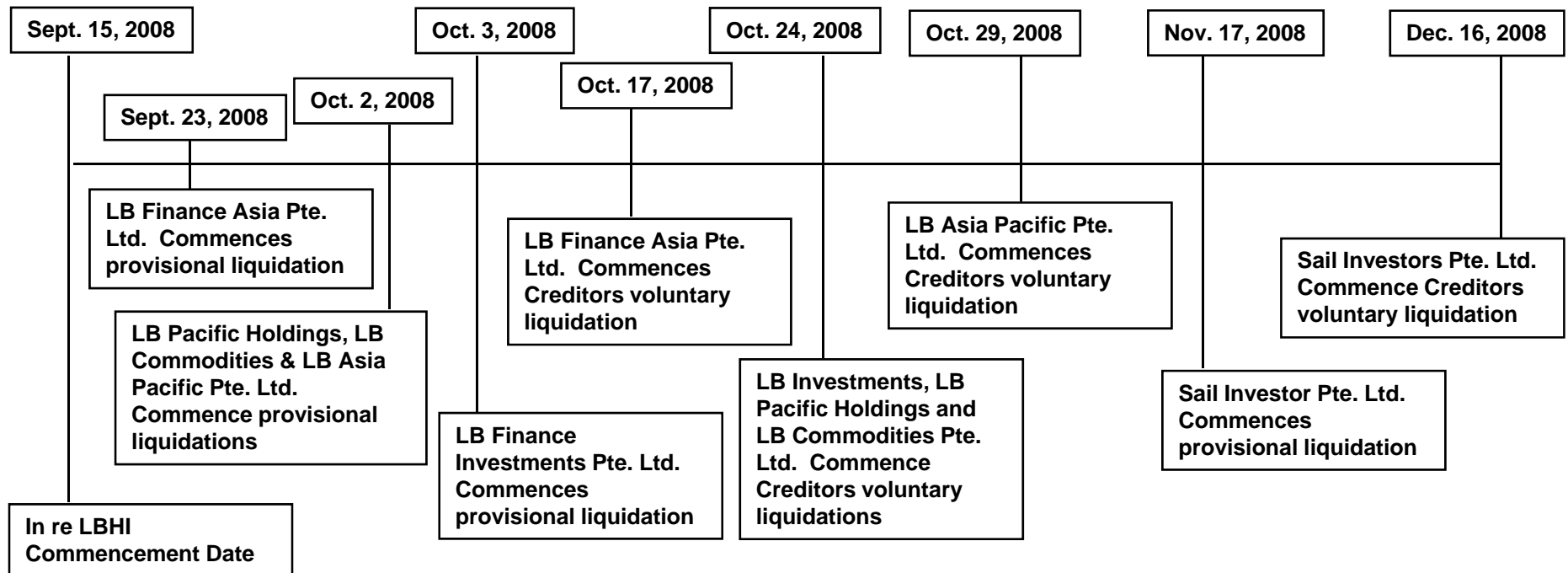
A. Timeline - Proceedings

➤ ***In re Lehman Brothers Pacific Holdings Pte Ltd. et al.***

Tribunal: High Court of Singapore

Applicable Law: Companies Act (Ch. 50)

Official Representatives: Peter Chay; Bob Yap Cheng Ghee; Chay Fook Yuen; Tay Puay Cheng, KPMG Advisory Services Pte. Ltd., Provisional Liquidators



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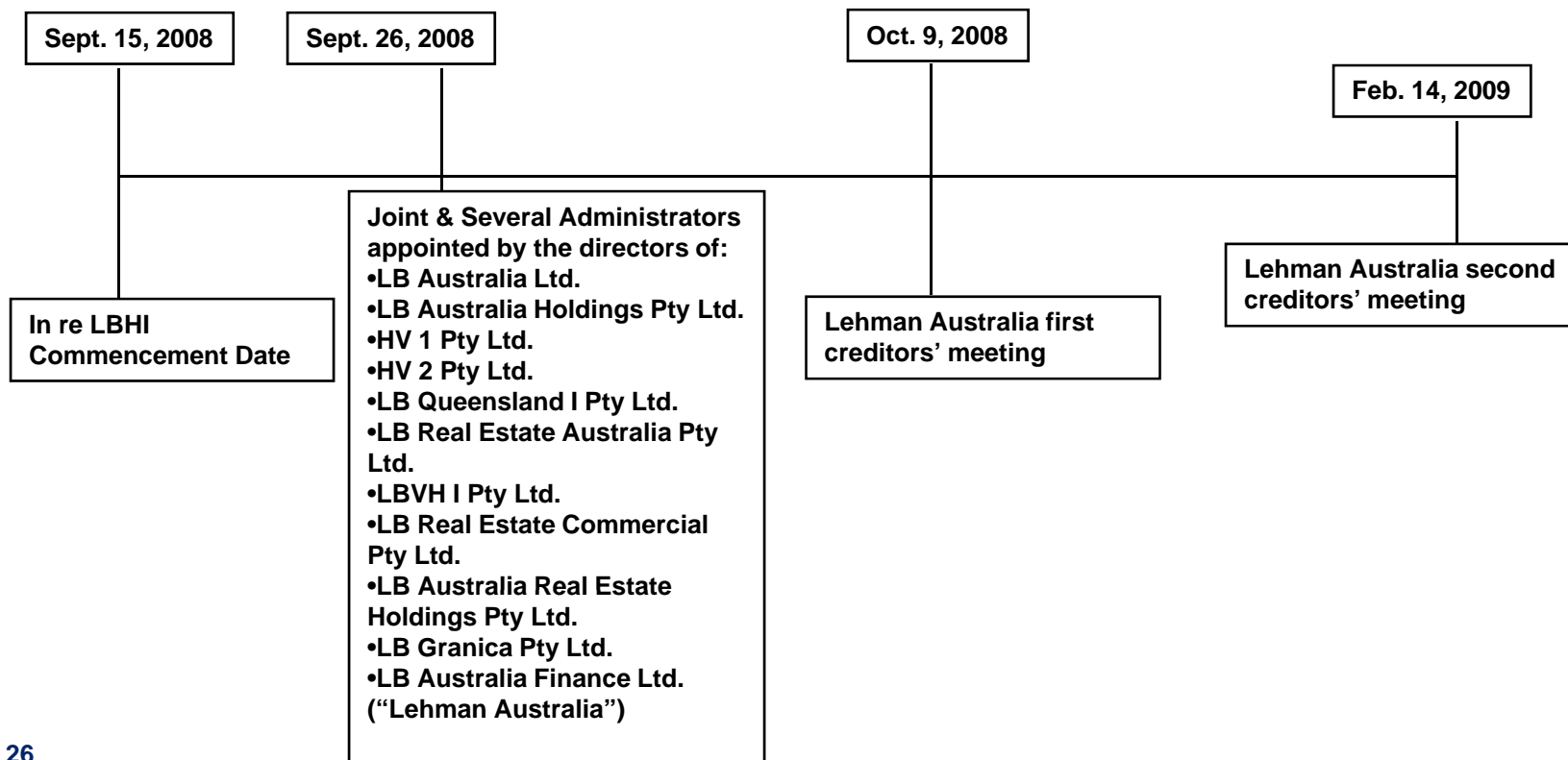
A. Timeline - Proceedings

➤ ***In re Lehman Brothers Australia Holdings Pty Ltd. et al.***

Tribunal: Supreme Court of New South Wales

Applicable Law: Section 436A of the Corporations Act 2001

Official Representatives: Stephen Parbery and Niel Singleton of Prentice Parbery Barilla (PPB), Administrators



III. Appendix

B. Timeline – International Operations

1. September

➤ Overall

- “Chaos” from precipitous filings
- “Melting” assets (with international funding and transaction requests)
- No asset or entity inventorying
- Loss of accounting systems
- Loss of operational support
- Loss of resources (headcount) as a result of Nomura and Barcap transactions
- Major asset transactions (Asian Fixed Income Business sale; European Trading and IB division sale; Indian Processing Center)

➤ Operations

- Established local A&M teams (Asia, Europe, Latin America)
- Identification of key operating platforms
- Identification of a number of “melting ice cubes” which as a result of cash constraints, local legislation pertaining to management liabilities in insolvency situations and labor related liabilities result in claims mitigation exercise

III. Appendix

B. Timeline – International Operations

1. September (continued)

➤ Administrators

- General: administrators assessing entities under their purview
- PwC:
 - Lead Europe Nomura sale process
 - Introductory call with A&M team
- KPMG:
 - Appointed Provisional Liquidators of eight Hong Kong entities
 - Appointed Provisional Liquidators of four Singapore entities
 - Lead Asia Nomura sale process
 - Tasked by Lehman Asia to prepare solvency reviews
- PPB: Appointed as Administrators of all but one of the Australian entities
- Oh-Ebashi: appointed as bankruptcy counsel to 4 Lehman Brothers Japan entities
- Nick Jacob and Gener Mendoza appointed as Rehabilitation Receivers in the Philippines

III. Appendix

B. Timeline – International Operations

2. October

➤ Overall

- Assessment of situation:
 - Identified entities and administrators having purview
 - Initiated process to gain control of boards of entities under A&M purview
 - Hired local legal counsel to ensure involvement in local proceedings
- Stabilization:
 - Halted premature bankruptcy filings by local directors
 - Assessment by A&M of its authority over LBHI controlled entities
 - Stabilization of operations through (i) payroll continuation by local administrators (Oh-Ebashi / KPMG and PwC) for legacy businesses outside of A&M purview (IMD & PE) and (ii) payment of third party asset managers

➤ Operations

- Ensure enforcement of Nomura TSA in Asia
 - Appointment of Asia TSA Manager
 - Access to Lehman legacy employees
 - Continuation of regulatory and reporting obligations
- Inventorying of “melting” assets and initiation of processes to resolve:
 - Initiation of sale process for LB France’s IB division, LB Russia’s broker dealer division, LB Sweden’s IT support platform, LB Turkey’s broker dealer division and NPL portfolio
 - Assessment of strategic alternatives of LB’s Europe PE fund Euromezz
 - Assessment of strategic alternatives of Bankhaus (Germany)
- Sale of LB Brazil investment banking

III. Appendix

B. Timeline – International Operations

2. October (continued)

➤ **Administrators**

- General: dialog initiated with key administrators
- PwC
 - Meeting with PwC LBHI liaison
 - Daily call between PwC & A&M
 - Fair dealings agreement and restitution of cash paid in “error”
 - Access to A&M work stream heads
 - Commencement of transition services negotiations in order to provide LBHI systems access (required for derivative pricing), local knowledge access, documentation access and ensure regulatory requirements
- KPMG
 - Meeting between KPMG and Asia A&M team to discuss working protocol including:
 - Internal agreement on cooperation and fair dealings
 - Agreement to share information
 - Agreement to avoid precipitous action prior to LBHI consultation
 - Meeting with KPMG Singapore to agree on ownership of Malaysian entities
 - Worked with KPMG Singapore and HK to negotiate and retain common external service providers including asset managers
 - Began working closely with KPMG to intervene in Japan RE asset auction
- Philippines: receivers agreed to a consensual approach to prepare a rehabilitation plan
- Oh-Ebashi: Initial meetings and intervention around planned auction of \$4.2 billion RE assets

III. Appendix

B. Timeline – International Operations

3. November

➤ Overall

- Inventoried non-US assets by product category and legal entity
- Communication with key administrators; international protocol discussions fail; developed working protocol (PwC and KPMG)
- Ensured access to systems and operational support (TSAs)
- A&M US LBIE UK creditor meeting (11/13) and Asia trip (KPMG / Oh-Ebashi)

➤ Operations

- Ensure Asia TSA implementation by Nomura
- Signed SPA for sale of LB's Russia broker dealer business
- Bankhaus (Germany)
 - 9/15 Moratorium imposed by Bafin, freezing all activities and assets
 - Negotiations with GDPF to avoid disorderly wind-down and minimize liabilities against LBHI
 - 11/14 Bankhaus declared insolvent and CMS appointed as provisional administrator
- Identification of 150+ Luxembourg entities; meeting with Public Prosecutor; changed board seats on entities and coordinating wind-down with Luxembourg authorities
- Coeur Defense (Paris) RE safeguard proceeding
- Philippines Court set timetable for submission of rehab plans and consideration by receivers

III. Appendix

B. Timeline – International Operations

3. November (continued)

➤ Administrators

- General: working principles established
- PWC
 - Protocol Meeting: LBI & LBIE representatives
 - Conceptual agreement on information sharing, cooperation and fair dealings
 - Skepticism regarding ability to execute formal protocol
 - TSA execution between LBIE and LBHI providing for cooperation and collaboration; the provision of services, shared and dedicated employees, use of facilities, premises, computer systems, access to documentation and other assistance on a transitional basis
 - Restitution of €308MM of LBIE client monies posted in “error” to LBHI account
 - Sharing with PwC of Barcap data extraction process and agreement on common priority applications
 - LBHI appointed to LBIE UCC
- KPMG
 - Protocol Meeting
 - Agreement on information sharing, cooperation and fair dealings
 - Agreement on common asset strategy approach and resource sharing
- Oh-Ebashi (Japan)
 - Partnering with KPMG on common, cooperative approach to Japan RE auction process
 - Meeting with LBJ and Oh-Ebashi regarding auction process of Lavender RE assets and International Protocol

III. Appendix

B. Timeline – International Operations

3. November (continued)

➤ **Administrators (continued)**

- PPB (Australia)
 - Protocol Meeting
 - Agreement on information sharing, cooperation and fair dealings
 - Agreement to execute protocol
 - Complete transparency by PPB: A&M viewed as if committee member
- CMS (Bankhaus)
 - Meetings to discuss cooperation, information sharing and common asset disposition strategy
 - Collaborative approach: CMS signed off on Turkish NPL sale

III. Appendix

B. Timeline – International Operations

4. December

➤ Overall

- Transitioned assets to US asset disposition teams and assisted US asset disposition teams to resource assets
- Established local finance and treasury functions and controls
- Assertion of LBHI intercompany claims and recognition by key administrators of creditor position
- A&M US LBIE UCC meeting (12/3) and two update calls

➤ Operations

- Access granted by PwC to LBIE trading floor
- Sale of LB Russia's broker dealer business
- Solvent wind-down of LB Turkey's broker dealer business
- Sale of Sail Investment (UK)
- Signed a Sale and Purchase Agreement (SPA) for the solvent wind-down of LB France's investment banking division
- Agreement with LBJ to include KPMG / A&M in Lavender RE auction process
- Transitioned real estate asset management to US Real Estate team

➤ Administrators

- General: working principles established
- PwC
 - 12/3/08 first UCC Meeting
 - Weekly TSA manager meetings and issue resolution
 - Access to Lehman premises

III. Appendix

B. Timeline – International Operations

4. December (continued)

➤ Administrators (continued)

- SIPA Trustee (LBI)
 - Meeting with PwC (LBIE) and SIPA Trustee (LBI) to discuss Barcap information sharing
 - LBI rejects idea of LBHI serving as information repository for all Barcap sourced information
- KPMG (Asia)
 - Commenced bi-weekly update meetings between A&M and KPMG to share details of progress, disposition strategy and to discuss any specific issues
 - KPMG confirmed support for having LBHI representation on Committees of Inspection (creditors committees) of key Hong Kong entities
 - KPMG consulted A&M on specific issues and dispositions (e.g. appointment of financial adviser for disposition of Taiwan High Speed Railway asset)
 - KPMG confirmed willingness to sign written protocol and work closely with LBHI / A&M asset disposition teams in the US and locally
 - KPMG sought approval in relation to the terms of disposal of Indian regulated entity
- PPB
 - Formal update meeting on proceedings
 - Complete access to proposed rehabilitation proceeding
- Oh-Ebashi
 - Negotiated ability to conduct due diligence around the Lavender RE assets to develop 'vendor' valuation for comparison to eventual bids
 - Put together joint KPMG / A&M-led due diligence team and began due diligence concurrently with bidders
 - Engaged with major local bank creditors

III. Appendix

B. Timeline – International Operations

5. January

➤ Overall

- Orderly asset disposition and management process in place
- Working relationships with all administrators
- A&M US LBIE UCC Meeting (1/22)

➤ Operations

- Sale of LBAM (France)
- Return of \$260MM of collateral from London Clearing House to LBHI
- Philippines submission of rehab plans to Receivers for their consideration
- Resourced Asian principal investment team
- Meetings with Indian companies in which LBHI had principal investments

➤ Administrators

- KPMG and A&M working closely on Japan and asset disposition protocols
- PwC (Switzerland): Initiated communication and discussions on cooperation and data sharing
- PwC (UK): Data Preservation
 - Established a global shared work environment
 - Implemented data request protocols
 - Modified data hand-off process

III. Appendix

C. Statutory Provisions

➤ **Mandates for Communication and Cooperation Between Courts and Foreign Representatives**

- UNCITRAL Model Law of Cross Border Insolvency (Article 25 and 26)
- US Bankruptcy Code §1525 and §1526
- Communication and Cooperation Between Courts and Foreign Representatives (Guideline 2.1)

➤ **Specific Problems with Civil-Law Jurisdiction**

- Civil law judges may be restricted or reluctant to take action not explicitly authorized by the civil code
- In some instances, Civil-law courts may “tacitly” approve acting pursuant to a protocol
 - In re Nakash, U.S. Bankruptcy Court S.D.N.Y. Case No. 94B44846 (May 23, 1996), and CC (Jer) 1595/87 (Liquidation /95 Nakash) [1996] (Israeli court proceeded as if protocol were in effect, without approving it formally)
 - *In re United Pan-Europe Comm’ns N.V.* (Dutch court unable to formally approve protocol, but acted as if it had been approved)

III. Appendix

D. Precedents

➤ **Precedents are limited in:**

- Size:
 - Lehman Brothers represents the largest bankruptcy in history
- Scope:
 - Only 3 cases have been multilateral, each involving 3 countries
 - Lehman Brothers is the first truly multilateral protocol involving multiple proceedings and jurisdictions

➤ ***In re Maxwell Commc'n Corp. (Bankr. S.D.N.Y. 1991) Case No. 91-15741***

- "...the first worldwide plan of orderly liquidation ever achieved." Jay Lawrence Westbrook, "The Lessons of Maxwell Communication." 64 Fordham L. Rev. 2531, 2534 (1996)
- Court appointed examiner worked with Administrators in the U.K. to produce a plan of reorganization that incorporated the "scheme of arrangement" filed in the U.K., creating a single, integrated plan
- Set precedent as the first cross-border protocol ever approved for use among two plenary bankruptcy proceedings

➤ ***In re Everfresh Beverages, Inc. (Bankr. S.D.N.Y. 1995) Case No. 95-45405 / (Ont. Ct. 1995) No. 32-077978***

- Purpose: to protect the interest of all creditors wherever located and to protect the integrity of the process by which the Chapter 11 case and the Canadian Proceeding is administered
- First protocol to use the Cross-Border Insolvency Concordat drafted by the International Bar Association's Insolvency and Creditors' Rights Committee

III. Appendix

E. Cross-Border Protocol

- See separate attachment