

Lehman Brothers International (Europe) (in administration)

**Waterfall II – Part C - List of further questions for consideration by the Senior
Creditor Group's and Wentworth's German law experts**

Clauses 7 to 9 of the German Master Agreement (GMA)

- 1) On the true construction of clauses 7 to 9 of the GMA:
 - a) When does a close-out amount arising under clauses 7 to 9 of the GMA become due and payable?
 - b) Must a default have occurred within the meaning of section 286 of the BGB in order for there to be a claim for damages for late payment?
 - c) Is section 271 of the BGB relevant to the question in 1(a) above?

Section 286 of the German Civil Code (BGB)

- 2) What is the true construction of section 286? In particular:
 - a) Can a default occur including by the service by the non-defaulting party of a “warning notice” on a defaulting party once the defaulting party has entered into, and remains in, administration in England & Wales?
 - b) What are the formal and substantive requirements for a “warning notice” (as the phrase is used in section 286 of the BGB)?
 - c) Could: (1) the filing of a proof of debt in the LBIE administration and/or (2) the service of a termination notice pursuant to the GMA by a non-defaulting counterparty to LBIE, constitute the service of a “warning notice” for the purposes of section 286(2) BGB?
 - d) Can a non-defaulting party serve a “warning notice” on the defaulting party after the defaulting party has repaid the principal debt owing to the non-defaulting party? If so, would its damages interest claim relate back to the period prior to the defaulting party making payment in full of the principal debt?
 - e) What are the exceptions to the need for a “warning notice” in order for default to occur? Having regard to the Administration Summary, would there have been a serious and definitive refusal of performance by LBIE within the meaning of 286(2) no. 3 of the German Civil Code or would there have been special reasons, weighing the interests of both parties, justifying the immediate commencement of default within the meaning of the 286(2) no. 4 the German Civil Code when: (a) an administration application was made by or in relation to LBIE; and/or (b) LBIE went into administration, in each case meaning that there was no need for a warning notice?