



HIGH COURT OF AUSTRALIA

Manager, Public Information

30 March 2010

LEHMAN BROTHERS ASIA HOLDINGS LIMITED (IN LIQUIDATION) v
CITY OF SWAN & ORS
LEHMAN BROTHERS HOLDINGS INC V CITY OF SWAN & ORS

On 26 September 2008 administrators were appointed to Lehman Brothers Australia Limited ("Lehman Australia"). Following the recommendation of the administrators, a majority of creditors (which included other companies in the Lehman Group) passed a resolution that Lehman Australia execute a deed of company arrangement ("DOCA"). On 12 June 2009 such a deed was executed by Lehman Australia, its administrators, and Lehman Brothers Asia Holdings Limited ("Lehman Asia").

In proceedings before the Federal Court of Australia, several creditors of Lehman Australia (the first to third respondents in the High Court) claimed that the DOCA purported to extinguish their rights to sue other companies in the Lehman Group. They submitted that such a release was not within the scope of Pt 5.3A of the *Corporations Act 2001* (Cth) and that they were therefore not bound by the DOCA. Part 5.3A sets out procedures for company administration and the execution of DOCAs. Justice Rares reserved the issue for the consideration of the Full Court of the Federal Court and on 25 September 2009 the Full Court found that the DOCA was void and of no effect. Justice Rares subsequently made a declaration that the DOCA was void and ordered that Lehman Australia be wound up by the Court.

Lehman Asia and Lehman Brothers Holdings Inc were granted special leave to appeal to the High Court. Today the Court pronounced orders dismissing both appeals. Its reasons will be delivered at a later date.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*