

Update – Waterfall II Application – Part A Judgment – 31 July 2015

On 31 July 2015 Mr Justice David Richards handed down his judgment in Part A of the Waterfall II Application, following the hearing of 18-26 February 2015.

In brief, the Judge's decision was as follows:

- (i) the rule in *Bower v Marris* (which would require post-administration interest to be calculated on the basis of a notional attribution of dividend payments first to interest and only then to principal) does not apply to the calculation of post-administration interest under rule 2.88(7)-(9) of the Insolvency Rules 1986 (the “**Rules**”);
- (ii) rule 2.88 of the Rules represents a complete code for the payment of post-administration interest on proved debts, leaving no scope for any non-provable claim for further interest;
- (iii) interest is not payable on statutory interest in respect of the period between the payment in full of proved debts and the date or dates on which statutory interest is paid;
- (iv) the words “*the rate applicable to the debt apart from the administration*” in rule 2.88(9) of the Rules does not include:
 - (a) a judgment rate of interest on a judgment obtained after the commencement of the administration; or
 - (b) a judgment rate which would apply to a debt if the creditor had obtained judgment for it but did not in fact do so;
- (v) statutory interest is payable on future debts and on the amount admitted to proof in respect of contingent debts from the date of the commencement of the administration; and
- (vi) the calculation of a currency conversion claim should not take into account the statutory interest paid to a relevant creditor.

The Judge did not determine (pending further consideration by the parties of the impact of the judgments in Parts A and B of the Waterfall II Application) the issues relating to currency conversion claims in relation to statutory interest (paragraphs 29 and 30 of the application notice).

Should you have any queries regarding this update, please contact LBIE's Communications and Counterparty Management team at generalqueries@lbia-eu.com.