

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

On 31 July 2015 Mr Justice David Richards handed down his judgment in Part B of the Waterfall II Application (the “**Judgment**”), following the hearing of 18-21 May 2015.

In brief, the Judge’s conclusions on the issues dealt with in the Part B judgment were as follows:

- (i) Neither the Claims Resolution Agreement (the “**CRA**”) nor any of the Claims Determination Deeds (the “**CDDs**”) have, as a matter of construction, the effect of releasing currency conversion claims (paragraph 34 of the application notice);
- (ii) Neither the CRA nor any of the CDDs have, as a matter of construction, the effect of releasing in whole or in part claims to statutory interest under rule 2.88. In all cases, creditors are entitled to the payment of statutory interest at the higher of the judgment rate or the rate otherwise applicable apart from the administration (which can include the original contractual rate) (paragraph 35 of the application notice);
- (iii) The CRA does not, as a matter of construction, itself create or give rise to any currency conversion claims (paragraph 38 of the application notice); and
- (iv) If, as a matter of construction, the CRA or any of the CDDs had the effect of releasing currency conversion claims, the administrators would have been directed, under the principle in Ex Parte James and under paragraph 74 of schedule B1 to the Insolvency Act not to enforce such releases (paragraph 36A 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.