

Agreed positions on French Law Questions¹

Question 22: Whether default interest pursuant to clause 9.1 of the FBF Master Agreement and the AFB Master Agreement are capable of being a “rate applicable to the debt apart from the administration” for the purposes of Rule 2.88(9).

Agreed answer: Default interest pursuant to clause 9.1 of the FBF Master Agreement and the AFB Master Agreement is capable of being a “rate applicable to the debt apart from the administration” for the purposes of Rule 2.88(9).

Question 23: Whether the “party” that receives the interest referred to in question 22 above pursuant to the FBF Master Agreement and the AFB Master Agreement refers to LBIE’s original counterparty or to a third party to whom LBIE’s original counterparty has transferred (by assignment or otherwise) its rights under the relevant agreements.

Agreed answer:

1. In the case of a *cession de contrat* (transfer of agreement) under French law (which would not be relevant following the termination of the agreement and cannot be used to transfer a close-out amount), the rate of interest payable under clause 9.1 of the FBF and AFB Master Agreement is calculated by reference to the overnight refinancing rate of the original contractual counterparty (compounded annually if overdue for at least one year) for the period before the date of the relevant transfer and by reference to the overnight refinancing rate of the third party (compounded annually if overdue for at least one year) for any period after the date of the relevant transfer.
2. In the case of a *cession de créance* (transfer of claim) under French law, the rate of interest payable under clause 9.1 of the FBF and AFB Master Agreement is calculated by reference to the overnight refinancing rate of the original contractual counterparty (compounded annually if overdue for at least one year) whether before or after the date of the relevant transfer.

Question 24: Whether the terms “overnight refinancing rate of the Party” in clause 9.1 as it appears in the FBF Master Agreement and the AFB Master Agreement should only be ascertained with reference to the actual or asserted cost of the payee or may be ascertained in other ways.

Agreed answer: The “overnight refinancing rate of the Party” in clause 9.1 as it appears in the FBF Master Agreement and the AFB Master Agreement is a question of fact to be determined objectively and by reference to the relevant overnight refinancing rates which would have been offered to the original contracting party by market participants at the relevant time if not specified by the parties in the schedule to the relevant AFB or FBF master agreement or otherwise.

¹ Questions have been amended, as per the agreement between the parties, to remove references to the AFTB and AFTI Master Agreements.

Question 25: Whether only the “party” pursuant to question 23 or another party authorised to act on behalf of the “party” can provide determination and notification of its [overnight refinancing rate]².

Agreed answer: The “overnight refinancing rate” in clause 9.1 of the FBF and AFB Master Agreements is a question of fact to be determined objectively and by reference to the relevant overnight refinancing rates which would have been offered to the original contracting party by market participants at the relevant time if not specified by the parties in the schedule to the relevant AFB or FBF master agreement or otherwise. The “party” pursuant to question 23 above or another entity expressly or impliedly authorised to act on behalf of the “party” can provide determination and notification of the same.

Question 26: What is the applicable standard, if any, by reference to which any statement by the party as to its “overnight refinancing rate” is constrained?

Agreed answer: The statement by the person identified pursuant to the answer to question 25 can be challenged by the defaulting party on the basis of manifest error, fraud or lack of good faith (which includes a duty of loyalty).”

² Issue 25 uses the expression “cost of funding” but we think this was used in error given that the FBF and AFB Master Agreements do not use this expression.