
Schedule A

1. In this Schedule, in order to assist the Court in granting the declaratory relief sought, the LBL Administrators set out in summary form their position on the Issues which they understand to have been agreed: Issues 2, 4, 5, 6 and 12.

Issue 2

2. Issue 2 concerns the question of whether any Sub-Debt Contribution Claim is to be included in the insolvency set-off account in LBIE's administration as against the provable claims of LBHI2 and/or LBL.
3. So far as LBL is aware, the parties are agreed that any Sub-Debt Contribution Claim is to be included in the insolvency set-off account in LBIE's administration, in particular as against the provable claims of LBHI2 to the Sub-Debt.
4. As set out in LBL's PP at T1/14, paras 117-119, this result must follow from the findings of the Court of Appeal in Waterfall I that the Sub-Debt is a provable debt, that the liability of LBL and LBHI2 extend (in principle and subject to what LBL now says in relation to s.74(2)(e)) to provable debts, and moreover that the Contribution Claim in respect of non-provable debts can be included in the insolvency set-off (Appeal Judgment at T1/9, paras 38-42 and 121).

Issue 4

5. Issue 4 concerns what effect the operation of insolvency set-off in LBIE's estate as between LBIE and LBHI2 will have on LBIE's ability to make a Sub-Debt Contribution Claim against LBL.
6. So far as LBL is aware, the parties are agreed that to the extent that set-off has already taken place that will extinguish to the same extent any further Sub-Debt Contribution Claim as against LBL.
7. LBL's reasons for agreeing with the above are set out in its PP at T1/14 paras 125 to 127 and in Reply at T1/20, paras 2.1-2.2, 2.4 and 11. In summary, set-off

takes effect to extinguish the Sub-Debt and, where this has occurred, LBIE cannot be permitted to seek the same sum again from LBL; this would be a double recovery.

Issues 5 and 6

8. Issues 5 and 6 fall to be considered together, and concern the effect that insolvency set-off having occurred in LBIE's estate on 4 December 2009 will have in the (subsequent) distributing administrations of LBHI2 and LBL as regards their claims against and liabilities to LBIE, and likewise the effect of insolvency set-off having occurred in LBEL's estate on 11 July 2012 will have in the (subsequent) distributing administration of LBL, on its claims against and liabilities to LBL.
9. So far as LBL is aware, the parties are agreed that the subsequent administrations do not affect the set-off which has taken place in LBIE's, or LBEL's, estate, without prejudice to the parties' ability to re-draw the balances in the set-off account on the basis of the hindsight principle where appropriate.
10. LBL's reasons are set out in LBL PP at T1/14, paras 131-132, and Reply at T1/20, para 2.5. In summary, whilst the operation of set-off is mandatory, there must be flexibility to re-draw the balances in the event that circumstances change or new information becomes available; see
 - a. Stein v Blake [1996] AC 243;
 - b. MS Fashions v BCCI [1993] CH 425: it should be possible to redraw the balances between the parties at a later point if circumstances change and/or new information becomes available; and
 - c. Bank of Credit & Commerce International (Overseas) Ltd v Habib Bank Ltd [1998] 2 BCLC 459, in which it was held that under Insolvency Rule 4.90, the Court was required to take into account the fact that debts owed to the creditor at the date of liquidation had subsequently been paid by third parties.

Issue 12

11. Issue 12 concerns only LBL and LBEL, and is as to whether set-off occurring in LBIE's estate as between a Contribution Claim and provable claims of LBL against LBIE, are impacted by any liability that LBEL may have to LBL.
12. The parties are agreed that such set-off occurring in LBIE's estate is irrelevant to LBEL's liability to LBL. LBL's reasons are set out in LBL PP at T1/14, para 140 and LBEL's PP at T1/18, paras 27-32. In summary, the fact that part of LBL's claims are discharged by set-off in LBIE's estate, does not affect any liability of LBEL in respect of any claims raised by LBL against it; 40% of LBL's claim against LBEL is still £400m, and LBEL is required to pay that sum.