

## **Supplemental Issues (other than Supplemental Issue 1a) arising out of the Orders dated 9 October 2015 in Tranches A and B of the *Waterfall II* application – Summary of Conclusions - 24 August 2016**

On 24 August 2016 Lord Justice David Richards handed down his judgment on the Supplemental Issues arising out of the Orders made on 9 October 2015 in the Waterfall IIA and IIB applications. (It does not cover the Supplemental Issue which is to be decided by Mr Justice Hildyard.)

### **Supplemental Issue 1b**

Where contractual interest on a debt that was future or contingent at the Date of Administration is payable only upon an event or contingency occurring after the Date of Administration, such interest is payable on a Currency Conversion Claim arising from such a debt if, but only if, such event or contingency occurs and only in accordance with the terms of the contract.

### **Supplemental Issue 1c**

In a case where contractual interest first starts to run on a proved debt at some point after the Date of Administration, the “rate applicable to the debt apart from the administration” for the purposes of Rule 2.88(9) of the Insolvency Rules 1986 is zero for the period from the Date of Administration to the date when the contractual interest first starts to run. In determining under Rule 2.88(9) the greater of the Judgments Act rate and the rate applicable to the debt apart from the administration, the periods before and after the date on which contractual interest starts to run should be taken together, not separately.

### **Supplemental Issue 2**

A Currency Conversion Claim cannot arise from the discharge of a debt by way of set-off under Rule 2.85(3).

### **Supplemental Issue 3**

A non-provable claim to interest on a Currency Conversion Claim is not to be reduced by interest paid to the creditor under Rule 2.88(7).

### **Supplemental Issue 4**

If, contrary to the decision in Tranche A, a creditor is entitled to make a claim for non-provable interest on a proved debt to the extent that its full entitlement to contractual interest in the absence of the administration has not been satisfied, any such claim falls within the release provided by the CRA and the CDDs, and the Administrators would not be directed to pay such a claim.

### **Supplemental Issue 5**

If a creditor is entitled to claim non-provable interest on a Currency Conversion Claim, any such claim falls within the release provided by the CRA but not within the release provided by the CDDs. In the case of a claim released by the CRA, the administrators would not be directed to pay the claim. If, on their true construction, the CDDs released such a claim, the administrators would be directed to pay it.