



Knowledge Bank

Interest in surplus cases

Corporate Account
CA001

This Statement provides a guide to the rules concerning interest on debts in a surplus liquidation case and the effect of the Late Payment of Commercial Debts (Interest) Act 1998.

Interest pursuant to the Insolvency Act 1986 (“IA86”)

Interest post liquidation only becomes payable if the estate's costs and expenses are paid in full, and also the capital and pre-liquidation interest of the proven debts have been paid. Thereafter section 189 IA86, reads as follows:

“(3) All interest under this section ranks equally, whether or not the debts on which it is payable rank equally.

(4) The rate of interest payable under this section in respect of any debt (“the official rate” for the purposes of any provision of this Act in which that expression is used) is whichever is the greater of:

(a) the rate specified in section 17 of the Judgments Act 1838 on the day on which the company went into liquidation, and

(b) the rate applicable to that debt apart from the winding up.”

The rate specified by the Judgments Act 1838 (“**Statutory Interest**”) is 8%.

The rate applicable to the debt apart from the winding up (“**Contractual Interest**”), usually relates only to a contractual ability to charge interest on the debt.

This contractual entitlement to interest may be significantly higher than 8%.

For instance, most banks have provision in their facilities for a much higher rate for defaulting debtors.

Late Payment of Commercial Debts (Interest) Act 1998 (“LPCDA”)

The scope of the LPCDA has been gradually increased, so that after 7 August 2002 it implies a term into all contracts for the “supply of goods or services where the purchaser and supplier are each acting in the course of business” which, in summary, entitles the supplier to interest.

This interest term will only be implied if there are no interest provisions already present in the contract. However, section 8(1) LPCD Act prevents avoidance of its terms by providing that *“any contract terms are void to the extent that they purport to exclude the right to statutory interest in relation to the debt, unless there is a substantial contractual remedy for late payment of the debt.”*

Interest payable pursuant to the LPCDA is calculated by reference to the 'reference rate'. The 'reference rate' is presently set at 8% above the Bank of England's Monetary Policy Committee 'official dealing rate' (also known as its 'official Bank rate') as set at six monthly intervals. The liquidator would use the official dealing rate in force on 30 June in respect of interest which starts to run between 1 July and 31 December, and the official dealing rate in force on 31 December for interest that starts to run between 1 January and 30 June. On 31 December 2011 the official dealing rate was 0.5%, the rate payable pursuant to the LPCDA is presently therefore, 8.5%. The LPCDA also entitles the creditor to "compensation" for late payment, calculated on a sliding scale but is only £100 at most. There is no case law to suggest whether this should be paid as "interest" or should form part of the capital of the debt.

Conclusion

In a surplus case, interest is payable to the creditors at the higher of the Statutory Interest rate of (presently) 8%, or the Contractual Interest rate (ie whatever the creditor is entitled to "*apart from the winding up*"). If the insolvent entity was trading, it is likely the LPCDA will apply, and that a term is implied into its trade contracts to pay interest at a rate of (presently) 8.5%.

Further information

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