

*In Re Lehman Brothers International (Europe) (in administration) and others [2014] EWHC 704 (Ch)*, the High Court ruled on issues regarding the order of distributions and payments in the administration and potential liquidation of various Lehman entities. This wide-ranging judgment gives clarity on a number of previously uncertain issues.

The case was unusual in that many of the issues arose from a projected surplus after provable debts had been paid where the principal insolvent was an unlimited company. Lehman Brothers International (Europe) (LBIE) was potentially to enter liquidation so the joint administrators sought determination on the issues highlighted below.

### What This Means for You

1. Certain refinements can be made to the general order of priority for distribution of a company's assets.
2. Expanding on the decision in *Nortel*, a wider category of unprovable liabilities was held to include the following, which rank ahead of subordinated loan debt (classed as regulatory capital in this instance):
  - statutory interest accrued during an immediately preceding administration
  - foreign currency conversion losses incurred between the conversion of a claim into Sterling and the payment of that claim
3. The finding that foreign currency losses have the status of an unprovable claim may give holders of foreign currency debt stronger grounds to negotiate a better treatment of such losses in a restructuring.

### Summary of Findings

1. The "contributory rule" did not extend to administrations (applying only in a liquidation).
2. The claims of LBIE's immediate parent (holding US\$2.225 billion of subordinated loan debt) were subordinated not only to provable debts, but also to statutory interest and unprovable liabilities.
3. Foreign currency creditors of LBIE were entitled to claim for currency losses.

4. If LBIE's administration was immediately followed by liquidation, interest accrued during the period of administration would not be provable as a liquidation debt or be payable as statutory interest.
5. Creditors of LBIE with debts which carried interest by reasons unconnected with LBIE's administration or liquidation (e.g. contractual interest) would be entitled to claim interest in a liquidation of LBIE as an unprovable claim.
6. The members of LBIE were required to contribute amounts sufficient for the payment of provable debts, statutory interest thereon as appropriate and unprovable liabilities.
7. LBIE would be entitled to lodge a proof in a distributing administration or a liquidation of its members in respect of certain contingent liabilities of those companies if LBIE were to go into liquidation.
8. In a distributing administration or a liquidation of LBIE's members, their claims respectively as creditors of LBIE would be the subject of mandatory set-off against the claims of LBIE in respect of those companies' contingent liabilities as contributories.
9. In the administration of LBIE, the contingent liabilities of its members would be the subject of mandatory set-off against the admitted proofs of debt of those companies as creditors of LBIE.

### Contact

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