

The Financial System and Major
Operational Disruption FSM Team
HM Treasury
Room 4/16
1 Horse Guards Road
London
SW1A 2HQ

By e-mail: FSMOD@HM-Treasury.gov.UK

24 April 2003

Dear Sirs

Consultation Document on Major Operational Disruption

Please find enclosed some comments and observations in relation to the consultation document. This does not represent a comprehensive response on behalf of all interested parts of my firm. In particular, we have not carried out a detailed review of currently used market standard forms to see, for example, to what extent the sort of circumstances contemplated would fall within existing force majeure or other exonerating provisions.

We note that the Condoc makes clear that the Government regards principal responsibility for being prepared for major operational disruption as remaining with the private sector.

Whilst this seems logical in principle, it has to be borne in mind that not everyone who is affected by a circumstance contemplated would be involved in the sort of organization which could be expected to take the lead.

It seems to us that preparation falls into two categories. The first is physical and organizational contingency planning. No doubt the regulatory authorities in the financial sector are involved in encouraging initiatives and ensuring that adequate preparation is carried out. The other is the legal consequences of an event which renders it impossible to perform (or to perform on time).

Because in any particular case the consequences may spread along a chain of connected parties, we believe that there may be some scope for legislative assistance in order to avoid some of the undesirable potential knock-on consequences in terms of defaults and cross defaults.

Yours faithfully

P J R Bloxham

LONDON
65 Fleet Street
London EC4Y 1HS
T+44 20 7936 4000
Direct T+44 20 7832 7193
F+44 20 7832 7001
Direct F+
G4 F+44 20 7936 3960
LDE No 23
E peter.bloxham@
freshfields.com
W freshfields.com

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