

## FINANCIAL MARKETS LAW COMMITTEE

### ISSUE 56 - EMERGENCY POWERS LEGISLATION WORKING GROUP

#### CHECKLIST FOR CONTRACTS

Those responsible for the terms of contracts used in the wholesale financial markets are recommended to consider the following questions when assessing the extent to which are prepared for any major operational disruption.

- Is it intended that performance of obligations should be required come what may, subject only to the applicability of general legal doctrine (such as in English law the doctrine of frustration)?
- If not, is it intended that the contract should adjust the performance of obligations in circumstances that would cover a major operational disruption?
- Does the contract appropriately address the extent of any liability for damages for a failure to perform an obligation as a result of a major operational disruption?
- Does the contract adequately provide for the possibility that a major operational disruption may interfere with any prescribed mechanism for determining rates or prices under the contract (including the mechanism for determining a single net amount payable) ?
- Does the contract rely on a definition of a business day or similar concept? If so, would it disrupt the operation of the contract if a day, originally scheduled to be a business day, fell outside the definition, perhaps on short notice? Does the contract provide any grace periods for general matters or specifically for major operational disruption? Are the period adequate to cover a major operational disruption, even including where part only of a day falls outside the definition?
- Does the contract provide any grace periods for general matters or specifically for major operational disruption? Are the period adequate to cover a major operational disruption?
- Does the contract allow a party to terminate the contract or exercise other remedies because of a failure by a party to perform obligations under other, separate contracts which results from an operational disruption?
- Could a party's failure to perform its obligations under the contract due to a major operational disruption result in a cross-default under its other contracts? If so, do those other contracts adequately address this risk?
- Are there (related) standard form or other contracts in relation to which it would be particularly important to minimise documentation basis risk?