

**FINANCIAL MARKETS LAW COMMITTEE  
ISSUE 56 – EMERGENCY POWERS LEGISLATION**

**Questionnaire and Requests**

**Contracts**

- 1** Please identify in general terms how the contract law of your jurisdiction deals with cases where performance of the contract or the operation of some other material term (e.g. the setting of a rate or price using market inputs) may be impossible because of supervening events (such as operational disruption). Is there a general doctrine which excuses or allows delayed performance because of impossibility, hardship, change of circumstances or other similar events?
  
- 2** We are interested in identifying key standard form contracts used in your markets (e.g. for derivatives, repos, foreign exchange). In relation to these, we would be interested in examples of how they address the following issues:
  - 2.1** the definition of business day;
  - 2.2** disruptions which affect the ability to fix a rate or price relevant to the contract;
  - 2.3** disruptions which prevent settlement of obligations;
  - 2.4** any general force majeure provisions; and
  - 2.5** any general provision concerning illegality of performance.

**Powers**

- 3** What emergency powers are available to public authorities (including regulators) in your financial centre? In particular, we should be interested to know:
  - 3.1** whether the powers include any power to suspend performance of obligations or to declare an emergency public holiday or give directions to the infrastructure bodies referred to below;
  - 3.2** whether the powers are general or specific and whether they contain any safeguards;
  - 3.3** whether the powers are exercisable immediately or only upon regulations being made;
  - 3.4** who is entitled to exercise the powers and for what purposes; and
  - 3.5** what benefits, limitations or disadvantages are thought to apply to the powers?

A copy of the relevant powers would be helpful.
  
- 4** To what extent were those powers exercised (if at all) after the events of 11 September 2001 or in any case of a natural disaster affecting the financial system, how and by whom were the powers exercised and what were the consequential effects?

A list of the names of the partners and their professional qualifications is open to inspection at the above office. The partners are solicitors, registered foreign lawyers or registered European lawyers. The firm is regulated by the Law Society.

Please refer to [www.linklaters.com/regulation](http://www.linklaters.com/regulation) for important information on the regulatory position of the firm.

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- 5 Is there any experience in your financial centre to indicate that there are any gaps or deficiencies in the emergency powers available to public authorities (including regulators) for dealing with a major disruption to the financial system and what particular lessons can be usefully learnt for the future?
- 6 To what extent did public authorities (including regulators) in your financial centre seek to liaise with equivalent authorities in other financial centres in responding to the above disruption and with what success?

### **Infrastructure bodies**

- 7 Please supply copies of all laws, regulations, rules or other principal agreements which govern the operation of exchanges, clearing houses, payments systems, securities settlement systems and other similar organisations (together “**infrastructure bodies**”) which are located in your country, particularly where they relate generally to (a) the effect of a force majeure or other disruptive event or (b) co-operation with other infrastructure bodies, whether in your country or abroad.
- 8 To what extent were those laws, regulations, rules or other agreements used (if at all) by infrastructure bodies to deal with the problems raised following the events of 11 September 2001 or any other major disruptive event (such as a hurricane, typhoon or earthquake) and what were the consequential effects?
- 9 Is there any experience in your financial centre to indicate that there are any gaps or deficiencies in the emergency powers available to infrastructure bodies and to suggest particular lessons that can be usefully learnt for the future?
- 10 Are there any other groups or organisations which act as co-ordinators (either formally or informally) of infrastructure bodies in your jurisdiction?

### **General**

- 11 Are you aware of any other published materials (e.g. official reports, journal articles) which have considered the issues which we are considering? If you are, please could you provide either a copy of such materials or provide us with appropriate citations so that we may obtain copies of them.

Respondents should note that we are more than happy to receive information by way of internet references and to receive information and answers piecemeal, rather than waiting until all answers are available. This Questionnaire and Requests is also available on the Financial Markets Law Committee website at [www.fmlc.org](http://www.fmlc.org) under “work in progress”.

Responses and materials should be sent by post to: Simon McKnight, FMLC Emergency Powers Legislation Working Group Secretary, c/o Linklaters, One Silk Street, London EC2Y 8HQ, or emailed to [simon.mcknight@linklaters.com](mailto:simon.mcknight@linklaters.com).