

**FINANCIAL MARKETS LAW COMMITTEE**

**ISSUE 56 – EMERGENCY POWERS LEGISLATION**

**APPENDIX 6**

**MATERIALS FROM OTHER INTERNATIONAL WHOLESALE  
FINANCIAL MARKETS**

This appendix to the Financial Markets Law Committee Report entitled "Issue 56 – Emergency Powers Legislation" dated November 2003 contains extracts of primary material relating to laws of other international wholesale financial markets

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## INTRODUCTION

This document is Appendix 6 to the Financial Markets Law Committee report on “Issue 56 – Emergency Powers Legislation” dated [●] 2003 (the “**Report**”). It contains extracts of primary material used in the preparation of the Report, such extracts being relevant to show how the laws of other jurisdictions would deal with an event of major operational disruption. Many of these extracts were kindly sent to us by the Financial Markets Lawyers Group, the European Financial Markets Lawyers Group, the Swiss National Bank, the Hong Kong Monetary Authority and the Financial Services Agency of Japan. These extracts are useful, but they are not exhaustive and, in many instances (particularly in relation to the Japanese material) unofficial translations have been used and should not be relied on as being completely correct.

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## 1 U.S. holiday laws

### 1.1 Federal law

5 U.S.C.A. §6103 sets forth the Federal “legal public holidays”: New Year’s Day (January 1), Martin Luther King, Jr.’s Birthday (third Monday in January), Washington’s Birthday (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Columbus Day (second Monday in October), Veterans’ Day (November 11), Thanksgiving Day (fourth Thursday in November), and Christmas Day (December 25). This section provides for rules that apply with respect to a legal public holiday and any other day declared to be a holiday by Federal statute or Executive order. One of these rules is that if the holiday occurs on a Saturday, the Friday immediately before would be the legal public holiday for employees whose basic workweek is Monday through Friday. This section applies to Federal employees and simply provides when they do not have to go to work. This section does not extend to States, State employees, or the public generally. Therefore, banks are unaffected by this statute.

Executive Order No. 11582 (February 11, 1971) (“Observance of Holidays”) contains similar holiday rules for employees of executive departments, independent agencies, and Government corporations. Again this does not apply to States or the public generally.

12 U.S.C.A. §95(a) provides that “during such emergency period as the President of the United States by proclamation may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President.” Therefore, the President may prohibit the transaction of banking business in an emergency (which is not defined by this statute) and thus effectively closing member banks.

12 U.S.C.A. §95(b)(1) authorizes the Comptroller of the Currency to designate a legal holiday for national banks in any State “[i]n the event of natural calamity, riot, insurrection, war, or other emergency conditions occurring in [that] State ....” This subsection also states that in the event that a State or State official authorized by law designates any day as a legal holiday for ceremonial or emergency reasons, for a State or any part of a State, that same day will be a legal holiday for all national banking associations or their offices located in the State or the part so affected. A national banking association may close or remain open on such a State-designated holiday unless the Comptroller by written order directs otherwise.

It should be noted (although not relevant here) that the President of the United States has the authority to “investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution” during the time of war. (12 U.S.C.A. §95a). This is part of the Trading With the Enemy Act and applies only to times of war.

President Franklin D. Roosevelt declared a national emergency and proclaimed a banking holiday on March 6, 1933 for March 6-9, 1933 inclusive. He relied upon the Trading with the Enemy Act (which has since then been amended to apply only to times of war). The order applied to “all banking institutions and all branches thereof located in the United States of America, including the territories and insular possessions....” He defined “banking institutions” to include Federal Reserve Banks.

The International Emergency Economic Powers Act (“IEEPA”) (codified at 50 U.S.C.A. §§ 1701-1706) was enacted in 1977 to limit the extensive economic powers granted to the president of the United States in peacetime emergencies by Section 5(b) of the Trading with the Enemy Act of 1947.

- The President can rely on IEEPA to deal with a threat which has its source in whole or in substantial part outside the United States. There is an argument that because of the interdependencies of the world’s

economies, the requirement that the threat spring substantially from a foreign source does not impose any significant limitation.

- The President must declare a national emergency with respect to the threat in question. There is a question of whether the act of declaring a national emergency will undermine public confidence in the banking or payment systems.
- IEEPA gives the President the authority (among other things) to prohibit (i) any transaction in foreign exchange, (ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national bank thereof, (iii) the importing or exporting of currency or securities.
- IEEPA grants the President authority over banking transactions only “to the extent that such transfers or payments involve any interest of any foreign country or a national thereof.” The phrase “any interest” is so broad that an argument could be made to extend the reach of the statute to banking transactions in which there is no foreign property interest but a only a political/economic interest. Thus, any large-scale financial transaction, even if it involved only U.S. parties, might be subject to this statute if it affected the economy of a foreign nation. It is unlikely that any significant economic activity in the U.S. would not be reached under such a theory of presidential power, given the current interdependence of the world’s industrial economies.

## 1.2 New York law

New York holiday law sets forth dates when banks are permitted to close.

Section 24 of the New York General Construction Law defines the term “public holiday” to include New Year’s Day (January 1), Martin Luther King Jr.’s Birthday (third Monday in January), Lincoln’s Birthday (February 12), Washington’s Birthday (third Monday in February), Memorial Day (last Monday in May), Flag Day (second Sunday in June), Independence Day (July 4), Labor Day (first Monday in September), Columbus Day (second Monday in October), Veterans’ Day (November 11), Thanksgiving Day (fourth Thursday in November), and Christmas Day (December 25). Section 24 also provides that if any of these holidays falls on a Sunday (except Flag Day), the next day is considered the “public holiday”. Also included in the term “public holiday” are “each general election day, and each day appointed by the president of the United States or by the governor of this state as a day of general thanksgiving, general fasting and prayer, or other general religious observances.” It is important to note that Section 24 limits the recognition of Presidentially declared holidays in New York to those concerning thanksgiving and prayer. Presumably the only other Presidentially declared holiday that would reach states would be one concerning national emergency.

In New York the Governor can declare a bank holiday if an emergency exists (Section 24-a(3)(a)). “Emergency” is defined as “any condition which may interfere with the conduct of normal banking operations ... or which poses an imminent or existing threat to the safety and security of persons or property, or both, including floods, wind, rain, hail or snow storms, power failures, transportation failures, earthquake, fire, riots, strikes, civil commotion, labor disputes, enemy action or threat of enemy action, and any similar or different condition which may interfere physically with the conduct of normal banking operations in the holiday area” (Section 24-a(3)(g)). An argument can be made that this definition can be stretched to encompass the Year 2000 problem. The statute is worded so that banks may close; they are not required to close. In fact, the statute provides that a bank office or principal office that has been closed pursuant to Section 24-a may nonetheless conduct limited operations and perform banking transactions (i) for the convenience of its customers or (ii) relating to transactions between the bank and other banks or persons which have remained open for business or are outside the holiday area (Section 24-a(3)(e)).

Even if the Governor has not declared an emergency, the officers of a bank can close one or more of its offices, or its principal office, or suspend a business operation or function of the bank (after satisfying certain requirements and under certain circumstances) if there is an emergency (Sections 24-a(3)(b) - (d)).

The New York holiday law provides that, unless the contract expressly or impliedly indicates a different intent, if a contract requires the payment of money or the performance of a condition on a Saturday, Sunday, or public holiday, or requires the payment of money or the performance of a condition within or before or after a period of time computed from a certain day, and such period of time ends on a Saturday, Sunday, or public holiday, such payment may be made or condition performed on the next succeeding business day, and if the period ends at a specified hour, such payment may be made on condition performed, at or before the same hour of such next succeeding business day, with the same force and effect as if made or performed in accordance with the terms of the contract (Section 25).

Section 24-a(3)(h) provides that any holidays declared pursuant to Sections 24-a(3)(a)-(c) will not be considered "full business days" nor banking days within the meaning of such terms as used in the uniform commercial code ("NYUCC"). This means that an obligation that is due on a "banking day" pursuant to Article 4 of the NYUCC (Bank Deposits and Collections), for example, would not be due on a day declared to be a holiday pursuant to Section 24-a(3).

There is nothing in these statutes which would put a limit on the number of consecutive days that a holiday can last.

The New York Executive Law provides that the Governor in issuing any proclamation appointing any day as a holiday or as a day of thanksgiving or fasting or prayer or other religious observance, under Section 24 of the General Construction Law is authorized to limit or restrict the effect and operation of such proclamation to any city or county.

### **1.3 New Jersey Law**

New Jersey law provides for the same "public holidays" as New York with the exception of Flag day, which New Jersey does not have and Good Friday which New York does not have. (Section 36:1-1.) The statute also provides for the following as public holidays: every Saturday, and any day "appointed, ordered or recommended by the Governor of this State, or the President of the United States, as a day of fasting and prayer, or other religious observance, or as a bank holiday or holidays." New Jersey law is different from New York law in that it would recognize any day declared by the President to be a bank holiday; it is not limited to religious observance days as the New York statute is. The statute provides that any bills, checks, or notes otherwise presentable for acceptance or payment on any of the days enumerated in the statute shall be deemed payable and be presentable for acceptance or payment on the "secular or business day next succeeding any such holiday." For any holiday falling on a Sunday, the following Monday is deemed the legal holiday.

Section 36:1-1.2 provides that if a holiday falls on a Saturday, the preceding Friday shall be the legal holiday for State employees and the public offices of the State government. This does not extend to banks.

Section 36:1-2 provides that any person or corporation, including a bank, may transact business in New Jersey on any designated holiday.

### **1.4 Conclusions drawn for Y2K date change**

There is no specific statute authorizing the President of the United States to declare December 31, 1999 and/or January 3, 2000 holidays in a non-emergency context. There are references in a Federal statute (5 U.S.C.A. §6103) and in one Executive Order to holidays being declared by Executive Order. Even if the President has the authority to declare a holiday for non-emergency reasons for these dates by Executive Order, such Executive Order would presumably only apply to Federal employees, and not banks, State governments or State employees. It should be noted that the New York holiday statute limits recognition of Presidentially declared holidays to those concerning thanksgiving and prayer, whereas the New Jersey holiday statute recognizes presidentially declared bank holidays.

In an emergency context, the President could rely on IEEPA to prohibit banking transactions on the days in question and thus effectively close all banks. The President would have to declare a national emergency to do so. There is nothing in IEEPA to prevent the President from declaring this emergency in advance, i.e., it could be declared in advance. However, the courts would then have more time to decide if the situation really amounts to a national emergency. In any event, such a declaration would most likely bind all banks.

Congress could also pass a statute to declare holidays for the dates in question, which would most likely bind banks.

It should also be noted that December 31, 1999 will be a holiday for Federal employees because under Federal law when a holiday falls on a Saturday (in this case, January 1, 2000), it is observed the Friday before.

To be very certain of reaching all banks, the holidays in question would have to be declared in each State. In New York, for example, the Governor is authorized to declare a holiday under Section 7 of the Executive Law and the Governor can declare a holiday for emergency reasons under Section 24-a of the General Construction Law. The definition of “emergency” can probably be stretched to encompass the Year 2000 problem. The statute is worded so that banks may close; they would not be required to close. There is nothing in the New York statute that would put a limit on the number of consecutive days that a bank could be closed if the holidays were declared pursuant to Section 24-a. New York law has provisions for dealing with contracts that come due on a holiday (as defined by the statute) which provide that performance will be made on the next succeeding business day unless the contract expressly or impliedly indicates a different result.

In some states (such as Connecticut), December 31, 1999 will be a holiday because they have statute providing for the observance on Friday of holidays falling on Saturdays.

## **1.5 New York General Construction law**

§ 24-a. Closing of banking organizations on Saturday; Sunday, public holiday or Saturday afternoon banking transactions; emergency bank holidays

1. Any banking organization lawfully doing business within the state of New York may be closed on any one or more Saturdays upon the adoption of a resolution to such effect by a majority vote of the board of directors or the board of trustees thereof or of the partners in the case of a private banker. Any one or more of such Saturdays shall, with respect to any such banking organization which shall be closed thereon in accordance with the provisions of this subdivision, constitute a public holiday within the meaning of such term as used in and for all purposes of section twenty-five and twenty-five-a of this chapter (but not, in the case of negotiable instruments, for the purposes of subdivision two of section twenty-five thereof), and shall neither be a “full business day” nor a banking day within the meaning of such terms as used in and for all purposes of the uniform commercial code. The term “banking organization”, as used in this section (except where otherwise defined therein), shall mean any banking organization as defined in the banking law, any branch or agency of a foreign banking corporation, any national bank, federal reserve bank, federal savings and loan association, federal home loan bank or federal credit union, and any person or association of persons lawfully carrying on the business of banking in this state whether incorporated or not. As used in this section (except where otherwise defined therein), the term “officers” shall mean the person or persons designated by the board of directors or trustees of a banking organization, or the partners in the case of a private banker, to act for the banking organization in carrying out the provisions of this section; the term “office” shall mean any place at which a banking organization transacts business other than its principal office; and the term “person” shall include natural persons, corporations, partnerships and associations.

2. Nothing in any law of this state shall in any manner whatsoever affect the validity of, or render void or voidable, the payment certification or acceptance of a check or other negotiable instrument under the uniform commercial code or any other transaction by a banking organization in this state, because done or performed on any Sunday or public holiday, or on any Saturday between twelve o’clock noon and midnight, provided such payment, certification, acceptance, or other transaction would be valid if done or performed on any business day or before twelve o’clock

noon on such Saturday; provided, further, that nothing in this subdivision shall be construed to compel any banking organization in this state, which by law or custom is entitled to close at twelve o'clock noon on any Saturday, to keep open for the transaction of business or to perform any of the acts or transactions aforesaid, on any Saturday after such hour except at its own option or to compel any banking organizations in this state to keep open on a public holiday except at its own option and then only to the extent it elects to do so.

3.a. The governor is authorized, by proclamation, to designate and appoint one or more holidays, or holiday periods, to be known as bank holidays, to be observed throughout the state, or to be observed in a portion or portions thereof, as specified in such proclamation, if an emergency as hereinafter defined, shall, in his opinion, require such action.

b. Whenever the officers of a banking organization are of the opinion that an emergency, as hereinafter defined, exists which affects one or more or all the banking organization's offices, they shall have authority to close one or more or all such offices even though the governor has not issued and does not issue a proclamation of emergency, provided however, that provision is made by such officers for the transaction of the business normally transacted at a closed office at another office or the principal office of the banking organization, until further notice. The office or offices so closed shall remain closed until the officers or, in the case of a banking organization as defined in the banking law, the superintendent of banks, direct that it be opened. A banking organization closing an office or offices pursuant to this paragraph shall give prompt notice to the superintendent of banks of its action.

c. Whenever the officers of a banking organization are of the opinion that an emergency, as hereinafter defined, exists which affects the banking organization's principal office, they shall have authority to close such principal office even though the governor has not issued and does not issue a proclamation of emergency, provided however, that provision is made by such officers for the transaction of the business normally transacted at such principal office, at another office of the banking organization, until further notice; provided further however, that if no other office of the banking organization can be so designated for the transaction of the business normally transacted at the principal office, the officers may direct that the principal office shall be closed only with the prior approval of the superintendent of banks. The superintendent of banks, in giving such approval, may require certification of such official of the federal government or of the state of New York or a political subdivision thereof as he deems sufficient to establish that an emergency exists which affects such banking organization's principal office. A banking organization closing such principal office pursuant to this paragraph shall give prompt notice to the superintendent of banks of its action.

d. Whenever the officers of a banking organization are of the opinion that an emergency, as hereinafter defined, exists which adversely affects the conduct of any business operation or function conducted at the bank's principal office, they shall have the authority, upon the prior approval of the superintendent of banks, not to conduct such operation or function even though the governor has not issued and does not issue a proclamation of emergency; provided, however, that such officers may exercise this authority without such prior approval if they have in good faith attempted, but been unable, to contact the superintendent of banks to request permission not to conduct such business or function; and provided further the principal office shall not be closed in its entirety pursuant to this paragraph. No business operation or function shall be closed pursuant to this paragraph d unless such officers have attempted, but in good faith found it infeasible to conduct such business operation or function at another office. A banking organization closing any business operation or function pursuant to this paragraph shall promptly notify the superintendent of banks of its action in a manner prescribed by the superintendent.

e. The discretion of the officers of any banking organization in acting pursuant to this subdivision, when exercised in good faith, shall not be questioned in any court or place.

f. No banking organization and no director, officer or employee of a banking organization shall be liable to any person for any direct or indirect loss suffered by such person by reason of the banking organization's failure or inability to make access to the banking organization's premises and facilities available to such person or by reason of the banking organization's failure to perform, or its delay in performing, any contractual, statutory or other duty



assumed by or imposed upon the banking organization in any capacity when such failure, inability or delay is caused by the banking organization, or any office or the principal office thereof, being closed as authorized by this section.

g. An emergency, within the meaning of this section, shall mean any condition which may interfere with the conduct of normal banking operations, in the holiday area, or at one or more of all offices or the principal office of a banking organization or organizations, or which poses an imminent or existing threat to the safety and security of persons or property, or both, including floods, wind, rain, hail or snow storms, power failures, transportation failures, earthquake, fire, riots, strikes, civil commotion, labor disputes, enemy action or threat of enemy action, and any similar or different condition which may interfere physically with the conduct of normal banking operations in the holiday area.

h. During such holiday, holidays and holiday periods, provided for in paragraphs a through c of this subdivision, all banking organizations may close any or all of their places of business in the holiday area. The superintendent of banks may, however, by special or general regulation, restriction, or order, provide that banking organizations (as such term is defined in the banking law) and branches and agencies of foreign banking corporations in this state shall, to the extent and at such of their places of business as may be directed by him, carry on such of their normal and usual operations or banking transactions in the holiday area during such holiday, holidays or holiday period, as may appear to him to be in the best interests of the public. Such holiday, holidays or holiday periods shall, with respect to such place or places of business in the holiday area of any banking organization which shall be closed thereon in accordance with the provisions of this subdivision, constitute a public holiday within the meaning of such term as used in and for all purposes of subdivision one of section twenty-five and of subdivision one of section twenty-five-a of this chapter (but not for the purposes of subdivision two of section twenty-five or of subdivision two of section twenty-five-a thereof), and shall neither be "full business days" nor banking days within the meaning of such terms as used in and for all purposes of the uniform commercial code, to the extent that the performance of obligations under said code are not directed to be performed by the special or general regulations, restrictions or orders of the superintendent of banks, and shall not be deemed to be public holidays for any other purpose, or under any other provision of law. If any banking operation or function is closed pursuant to paragraph d of this subdivision, a bank holiday shall be deemed to exist, with the same effects and limitations as set forth in the preceding sentence, with respect to such banking operation or function.

i. A bank office or principal office that has been closed as authorized by this section may nonetheless conduct limited operations and perform banking transactions (i) for the convenience of its customers or (ii) relating to transactions between that bank and other banks or persons which have remained open for business or are outside the holiday area.

j. For purposes of this section, each reference to the superintendent of banks shall be deemed to include any official of the banking department to whom authority granted by this section has been delegated.

## **1.6 New York Universal Commercial Code**

### *Section 4-104 Definitions and Index of Definitions.*

(1) In this Article unless the context otherwise requires

...

(c) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions;

## **2 U.S. emergency laws**

### **2.1 US Federal law – US Code**

#### ***Title 12 USC***

*Section 95 Emergency limitations and restrictions on business of members of Federal reserve system; designation of legal holiday for national banking association; exceptions; "State" defined*

(a) In order to provide for the safer and more effective operation of the national Banking System and the Federal Reserve System, to preserve for the people the full benefits of the currency provided for by the Congress through the national banking system and the Federal reserve system, and to relieve interstate commerce of the burdens and obstructions resulting from the receipt on an unsound or unsafe basis of deposits subject to withdrawal by check, during such emergency period as the President of the United States by proclamation may prescribe, no member bank of the Federal reserve system shall transact any banking business except to such extent and subject to such regulations, limitations and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President. Any individual, partnership, corporation, or association, or any director, officer or employee thereof, violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000 or, if a natural person, may, in addition to such fine, be imprisoned for a term not exceeding ten years. Each day that any such violation continues shall be deemed a separate offense.

(b)

(1) In the event of natural calamity, riot, insurrection, war, or other emergency conditions occurring in any State whether caused by acts of nature or of man, the Comptroller of the Currency may designate by proclamation any day a legal holiday for the national banking associations located in that State. In the event that the emergency conditions affect only part of a State, the Comptroller of the Currency may designate the part so affected and may proclaim a legal holiday for the national banking associations located in that affected part. In the event that a State or a State official authorized by law designates any day as a legal holiday for ceremonial or emergency reasons, for the State or any part thereof, that same day shall be a legal holiday for all national banking associations or their offices located in that State or the part so affected. A national banking association or its affected offices may close or remain open on such a State-designated holiday unless the Comptroller of the Currency by written order directs otherwise.

(2) For the purpose of this subsection, the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

### **2.2 New York Executive law**

#### ***Article 2-B State and Local Natural and Man-made Disaster Preparedness***

*Section 20 Natural and man-made disasters; policy; definitions.*

1. It shall be the policy of the state that:

a. local government and emergency service organizations continue their essential role as the first line of defense in times of disaster, and that the state provide appropriate supportive services to the extent necessary;

- b. local chief executives take an active and personal role in the development and implementation of disaster preparedness programs and be vested with authority and responsibility in order to insure the success of such programs;
- c. state and local natural disaster and emergency response functions be coordinated in order to bring the fullest protection and benefit to the people;
- d. state resources be organized and prepared for immediate effective response to disasters which are beyond the capability of local governments and emergency service organizations; and
- e. state and local plans, organizational arrangements, and response capability required to execute the provisions of this article shall at all times be the most effective that current circumstances and existing resources allow.

2. As used in this article the following terms shall have the following meanings:

- a. "disaster" means occurrence or imminent threat of wide spread or severe damage, injury, or loss of life or property resulting from any natural or man-made causes, including, but not limited to, fire, flood, earthquake, hurricane, tornado, high water, landslide, mudslide, wind, storm, wave action, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, radiological accident, water contamination, bridge failure or bridge collapse.
- b. "state disaster emergency" means a period beginning with a declaration by the governor that a disaster exists and ending upon the termination thereof.
- c. "municipality" means a public corporation as defined in subdivision one of section sixty-six of the general construction law and a special district as defined in subdivision sixteen of section one hundred two of the real property tax law.
- d. "commission" means the disaster preparedness commission created pursuant to section twenty-one of this article.
- e. "emergency services organization" means a public or private agency, organization or group organized and functioning for the purpose of providing fire, medical, ambulance, rescue, housing, food or other services directed toward relieving human suffering, injury or loss of life or damage to property as a result of an emergency, including non-profit and governmentally-supported organizations, but excluding governmental agencies.
- f. "chief executive" means:
  - (1) a county executive or manager of a county;
  - (2) in a county not having a county executive or manager, the chairman or other presiding officer of the county legislative body;
  - (3) a mayor of a city or village, except where a city or village has a manager, it shall mean such manager; and
  - (4) a supervisor of a town, except where a town has a manager, it shall mean such manager.

*Section 21 Disaster preparedness commission established; meetings; powers and duties.*

1. There is hereby created in the executive department a disaster preparedness commission consisting of the commissioners of transportation, health, division of criminal justice services, education, social services, economic development, agriculture and markets, housing and community renewal, general services, labor, environmental conservation, mental health, the president of the New York state energy research and development authority, the superintendents of state police, insurance, banking, the secretary of state, the state fire administrator, the chair of the public service commission, the adjutant general, the director of the state office for technology, the chairman of the thruway authority, the chief professional officer of the state coordinating chapter of the American Red Cross and three additional members, to be appointed by the governor, two of whom shall be chief executives. The governor shall designate the chair of the commission.

The members of the commission, except those who serve ex officio, shall be allowed their actual and necessary expenses incurred in the performance of their duties under this article but shall receive no additional compensation for services rendered pursuant to this article.

2. The commission, on call of the chairperson, shall meet at least twice each year and at such other times as may be necessary. The agenda and meeting place of all regular meetings shall be made available to the public in advance of such meetings and all such meetings shall be open to the public. The commission shall establish quorum requirements and other rules and procedures regarding conduct of its meetings and other affairs. The adjutant general shall serve as secretary to the commission and provide staff services as may be necessary through the state emergency management office.

3. The commission shall have the following powers and responsibilities:

- a. study all aspects of man-made or natural disaster prevention, response and recovery;
- b. request and obtain from any state or local officer or agency any information necessary to the commission for the exercise of its responsibilities;
- c. prepare state disaster preparedness plans, to be approved by the governor, and review such plans and report thereon by March thirty-first of each year to the governor and the legislature. In preparing such plans, the commission shall consult with federal and local officials, emergency service organizations, and the public as it deems appropriate;
- d. prepare, keep current and distribute to chief executives and others an inventory of programs directly relevant to prevention, minimization of damage, readiness, operations during disasters, and recovery following disasters;
- e. direct state disaster operations and coordinate state disaster operations with local disaster operations following the declaration of a state disaster emergency;
- f. unless it deems it unnecessary, create, following the declaration of a state disaster emergency, a temporary organization in the disaster area to provide for integration and coordination of efforts among the various federal, state, municipal and private agencies involved. The commission, upon a finding that a municipality is unable to manage local disaster operations, may, with the approval of the governor, direct the temporary organization to assume direction of the local disaster operations of such municipality, for a specified period of time, and in such cases such temporary organization shall assume direction of such local disaster operations, subject to the supervision of the commission. In such event, such temporary organization may utilize such municipality's local resources, provided, however, that the state shall not be liable for any expenses incurred in using such municipality's resources.
- g. assist in the coordination of federal recovery efforts and coordinate recovery assistance by state and private agencies.
- h. provide for periodic briefings, drills, exercises or other means to assure that all state personnel with direct responsibilities in the event of a disaster are fully familiar with response and recovery plans and the manner in which they shall carry out their responsibilities, and coordinate with federal, local or other state personnel. Such activities may take place on a regional or county basis, and local and federal participation shall be invited and encouraged.
- i. submit to the governor and the legislature by March thirty-first of each year an annual report which shall include but need not be limited to:
  - (1) a summary of commission and state agency activities for the year and plans for the ensuing year with respect to the duties and responsibilities of the commission;
  - (2) recommendations on ways to improve state and local capability to prevent, prepare for, respond to and recover from disasters;

(3) the status of the state and local plans for disaster preparedness and response, including the name of any locality which has failed or refused to develop and implement its own disaster preparedness plan and program, and

j. coordinate and, to the extent possible and feasible, integrate commission activities, responsibilities and duties with those of the civil defense commission.

*Section 22 State disaster preparedness plans.*

1. The commission shall prepare a state disaster preparedness plan and submit such plan to the governor for approval no later than one year following the effective date of this act. The governor shall act upon such plan by July first of that year. The commission shall review such plans annually.

2. The purpose of such plans shall be to minimize the effects of disasters by: (i) identifying appropriate measures to prevent disasters, (ii) developing mechanisms to coordinate the use of resources and manpower for service during and after disaster emergencies and the delivery of services to aid citizens and reduce human suffering resulting from a disaster, and (iii) provide for recovery and redevelopment after disaster emergencies.

3. Such plans shall be prepared with such assistance from other agencies as the commission deems necessary, and shall include, but not be limited to:

a. Disaster prevention. Plans to prevent and minimize the effects of disasters shall include, but not be limited to:

- (1) identification of potential disasters and disaster sites;
- (2) recommended disaster prevention projects, policies, priorities and programs, with suggested implementation schedules, which outline federal, state and local roles;
- (3) suggested revisions and additions to building and safety codes, and zoning and other land use programs;
- (4) suggested ways in which state agencies can provide technical assistance to municipalities in the development of local disaster prevention plans and programs;
- (5) such other measures as reasonably can be taken to prevent disasters or mitigate their impact.

b. Disaster response. Plans to coordinate the use of resources and manpower for service during and after disaster emergencies and to deliver services to aid citizens and reduce human suffering resulting from a disaster emergency shall include, but not be limited to:

- (1) centralized coordination of resources, manpower and services, utilizing existing organizations and lines of authority and centralized direction of requests for assistance;
- (2) the location, procurement, construction, processing, transportation, storing, maintenance, renovation, distribution or use of materials, facilities and services;
- (3) a system for warning populations who are or may be endangered;
- (4) arrangements for activating state, municipal and volunteer forces, through normal chains of command so far as possible and for continued communication and reporting;
- (5) a specific plan for rapid and efficient communication, and for the integration of state communication facilities during a state disaster emergency, including the assignment of responsibilities and the establishment of communication priorities, and liaison with municipal, private and federal communication facilities;
- (6) a plan for coordinated evacuation procedures, including the establishment of temporary housing and other necessary facilities;

- (7) criteria for establishing priorities with respect to the restoration of vital services and debris removal;
- (8) a plan for the continued effective operation of the criminal justice system;
- (9) provisions for training state and local government personnel and volunteers in disaster response operations;
- (10) providing information to the public;
- (11) care for the injured and needy and identification and disposition of the dead;
- (12) utilization and coordination of programs to assist victims of disasters, with particular attention to the needs of the poor, the elderly, the handicapped, and other groups which may be especially affected;
- (13) control of ingress and egress to and from a disaster area;
- (14) arrangements to administer federal disaster assistance; and
- (15) a system for obtaining and coordinating disaster information including the centralized assessment of disaster effects and resultant needs.

c. Recovery. Plans to provide for recovery and redevelopment after disaster emergencies shall include, but not be limited to:

- (1) measures to coordinate state agency assistance in recovery efforts;
- (2) arrangements to administer federal recovery assistance; and
- (3) such other measures as reasonably can be taken to assist in the development and implementation of local disaster recovery plans.

*Section 23 Local disaster preparedness plans.*

1. Each county, except those contained within the city of New York, and each city, town and village is authorized to prepare disaster preparedness plans. The disaster preparedness commission shall provide assistance and advice for the development of such plans. City, town and village plans shall be coordinated with the county plan.
2. The purpose of such plans shall be to minimize the effect of disasters by (i) identifying appropriate local measures to prevent disasters, (ii) developing mechanisms to coordinate the use of local resources and manpower for service during and after disasters and the delivery of services to aid citizens and reduce human suffering resulting from a disaster, and (iii) providing for recovery and redevelopment after disasters.
3. Plans for coordination of resources, manpower and services shall provide for a centralized coordination and direction of requests for assistance.
4. Plans for coordination of assistance shall provide for utilization of existing organizations and lines of authority.
5. In preparing such plans, cooperation, advice and assistance shall be sought from local government officials, regional and local planning agencies, police agencies, fire departments and fire companies, local civil defense agencies, commercial and volunteer ambulance services, health and social services officials, community action agencies, organizations for the elderly and the handicapped, other interested groups and the general public. Such advice and assistance may be obtained through public hearings held on public notice, or through other appropriate methods.
6. All plans for disaster preparedness developed by local governments or any revisions thereto shall be submitted to the commission by December thirty-first of each year to facilitate state coordination of disaster operations.
7. Such plans shall include, but not be limited to:

a. Disaster prevention. Plans to prevent and minimize the effects of disasters shall include, but not be limited to:

- (1) identification of potential disasters and disaster sites;
- (2) recommended disaster prevention projects, policies, priorities and programs, with suggested implementation schedules, which outline federal, state and local roles;
- (3) suggested revisions and additions to building and safety codes and zoning and other land use programs;
- (4) such other measures as reasonably can be taken to prevent disasters or mitigate their impact.

b. Disaster response. Plans to coordinate the use of resources and manpower for service during and after disasters and to deliver services to aid citizens and reduce human suffering resulting from a disaster shall include, but not be limited to:

- (1) centralized coordination of resources, manpower and services, utilizing existing organizations and lines of authority and centralized direction of requests for assistance;
- (2) the location, procurement, construction, processing, transportation, storing, maintenance, renovation, distribution or use of materials, facilities and services which may be required in time of disaster;
- (3) a system for warning populations who are or may be endangered;
- (4) arrangements for activating municipal and volunteer forces, through normal chains of command so far as possible, and for continued communication and reporting;
- (5) a specific plan for rapid and efficient communication and for the integration of local communication facilities during a disaster including the assignment of responsibilities and the establishment of communication priorities and liaison with municipal, private, state and federal communication facilities;
- (6) a plan for coordination evacuation procedures including the establishment of temporary housing and other necessary facilities;
- (7) criteria for establishing priorities with respect to the restoration of vital services and debris removal;
- (8) a plan for the continued effective operation of the criminal justice system;
- (9) provisions for training local government personnel and volunteers in disaster response operations;
- (10) providing information to the public;
- (11) care for the injured and needy and identification and disposition of the dead;
- (12) utilization and coordination of programs to assist victims of disasters, with particular attention to the needs of the poor, the elderly, the handicapped, and other groups which may be especially affected;
- (13) control of ingress and egress to and from a disaster area;
- (14) arrangements to administer state and federal disaster assistance;
- (15) procedures under which the county, city, town, village or other political subdivision and emergency organization personnel and resources will be used in the event of a disaster;
- (16) a system for obtaining and coordinating disaster information including the centralized assessment of local disaster effects and resultant needs; and
- (17) continued operation of governments of political subdivisions.

c. Recovery. Local plans to provide for recovery and redevelopment after disasters shall include, but not be limited to:

- (1) recommendations for replacement, reconstruction, removal or relocation of damaged or destroyed public or private facilities, proposed new or amendments to zoning, subdivision, building, sanitary or fire prevention regulations and recommendations for economic development and community development in order to minimize the impact of any potential future disasters on the community.
- (2) provision for cooperation with state and federal agencies in recovery efforts.
- (3) provisions for training and educating local disaster officials or organizations in the preparation of applications for federal and state disaster recovery assistance.

*Section 23-a ...*

*Section 24 Local state of emergency; local emergency orders by chief executive.*

1. Notwithstanding any inconsistent provision of law, general or special, in the event of a disaster, rioting, catastrophe, or similar public emergency within the territorial limits of any county, city, town or village, or in the event of reasonable apprehension of immediate danger thereof, and upon a finding by the chief executive thereof that the public safety is imperiled thereby, such chief executive may proclaim a local state of emergency within any part or all of the territorial limits of such local government; provided, however, that in the event of a radiological accident as defined in section twenty-nine-c of this article, such chief executive may request of the governor a declaration of disaster emergency. Following such proclamation and during the continuance of such local state of emergency, the chief executive may promulgate local emergency orders to protect life and property or to bring the emergency situation under control. As illustration, such orders may, within any part or all of the territorial limits of such local government, provide for:

- a. the establishment of a curfew and the prohibition and control of pedestrian and vehicular traffic, except essential emergency vehicles and personnel;
- b. the designation of specific zones within which the occupancy and use of buildings and the ingress and egress of vehicles and persons may be prohibited or regulated;
- c. the regulation and closing of places of amusement and assembly;
- d. the suspension or limitation of the sale, dispensing, use or transportation of alcoholic beverages, firearms, explosives, and flammable materials and liquids;
- e. the prohibition and control of the presence of persons on public streets and places;
- f. the establishment or designation of emergency shelters and/or emergency medical shelters;
- g. the suspension within any part or all of its territorial limits of any of its local laws, ordinances or regulations, or parts thereof subject to federal and state constitutional, statutory and regulatory limitations, which may prevent, hinder, or delay necessary action in coping with a disaster or recovery therefrom whenever (1) a request has been made pursuant to subdivision seven of this section, or (2) whenever the governor has declared a state disaster emergency pursuant to section twenty-eight of this article. Suspension of any local law, ordinance or regulation pursuant to this paragraph shall be subject to the following standards and limits:
  - (i) no suspension shall be made for a period in excess of five days, provided, however, that upon reconsideration of all the relevant facts and circumstances, a suspension may be extended for additional periods not to exceed five days each during the pendency of the state of emergency;
  - (ii) no suspension shall be made which does not safeguard the health and welfare of the public and which is not reasonably necessary to the disaster effort;
  - (iii) any such suspension order shall specify the local law, ordinance or regulation, or part thereof suspended and the terms and conditions of the suspension;



(iv) the order may provide for such suspension only under particular circumstances, and may provide for the alteration or modification of the requirements of such local law, ordinance or regulation suspended, and may include other terms and conditions;

(v) any such suspension order shall provide for the minimum deviation from the requirements of the local law, ordinance or regulation suspended consistent with the disaster action deemed necessary; and

(vi) when practicable, specialists shall be assigned to assist with the related emergency actions to avoid adverse effects resulting from such suspension.

2. A local emergency order shall be effective from the time and in the manner prescribed in the order and shall be published as soon as practicable in a newspaper of general circulation in the area affected by such order and transmitted to the radio and television media for publication and broadcast. Such orders may be amended, modified and rescinded by the chief executive during the pendency or existence of the state of emergency. Such orders shall cease to be in effect five days after promulgation or upon declaration by the chief executive that the state of emergency no longer exists, whichever occurs sooner. The chief executive nevertheless, may extend such orders for additional periods not to exceed five days each during the pendency of the local state of emergency.

3. The local emergency orders of a chief executive of a county shall be executed in triplicate and shall be filed within seventy-two hours or as soon thereafter as practicable in the office of the clerk of the governing board of the county, the office of the county clerk and the office of the secretary of state. The local emergency orders of a chief executive of a city, town or village shall be executed in triplicate and shall be filed within seventy-two hours or as soon thereafter as practicable in the office of the clerk of such municipal corporation, the office of the county clerk and the office of the secretary of state.

4. Nothing in this section shall be deemed to limit the power of any local government to confer upon its chief executive any additional duties or responsibilities deemed appropriate.

5. Any person who knowingly violates any local emergency order of a chief executive promulgated pursuant to this section is guilty of a class B misdemeanor.

6. Whenever a local state of emergency is declared by the chief executive of a local government pursuant to this section, the chief executive of the county in which such local state of emergency is declared, or where a county is wholly contained within a city, the mayor of such city, may request the governor to remove all or any number of sentenced inmates from institutions maintained by such county in accordance with section ninety-three of the correction law.

7. Whenever a local state of emergency has been declared pursuant to this section, the chief executive of the county in which the local state of emergency has been declared, or where a county is wholly contained within a city, the chief executive of the city, may request the governor to provide assistance under this chapter, provided that such chief executive determines that the disaster is beyond the capacity of local government to meet adequately and state assistance is necessary to supplement local efforts to save lives and to protect property, public health and safety, or to avert or lessen the threat of a disaster.

8. The legislature may terminate by concurrent resolution, such emergency orders at any time.

*Section 25 Use of local government resources in a disaster.*

1. Upon the threat or occurrence of a disaster, the chief executive of any political subdivision is hereby authorized and empowered to and shall use any and all facilities, equipment, supplies, personnel and other resources of his political subdivision in such manner as may be necessary or appropriate to cope with the disaster or any emergency resulting therefrom.

2. Upon the threat or occurrence of a disaster, a chief executive may request and accept assistance which is coordinated and directed by the county chief executive as provided in section twenty-six of this article.

3. A chief executive may also request and accept assistance from any other political subdivision and may receive therefrom and utilize any real or personal property or the service of any personnel thereof on such terms and conditions as may be mutually agreed to by the chief executives of the requesting and assisting political subdivisions.

4. Upon the receipt of a request for assistance made pursuant to subdivision two or three of this section, the chief executive of any political subdivision may give, lend or lease, on such terms and conditions as he may deem necessary to promote the public welfare and protect the interests of such political subdivision, any services, equipment, facilities, supplies or other resources of his political subdivision. Any lease or loan of real or personal property pursuant to this subdivision, or any transfer of personnel pursuant hereto, shall be only for the purpose of assisting a political subdivision in emergency relief, reconstruction, or rehabilitation made necessary by the disaster.

5. A political subdivision shall not be liable for any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of any officer or employee in carrying out the provisions of this section.

6. The chief executive, when requesting assistance pursuant to this section may request assistance from the civil defense and disaster preparedness forces of any other political subdivision, but only if the civil defense and disaster preparedness forces of the type being requested have already been activated within the political subdivisions requesting assistance. The chief executive of any political subdivision receiving such a request is hereby authorized and empowered, subject to the provisions of section twenty-six of this article, to respond thereto.

7. Any power or authority conferred upon any political subdivision by this section shall be in addition to and not in substitution for or limitation of any powers or authority otherwise vested in such subdivision or any officer thereof.

*Section 26 Coordination of local disaster preparedness forces and local civil defense forces in disasters.*

1. Upon the threat or occurrence of a disaster, the chief executive of a county may coordinate responses for requests for assistance made by the chief executive of any political subdivision within the county.

2. Coordination of assistance shall utilize existing organizations and lines of authority and shall utilize any disaster preparedness or civil defense plans prepared by the affected municipality.

3. A chief executive or any elected or appointed county, city, town or village official shall not be held responsible for acts or omissions of municipal employees, disaster preparedness forces or civil defense forces when performing disaster assistance pursuant to a declared disaster emergency or when exercising disaster preparedness plans.

*Section 27 ...*

*Section 28 State declaration of disaster emergency.*

1. Whenever the governor, on his own initiative or pursuant to a request from one or more chief executives, finds that a disaster has occurred or may be imminent for which local governments are unable to respond adequately, he shall declare a disaster emergency by executive order.

2. Upon declaration of a disaster arising from a radiological accident, the governor or his designee, shall direct one or more chief executives and emergency services organizations to:

(a) notify the public that an emergency exists; and

(b) take appropriate protective actions pursuant to the radiological emergency preparedness plan approved pursuant to sections twenty-two and twenty-three of this article. The governor, or his designee, shall also have authority to direct that other actions be taken by such chief executives pursuant to their authority under section twenty-four of this article.

3. The executive order shall include a description of the disaster, and the affected area. Such order or orders shall remain in effect for a period not to exceed six months or until rescinded by the governor, whichever occurs first. The governor may issue additional orders to extend the state disaster emergency for additional periods not to exceed six months.

4. Whenever the governor shall find that a disaster is of such severity and magnitude that effective response is beyond the capabilities of the state and the affected jurisdictions, he shall make an appropriate request for federal assistance available under federal law, and may make available out of any funds provided under the governmental emergency fund or such other funds as may be available, sufficient funds to provide the required state share of grants made under any federal program for meeting disaster related expenses including those available to individuals and families.

*Section 28-a Post disaster recovery planning.*

1. Whenever a state disaster emergency has been declared any county, city, town or village included in such disaster area shall prepare a local recovery and redevelopment plan, unless the legislative body of the municipality shall determine such plan to be unnecessary or impractical. Prior to making such determination, the municipality shall notify the commission of its intent to forego preparation and provide an opportunity to comment to the commission. Within fifteen days after the declaration of a state disaster, any county, city, town or village included in such disaster area shall report to the commission whether the preparation of a recovery and redevelopment plan has been commenced, and if not, the reasons for not preparing such plan. Within sixty days after the declaration of a state disaster, the commission shall report to the governor and the legislature the status of local recovery and redevelopment plans, including the name of any municipality which has failed or refused to commence the development of a recovery and redevelopment plan.

2. The commission shall provide technical assistance in the development of such plans upon the request of such county, city, town or village.

3. A local recovery and redevelopment plan shall include, but need not be limited to: plans for replacement, reconstruction, removal or relocation of damaged or destroyed facilities; proposed new or amended regulations such as zoning, subdivision, building or sanitary ordinances and codes; and plans for economic recovery and community development. Such plans shall take into account and to the extent practicable incorporate relevant existing plans and policies and such plans shall take into account the need to minimize the potential impact of any future disasters on the community.

4. Proposed plans shall be presented at a public hearing upon five days notice published in a newspaper of general circulation in the area affected and transmitted to the radio and television media for publication and broadcast. Such notice shall state the time and place of the hearing and indicate where copies of the proposed plan may be inspected or obtained. Any county, city, town, or village preparing a recovery and redevelopment plan pursuant to this subdivision may, upon mutual agreement with any other such county, city, town or village, hold a joint hearing to consider such recovery and redevelopment plan.

5. Such plans shall be prepared within forty-five days after the declaration of a state disaster and shall be transmitted to the commission. The commission shall provide its comments on the plan within ten days after receiving such plan.

6. A plan shall be adopted by such county, city, town or village within ten days after receiving the comments of the commission. The adopted plan may be amended at any time in the same manner as originally prepared, revised and adopted.

7. The adopted plan shall be the official policy for recovery and redevelopment within the municipality.

8. Nothing in this section shall preclude any municipality from applying for or accepting and receiving any federal funds.

*Section 29 Direction of state agency assistance in a disaster emergency.*

Upon the declaration of a state disaster emergency the governor may direct any and all agencies of the state government to provide assistance under the coordination of the disaster preparedness commission. Such state assistance may include:

- (1) utilizing, lending, or giving to political subdivisions, with or without compensation therefor, equipment, supplies, facilities, services of state personnel, and other resources, other than the extension of credit;
- (2) distributing medicine, medical supplies, food and other consumable supplies through any public or private agency authorized to distribute the same;
- (3) performing on public or private lands temporary emergency work essential for the protection of public health and safety, clearing debris and wreckage, making emergency repairs to and temporary replacements of public facilities of political subdivisions damaged or destroyed as a result of such disaster; and
- (4) making such other use of their facilities, equipment, supplies and personnel as may be necessary to assist in coping with the disaster or any emergency resulting therefrom.

*Section 29-a Suspension of other laws.*

1. Subject to the state constitution, the federal constitution and federal statutes and regulations, and after seeking the advice of the commission, the governor may by executive order temporarily suspend specific provisions of any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster.
2. Suspensions pursuant to subdivision one of this section shall be subject to the following standards and limits:
  - a. no suspension shall be made for a period in excess of thirty days, provided, however, that upon reconsideration of all of the relevant facts and circumstances, the governor may extend the suspension for additional periods not to exceed thirty days each;
  - b. no suspension shall be made which does not safeguard the health and welfare of the public and which is not reasonably necessary to the disaster effort;
  - c. any such suspension order shall specify the statute, local law, ordinance, order, rule or regulation or part thereof to be suspended and the terms and conditions of the suspension;
  - d. the order may provide for such suspension only under particular circumstances, and may provide for the alteration or modification of the requirements of such statute, local law, ordinance, order, rule or regulation suspended, and may include other terms and conditions;
  - e. any such suspension order shall provide for the minimum deviation from the requirements of the statute, local law, ordinance, order, rule or regulation suspended consistent with the disaster action deemed necessary; and
  - f. when practicable, specialists shall be assigned to assist with the related emergency actions to avoid needless adverse effects resulting from such suspension.
3. Such suspensions shall be effective from the time and in the manner prescribed in such orders and shall be published as soon as practicable in the state bulletin.
4. The legislature may terminate by concurrent resolution executive orders issued under this section at any time.

*Section 29-b ...*

*Section 29-c ...*

*Section 29-d ...*

*Section 29-e New York state emergency assistance program.*

1. For purposes of this section the following terms shall have the following meanings:

- (a) "Infrastructure" shall mean and include publicly owned storm and sanitary sewers, water supply systems, drainage systems, transportation systems, roads and bridges.
- (b) "Municipality" shall mean any county, city, village, or town of the state.
- (c) "Public facilities" shall mean and include publicly owned buildings, including traditional government buildings, such as courthouses, firehouses, police stations, parks, recreational facilities, and correctional facilities.
- (d) "Fund" shall mean the state's contingency reserve fund established by law.
- (e) "The state emergency management office" shall mean the office within the office of military and naval affairs that assists the disaster preparedness commission in implementing the powers and duties of the disaster preparedness commission.

2. The governor may, upon a finding that a municipality in the state has suffered substantial damage by an unanticipated natural disaster which has resulted in significant economic distress within such municipality, issue a declaration of significant economic distress in accordance with the provisions herein. In determining whether such significant economic distress exists, the governor shall consider whether the following criteria have been met:

- (a) the municipality suffered a substantial loss of assessed value;
- (b) substantial damage has occurred to municipal buildings, facilities and infrastructure;
- (c) the cost incurred by the municipality for clean-up operations is significant;
- (d) businesses within the municipality have experienced significant economic loss due to the inability to conduct normal business due to the disaster;
- (e) a significant increase in unemployment claims filed by persons employed within the municipality has occurred; and
- (f) the county or the county within which the municipality is located has been declared eligible by the United States small business administration for physical disaster and economic injury disaster loans.

In addition, the governor shall also consider the extent that other financial resources, including federal assistance and insurance, are available to assist the municipality to repair damage caused by the disaster.

3.

- (a) Upon the issuance of a declaration of significant economic distress due to unanticipated natural disaster by the governor, a municipality recognized by the governor as being affected by such disaster which occurred on or after December first, nineteen hundred ninety-two, may apply to the state emergency management office on a form prescribed by such office, for reimbursement from the state's contingency reserve fund for reimbursement of extraordinary and unanticipated costs associated with the reconstruction or repair of public buildings, facilities or infrastructure.
- (b) Where the municipality applying for assistance authorized pursuant to this section is a city, and such application pertains to a county wholly contained within such city, such city may submit separate applications for such assistance for each such county.
- (c) Such municipality shall be granted the assistance provided pursuant to this section, within the amounts made available by appropriation from the fund, upon approval of such application, provided that such municipality agrees

to have a local disaster preparedness plan pursuant to section twenty-three of this article in effect by December thirty-first, nineteen hundred ninety-three. On or after December thirty-first, nineteen hundred ninety-three, no municipality shall be eligible for reimbursement of such expenses unless such plan is in effect.

(d) Municipalities which have received assistance pursuant to this section shall, as soon thereafter as may be possible, amend their respective local disaster preparedness plans to include corrective measures that must be taken in order to avoid, to the extent possible, similar emergencies in the future.

(e) Municipalities applying for assistance pursuant to this section shall accurately describe the emergency conditions which necessitate the expenditure of funds for which reimbursement is being sought pursuant to this section.

(f) In providing assistance pursuant to this section, the state emergency management office may give preference to applicants which demonstrate the greatest need or which document that such assistance will be utilized to bring the applicant into compliance with federal or state law.

(g) In the event that amounts appropriated are insufficient to provide for full reimbursement of all extraordinary and unanticipated costs incurred by such municipality approved for reimbursement pursuant to this section, the state emergency management office is authorized to provide a pro rata share of the appropriations, appropriated herein, to such municipality.

4.

(a) The adjutant general as defined in article nine of this chapter with the advise and consent of the disaster preparedness commission created pursuant to this article, shall have the power to make such rules and regulations as may be necessary and proper to effectuate the purposes of this section.

(b) The adjutant general shall by March fifteenth of each year report to the governor and the legislature describing the activities and operation of the program authorized by this section. Such report shall set forth the number of reimbursement applications received and approved; the identities of the counties, cities, towns and villages receiving reimbursement together with the amount and purpose of the reimbursement.

*Section 29-g Emergency management assistance compact.*

1. The emergency management assistance compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term "states" is taken to mean the several states, the commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions. The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state or states, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resource shortages, community disorders, insurgency or enemy attack. This compact shall also provide for mutual cooperation in emergency-related exercises, testing or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' national guard forces, either in accordance with the national guard mutual assistance compact or by mutual agreement between states.

2. Each party state entering into this compact recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist. The prompt, full and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care and welfare of the people in the event of any emergency or

disaster declared by a party state, shall be the underlying principle on which all provisions of this compact shall be understood. On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

3.

(a) It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this section. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

- (1) Review individual state hazard analysis and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects or resource shortages, civil disorders, insurgency or enemy attack.
- (2) Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.
- (3) Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.
- (4) Assist in warning communities adjacent to or crossing the state boundaries.
- (5) Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue and critical lifeline equipment, services and resources, both human and material.
- (6) Inventory and set procedures for the interstate loan and delivery of human material resources, together with procedures for reimbursement or forgiveness.
- (7) Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

(b) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:

- (1) A description of the emergency service function for which assistance is needed, such as, but not limited to, fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.
- (2) The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time that they will be needed.
- (3) The specific place and time for staging of the assisting party's response and a point of contact at that location.

(c) There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans and resource records relating to emergency capabilities.

4. Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof provided, that it is understood that the state rendering aid may withhold resources to the extent

necessary to provide reasonable protection for such state. Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state, or states, of emergency or disaster remains in effect or loaned resources remain in the receiving states, whichever is longer.

5. Whenever any person holds a license, certificate or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

6. Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account or any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith shall not include willful misconduct, gross negligence or recklessness.

7. Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are parties hereto, this instrument contains elements of a broad base common to all states, and nothing contained herein shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

8. Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

9. Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests provided, that any aiding party state may assume, in whole or in part, such loss, damage, expense or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost provided, however, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Expenses under subdivision eight of this section shall not be reimbursable under this provision.

10. Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies and all other relevant factors. Such plans shall



provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

11.

(a) This compact shall become operative immediately upon its enactment into law by any two states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

(c) Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval be deposited with each of the party states and with the federal emergency management agency and other appropriate agencies of the United States government.

12. This compact shall be construed to effectuate the purposes stated in subdivision one of this section. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

13. Nothing in this compact shall authorize or permit the use of military forces by the National Guard of a state at any place outside the state in any emergency for which the president is authorized by law to call into federal service the militia, or for any purposes for which the use of the army or the air force would in the absence of express statutory authorization be prohibited under section 1385 of title 18, United States code.

14. The legally designated state official who is assigned responsibility for emergency management shall not offer resources to, or request resources from, another compact member state, without prior discussion with and concurrence from the state agency, department, office, division, board, bureau, commission or authority that may be asked to provide resources or that may utilize resources from another compact member state.

15. The director of the state emergency management office shall, on or before the first day of January, two thousand two, provide to the legislature and the governor copies of all mutual aid plans and procedures promulgated, developed or entered into after the effective date of this section. The director of the state emergency management office shall annually hereafter provide the legislature and governor with copies of all new or amended mutual aid plans and procedures on or before the first day of January of each year.

## **2.3 Illinois law**

*Illinois Compiled Statutes, Financial Regulation, Promissory Note and Bank Holiday Act, 205 ILCS 630/*

*Section 17 Holidays.*

(a) The following days shall be legal holidays in the State of Illinois upon which day a bank may, but is not required to, remain closed:

...

, and any day proclaimed by the Governor of this State as a legal holiday. From 12 o'clock noon to 12 o'clock midnight of each Saturday shall be considered a half holiday. In addition to such holidays and half holidays, a bank may select one day of the week to remain closed, as provided in subsection (b) of this Section.

(b) ...

(c) ...

(d) All legal holidays, the half holidays and any day selected by a bank doing business within the State to remain closed, shall, for all purposes whatsoever, as regards the presenting for payment or acceptance, the maturity and protesting and giving of notice of the dishonor of bills of exchange, bank checks and promissory notes and other negotiable or commercial paper or instrument, be treated and considered as a Sunday. When any such holidays fall on Sunday, the Monday next following shall be held and considered such holiday. All notes, bills, drafts, checks or other evidence of indebtedness, falling due or maturing on either of such days, shall be deemed as due or maturing upon the day following, and when 2 or more of these days come together, or immediately succeeding each other, then such instruments, paper or indebtedness shall be deemed as due or having matured on the day following the last of such days.

(e) Any act authorized, required or permitted to be performed at or by or with respect to any bank doing business within the State on a day which it has selected to remain closed under this Section may be so performed on the next succeeding business day and no liability or loss of rights of any kind shall result from such delay.

(f) Nothing in this Act shall in any manner affect the validity of, or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument, or any other transaction by a bank in this State, because done or performed on any Saturday, Sunday, holiday, or any day selected by a bank to remain closed, or during any time other than regular banking hours; but no bank in this State, which by law or custom is entitled to remain open or to close for the whole or any part of any day selected by it to remain open or to close, is compelled to close, or to remain open for the transaction of business or to perform any of the acts or transactions aforesaid except at its own option.

*Illinois Compiled Statutes, Financial Regulation, Banking Emergencies Act, 205 ILCS 610/*

#### *Section 1 Definitions.*

As used in this Act, unless the context otherwise requires:

(1) "Commissioner" means the officer of this State designated by law to exercise supervision over banks and trust companies, and any other person lawfully exercising such powers.

...

(5) "Emergency" means any condition or occurrence which may interfere physically with the conduct of normal business operations at one or more or all of the offices of a bank, or which poses an imminent or existing threat to the safety or security of persons or property, or both at one or more or all of the offices of a bank. Without limiting the generality of the foregoing, an emergency may arise as a result of any one or more of the following: natural disasters; civil strife; power failures; computer failures; interruption of communication facilities; robbery or attempted robbery.

#### *Section 2 Power of Commissioner.*

Whenever the Commissioner is notified by any officer of a bank or by any other means becomes aware that an emergency exists, or is impending, he may, by proclamation, authorize all banks in the State of Illinois to close any or all of their offices, or if only a bank or banks, or offices thereof, in a particular area or areas of the State of Illinois are affected by the emergency or impending emergency, the Commissioner may authorize only the affected bank, banks, or offices thereof, to close. The office or offices so closed may remain closed until the Commissioner

declares, by further proclamation, that the emergency or impending emergency has ended. The Commissioner during an emergency or while an impending emergency exists, which affects, or may affect, a particular bank or banks, or a particular office or offices thereof, but not banks located in the area generally of the said county or municipality, may authorize the particular bank or banks, or office or offices so affected, to close.

The office or offices so closed shall remain closed until the Commissioner is notified by a bank officer of the closed bank that the emergency has ended. The Commissioner shall notify, at such time, the officers of the bank that one or more offices, heretofore closed because of the emergency, should reopen and, in either event, for such further time thereafter as may reasonably be required to reopen.

*Section 3 Notice to Commissioner and the Public.*

A bank closing an office or offices pursuant to the authority granted herein under this Act shall give as prompt notice of its action as conditions will permit and by any means available, to the Commissioner, or in the case of a national bank, to the Comptroller of the Currency. In addition the bank shall post notice of the temporary closing and the authorization for the closing on the main entrance doors of the bank affected. (Source: P.A.77-1782.)

*Section 4 Effect of Closing.*

Any day on which a bank, or any one or more of its offices, is closed during all or any part of its normal banking hours pursuant to the authorization granted under this Act shall be, with respect to such bank or, if not all of its offices are closed, then with respect to any office or offices which are closed, a legal holiday for all purposes with respect to any banking business of any character. No liability, or loss of rights of any kind, on the part of any bank, or director, officer, or employee thereof, shall accrue or result by virtue of any closing authorized by this Act.

The provisions of this Act shall be construed and applied as being in addition to, and not in substitution for or limitation of, any other law of this State or of the United States, authorizing the closing of a bank or excusing the delay by a bank in the performance of its duties and obligations because of emergencies or conditions beyond the bank's control, or otherwise.

*Illinois Compiled Statutes, Executive Branch, Illinois Emergency Management Agency Act, 20 ILCS 33051*

*Section 2 Policy and Purposes.*

(a) Because of the possibility of the occurrence of disasters of unprecedented size and destructiveness resulting from the explosion in this or in neighboring states of atomic or other means from without or by means of sabotage or other disloyal actions within, or from fire, flood, earthquake, telecommunications failure, or other natural or technological causes, and in order to insure that this State will be prepared to and will adequately deal with any disasters, preserve the lives and property of the people of this State and protect the public peace, health, and safety in the event of a disaster, it is found and declared to be necessary:

- (1) To create an Illinois Emergency Management Agency and to authorize emergency management programs within the political subdivisions of the State.
- (2) To confer upon the Governor and upon the principal executive officer of the political subdivisions of the State the powers provided herein.
- (3) To provide for the rendering of mutual aid among the political subdivisions and taxing districts of the State and with other states and with respect to the carrying out of an emergency management program.

(b) It is further declared to be the purpose of this Act and the policy of the State that all emergency management programs of this State be coordinated to the maximum extent with the comparable programs of the federal government, including its various departments and agencies, of other states and localities and private agencies of every type, to the end that the most effective preparation and use may be made of the nation's resources and facilities for dealing with any disaster that may occur.

#### *Section 4 Definitions.*

As used in this Act, unless the context clearly indicates otherwise, the following words and terms have the meanings ascribed to them in this Section:

"Disaster" means an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, or acts of domestic terrorism.

#### *Section 7 Emergency Powers of the Governor.*

(a) In the event of a disaster, as defined in Section 4, the Governor may, by proclamation declare that a disaster exists. Upon such proclamation, the Governor shall have and may exercise for a period not to exceed 30 days the following emergency powers; provided, however, that the lapse of the emergency powers shall not, as regards any act or acts occurring or committed within the 30 days period, deprive any person, firm, corporation, political subdivision, or body politic of any right or rights to compensation or reimbursement which he, she, it, or they may have under the provisions of this Act:

(1) To suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules and regulations of any State agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder or delay necessary action, including emergency purchases, by the Illinois Emergency Management Agency, in coping with the disaster.

(2) To utilize all available resources of the State government as reasonably necessary to cope with the disaster and of each political subdivision of the State.

(3) To transfer the direction, personnel or functions of State departments and agencies or units thereof for the purpose of performing or facilitating disaster response and recovery programs.

(4) On behalf of this State to take possession of, and to acquire full title or a lesser specified interest in, any personal property as may be necessary to accomplish the objectives set forth in Section 2 of this Act, including: airplanes, automobiles, trucks, trailers, buses, and other vehicles; coal, oils, gasoline, and other fuels and means of propulsion; explosives, materials, equipment, and supplies; animals and livestock; feed and seed; food and provisions for humans and animals; clothing and bedding; and medicines and medical and surgical supplies; and to take possession of and for a limited period occupy and use any real estate necessary to accomplish those objectives; but only upon the undertaking by the State to pay just compensation therefor as in this Act provided, and then only under the following provisions:

a. The Governor, or the person or persons as the Governor may authorize so to do, may forthwith take possession of property for and on behalf of the State; provided, however, that the Governor or persons shall simultaneously with the taking, deliver to the owner or his or her agent, if the identity of the owner or agency is known or readily ascertainable, a signed statement in writing, that shall include the name and address of the owner, the date and place of the taking, description of the property sufficient to identify it, a statement of interest in the property that is being so taken, and, if possible, a statement in writing, signed by the owner, setting forth the sum that he or she is willing to accept as just compensation for the property or use. Whether or not the owner or agent is known or readily ascertainable, a true copy of the statement shall promptly be filed by the Governor or the person with the Director, who shall keep the docket of the statements. In cases where the sum that the owner is willing to accept as just compensation is less than \$1,000, copies of the statements shall also be filed by the Director with, and shall be passed upon by an Emergency Management

Claims Commission, consisting of 3 disinterested citizens who shall be appointed by the Governor, by and with the advice and consent of the Senate, within 20 days after the Governor's declaration of a disaster, and if the sum fixed by them as just compensation be less than \$1,000 and is accepted in writing by the owner, then the State Treasurer out of funds appropriated for these purposes, shall, upon certification thereof by the Emergency Management Claims Commission, cause the sum so certified forthwith to be paid to the owner. The Emergency Management Claims Commission is hereby given the power to issue appropriate subpoenas and to administer oaths to witnesses and shall keep appropriate minutes and other records of its actions upon and the disposition made of all claims.

b. When the compensation to be paid for the taking or use of property or interest therein is not or cannot be determined and paid under item (a) above, a petition in the name of The People of the State of Illinois shall be promptly filed by the Director, which filing may be enforced by mandamus, in the circuit court of the county where the property or any part thereof was located when initially taken or used under the provisions of this Act praying that the amount of compensation to be paid to the person or persons interested therein be fixed and determined. The petition shall include a description of the property that has been taken, shall state the physical condition of the property when taken, shall name as defendants all interested parties, shall set forth the sum of money estimated to be just compensation for the property or interest therein taken or used, and shall be signed by the Director. The litigation shall be handled by the Attorney General for and on behalf of the State.

c. Just compensation for the taking or use of property or interest therein shall be promptly ascertained in proceedings and established by judgment against the State, that shall include, as part of the just compensation so awarded, interest at the rate of 6% per annum on the fair market value of the property or interest therein from the date of the taking or use to the date of the judgment; and the court may order the payment of delinquent taxes and special assessments out of the amount so awarded as just compensation and may make any other orders with respect to encumbrances, rents, insurance, and other charges, if any, as shall be just and equitable.

(5) When required by the exigencies of the disaster, to sell, lend, rent, give, or distribute all or any part of property so or otherwise acquired to the inhabitants of this State, or to political subdivisions of this State, or, under the interstate mutual aid agreements or compacts as are entered into under the provisions of subparagraph (5) of paragraph (c) of Section 6 to other states, and to account for and transmit to the State Treasurer all funds, if any, received therefor.

(6) To recommend the evacuation of all or part of the population from any stricken or threatened area within the State if the Governor deems this action necessary.

(7) To prescribe routes, modes of transportation, and destinations in connection with evacuation.

(8) To control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein.

(9) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.

(10) To make provision for the availability and use of temporary emergency housing.

(11) A proclamation of a disaster shall activate the State Emergency Operations Plan, and political subdivision emergency operations plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces that the plan or plans apply and for use or distribution of

any supplies, equipment, and materials and facilities assembled, stockpiled or arranged to be made available under this Act or any other provision of law relating to disasters.

(12) Control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means, the use, sale or distribution of food, feed, fuel, clothing and other commodities, materials, goods, or services; and perform and exercise any other functions, powers, and duties as may be necessary to promote and secure the safety and protection of the civilian population.

(13) During the continuance of any disaster the Governor is commander-in-chief of the organized and unorganized militia and of all other forces available for emergency duty. To the greatest extent practicable, the Governor shall delegate or assign command authority to do so by orders issued at the time of the disaster.

(14) Prohibit increases in the prices of goods and services during a disaster.

### 3 Swiss National Bank

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Zurich, 25 July 2003

Legal Service  
HKU/BRU

### Emergency powers legislation

Dear Mr McKnight

We are referring to your letter dated July 7, 2003 regarding information in emergency powers legislation under Swiss law. This is in fact a highly topical issue also in our jurisdiction, and we are happy to answer your questions. As a preliminary matter, however, it should be pointed out that the Swiss National Bank (SNB) is Switzerland's central bank and assumes no supervisory powers in relation to banks or other financial institutions. The main authority in this area lies with the Swiss Federal Banking Commission (FBC, [www.ebk.admin.ch](http://www.ebk.admin.ch)). However, under legislation currently pending before Parliament, the SNB will assume responsibility to oversee payment and securities clearing and settlement systems. These powers will include responsibility in the case of emergencies. We expect this legislation to enter into force in the first half of next year and are currently in the process of setting up a division that will carry out the oversight of financial market infrastructures. With regard to experiences made after September 11, 2001, however, we will have to refer you to the FBC (Urs Zulauf or Eva Huepkes).

3.1. Under current Swiss law, emergency powers are based on two distinct set of rules, both of which are not primarily aimed at failures of vital financial market infrastructures but are both broad and flexible enough for use in such an instance. First, the Federal Law on Banks and Savings Institutions of November 8, 1934 (as amended) gives the Federal Council (i.e. the executive branch of government) the power to suspend performance of obligations by declaring a postponement of the maturity of claims against one or several banks (see annex for arts. 25-28 BankL). These powers have been used in the past (mostly before World War II) only in a very limited number of cases, due to a lack of bank insolvencies as well as the high threshold that must be met in order to trigger the application of these rules. Art. 25 BankL provides for a postponement of maturity (for all liabilities or certain classes) if a bank is exposed to "continued and excessive withdrawals" (Art. 25(1) BankL). Before issuing such an order, however, it must be "established by a special audit report that the creditors' claims are fully covered and that the payment of interest can be maintained during the postponement". Obviously, this statutory requirement would present some difficulties in the situations envisaged in your study.

The legislation on bank insolvency is currently being completely overhauled; a draft was presented to Parliament in December 2002 and was adopted by the National Council a few weeks ago. It is expected that the new legislation will enter into force sometime in 2004. In relevant parts, the revised law provides that

"The Banking Commission may order protective measures, in particular it may ...

f. prohibit the bank to make or receive payments or to execute securities transactions

g. order a moratorium or a postponement of maturity, except for mortgage backed securities."

(See art. 26(1)(h) of the Bill of December 24, 2002, for the Amendment of the Federal Law on Banks and Savings Institutions [rev. BankL], Federal Gazette 2002, p. 8060-8126). Such measures may be ordered if there is reason to believe that a bank is insolvent, or has liquidity problems, or no longer meets the capital requirements (see art. 25(1) rev. BankL). It should be noted that, while the present statute vests the power to issue such an order in the executive branch of the Federal government, such powers will lie with the Banking Commission under the new legislation. Finally, the new legislation will extend the scope of application of arts. 25 seq. rev. BankL to broker/dealers (it is currently limited to banks). In summary, powers for emergency situations under future legislation will be much more flexible and comprehensive.

The powers under the banking legislation currently apply to many, but not all of Switzerland's financial infrastructure bodies. Most notably, Swiss Interbank Clearing, Switzerland's RTGS payment system, does not have banking status and would therefore not be covered by bank insolvency legislation. In such a case, or if the powers under bank insolvency legislation would not be sufficiently broad, protective orders or regulations could be issued based directly on the Federal Constitution, art. 185(3):

#### **Art. 185** External and Inner Security

3 [The Federal Government] may base itself directly on the present article to issue ordinances and orders to obviate existing or imminent great disturbances of the public order, the external or the inner security. Such ordinances shall be limited in time.

Even though this article is not primarily aimed at disturbances in the financial markets caused by failures of infrastructures, we believe that it is broad and flexible enough to be applied in such a case. It should be noted, however, that application of art. 185 requires "great disturbances of the public order,



the external or the inner security". This phrase is understood to include instances where failures of infrastructure would seriously impede trade and commerce. We therefore believe that it would provide a sufficiently broad basis for intervention in the case of an interruption of payment or securities clearing and settlement systems. The order or regulation would have to be issued by the Federal Council, the executive branch of government.

3.2. see above.

3.3. The powers under the banking legislation are exercisable immediately (by issuing orders to banks). The constitutional powers could be exercised either by issuing a regulation or an order.

3.4. Currently, the powers under both the banking legislation and the federal constitution are to be exercised by the Federal Council. Under the new banking legislation, the powers to issue orders will be vested in the Banking Commission.

3.5. The powers to suspend performance of obligations or to issue a moratorium might be useful in a predominantly domestic situation. However, we believe that these powers are only of limited use in a cross-border situation, since there is no assurance that the suspension of performance of the moratorium would have any cross-border effect while issuing of such an order would certainly accelerate the outflow of funds. Furthermore, it is not sufficiently clear yet what the impact of such an order on financial market transactions would be. In particular, such an order could constitute a default event under certain master agreements.

4. These powers were not exercised after September 11, 2001.

5. No.

6. No.

7. For the time being, there is no special legislation concerning payment systems or securities clearing and settlements systems. As mentioned above, the SNB will assume powers in this area under new legislation currently pending, including powers to issue regulations. (See arts. 19 - 21 rev. National Bank Law, Annex II). In addition, the new banking legislation will include an article 27 on "Protection of Systems" that, in relevant parts, will read as follows:

If possible the Banking Commission informs operators of payment systems and securities clearing and settlement systems in Switzerland and abroad when it intends to take protective measures pursuant to article 26(2)(f)-(h) at the exact point of time these measures will become effective.

As regards insolvency proceedings, arts. 37f and 37g of the revised banking law may be relevant:

Art. 37f                      Co-ordination with proceedings abroad

1 If the bank is subject to insolvency proceedings abroad the Banking Commission shall co-ordinate the bankruptcy proceeding to the extent possible with the competent authorities abroad.

Art. 37g                      Recognition of foreign insolvency decrees and orders

1 The Banking Commission shall decide whether insolvency decrees and orders relating to the liquidation or the protection of a bank issued by an authority abroad may be recognized.

2 The Banking Commission may be recognize decrees and orders issued in the state of the principal place of business of a bank.

8. They were not used after September 11, 2001.

9. No.

10. See preliminary remark.

11. No.

We hope this information will be helpful for you. Please do not hesitate to get back to us should you have any other query or wish to clarify any specific matter. We would also be very interested in receiving any information on the progress of your project.

Yours sincerely,

Banque nationale suisse

Dr. Hans Kuhn

Dr. Franziska Löw

Encl.: Annex I

## Annex I

### FEDERAL LAW ON BANKS AND SAVINGS BANKS

of November 8, 1934 (Incorporating Last Amendment under Date of April 22, 1999)<sup>1</sup>

#### SECTION XI – POSTPONEMENT OF MATURITY

##### Art. 25

1 Banks that are exposed to continued and excessive withdrawals may ask the Federal Council to grant them a postponement of maturity.

2 The postponement of maturity can be granted only where it is established by a special audit report that the creditors' claims are fully covered and that the payment of interest can be maintained during the postponement.

##### Art. 26

The postponement of maturity can be granted for all liabilities of the bank or for certain kinds only with the exception of the interest on funds deposited by third persons; the postponement can be granted either for the total or partial amount of the liabilities.

##### Art. 27

The Federal Council decides on the postponement of maturity after consultation with the National Bank and the Banking Commission. The necessary measures are taken on a case-by-case basis by applying Articles 29-35 in an analogous manner. The duration of the postponement must be limited.

##### Art. 28

Where it appears subsequently that the bank no longer fulfils the conditions for the postponement, the Federal Council will annul the postponement; the bank can initiate proceedings under Article 29 or Article 35, paragraph 2.

#### SECTION XII – MORATORIUM

##### Art. 29

1 If a bank is no longer in a position to meet its commitments in a timely manner, this bank may ask the competent court that it be granted a moratorium. The request must be

accompanied by a statement showing the current status, the available annual financial statements as well as the annual reports and the audit reports of the last five years.

1bis The court appoints a provisional commissioner who has the same powers as the regular commissioner until the court has passed a decision on the request or until bankruptcy proceedings have begun. An auditing firm recognised by banking law may be designated as provisional commissioner. Legal transactions carried out by the bank between the closing of its offices or in the period between the filing of the application and the appointment of the provisional commissioner are not valid in respect to its creditors.

1ter Where a bank has filed a request for moratorium, the bankruptcy court suspends the adjudication of bankruptcy until such time as this application has been processed.

2 The court grants the moratorium for one year if the current status report proves that the bank can meet its liabilities. When required by the circumstances, the moratorium can be extended for another year.

3 The moratorium must be published and communicated to the Office for Bankruptcy Proceedings, to the Court for Bankruptcy Cases and to the Banking Commission.

4 The Cantonal governments must designate one single Cantonal authority for moratorium cases.

#### Art. 30

1 If the court grants the moratorium, it appoints one or more qualified persons as commissioner of the bank. A legal entity, in particular a bank or a trust company, may also be nominated as commissioner.

2 The commissioner is placed under the supervision of the court and can be removed by it for important reasons.

3 The creditors and the bank can lodge an appeal with the court against illegal orders of the commissioner; the complaint must be filed in writing within 10 days after the interested party has received knowledge of the order. The decision on the complaint can be appealed in the Federal Court.

#### Art. 31

Immediately upon his appointment the commissioner must assess the financial situation of the bank in collaboration with the auditing firm and must report it to the court and to the bank; he takes the steps that are necessary to maintain the bank's activities.

#### Art. 32

1 The moratorium has the effects described in Article 297 of the Federal Law on Debt Collection and Bankruptcy.

2 During the moratorium the bank continues to do business under the supervision and in accordance with the instructions of the commissioner; it shall not, however, perform legal acts which would prejudice the legitimate interests of the creditors or give advantage to individual creditors at the expense of the others. Payments to creditors must be approved by the commissioner. He is authorised to order, at his discretion, payments up to a specified amount, to creditors with due claims, in which connection he shall take into due consideration the interests of creditors with claims privileged by legal act or the law and the interests of the small creditors. These payments may not exceed half of those amounts that are secured according to the commissioner's assessment of the financial situation.

3 During the moratorium the court can at any time take the additional measures it deems necessary, on account of the situation, to protect the interests of the bank or the creditors. It can, in particular, submit to the approval of the commissioner the decision as to the validity of the conclusion of new business transactions, the sale of real estate, the creation of pledges or the issuance of a guarantee; measures to this effect must be published.

4 The bank must make its books and documents available to the court and the commissioner, and must furnish all information that may be required. The commissioner must be invited, in due time, to every meeting of the board of management of the bank; he can personally call such meetings.

#### Art. 33

1 If the bank wishes to proceed to an extra judicial reorganisation, or to conclude an arrangement with its creditors, the commissioner must give his expert opinion on the propositions to the bank's authorities, to the creditors or to the authority that decides on such arrangements.

2 Where the commissioner deems that the moratorium is no longer necessary, the court may, upon his request, revoke the moratorium; this decision must be published.

#### Art. 34

1 On request of the commissioner or of one of the creditors, the court must revoke the moratorium and publish this decision:

- a. if the bank has obtained the moratorium on the basis of incorrect statements;
- b. if the bank does not comply with the commissioner's instructions, if it prejudices the legitimate interests of the creditors or if it gives an unfair advantage to certain individual creditors at the expense of the other creditors.

#### Art. 35

1 The court may, as an exception, extend the moratorium for another six months, if it becomes obvious during the moratorium that the bank can achieve an extra judicial reorganisation.

2 Where it becomes evident during the moratorium that the assets of the bank no longer cover its liabilities, or that it will not be able to meet its liabilities in time after the expiration of the moratorium, or that it will not be able to achieve an out-of-court reorganisation, the court instructs the commissioner to demand that the bankruptcy court immediately open the bankruptcy proceedings, unless the bank petitions for an arrangement with the creditors. A postponement of the bankruptcy proceedings pursuant to Article 725, paragraph 4, and Article 903, paragraph 5, of the Swiss Federal Code of Obligations is not admissible.

3 In bankruptcy proceedings, the commissioner functions as receiver in bankruptcy; in proceedings for an arrangement with creditors, he fulfils the obligations of the receiver .

#### 4 Austria

A provision of the Austrian constitutional Law (Article 18) determines the right of the Austrian President (*Bundespräsident* – NOT the chancellor as head of the Government) to adopt emergency regulations. In summary, paragraph 2 of this provision determines that the President can, upon proposal of the Federal government, take preliminary regulations (*Notverordnungen*), thereby also changing existing laws (*Notverordnungsrecht des Bundespräsidenten*). Such emergency Regulations can be taken in order to prevent the general public from an obvious (*offenkundigen*) damage that could not be repaired (*nicht wider gutzumachenden Schadens*) if the Parliament could not gather quickly enough to adopt these measures itself. Such an emergency regulation has to be counter-signed by the Federal Government.

Article 19 (2) determines procedures how the Parliament can ex-post ratify, change or abandon emergency regulations adopted in accordance with Article 19(1).

According to Article 18(3), an emergency regulation cannot change constitutional laws nor create a permanent financial burden for State or financial burdened the regions (*Länder, Bezirke, Gemeinden*).

Similar emergency powers exist for the regional Governments (*Landesregierungen*) and the head of the *Länder* (*Landeshauptmann* = head of the *Landesregierungen*).

The *Notverordnungsrecht* is very broad and does not have limits other than those referred to above which are specified in Article 18(3). Hence, emergency regulations could within the parameters of Article 18(3) also affect financial markets.

No reference is made in this context to Articles 58 or 297 of the Treaty.

## 5 Belgium

The Belgian Constitution does not contain any provisions on emergency conditions (*état d'urgence/noodtoestand*). The possibility to derogate from the Constitution has been expressly forbidden by the Constitution (Art. 187 "La Constitution ne peut être suspendue en tout ni en partie").

During the two world wars Belgium has found itself in a situation which could be described as extra-constitutional. The "decision-laws (*besluit-wetten*)" adopted by the Council of Ministers have after the wars been recognised by the *Cour de Cassation*, although they were clearly in violation with the Constitution.

The measures taken by the Government in times of crisis have all been based on a Specific delegation given by Parliament to the Government. This theory is based on art. 105 of the Constitution "Le Roi n'a d'autres pouvoirs que ceux que lui attribuent formellement la Constitution et les lois particulières portées en vertu de la Constitution même". The Council of State has approved this "attribution-theory", provided that:

- there is an exception crisis;
- it is for a limited period;
- the attributed powers have been delimited accurately;
- it does not violate the constitutional division of competence (e.g. for tax only Parliament is competent);
- it does not violate international law.

In practice, there are very few rules where an emergency situation gives the Government the competence to undertake special measures. One example that comes to mind is the "revendication" of property where in cases of urgency the principles of the expropriation law does not have to be observed

Article 13 of the new law of 2 August 2002 on the supervision of the financial sector and the financial services escaped my attention.

This provision deals indeed with exceptional events and with events of a sudden crisis on the financial markets.

Please note that on 18 March 2002 the ECB was consulted on this law and on 24 April 2002, it delivered its opinion. The relevant article (article 13) was not the object of a special comment. (In this context it has to be noted that the express request for a speedy delivery of the opinion did not allow the drafting panel to go too much into the details of this comprehensive new law.)

Article 13 reads as follows:

- §1. When an exceptional event disturbs the regular operation of a Belgian regulated market, the BFC may, following discussion with the regulated market concerned, suspend all or part of the operations on this market for a maximum of two consecutive trading days.
- §2. In the event of a sudden crisis on the financial markets, the King may, on the recommendation of the NBB and the BFC, take all necessary protection measures with regard to Belgian regulated markets, including the temporary derogation from the provisions of this chapter. Decisions taken on the basis of the first paragraph cease to have effects if they are not confirmed in a law within 12 months of their entry into force.

(IN FRENCH: Art. 13. §1 er. Lorsqu'un événement exceptionnel perturbe le fonctionnement régulier d'un marché réglementé belge, la CBF peut, après concertation avec l'entreprise du marché concernée, suspendre tout ou partie des négociations sur ce marché pour une durée n'excédant pas deux jours de négociation consécutifs.



- §2. En cas de crise soudaine sur les marchés financiers, le Roi peut, sur avis de la BNB et de la CBF, prendre toutes les mesures de sauvegarde nécessaires à l'égard des marchés réglementés belges, y compris des dérogations temporaires aux dispositions du présent chapitre.

Les arrêtés pris en vertu de l'alinéa 1<sup>er</sup>, cessent de produire leurs effets s'ils n'ont pas été confirmés par la loi dans les douze mois de leur date d'entrée en vigueur.)

In the explanatory memorandum the Government notes that article expands the range of tools available to the public authorities for crisis management. Here follows a quote from the said memorandum “For instance, the BEG has been granted the authority to suspend operations on a regulated market for a maximum of two consecutive days of trading in the event of exceptional market disruption. Incidentally, the French financial market authorities have similar powers (see article 42. III of law no. 96-597 of 2 July 1996). Moreover, in the event of a sudden crisis on the financial markets, the King may take any protective measures required *vis-à-vis* the Belgian regulated markets, including temporary dispensations from the provisions of chapter II of this draft law. However, these provisions do not detract from the fact that the market companies are themselves responsible for elaborating suitable structural measures and drawing up emergency plans to overcome any market disruptions (article 4, 6° of this draft law), and that the market rules must provide for suitable order freezing measures or measures to interrupt transactions in the event of excessive price volatility (article 9, 4°).”

## 6 France

The only provision dealing with emergency powers can be found in one Article of the French Constitution of 1958 which provides the following:

### Article 16 of the French Constitution

“Art. 16. – Lorsque les institutions de la République, l’indépendance de la Nation, l’intégrité de son territoire ou l’exécution de ses engagements internationaux sont menacés grave et immédiate et que le fonctionnement régulier des pouvoirs publics constitutionnels est interrompu, le Président de la République prend les mesures exigées par ces circonstances, après consultation officielle du Premier Ministre, des Présidents des assemblées que du Conseil Constitutionnel.

Il en informe la Nation par un message.

Ces mesures doivent être inspirées par la volonté d’assurer aux pouvoirs publics constitutionnels, dans les moindres délais, les moyens d’accomplir leur mission. Le Conseil Constitutionnel est consulté à leur sujet.

Le Parlement se réunit de plein droit.

L’Assemblée Nationale ne peut être dissoute pendant l’exercice des pouvoirs exceptionnels.”

Based on the principle established by Napoléon that “a solid Constitution must be short and obscure”, this Article provides that the President of the Republic can take all necessary measures when the Republic institutions, the independence of the country, the integrity of the territory are threatened and when the regular functioning of constitutional public powers is interrupted. There is no such similar legislation on emergency powers in France. As regards the economic and financial sphere, there are some provisions disseminated in various Codes related to exceptional and emergency prerogatives. However, they remain marginal or residual. For instance, the Consumer Code (CODE DE LA CONSOMMATION) provides as a principle of free competition and the free establishment of prices and as an exception the possibility to take temporary measures in case of exceptional circumstances.

### Article L113-1 (Prix et conditions de vente)

“Les prix des biens, produits et services sont librement déterminés par le jeu de la concurrence. (...) Toutefois, dans le secteurs ou les zones où la concurrence par les prix est limitée en raison, soit de situations de monopole ou de difficultés durables d’approvisionnement, soit de dispositions législatives ou réglementaires, un décret en Conseil d’Etat peut réglementer les prix après consultation du conseil de la concurrence.

Les dispositions des deux premiers alinéas ne font pas obstacle à ce que le Gouvernement arrête par décret en Conseil d’Etat, contre des hausses ou des baisses excessives de prix, des mesures temporaires motivées par une situation de crise, des circonstances exceptionnelles, une calamité publique ou une situation manifestement anormale du marché dans un secteur déterminé. Le décret est pris après consultation du Conseil national de la consommation. Il précise sa durée de validité, qui ne peut excéder six mois.”

Similarly, as regards the stock exchanges (see the French Financial and Monetary Code), when an exceptional event affects the regular functioning of a regulated market, the Chairman of the CMF can suspend the trades for two days and also the Minister can beyond these two days.

### Article L421-5

“Lorsqu’un événement exceptionnel perturbe le fonctionnement régulier d’un marché réglementé, le président du conseil des marchés financiers ou, en cas d’empêchement, son représentant désigné à cet effet par lui peut suspendre tout ou partie des négociations, pour une durée n’excédant pas deux jours de négociations consécutifs. Au-delà de cette durée, la suspension est prononcée par arrêté du ministre chargé de l’économie pris sur proposition du président du conseil des marchés financiers.

Si la suspension sur un marché règlement a duré plus de deux jours de négociations consécutifs, les opérations en cours à la date de suspension peuvent être compensées et liquidées dans les conditions définies par les règles du marché.”

## 7 Germany

### Emergency procedures relating to the financial sector in Germany

The German law contains two types of emergency procedures, which entitle the Federal Government to act in crisis situations affecting the financial sector.

#### 1. §§ 47, 48 of the German Banking Act (Kreditwesengesetz)

§§ 47, 48 of the German Banking Act (Kreditwesengesetz) empower the Federal Government to take certain emergency measures in narrowly defined cases where economic troubles within credit institutions threaten to affect the national economy as a whole.

The provisions have been introduced in the Banking Act as a consequence of the banking crisis of 1931 and have never been used since. They are designed to achieve a short-term freeze of financial activities in cases of an impending crisis for the general economy stemming from credit institutions.

The preconditions under which § 47 can be invoked are as follows:

- There needs to be a danger that financial difficulties within credit institutions (i.e. more than one) in Germany may arise.
- As a consequence of these difficulties, one has to expect grave dangers for the national economy (i.e. not just one sector or one region). As a particular example for the dangers that may occur, the smooth functioning of payment systems is mentioned. In relation thereto, potential dangers may be that payment orders or bookings on accounts can no longer be executed or that deposits can no longer be taken or paid out.

The emergency measures can only be taken by the Federal Government by means of a regulation, after (informal) consultation of the Deutsche Bundesbank. Such regulation may stay in force for a maximum of three months after entry into force.

The instruments that may be taken by the Federal Government are exclusively the following:

- A moratorium, i.e. to grant one or more credit institutions a delay to discharge its obligations. As a consequence, no insolvency proceedings may be initiated or enforcements or seizures of assets may be sought against such institution.
- A closure of credit institutions, i.e. the imposition of bank holidays for customer business (only), inclusive of payments or transfers. Such closure may be limited to certain types of credit institutions or certain types of bank business. The inter-bank business or central bank operations are not covered by this competence.
- A closure of the exchanges (stock exchanges and commodity exchanges). Here, no limitation to certain exchanges is permitted.

The regulation of the Federal Government needs to specify the legal consequences of the emergency measures for prescription periods (in civil law, commercial law, company law, bills of exchange law, cheque law and procedural law).

For the time after the resumption of the banking or exchange business, according to § 48 of the Banking Act, the Federal Government may issue regulations for temporary restrictions for a maximum of three months, e.g. for withdrawals from bank accounts.

#### 2. § 1(2) of the Act on the Safeguarding of the Economy (Wirtschaftssicherstellungsgesetz)

§ 1(2) of the Act on the Safeguarding of the Economy provides the Federal Government with additional emergency powers in case the German Parliament has declared (i) that Germany is under the threat of a military attack by a foreign country

(*Spannungsfall* – Art.30a(1) of the German Constitution (*Grundgesetz*)) or (ii) that Germany is under a military attack by a foreign country or such attack is imminent (*Verteidigungsfall* – Art.115a(1) of the German constitution).

In such a situation, the Federal Government is empowered to take measures to regulate the supply of cash and credit. This includes restrictions to the business of banks as well as temporary closures of credit institutions and Stock Exchanges

## 8 Greece

The Greek legislation does not provide for special rules allowing the Greek Government to legislate outside the procedures laid down in the Greek Constitution of 1975, as amended in 1986 and 2000. Nevertheless, under extraordinary circumstances, the following rules apply:

Article 44 (1) of the Greek Constitution stipulates that “under extraordinary circumstances of on urgent and unforeseeable need, the President of the Republic may upon the proposal of the Cabinet, issue acts of legislative content. Such acts shall be submitted to Parliament for ratification within forty days of their issuance or within forty days from the convocation of parliamentary session. Should such acts not be submitted to Parliament within the above time-limits or if they should not be ratified by Parliament within three months of their submission, they will henceforth cease to be in force”. This is a general provision for legislating in case of emergency broadly defined.

A more specific provision is that of Article 48 of the Greek Constitution related to the state of siege. This article foresees that in specific cases of war or mobilization owing to external dangers or an imminent threat against national security, or an armed coup aiming at overthrowing the democratic regime, the Parliament may issue a resolution upon a proposal of the Cabinet and put into effect throughout the State the state of siege by establishing extraordinary courts and suspending certain provisions related to civil rights under the Greek Constitution. The duration of these measures cannot exceed 15 days. If the Parliament is absent and cannot be convoked in time, the measures mentioned are taken by presidential decree issued on proposal of the Cabinet and submitted to the Parliament for approval as soon as possible but no later than 15 days. From the time that such measures come into effect, the President of the Republic may following a proposal of the Cabinet issue acts of legislative content to meet emergencies or to restore as soon as possible the function of the constitutional institutions. Those acts must be submitted to Parliament for ratification within 15 days otherwise they lose their force *ipso jure*.

## 9 Ireland

The legal basis for the passage of emergency legislation in Ireland contained in Article 28.3.3 of *Bunreacht na hEireann* (Constitution of Ireland), which provides that “nothing in the Constitution shall be invoked to invalidate any law enacted by the *Oireachtas* (National Parliament) which is expressed to be for the purpose of securing the public safety and the preservation of the State in time of war or armed rebellion, or to nullify any act done or purporting to be done in time of war or armed rebellion.” Thus, it is constitutionally necessary to establish that there is in fact a state of war or armed rebellion before the State can proceed to adopt emergency legislation. Historically, such legislation has been passed during the Second World War between 1939-45 (“time of war”) and again in 1976, at the height of the Northern Irish troubles (in a somewhat controversial judgment, the Supreme Court held that the IRA’s armed conflict constituted a state of “armed rebellion” so far as the Republic of Ireland is concerned, justifying the passage of emergency legislation extending police powers).

It would not be constitutionally possible for the Irish National Parliament to adopt an act on emergency powers of the kind contemplated by the Finnish Government, since there is currently no state of war or armed rebellion in Ireland. If a state of war or armed rebellion arose, it would indeed be legally possible for the Irish National Parliament to adopt emergency legislation regarding the regulation of financial markets. In this regard, note that the emergency powers legislation passed during the Second World War had the effect of bringing the entire Irish economy under centralised government control (rationing, etc.).

- What might be the justification of such legislation in relation to the obligations of the Member States under Community law? Is there any reference, for example, to Articles 58 and 297 of the Treaty?

Article 29.4.5 of the Constitution establishes the supremacy of Community law over Irish law, providing in terms quite similar to Article 28.3.3 (the emergency powers provision) that “no provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State which are necessitated by the obligations of membership of the European Union or of the Communities, or prevents laws enacted, acts done or measures adopted by the European Union or by the Communities or by the institutions thereof, or by bodies competent under the Treaties establishing the Communities, from having the force of law in the State.” Academics have raised the question of what the Irish Supreme Court would say as a matter of Irish constitutional law if a conflict arose between (a) emergency powers legislation passed by the *Oireachtas* under Article 28.3.3 of the Constitution and (b) legislation adopted at Community level, which otherwise clearly enjoys supremacy over Irish law. There is no easy answer to this question and in advance of a “real life” situation arising, one can only say at this point that there appears to be an internal contradiction within the Constitution on this point that would need to be resolved by the Supreme Court as a matter of Irish law.

## 10 Luxembourg

The Constitution of Luxembourg does not provide for any specific emergency powers: the Grand-Duke enforces the legislation, directs the administration and the army; he cannot suspend the execution of any law.

Nevertheless, specific laws could extend his powers:

he could regulate matters normally, but not expressly, in the field of the law,

he could take any necessary measure when the legislator is unable to function correctly due to:

- absolute necessity (*état de nécessité*), for example an armed occupation. In this case, the Grand Duke is authorised to adopt any regulation for the sake of general interest;
- relative necessity, i.e. particular social or economic circumstances, in which the normal way to adopt legislation could be too slow or inefficient. In this case, a specific law (*loi d'habilitation*) empowers the Grand-Duke, with the approval of the Parliament (*Chambre des Députés*), to adopt grand-ducal regulation, for a limited period of time, in any matter except those reserved to the law by the Constitution. The regulations adopted by the Grand-Duke in this way shall be examined by the *Conseil d'Etat* (highest administrative court), which gives an Opinion, and shall be ratified by the legislator. This kind of specific grand-ducal regulation, which is not actually an emergency power, is relatively usual: for example, at the end of each year, a law empowers the Grand-Duke for about 10 days to adopt laws in economic and financial matters, if there is any urgency.



## 11 Netherlands

The Netherlands indeed have a so-called *Noodwet financieel verkeer* of 25 May 1978 (as amended). There is also a list of other emergency acts dealing with other areas (distribution of goods, agricultural sector, prices etc.). Article 103 of the Netherlands Constitution provides a legal basis for all these emergency acts.

The Emergency Act for financial services contains emergency powers enabling the Minister of Finance to take all necessary acts regarding the financial sector. Emergencies are notably described as covering armed attack on the Netherlands, violation of the country's territorial integrity, war & treat of war and natural catastrophes. The justification is based on the natural law principle of "*salus rei publicae supreme lex*", i.e. in emergencies the public authorities have to take all necessary actions so as to ensure as much as possible the continued and unhampered functioning of the State.

Prior to exercising these emergency powers, a separate Royal Decree is needed to ascertain that an emergency does indeed exist (parliamentary assent can be provided ex post). The Act does not contain any reference to Community law (Article 297 ECT etc.), but the principle of supremacy of Community law will presumably entail that these emergency powers will have to be executed in line with Community law.

The *Noodwet financieel verkeer* attributes in particular the following powers to the Minister of Finance in the event of emergencies:

- to prohibit or impose conditions and other requirements on export and import of foreign currency and other means of payment;
- to regulate interest rates applicable in the financial markets;
- to regulate and restrict lending activities and deposit-taking by credit institutions;
- to prohibit or restrict issuance and trade of securities;
- to suspend or restrict the functioning of clearing and settlement systems;
- to restrict and regulate payment transfers and payment systems;
- to require DNB to provide the Minister credits and advances in derogation to the Central Bank Act;
- to regulate on accounting and financial statements of credit institutions and insurance companies;
- to impose other restrictions concerning the activities and pricing policies of credit institutions and insurance companies;
- to issue temporary emergency banknotes.

## 12 Portugal

The Portuguese legal framework:

### 12.1 Legal Framework

The Constitution foresees in its Article 19(2) the possibility of having a state of siege or a state of emergency may declared in all or any part of the national territory, but only in the event of actual or imminent aggression by foreign forces, of serious threat to, or disturbance of, the democratic constitutional order or of a public disaster. According to Article 19(3) of the Constitution, the state of emergency may be declared where the circumstances mentioned in paragraph 2 are of a less serious nature. Pursuant to paragraphs 7 and 8 of the constitutional provision in question, a declaration of a state of siege or a state of emergency may affect constitutional normality only within the limits set out in the Constitution and in law; in particular, it may not affect the enforcement of the constitutional provisions with respect to the powers and functioning of the organs with supreme authority (i.e. President, Parliament, Government and courts) and the organs of self-government of the autonomous regions (i.e. the islands of Azores and Madeira), nor the sights and immunities of their members. On the other hand, a declaration of a state of siege or a state of emergency shall vest the authorities with the powers to take the action necessary and appropriate for the prompt restoration of the constitutional normality.

The constitutional provisions in question are implemented by means of Law No. 44/86 of 30 September 1986 whereby a reasonably detailed procedure for the declaration of both the states of siege and emergency is laid down.

Article 30(1) of the Statute of the Banco de Portugal grants to the Governor exceptional powers in emergency situations. More concretely, the statutory provision in question entrusts to the Governor, whenever serious interests of the country or of the Banco de Portugal are at stake and it proves impossible to convene the Board of Directors, due to urgent need, for the lack of quorum, or any other justified reason, full powers to act in all matters required for the accomplishment of the purposes assigned to the Banco de Portugal and which fall within the competence of the Board.

### 12.2 Regulation of financial markets

Both the quoted Article 19 of the Constitution and Law No. 44/86 do not contain any provision on specific competencies and, in particular, on the regulation of financial markets. Article 19 of the latter and paragraph 8 of the former enable broadly the authorities to take measures necessary and appropriate, comprised legal acts, for the prompt restoration of the constitutional normality, whereas Article 17 of Law No. 44/86 entrusts the Government with the power to execute the measures laid down in the declaration of state of siege or state of emergency.

However, since Article 30(1) of the Statute of the Banco de Portugal grants the Governor exceptional powers in emergency situations, it is deemed that the attributions and competencies assigned to the Banco de Portugal, comprised those flowing from its participation in the ESCB, will continue to be carried out by the Banco de Portugal.

No reference is however made in the mentioned legislation to Community law and, in particular, Articles 58 and 297 of the EC Treaty.

## 13 Spain

### Emergency conditions

The Spanish law does not contain any specific provisions regarding regulation of financial markets in emergency conditions.

The Spanish Constitution of 1978, in its article 86, provides that the Government can adopt provisional legislative dispositions called “*Decretos-leyes*” (law decree) in case of “extraordinary and urgent necessity”. This “*Decretos-leyes*” cannot affect the regulation of the state’s basic institutions, the citizens’ rights, duties and freedoms (regulated under Title I of the Constitution), the regime of the autonomic communities and the general electoral law. According to this, emergency regulations could affect financial markets.

Section 2 of the above mentioned article states that the “*Decretos-leyes*” have to be put under debate and voting of totality to the Congress (“*Congreso de los Diputados*”) in the term of the 30 following days to its promulgation. Within this term, the congress has to pronounce on its confirmation or its derogation.

There is no reference made to Articles 58 and 297 of the Treaty.

## 14 Sweden

First of all note the references to Swedish law and authorities in the Finnish legislative proposal (*lag om försäkringsverksamhet under krig eller krigsfar* (1999:890); *lag om registrering av krigsskada på egendom* (1999:889); *försäkringsrörelselagen*; *trafikskadelagen*; *Finansinspektionen*). Another rule that you may also note is Chapter 6, Article 8 of the Sveriges Riksbank Act which gives the Riksbank the possibility, in exceptional circumstances, to give liquidity support, grant credits or provide guarantees on special terms to banks and Swedish companies supervised by *Finansinspektionen*.

In addition, there are certain limited situations where the need for the state to act rapidly to solve unexpected situations is anticipated in the Constitution Act (*regeringsformen*; RF). This is in general achieved through the possibility to delegate constitutional powers from the Parliament (*riksdagen*) to the Government (*regeringen*), thereby providing the Government with the power to issue decrees within certain specified topics, such as the protection of life, personal security and health (see RF Chapter 8, Articles 7-8).

Other Swedish emergency rules focus on the situation in case of war or the threat of war. For these cases, consideration has been given to the possibility (a) to change the Constitution through a simplified procedure, but with a qualified majority (instead of two decisions by the Parliament with a general election in between) or (b) to allow the Government the right to act within the normal competence of the Parliament in exceptional circumstances (in Swedish referred to as “*konstitutionell nödrätt*”). However, both these options (a and b) have been discarded and the solution chosen is instead to establish a separate set of constitutional rules in peacetime that will apply in case of war or threat of war. These rules are contained in its own Chapter 13 of RF and include the delegation of parliamentary powers to a special “war delegation” (RF Chapter 13, Articles 2-3) and, if both the Parliament and the special war delegation are unable to carry out the duties of Parliament, then the Government may exercise such duties (RF Chapter 13, Article 5). Powers belonging to the Government can to a large degree be delegated to regional authorities (according to RF Chapter 13, Article 8) and also the decision-making by local authorities can be exercised differently (according to RF Chapter 13, Article 13 and *lagen om förfarandet hos kommunerna, förvaltningsmyndigheterna och domstolarna under krig och krigsfara m.m.*). The possibility of delegation of powers beyond the general rules on delegation (under RF Chapter 8, Articles 7-8 referred to above) can be used also in certain other exceptional circumstances (when Sweden is not at war or threatened by war) provided that the situation results from a war, including a war between other countries where Sweden does not participate (see RF Chapter 13, Article 6). Chapter 13 of RF was revised in 1988.

## **15 Hong Kong**

### **15.1 Securities and Futures Ordinance**

#### **PART II**

#### **SECURITIES AND FUTURES COMMISSION**

##### **Division 1 – The Commission**

### **3 Securities and Futures Commission**

- (1) Notwithstanding the repeal of the Securities and Futures Commission Ordinance (Cap. 24) under section 406, the body established by section 3 of that Ordinance as the Securities and Futures Commission shall continue in existence in its original name as a body corporate with power to sue and be sued in that name.
- (2) Subject to the provisions of this Ordinance, the corporate identity of the Commission, and the rights, privileges, powers, obligations and liabilities of the Commission and those of others in relation to the Commission, are not affected by the repeal of the Securities and Futures Commission Ordinance (Cap. 24) under section 406, and any reference to the Commission (whether by reference to that Ordinance or otherwise) in any Ordinance or any instrument, record or document, or in or for the purposes of any proceedings, agreement or arrangement (whether in writing or not) shall be construed accordingly.
- (3) The receipts of the Commission are not subject to taxation under the Inland Revenue Ordinance (Cap. 112).
- (4) Part 1 of Schedule 2 contains provisions relating to the constitution and proceedings of and other matters relating to the Commission.

### **4 Regulatory objectives of Commission**

The regulatory objectives of the Commission are:

- (a) to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
- (b) to promote understanding by the public of the operation and functioning of the securities and futures industry;
- (c) to provide protection for members of the public investing in or holding financial products;
- (d) to minimize crime and misconduct in the securities and futures industry;
- (e) to reduce systematic risks in the securities and futures industry; and
- (f) to assist the Financial Secretary in maintaining the financial stability of Hong Kong by taking appropriate steps in relation to the securities and futures industry.

### **5 Functions and powers of Commission**

- (1) The functions of the Commission are, so far as reasonably practicable:

- (a) to take such steps as it considers appropriate to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
- (b) to supervise, monitor and regulate:
  - (i) the activities carried on by recognized exchange companies, recognized clearing houses, recognized exchange controllers or recognized investor compensation companies, or by persons carrying on activities regulated by the Commission under any of the relevant provisions, other than registered institutions; and
  - (ii) such of the activities carried on by registered institutions as are required to be regulated by the Commission under any of the relevant provisions;
- (c) to promote and develop an appropriate degree of self-regulation in the securities and futures industry;
- (d) to promote, encourage and enforce the proper conduct, competence and integrity of persons carrying on activities regulated by the Commission under any of the relevant provisions in the conduct of such activities;
- (e) to encourage the provision of sound, balanced and informed advice regarding transactions or activities related to financial products;
- (f) to take such steps as it considers appropriate to ensure that the relevant provisions are complied with;
- (g) to maintain and promote confidence in the securities and futures industry in such manner as it considers appropriate, including by the exercise of its discretion to disclose to the public any matter relating or incidental to the performance of any of its functions;
- (h) to co-operate with and provide assistance to regulatory authorities or organizations, whether formed or established in Hong Kong or elsewhere;
- (i) to promote understanding by the public of the securities and futures industry and of the benefits, risks and liabilities associated with investing in financial products;
- (j) to encourage the public to appreciate the relevant benefits of investing in financial products through persons carrying on activities regulated by the Commission under any of the relevant provisions;
- (k) to promote understanding by the public of the importance of making informed decisions regarding transactions or activities related to financial products and of taking responsibility therefor;
- (l) to secure an appropriate degree of protection for members of the public investing in or holding financial products, having regard to their degree of understanding and expertise in respect of investing in or holding financial products;
- (m) to promote, encourage and enforce:
  - (i) the adoption of appropriate internal controls and risk management systems by persons carrying on activities regulated by the Commission under any of the relevant provisions, other than registered institutions; and
  - (ii) the adoption of appropriate internal controls and risk management systems by registered institutions in the conduct of activities regulated by the Commission under any of the relevant provisions;
- (n) to suppress illegal, dishonourable and improper practices in the securities and futures industry;

- (o) to take appropriate steps in relation to the securities and futures industry further to any requirement of the Financial Secretary for the purpose of providing assistance in maintaining the financial stability of Hong Kong;
  - (p) to recommend reforms of the law relating to the securities and futures industry;
  - (q) to advise the Financial Secretary on matters relating to the securities and futures industry and provide him with such information in relation thereto as it considers appropriate; and
  - (r) to perform functions conferred or imposed on it by or under this or any other Ordinance.
- (2) Subsection (1)(c) does not limit or otherwise affect any other function of the Commission.
- (3) The Commission, in performing any of its functions in relation to:
- (a) any authorized financial institution as a registered institution or as an associated entity of an intermediary; or
- any person as an associated entity of an authorized financial institution that is a registered institution,
- may rely, in whole or in part, on the supervision of such authorized financial institution or person (as the case may be) by the Monetary Authority.
- (4) For the purposes of this Ordinance, the Commission may:
- (a) acquire, hold and dispose of property of any description;
  - (b) make contracts or other agreements;
  - (c) receive and expend moneys;
  - (d) with the approval of the Financial Secretary, borrow money on security or other conditions;
  - (e) publish or otherwise make available materials (however described) indicating to persons who are, or who carry on activities, regulated by the Commission under any of the relevant provisions and, where the Commission considers appropriate, to any other persons the manner in which, in the absence of any particular consideration or circumstance, the Commission proposes to perform any of its functions; and
  - (f) publish or otherwise make available materials (however described) indicating to the public any matter relating or incidental to the performance of any of the functions of the Commission.
- (5) Materials published or otherwise made available under subsection 4(e) or (f) are not subsidiary legislation.

## **6 General duties of Commission**

- (1) In performing its functions, the Commission shall, so far as reasonably practicable, act in a way which:
- (a) is compatible with its regulatory objectives; and
  - (b) it considers most appropriate for the purpose of meeting those objectives.
- (2) In pursuing its regulatory objectives and performing its functions, the Commission shall have regard to:
- (a) the international character of the securities and futures industry and the desirability of maintaining the status of Hong Kong as a competitive international financial centre;

- (b) the desirability of facilitating innovation in connection with financial products and with activities regulated by the Commission under any of the relevant provisions;
- (c) the principle that competition among persons carrying on activities regulated by the Commission under any of the relevant provisions should not be impeded unnecessarily;
- (d) the importance of acting in a transparent manner, having regard to its obligations of preserving secrecy and confidentiality; and
- (e) the need to make efficient use of its resources.

## **11 Directions to Commission**

- (1) After consultation with the chairman of the Commission, the Chief Executive may, upon being satisfied that it is in the public interest to do so, give the Commission written directions as to the furtherance of any of its regulatory objectives or the performance of any of its functions.
- (2) The Commission shall comply with any written direction given under subsection (1).
- (3) Where any written direction is given under subsection (1), any requirement under any other provision of this or any other Ordinance that the Commission shall, for the purpose of performing any of the functions to which the written direction relates:
  - (a) form any opinion;
  - (b) be satisfied as to any matter (including existence of particular circumstances); or
  - (c) consult any person,

shall not apply for all purposes connected with the performance of functions pursuant to, or consequent upon, the written direction.

- (4) Written directions given under subsection (1) are not subsidiary legislation.

## **29 Direction to cease to provide facilities or services in emergencies**

- (1) In addition to the powers of the Commission under section 28, the Commission may, after consultation with a recognized exchange company, by notice in writing served on the company, direct the company to cease to provide or operate such facilities or cease to provide such services as are specified in the notice for a period not exceeding five business days.
- (2) The Commission may only serve a notice under subsection (1) if it is of the opinion that the orderly transaction of business on the stock market or futures market (as the case may be) is being, or is likely to be, impeded because:
  - (a) an emergency or natural disaster has occurred in Hong Kong; or
  - (b) there exists an economic or financial crisis, whether in Hong Kong or elsewhere, or any other circumstances, which is likely to prejudice orderly transaction of business on the stock market or futures market (as the case may be).
- (3) The Commission may, by notice in writing served on the recognized exchange company, extend the direction under subsection (1) for further periods not exceeding 10 business days in all.
- (4) A notice served under the section shall take effect immediately.



## 15.2 Interpretation and General Clauses Ordinance

- (1) In computing time for the purposes of any Ordinance:
- (a) a period of days from the happening of any event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;
  - (b) if the last day of the period is a public holiday or a gale warning day or black rainstorm warning day the period shall include the next following day, not being a public holiday or a gale warning day or black rainstorm warning day;
  - (c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day is a public holiday or a gale warning day or black rainstorm warning day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next following day, not being a public holiday or a gale warning day or black rainstorm warning day;
  - (d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, no public holiday or a gale warning day or black rainstorm warning day shall be reckoned in the computation of that time.

(Amended 43 of 1983 s 2; 68 of 1995 s. 16)

- (2) In this section:

“**black rainstorm warning day**” means any day throughout or for part of which a black rainstorm warning is in force, and “black rainstorm warning” means a warning issued by the Director of the Hong Kong Observatory of a heavy rainstorm in, or in the vicinity of, Hong Kong by the use of the heavy rainstorm signal commonly referred to as Black; (Amended L.N.362 of 1997)

“**gale warning day**” means any day throughout or for part of which a gale warning is in force, and “gale warning” has the meaning assigned to it by section 2 of the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap 62). (Replaced 68 of 1995 s. 16)

## 15.3 Judicial Proceedings (adjournment during gale warnings) Ordinance

- (1) For the purposes of this Ordinance:
- (a)
    - (i) a gale warning shall commence when the Director issues from the Hong Kong Observatory a report to the effect that any of the tropical cyclone warning signals commonly referred to as No. 8NW, 8SW, 8NE, 8SE, 9 or 10 is in force; and
    - (ii) a rainstorm warning shall commence when the Director issues from the Hong Kong Observatory a report to the effect that the heavy rainstorm warning signal commonly referred to as Black is in force; and (Amended 21 of 1999 s. 3)
  - (b) the gale warning or rainstorm warning as the case may be shall cease when the Director issues from the Hong Kong Observatory a report to the effect that none of the signals mentioned in paragraph (a) remains in force. (Replaced 41 of 1993 s. 6. Amended L.N. 362 of 1997).
- (2) As soon as practicable after a gale warning or a rainstorm warning ceases the Director shall by notice in the Gazette declare the times at which and the days on which the gale warning or rainstorm warning commenced and ceased. (Amended 41 of 1993 s. 6)

## 15.4 Banking Ordinance

In this section:

“business day”: means any day other than:

- (a) a public holiday; or
- (b) a gale warning day or a black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap 1).

## **15.5 Rules of the Stock Exchange of Hong Kong**

### **CHAPTER 5**

#### **TRADING**

##### **Operational Trading Rules**

##### **Trading Hours**

501. (1) Trading is conducted on every weekday, unless otherwise determined by the Board (excluding Saturdays and public holidays) at the times specified below or at such other times as may be determined by the Chief Executive in consultation with the Chairman and the Commission:

Morning Session 10:00 a.m. to 12:30 p.m.

Afternoon Session 02.30 p.m. to 03:00 p.m.

There is no afternoon trading session on the eves of Christmas, New Year and Lunar New Year.

- (2) In addition to the trading hours specified in Rule 501(1), trading is also conducted during the Pre-opening Session unless otherwise determined by the Board from time to time.

- 501A. In addition to the trading hours specified in Rule 501, trading of the Extended Trading Securities on a trading day is also conducted during the Extended Morning Session unless otherwise determined by the Board from time to time.

There is no Extended Morning Session on the eves of Christmas, New Year and Lunar New Year.

- 501B. Unless otherwise determined by the Board, there shall be no Extended Morning Session on a trading day if there is no morning session on that day for whatever reason.

##### **Typhoon and Rainstorm**

571. Unless otherwise decided by the Board, the trading and settlement arrangements upon approach and retreat of typhoons and/or issuance and discontinuation of Black Rainstorm Warnings shall be as follows:

##### **Emergency**

572. If in the opinion of the Board or of the HKE's board the functioning of the Trading Hall or the System is, or is threatened or likely to be, severely and adversely affected by an emergency, including but not limited to fire or other casualty or accident, typhoon, rainstorm, power failures, communications breakdowns, computer malfunction, war, riot, civil commotion, labour strike and other similar events, the Board shall have full authority to take such action as the Board may in its absolute discretion deem necessary or appropriate to deal with such emergency or as directed by HKEx board. Under no circumstances shall the Exchange or HKEx be responsible for damages arising from any such emergency or any action taken by the Exchange in respect thereto.

573. If an emergency as stipulated in Rule 572 occurs, the Board may, in its absolute discretion, adjust the trading hours as specified in Rule 501 and the Extended Morning Session and the times for termination of

the terminal activities as specified in Rule 502 and Rule 501E(1) to compensate for the loss in trading time arising from the emergency.

## **15.6 Stock Exchange of Hong Kong – Option Trading Rules**

### **CHAPTER 9**

#### **EMERGENCY PROCEDURES**

##### **Suspension of Options Trading**

- 90.1 Facilities for trading Options Contracts on the Exchange may at any time be suspended, restricted or withdrawn for a temporary period or for such longer period as may be determined by the Board in prior consultation with the Commission.
- 90.2 Suspension, restriction or withdrawals of facilities for trading Options Contracts on the Exchange may be ordered by the Chief Executive, in consultation with the Commission, notwithstanding Options Trading Rule 901 if, in his opinion, it is not possible for a meeting of the Board to be convened immediately. The Chief Executive, in consultation with the Chairman, shall arrange a meeting of the Board as soon as possible after such suspension, restriction or withdrawal. The Chief Executive may not otherwise suspend, restrict or withdraw facilities for the trading of Options Contracts on the Exchange.
- 90.3 If, in the opinion of the Board, or the Chief Executive in consultation with the Commission, the functioning or operation of the Options System is, or is threatened or likely to be, impaired (whether by reason of any fire or other casualty or accident, typhoon, power failure, communications breakdown, computer malfunction or any other event) in relation to one or more Options Trading Exchange Participants, the Board shall have full authority to take such action as it may, in its absolute discretion, consider necessary to deal with such impairment, including, but not limited to, the adjustment of the times for the commencement and closure of various activities in the Options system. Any such action may result in the inability of one or more Options Trading Exchange Participants to enter into Options Contracts and, accordingly, in the inability of one or more Options Broker Exchange Participants to enter into Options Broker Client Contracts and of clients of Options Exchange Participants to enter into Client Contracts. Furthermore, Options Trading Exchange Participants may from time to time be prevented from, or hindered in, entering into Options Contracts as a result of a failure of communications, of a User Device or PC Terminal or an HKATS workstation or of the Options System.

##### **Typhoon Signals and Black Rainstorm Warnings**

- 90.4 Trading in all option series may be temporarily suspended in accordance with the Operational Trading Procedures in the event of a typhoon no.8 signal or above being hoisted or a black rainstorm warning being issued.

##### **1.12 Special Events**

Special events which may affect trading will be handled by the Exchange in a manner similar to those described in relation to Typhoon Signals or Black Rainstorm Warnings.

## 16 Japan

### 16.1 Civil Code (Books I-III: Law No. 89, 1896)

#### *Book I General Provisions, Chapter V Periods of Time*

##### *Article 142 (Period due to terminate on holiday)*

If, in cases where the last day of a period falls on a national holiday, Sunday or any other holiday, it is customary not to do business on such day, the period shall terminate on the following day.

#### *Book III Obligations, Chapter I General Provisions, Section I Subject-matter of Obligation*

##### *Article 410 (Special provisions where performance is impossible)*

1. If among the acts of performance which form the subject of an obligation some have either been impossible from the beginning or have subsequently become impossible, the obligation shall exist in respect of the remaining acts.
2. The provisions of the preceding paragraph shall not apply, if any act of performance has become impossible by reason of the fault of the party who does not have the right of election.

#### *Book III Obligations, Chapter I General Provisions, Section II Effect of Obligation*

##### *Article 415 (Claim for damages for non-performance)*

If an obligor fails to effect performance in accordance with the tenor and purport of the obligation, the obligee may claim damages; the same shall apply to cases where performance becomes impossible for any cause for which the obligor is responsible.

#### *Book III Obligations, Chapter II Contract, Section I General Provisions, Subsection III Rescission of Contract*

##### *Article 540 (Exercise of right of rescission)*

1. If one of the parties has a right of rescission either by contract or by provision of law, the rescission shall be effected by a declaration of intention made to the other party.
2. The declaration of intention mentioned in the preceding paragraph cannot be revoked.

##### *Article 541 (Right of rescission for delay in performance)*

If one of the parties does not perform his obligation, the other party may fix a reasonable period and demand its performance, and may rescind the contract, if no performance is effected within such period.

##### *Article 542 (Right of rescission for non-performance at fixed time)*

If, where according to the nature of the contract or by a declaration of intention by the parties, the object for which the contract was made cannot be attained unless it is performed at a fixed time or within a fixed period, one of the parties has allowed the time to elapse without performance on his part, the other party may without making a demand as mentioned in the preceding Article forthwith rescind the contract.

##### *Article 543 (Right of rescission for impossibility)*

If performance has become impossible in whole or in part by any cause for which the obligor is responsible, the obligee may rescind the contract.

##### *Article 544 ...*

##### *Article 545 (Effect of rescission)*

1. If one of the parties has exercised his right of rescission, the other party is bound to restore the former to his original position; but the rights of third parties shall not be prejudiced thereby.
2. Interest must be paid upon any money to be repaid in the case mentioned in the preceding paragraph as from the time when such money was first received.
3. The exercise of a right of rescission shall not preclude a claim for damages.

***Book III Obligations, Chapter II Contract, Section III Sale***

***Article 573 (Time for payment of purchase price)***

If a time has been stipulated for the delivery of the subject-matter of a sale, the same time shall also be presumed to have been stipulated for the payment for the purchase price.

## **16.2 Commercial Code (Law No. 48, 1899)**

***Book III Commercial Transactions, Chapter I General Provisions***

***Article 520 (Time for transactions)***

Where business hours have been determined by law, ordinance or custom, the performance of an obligation or a claim for such performance may be made only during such business hours.

## **16.3 Securities and Exchange Law**

***Article 154 (Powers to collect report and inspect)***

Prime Minister may, in case where the Minister deems it necessary and appropriate in the public interest or for the protection of investors, order a securities exchange or an issuer of a security listed on the securities exchange to submit a report or material informative of the business or property of the securities exchange, or cause a government official in charge of the matter to inspect the state of its business or property, books and records, or other things.

***Article 155 Revocation of License, Suspension of Business, Dismissal of Officer, or Suspension of Trade by Reason of Violation of Law or Regulations, etc.***

Prime Minister may, in case where a securities exchange falls within the purview of any of items set forth below and if the Minister deems it necessary and appropriate in the public interest and for the protection of investors, take action set forth in each such item:

- (1) In case where a securities exchange acted in violation of laws or regulations thereunder, administrative action taken by a governmental body under laws or regulations thereunder, or the articles of incorporation or other rules of the securities exchange, or where the securities exchange failed to exercise its powers granted by this Law, order issued under this Law, the articles of incorporation and other rules of the securities exchange for the purpose of making a member, etc. or an issuer of a security listed thereon comply with laws or regulations thereunder, administrative action taken by a governmental body under laws or regulations thereunder, or the articles of incorporation, business regulations, order acceptance regulations and other rules of the securities exchange (hereinafter in this item collectively referred to as “laws and regulations, etc.”) or just and equitable principles of trade set forth in the articles of incorporation or other rules of the securities exchange or to take any other necessary action, despite the fact that such persons acted in violation of the laws and regulations, etc. or in contravention of just and equitable principles of trade; revocation of license referred to in Paragraph 1 of Article 80, or issuance of an order to suspend its business, in whole or in part, for a period of one year or such shorter time as may be fixed by the Minister,

to change its business or prohibit part of its business, to dismiss its officer, or to take necessary measures set forth in the articles of incorporation or other rules of the securities exchange, or

(2) In case where the Minister deems that an act of the securities exchange or the state of sale or purchase, etc. of securities in the exchange securities market provided by itself is detrimental to the public interest or for the protection of investors; issuance of an order to suspend the sale or purchase, etc. of securities in the exchange securities market, in whole or in part, for a period of ten days or such shorter period as may be fixed by the Minister, or to suspend its business, in whole or in part, for a period of three months or such shorter period as may be fixed by the Minister subject to a decision by a Cabinet meeting.

2. Prime Minister shall, in case where the Minister intends to issue, pursuant to the provisions of Item (1) of the preceding article, an order to suspend business of a securities exchange, in whole or in part, change its business, prohibit part of its business, or take necessary measures set forth in its articles of incorporation or other rules, hold a hearing, notwithstanding the division of procedures for expressing opinion under the provisions of Paragraph 1 of Article 13 of the Administrative Procedure Law.

3. No complaint may be raised under the Law for Examination of Complaints against Administrative Actions in connection with any action taken pursuant to the provisions of Item (2) of Paragraph 1 hereof.

#### *Article 155-2*

Prime Minister may, in case where the Minister deems it necessary and appropriate in the public interest or for the protection of investors in the light of the articles of incorporation, business regulations, order acceptance regulations or other rules, trade practices, or the state of business operations or property of a securities exchange, order the securities exchange to amend the articles of incorporation, business regulations, order acceptance regulations or other rules, to change trade practices, or to take other measures necessary for supervision, to the extent necessary. In this instance, a hearing shall be held notwithstanding the division of procedures for expressing opinions under the provisions of Paragraph 1 of Article 13 of the Administrative Procedure Law.

## **16.4 Banking Law**

### *Article 15 (Holidays and business hours)*

1. The holidays of a bank shall be limited to Sundays and other days prescribed by Cabinet Order.
2. The business hours of a bank shall be prescribed by Cabinet Order in consideration of circumstances etc. of financial transactions.

### *Article 16 (Temporary suspension of business, etc.)*

1. Excepting the cases prescribed by Ministry of Finance Ordinance, if a bank suspends temporarily the whole or part of its business in the business place or agency office due to inevitable reasons such as natural disaster, it shall give a public notice, and post up in front of said business place or agency office, together with making notification to the Minister of Finance attaching the reason. The same shall apply if a bank reopened the whole or a part of business in the business place or agency office in which the whole or a part of business was temporarily suspended.
2. ...

## **16.5 Cabinet Order for Banking Law (*Sekou Kisoku*)**

### *16 (Opening hours)*

16.1 Opening hour of a bank (including branches of its agencies) shall be from 9 a.m. to 3 p.m.

16.2 Opening hour provided in the foregoing paragraph may be extended for the convenience of the business.

16.3 In case there is need to have different opening hour from the one provided in the paragraph 1 due to special circumstances of the location of its branches (including branches of its agencies; same in hereunder) (except the case that falls under the foregoing paragraph,) a bank may change the opening hour of such branches.

16.4 When a bank is going to change its opening hour as provided in the foregoing paragraph, it shall display the notification to that effect at such branches.

16.5 Notwithstanding the foregoing paragraph, opening hour of a bank's branch in a foreign country shall be the hour that is admitted by the laws and regulations in the location of the branch.

## **16.6 Cabinet Order for Banking Law (Sekou Rei)**

### *5 (Holidays)*

5.1 The days stipulated as the days prescribed by Cabinet Order in 15-1 of the Banking Law shall be the following days.

1. Holidays prescribed in the Law on National Holidays,
2. Days starting from 31 December to and including 3 January of the following year (excluding the days provided in the foregoing paragraph,) and
3. Saturdays

5.2 The following days may be holidays of branches of a bank (including branches of its agencies; same in hereunder) in addition to the days prescribed in each of the foregoing paragraphs.

1. Days that fall on general holidays at the location of the branch and that the Commissioner of FSA announced as holidays of the branch
2. Days that the Commissioner of FSA admitted as the days that it is unavoidable to be made holiday of the branch, due to special circumstances of the location of the branch

5.3 When a bank makes the days prescribed in 5-2-2 holidays of the branches, it shall display the notification to that effect at such branches.

## **16.7 Disaster Countermeasures Basic Act**

### *(Definition)*

2-1 Definitions of the terms referred to in each of the following sub-paragraphs shall be those provided in such sub-paragraphs.

2-1-1 Disaster: Damage that occurs from blizzard, heavy rain, heavy snow, flood, high water, earthquake, tidal water (tsunami,) eruption, other abnormal natural phenomenon, large-scale fire, burst or other cause similar to them in terms of the extent of damages it incurs and that is prescribed by the Cabinet Order

### *Description from the Financial Services Agency of Japan in response to our request*

Disaster Countermeasures Basic Act stipulates that the government shall take necessary financial measures to achieve the purpose of the law (Article 9-1.). Based on this, when a disaster occurs, the government is deemed to take following measures adequately against private financial institutions without missing the opportunity and as far as they are deemed to be necessary, according to the local situation of disaster and needs for fund, at the same time as keeping close contact with related institutions.

- Measures in respect of loans related to the disaster

- Measures in respect of withdrawal of deposit including early withdrawal before maturity
- Measures in respect of bill exchange and holiday operation
- Measures in respect of payment of insurance and delay of payment of insurance premium
- Measures in respect of responses such as suspension of operation

Disaster Countermeasures Basic Act stipulates that, in case the Prime Minister declare the State of Emergency by Disaster, and if there is no time to get approval by Diet due to its closure or other reasons for the delay of payment of financial obligations and extension of period of maintenance of rights when they are urgently needed to maintain order of the country and ensure public welfare, it is possible to constitute cabinet orders by the authority of the Cabinet.