

Comments on behalf of The Association of Corporate Treasurers

in response to the
Unfair Contract Terms

Introduction

The Association

The Association of Corporate Treasurers was formed in London, England, in 1979 to encourage and promote the study and practice of corporate finance and treasury management and to educate those involved in the field. Today, it is an organisation of professionals in corporate finance, risk and cash management operating internationally.

A professional body and not a trade association, it has over 3,000 Fellows, Members and Associate Members. More information is available on our website, www.treasurers.org. With more than 1,200 students in more than 40 countries, its education and examination syllabuses are recognised as the global standard setters for treasury education.

Members of the Association work in many fields and in many countries. The majority of Fellows work in large UK public companies, responsible for the treasury and corporate finance functions.

The ACT usually comments from the corporate and not the financial services sector standpoint.

This Consultation

This is an important topic. We would be pleased to further expand any point made herein or to assist the Commission in any other way.

These comments are on the record.

Contact details for the ACT are on page 3.

Comments

1. Wholesale financial markets generally.

Participants in the wholesale financial markets in London include large public companies as well as financial services companies. Companies have an interest in the efficient operating of those markets.

In looking at contracts applicable in those markets it is important to recognise the distinction between companies operating in these markets as wholesale counterparties and retail counterparties - which may include small companies.

We believe that it is essential that wholesale financial markets are excluded from the reasonableness tests discussed in the consultation/discussion paper in order to avoid uncertainties which would destroy those markets. Counter-parties cannot deal with each other in circumstances of contractual uncertainty.

We have seen Lord Browne-Wilkinson's letter dated 20th June 2003 to Sir Roger Toulson on behalf of the Financial Markets Law Committee. We would like to support his remarks.

2. Corporate finance

We have recently commented to the Law Commission on the issue of trusteeships involved in the raising of corporate finance, following CP 171 on Trustee Exemptions. A copy of our comments is available under Loan Documentation at <http://www.treasurers.org/technical/papers/>

In so far as any change on unfair contract terms generally may otherwise apply in the corporate finance field, including to what we have called "corporate finance trusteeships" we believe a complete exclusion should be provided.

London, 29 July 2003

The Association of Corporate Treasurers

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