

HERBERT SMITH FREEHILLS REACTS TO REGULATOR'S PAPER ON TOUGH LEGACY ISSUES RESULTING FROM LIBOR TRANSITION

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Deals and cases

Responding to news that the Tough Legacy Taskforce has issued its [paper](#) on "tough legacy" issues in the transition from LIBOR, [Rupert Lewis](#), head of banking litigation at Herbert Smith Freehills, says:

"Publication of this "tough legacy" paper has been eagerly anticipated since the beginning of the year, and I think the market will broadly welcome the outcome. The recommendation from the Taskforce for a legislative fix to address tough legacy contracts is wider than many will have expected, as it suggests that there is a "case for action" which extends to all asset classes and possibly all LIBOR currencies. A key factor driving the breadth of the recommendation appears to have been a recognition of the linkages across asset classes in more complicated structured arrangements. However, it is important to bear in mind that a legislative fix will automatically determine the amendments which will be made to those contracts which are caught, whatever the economic consequences for the parties.

"While the Taskforce has indicated its preference for a legislative solution of some kind, it is of course not within the gift of the Taskforce, or indeed the regulators, to provide this fix. The paper emphasises that there is still no guarantee that such a solution will materialise, or that it will be available for all products and circumstances. There also remain risks of significance divergence between the legislative measures introduced in different jurisdictions. While this should have the effect of reducing the litigation risk of some tough legacy contracts, it requires higher level government/regulatory intervention. The important next step is to see if and when the government takes up the recommendations, which will be more challenging given the many competing demands for its attention. The message from the Taskforce remains very clear: LIBOR transition should primarily be achieved by active amendment, as this is the only way for parties to have certainty over their contracts and their economic effects."

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