

# Client Briefing (1)

August 1998

## THE MILLENNIUM PROBLEM

In the Year 2000 computer based information systems of all types will encounter a new century for the first time and few people can remain unaware of the problems it poses to business and many areas of our computer based society.

This briefing document is intended to outline Insurers' present attitude to some of the insurance issues created by the Millennium problem.

For the insurance industry the problem is twofold, firstly as a massive user of information technology and secondly as an insurance provider for unforeseen risks.

The insurance industry is planning to be fully Year 2000 compliant by October 1998 to enable a full annual trading cycle to be completed before the Millennium. For businesses checking the compliance of their suppliers, their insurance services' suppliers, both insurers and intermediaries, should not be overlooked.

Tysers are on course to meet the industry's Year 2000 conformity standards, and comply with the British Standards Institute definition of conformity.

### A Definition of Year 2000 Conformity Requirements

Year 2000 conformity shall mean that neither performance nor functionality is affected by dates prior to, during and after the Year 2000.

In particular:-

#### Rule 1

No value for current date will cause any interruption in operation.

#### Rule 2

Date-based functionality must behave consistently for dates prior to, during and after Year 2000.

#### Rule 3

In all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithms or inferencing rules.

#### Rule 4

Year 2000 must be recognised as a leap year.

*Source: BSI - disc. PD 2000 - 1.*

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## The Insurance Issues

The insurance industry relies on insured losses being unexpected, accidental and spread over time, which is exactly the opposite of the Millennium situation.

It appears almost certain that the failure of a business to take effective action to deal with the Year 2000 problem will be seen by Insurers as foreseeable circumstances and a failure to take reasonable precautions and so that any loss or damage caused in such circumstances will not be viewed as fortuitous **and will not be covered.**

The extent however, to which the insurance industry will provide cover is currently becoming clearer, and at the time of printing this briefing document it appears that the majority of Insurers will be adopting the Millennium Exclusion Clause recommended by the Association of British Insurers for Property and Business Interruption policies.

Although described as an exclusion clause, by defining what is not covered under Property Damage policies and Business Interruption policies (Consequential Loss policies) it is possible to determine the remaining cover provided.

Currently the proposed clause will apply to Property and Business Interruption insurances only and not to other classes of insurance e.g. Liability insurances, Professional Indemnity insurances etc. For businesses within the computer industry, specific treatment of the Year 2000 insurance problem can also be expected.

## Property and Business Interruption Insurances

The ABI's recommended exclusion wording is as follows:-

“Damage or consequential loss directly or indirectly caused by or consisting of or arising from the failure of any computer, data processing equipment or media, microchip, integrated circuit or similar device or any computer software, whether the property of the insured or not, and whether occurring before, during or after the year 2000.

- i) correctly to recognise any date as its true calendar date
- ii) to capture, save or retain and/or correctly to manipulate, interpret or process any data or information or command or instruction as a result of treating any date otherwise than as its true calendar date.
- iii) to capture, save, retain or correctly to process any data as a result of the operation of any command which has been programmed into any computer software, being a command which causes the loss of data or the inability to capture, save, retain or correctly to process such data on or after any date.

**but this shall not exclude subsequent damage or consequential loss, not otherwise excluded, which itself results from a defined peril.”**

*Source: British Insurance & Investment Brokers' Association*



## **What Does This Mean?**

The last paragraph of the clause effectively defines the insurance cover remaining, i.e. “but this shall not exclude subsequent damage or consequential loss, not otherwise excluded, which itself results from a defined peril”.

Whether you have a Fire & Special Perils policy or the more common “All Risks” policy, the cover for Year 2000 problems is the same i.e. Insurers are prepared to cover loss by defined perils arising from Year 2000 non-compliance, but will completely exclude all other losses.

The defined perils referred to are:-

“Fire, Lightning, Explosion, Aircraft or other Aerial Devices or articles dropped therefrom, Riot, Civil Commotion, Strikers, Locked-out Workers, Persons taking part in labour disturbances, Malicious Persons, Earthquake, Storm, Flood, Escape of Water from any tank, apparatus or pipe, and Impact by any road vehicle or animal”.

Accidental damage, whether direct or indirect is excluded and only the happening of a fire or other defined peril will be sufficient to trigger an insured loss. However, where a fire or other defined peril occurs and the loss is aggravated by a Year 2000 non-compliance, for example the failure of a fire alarm, Insurers will not treat this as a reason to avoid the claim.

By way of example, where a Year 2000 non-compliance causes fire or explosion in plant or equipment, the direct loss and the indirect loss flowing from the event will be covered under the Property and Business Interruption insurance. However, the same non-compliance causing purely accidental interruption and damage to production will not be covered unless it leads on to a defined peril.

## **Liability Insurances**

It is expected that the statutory cover provided by Employers’ Liability policies will be unaffected by Year 2000 clauses or exclusions of cover.

For Public (and Products) Liability policies however, the opposite situation is widely expected to apply and Insurers are likely to totally exclude cover for liability arising from Year 2000 problems, as businesses are expected to ensure that the services facilities and products they provide are safe.

For example, a Year 2000 caused failure of machinery, equipment or products used or sold to the public which results in death, injury or damage to customers or others would not be insured. The potential liability of a business could be massive in some circumstances and the importance of a comprehensive and fully tested compliance plan being in place at least 12 months before the Millennium and which runs on for at least the following 12 months, cannot be overestimated.

## What's Next?

It is not certain that all Insurers will adopt the ABI recommended wording for Property and Business Interruption risks and some Insurers may offer non-compliance cover with greater restriction or not offer cover at all. It is expected that Insurers will not offer any Public or Products Liability cover for Year 2000 Liability risks. Tysers will monitor the situation and advise clients how it individually affects their policies.

The position also remains unclear on other classes of insurance and on particular types of business, i.e. computer consultants etc. and again Tysers will keep you informed as to how your policies are affected as they come up for renewal, or when new policies are taken out in the future.

It is also likely that "buy-back" facilities may be available on certain policies or for certain businesses. It is almost certain however that any buy-backs available will be dependent upon the business having carried out a suitable Year 2000 compliance plan, and having the ability to demonstrate to Insurers that the business has done all that it reasonably can be expected to do in order to avoid losses arising from Year 2000 non-compliance. Also of course a comprehensive Year 2000 compliance plan will minimise the exposure to both direct and indirect losses that a business may suffer, and the compliance plan should also encompass potential exposures from suppliers and/or customers where insurance cover is also sought for these exposures.

We recommend that you retain full documentary evidence of your Year 2000 compliance plan which once created should also be updated and maintained, as in addition to helping to minimise your exposure to both direct and indirect losses, it may be invaluable in proving to Insurers in a loss situation that all reasonable precautions were taken. In the event of a "buy-back" opportunity you will also be able to demonstrate that your business is a good risk for which Insurers may be willing to offer wider cover.

Completion and return of the questionnaire form accompanying this briefing document will assist us in advising you on the insurance aspects of the Millennium problem.

**For further information or assistance with specific problems,  
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