**SUMMARY MINUTES**

**Video Conference: EFMLG, FMLG, HKMA, SNB, MAS, FLB and FMLC**

**Friday, 4 September 2009, 1-2 pm GMT**

| **1.** | **EFMLG initiatives – update** | **European Financial Markets Lawyers Group** |
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| a. | Implementation of ECOFIN conclusions of 9 June 2009 on European financial supervision | Since the release in February of the High Level Group report chaired by Jacques de Larosière and the Commission communication in May on the same topic, the ECOFIN and the European Council have indicated in June what should be the directions to be taken regarding the reform of European Financial Supervision, while expressing their broad support to the European Commission's recommendations. The Commission is now expected to adopt on 23 September a package of legislative proposals concerning both macro-prudential and micro-prudential supervision. As regards macro-prudential supervision, this package which comprise the proposals on the European Systemic Risk Board which will have as a task to monitor and assess potential threats to financial stability and, where necessary, issue risk warnings and recommendations for action, and monitor their implementation. The ECB/ESCB will play an important role in the context of the ESRB since the members of the General Board of the ESRB are the members of the General Council of the ECB (including the President and the Vice-President of the ECB). Moreover, the ECB is requested to provide the analytical, statistical, administrative and logistical support to this new EU body. As regards the second pillar of the |

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| | | supervisory reform, i.e. the establishment of the European System of Financial Supervision, the EU Member States have also agreed to the creation of three new European micro-prudential supervisory authorities for the banking, insurance and securities sectors. These three authorities will replace the three current advisory committees of supervisors with reinforced responsibilities. For this purpose, it is planned that these authorities will avail of some binding decision-making powers, the exact nature of which will be specified in the forthcoming legislation.<br>The European Council has pointed out in June that these legislative proposals to put in place the new framework for EU supervision should be fully in place in the course of 2010. This will require the current EU Swedish Presidency and the newly-elected European Parliament to act swiftly in the course of the next months. |
| b<br>. | EU Commission's Proposal for a Directive on Alternative Investment Fund Managers | Ms Katja Würtz from the ECB Legal Services provided a brief introduction of the proposed directive on Alternative Investment Fund Managers (AIFMs). The proposed directive, which was tabled by the Commission on 30 April 2009, regulates managers of hedge funds, private equity funds and all kinds of collective investment undertakings other than UCITS. Thus, the proposed directive does not aim at regulating the funds themselves. The proposed directive covers AIFMs that are established in the EU and which manage and administer one or more AIFs, that together have either at least €100 million of assets or, in the case of AIFs with no leverage and a lock-in period for investors of at least five years, €500 million of assets. AIFs covered by the proposed directive are subject to a number of requirements covering leverage, |

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| | | authorisation, capital adequacy, infrastructure, operations and investment strategies. The Commission intends to have the proposed directive adopted by the end of the year with deadline for transposition in 2011. However, the proposed directive has generated vivid debate and it cannot be excluded that it will be subject to fundamental revision also affecting the proposed time-schedule. |
| c. | EFMLG position paper on Draft Common Frame of Reference | In December 2008, two academic groups – the Study Group on a European Civil Code and the Research Group on EC Private Law (Acquis Goup) –submitted to the European Commission the final version of a joint Draft Common Frame of Reference (DCFR) which provides for a set of ‘model rules' covering core fields of civil law such as contract law and proprietary security rights in movable assets. Although it is not yet decided what will be the future function of the DCFR, this set of non-binding rules could have an important impact on the financial industry and could be a source of inspiration and guidance for both the European and national legislators. The EFMLG has therefore decided to contribute to this project by pointing to some particular aspects of the DCFR that are relevant for financial services. The EFMLG is of the view that the DCFR should be compatible with existing Community financial market regulation and with the industry's practices, as represented, for instance, by standard agreements used for some financial instruments traded in the financial markets. The EFMLG paper is now available on the EFMLG website. |

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| d. | EFMLG Legal Symposium on Standard market documentation, 15.9.2009 | The EFMLG organises a high-level Legal symposium on standard market documentation which will take place on 15 September in London and to which will attend lawyers from the EFMLG and several representatives of various market and banking associations, legal groupings and international law firms. The organisation of this event constitutes one of the results of the dialogue initiated early this year with the leading industry organisations sponsoring standard market documentation, the purpose of which is to discuss the lessons to be learned from the market turmoil regarding specific provisions commonly used in financial transactions documentation, also with a view on potential divergences between various master agreements, for instance, the harmonisation of events of default clauses, termination notices, automatic early termination, calculation of close-out amounts or collateral and margin disputes. |
| **2.** | **FMLG initiatives – update** | **Financial Markets Lawyers Group** |
| a. | Update on the TALF program (Term Asset-Backed Securities Loan Facility) | Since the last Videoconference in March, the Term Asset-Backed Securities Loan Facility program (TALF) has expanded the eligible collateral for the program. The program, which was authorized as a Section 13(3) (of the Federal Reserve Act) facility in the fall of 2008, provides non-recourse financing to holders of certain asset-backed securities (ABS) backed by the securities. When TALF was introduced, the program initially accepted USD-denominated ABS backed by student loans, auto loans, credit card loans, and loans guaranteed by the Small Business Administration. The asset classes have since been expanded to include new receivables |

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| | | including business equipment and mortgage servicing advances. In May, the Federal Reserve announced that legacy commercial backed mortgage securities (CMBS) issued prior to January 1, 2009, and newly issued CMBS would be accepted as collateral for loans under the program. While the expectation is that it will take time for newly-issued CMBS to be pledged as collateral to the program, there are indications in the market that a number of issues will be created for the TALF program. On August 17, the Federal Reserve and U.S. Treasury (UST) announced that the termination date for the consumer receivables ABS portion of TALF would be extended from December 31, 2009 through March 31, 2010, and the termination date for the newly-issued CMBS portion of TALF would be extended through March 31, 2010. The economic indications thus far are that TALF has been a success in the market in bringing down spreads in the market. |
| b. | Update on Obama Administration's Financial Regulatory Reform program | The Obama Administration has introduced to Congress nineteen titles of legislation to implement its financial regulatory reform plan, which was issued earlier in the year. However, given the Administration and Congress' focus on national health care, expectations are low that comprehensive financial regulatory reform legislation will be passed by the end of the year. Congress will not likely take up legislation associated with systemic risk regulation or a new resolution regime for non-banks.<br>Instead, Congress may take action on smaller elements of financial regulatory reform, namely the creation of a new consumer financial regulator (focused on regulations to protect consumers) and passage of derivatives legislation. With respect to executive compensation, the House of |

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| | | Representatives has already passed a bill on this issue; the bill does not impose strict caps on compensation but introduces standards to discourage management from taking risks for short-term benefits. Congress may also pass legislation associated with credit rating agencies. |
| c. | TARP capital repayment guidelines | In June, the UST began permitting certain financial institutions to repay funds received as part of their participation in the Capital Purchase Program (CPP) of the TARP. The terms of repayment provide that once an institution notifies UST that it wishes to repay funds received from the CPP, UST must consult with the institution's appropriate federal supervisor, with repayment subject to the existing supervisory procedures for approving redemption requests for capital instruments. Supervisors are expected to take into account the institution's overall soundness, capital adequacy, and ability to lend, as well as confirmation the institution has comprehensive internal capital assessment program.<br>Institutions that repaid their CPP preferred stock are also allowed to repurchase the warrants issued to UST. The repurchase price for these warrants will be the "fair market value" of the warrants. The institution must submit a determination of fair market value to the UST, which will in turn conduct a process to determine whether to accept the institution's proposal. The UST's determination of value will be based on available market prices; financial modeling and outside consultants and financial agents. If the parties fail to agree, they will enter into an appraisal procedure to reach a final price.<br>If an institution chooses not to repurchase the warrants, UST may liquidate registered warrants |

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| | | over time through an auction process. However, the warrants cannot be sold to another investor until the institution has an opportunity to repurchase them.<br>http://www.financialstability.gov/roadtostability/capitalpurchaseprogram.html |
| **3.** | **HKMA initiatives – update** | **Hong Kong Monetary Authority** |
| a. | Launch of the CMU Fund Order Routing and Settlement Service | • The Central Moneymarkets Unit (CMU) was established by the HKMA in 1990 to provide computerised clearing and settlement facilities for Exchange Fund Bills and Notes.<br><br>• On 11 August 2009 the HKMA launched the new CMU Fund Order Routing and Settlement Service (Service) to provide a common processing platform for investment fund orders and settlement.<br><br>• The scope of the operation of the new Service includes<br>a. Handling subscription, redemption and switching orders<br>b. Generating corresponding confirmation and payment instructions<br>c. Providing regular reports<br>d. Settlement and custody of investment funds. |

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| | | • The new Service will allow for:<br><br>a. Full settlement and processing from the order initiation to the final settlement<br>b. A single entry point streamlining the fund processing procedure<br>c. Lower operational risks and lower back office costs<br>d. Access to a wide choice of overseas funds in the local time zone<br>e. The potential to attract more business of investment funds from the Mainland and the Asia region.<br><br>• The new Service will use existing linkages with Euroclear and Clearstream to utilize their platforms to cover most European and international investment funds available in the market. Euroclear and Clearstream will benefit by gaining greater access to Hong Kong and Asian Funds. Transfer agents will benefit by the reduction of the manual work and related operational risk in fund processing. Investment managers will benefit by having services in the same time zone, in the same language and a single entry point of access to a wide choice of overseas funds and Hong Kong funds.<br><br>• At the macro-level, such a standardized investment-fund processing platform also brings significant benefits in several aspects |

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| | | a. Monetary and financial stability – expanding the existing multi-dimensional debt instruments, equities, and banking platform to include investment funds will help reduce dependence on a particular channel, thus reducing the risk of systemic problems<br>b. Financial integration between the Mainland and Hong Kong – the new Service will provide safe and efficient cross-border clearing and settlement services for all types of financial products, which will reduce the systemic risk for the Mainland-Hong Kong region as a whole<br>c. Reduced liquidity pressure and operational and settlement risks – it is likely the new Service will shorten the overall settlement cycle for investment funds.<br><br>• It is the policy of the CMU to adopt a long-term cost recovery principle and therefore to encourage usage of the new Service at the initial stage, a charging scheme with incentives will be offered, e.g., early users will enjoy a capped service charge. |
| b. | Update on deposit protection in Hong Kong | • Government guarantee - On 22nd July 2009 the HKMA, Bank Negara Malaysia and the MAS announced the establishment of a tripartite working group to map out a coordinated strategy for the scheduled exit from the full deposit guarantee by the end of |

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| | | 2010 in their respective jurisdictions, subject to the conditions existing at that time.<br><br>• Deposit Protection Scheme (DPS) - The Deposit Protection Board (DPB) conducted a review of the DPS to enhance its effectiveness and efficiency. The review was done in two phases, with the first completed in the first quarter of 2009 and the second in July of 2009.<br><br>I. FIRST PHASE<br><br>• Protection limit – it was recommended that the existing HK$100,000 protection limit be increased to HK$500,000. This increase in coverage should raise the percentage of depositors fully covered from 80% to 90%. It was further recommended that level of priority claims for depositors under the Companies Ordinance in bank liquidations be adjusted to link it to this increased limit.<br><br>• Compensation calculation basis – In Hong Kong, full netting is used by the DPS whereby all liabilities of a depositor are netted against his deposits in the determination of compensation. The DPB reviewed changes to the UK deposit insurance scheme as well as new international principles of deposit insurance and considered whether it |

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| | | should switch from net to gross, which may allow for the speeding up of payout. The DPB ultimately decided to recommend that the netting approach be maintained, with international developments to be monitored.<br><br>• Product coverage – it was recommended that the definition of deposit in the Deposit Protection Scheme Ordinance (DPSO) be amended bring in those portions of pledged deposits not required to secure a utilised limit.<br><br>• Types of institutions covered – it was recommend that the DPS should not be extended to cover deposits in restricted license banks and deposit-taking institutions because customer deposits in such institutions are calculated to be only about .5% of all customer deposits held by authorized institutions in Hong Kong and even if protection is increased to HK$500,000 only a few of these institutions' depositors would be fully covered.<br><br>• Funding arrangements – with a protection limit of HK$100,000 and based on existing contributions from banks, the target size of the Deposit Protection Scheme Fund (DPSF) is about HK$1.5 Billion and it is expect to be reached by 2012. The proposal to raise the protection limit to HK$500,000 will mean that the target size of the DPSF will need to be increased to about HK$2.8 Billion. The DPB is mindful that requiring larger |

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| | | contributions from banks will result in costs being passed down to depositors and it therefore recommended an extension of the period to reach the target size of the DPSF to 2016, which will keep the absolute amount of annual contributions payable by scheme members about the same.<br><br>II. SECOND PHASE<br><br>• The DPB has recommended that the DPSO be amended to recognize DPB members when they are outside of Hong Kong to allow for the passing of resolutions on the implementing of a payout even when more than four members are outside of Hong Kong.<br><br>• The DPB has recommend that it be given the power to determine the amount of accrued interest on a deposit or customer liability if the DBP considers that there is uncertainty over the amount or that the time required to ascertain the amount in accordance with the DPSO would be so long as to unduly delay payment.<br><br>• The DPB has recommended the strengthening of the existing negative disclosure requirements and introducing positive disclosure requirements to enhance the |

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| | | transparency of the DPS. |
| **4.** | **SNB initiatives – update** | **Swiss National Bank** |
| a. | Swiss government divests its UBS investment | Following the out-of-court settlement reached in the US civil proceedings against UBS mid August 2009, the Swiss government sold its investment in UBS that it acquired last October when the Swiss Confederation invested CHF 6 billion in UBS in order to facilitate the sale of toxic assets from UBS to a special purpose vehicle set up by the SNB. In turn the Swiss Confederation received mandatory convertible notes. By selling now the shares that resulted from the conversion, the Swiss Confederation realised a return on its investment of CHF 1.2 billion. The Swiss Confederation does no longer have a stake in UBS.<br>The Confederation's divestment does not affect the purchase of toxic assets from UBS made by the SNB's special purpose vehicle or the management of these assets. The SNB facilitated this purchase within the context of its statutory mandate to contribute to the stability of the financial system. The assets were permanently sold to the special purpose vehicle and are being managed according to commercial criteria. |
| b. | Investor protection - transitional provisions and new legal regime | In December 2008 the Swiss Parliament has passed new temporary legislation providing for an enhanced investor protection. Under the new legislation deposits of up to CHF 100'000 per client are afforded priority treatment should a bank or securities dealer become bankrupt. This |

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| | | preferential treatment of client deposits applies to all client deposits regardless whether they are held with (i) a Swiss bank or securities dealer or with one of their branches outside Switzerland, or (ii) with a Swiss subsidiary or branch of a foreign bank and securities dealer. Under the old regime deposits were only protected up to an amount of CHF 30’000.<br>In case the bankrupt does not have sufficient liquid assets to satisfy all preferential deposits, a complementary deposit guarantee scheme will step in to cover preferential deposits held with Swiss branches of (i) Swiss banks and securities dealers, (ii) Swiss subsidiaries of foreign banks and securities dealers, and (ii) foreign banks and securities dealers. This complementary deposit guarantee scheme has an overall ceiling of CHF 6 billion, which used to be CHF 4 billion under the old regime.<br>Should this complementary deposit guarantee scheme not be sufficient to fully satisfy all preferential deposits such claims will become part of the ordinary bankruptcy proceedings. In order to protect client deposits, banks and securities dealers are thus obliged to hold sufficient assets in Switzerland to ensure full repayment of all preferential deposits.<br>The new legislation is limited in time up until December 2010. As mentioned before, works are in progress to revise the existing investor protection regime entirely. In particular the Federal Council has expressed its concern that the current investor protection regime might not be sufficient because under the complementary deposit guarantee scheme funding of the guarantee scheme takes place ex post only, i.e. once a bank or securities dealer has been declared bankrupt and does not have enough liquid assets to satisfy all preferential deposits. |

| 5. | **MAS initiatives – update** | **Monetary Authority Singapore** |
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| a. | Financial Crisis Measures | In managing the recent global financial crisis, MAS has focused on maintaining the strength of Singapore's financial system based on three key pillars.<br><br>**The first pillar, maintaining sound financial institutions**. Given the openness of Singapore's financial system and the severe downturn in its economy, Singapore's financial system could not be insulated. MAS therefore intensified supervision of financial institutions through close monitoring of their financial soundness, holding regular discussions with their board, management, auditors, home regulators and head-office auditors. Stress tests of major financial institutions were carried out, providing assurance that these institutions were generally resilient even under stress conditions.<br><br>**The second pillar, ensuring well-functioning markets**. MAS reassured financial institutions that they would have access to S$ and US$ liquidity in several ways:<br><br>1. MAS kept a higher level of liquidity in the banking system.<br><br>2. It expanded eligibility to the MAS Standing Facility to all banks that participate in the MAS Electronic Payment system, MEPS+, allowing them to repurchase Singapore |

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| | | Government Securities for S$ funds with the MAS. The MAS Standing Facility was also enhanced in two areas:<br><br>a. By MAS accepting AAA-rated S$ debt securities issued by sovereigns, supranationals and sovereign-backed corporates as collateral in the Standing Facility, in addition to Singapore Government Securities.<br><br>b. By MAS entering into cross-border collateral arrangements with other central banks to accept well-rated foreign currencies and government debt securities as collateral in the Standing Facility.<br><br>3. In October 2008, MAS had joined global central banks in establishing a temporary reciprocal currency arrangement of US$30 billion with the US Federal Reserve to provide US dollar liquidity to financial institutions through central banks. In June 2009, this swap arrangement was extended to 1 February 2010.<br><br>4. On 9 June 2009, MAS and De Nederlandsche Bank N.V. (“DNB”) signed a Memorandum of Understanding for an arrangement to enhance liquidity provision to banks in non-routine situations. Under the arrangement, Dutch banks operating in Singapore or Singapore banks operating in the Netherlands can approach the MAS or |

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| | | DNB to ask for liquidity assistance if needs arise.<br><br>To avoid a situation where good and viable companies, especially mid-sized companies, were unable to get the funding they needed to stay afloat and grow, the Singapore Government stepped in to take on a significant share of the risks in bank lending under a Special Risk-sharing Initiative ("SRI"). Under SRI, the Government introduced a new Bridging Loan Programme for working capital loans for small and medium sized enterprises and some larger companies, with the Government taking 80% of the risk. The Government also stepped in to share 75% of the risk for trade financing for the first time. The programmes under SRI are in operation for one year, but with possible extension for another year if the situation warrants.<br><br>**The third pillar, maintaining the confidence of investors.** The Singapore Government had in October 2008 announced a guarantee on deposits of individuals and non-bank customers of banks, merchant banks and finance companies. In July 2009, MAS, together with the Hong Kong Monetary Authority and Bank Negara Malaysia announced the establishment of a tripartite working group to map out a coordinated strategy for the scheduled exit from the full deposit guarantee by the end of 2010. |
| b. | Sale and Marketing of Investment products | MAS responded to the default of structured notes linked to Lehman Brothers by taking prompt measures to require affected financial institutions to review complaints rigorously. MAS' |

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| | | approach was for financial institutions to review complaints on a case-by-case basis and make settlement offers taking into account the facts and circumstances of each transaction.<br><br>On 7 July 2009, MAS also completed its investigations into the sale and marketing of the structured notes. In deciding on the appropriate regulatory action, MAS considered the nature and impact of the failings, the steps taken by the financial institutions to rectify these, and the extent to which they accepted responsibility and resolved investors' complaints. The following regulatory actions were taken:<br><br>1. MAS imposed bans on the sale of structured notes by these institutions for periods ranging from six months to two years.<br><br>2. MAS issued formal directions to the financial institutions to rectify all the weaknesses identified by the investigations and to review and strengthen all internal processes and procedures for the provision of financial advisory services across all investment products. The financial institutions will not be able to distribute structured notes until MAS is satisfied with the measures they have put in place.<br><br>The lessons from this episode for financial institutions and MAS were as follows:<br>For **financial institutions**, MAS has reviewed the sale and marketing of structured products, and |

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| | | on 12 March 2009 put out for consultation a set of proposals to further safeguard consumers' interests and promote higher industry standards for the sale and marketing of unlisted investment products.<br><br>On 3 April 2009, MAS issued Guidelines on Fair Dealing. The Guidelines reiterate that the board and senior management of financial institutions are responsible for achieving fair dealing outcomes by their institutions. They will need to go beyond just addressing the failings identified in MAS' investigations. An immediate area for attention is staff training.<br><br>On the part of **MAS**, it will review and intensify its supervision of financial institutions in the sale of investment products, and commit more resources to this. |
| c. | Guidelines on the Application of Banking Regulations to Islamic Banking | On 7 May 2009, MAS issued a set of guidelines on the Application of Banking Regulations to Islamic Banking. The guidelines consolidate the various regulations and clarifications which MAS has issued, and offer specific information on the regulatory treatment of various Islamic structures. This set of Guidelines provides greater clarity and certainty for financial institutions offering Islamic banking products in Singapore.<br><br>MAS also issued two regulations clarifying that, with immediate effect, Singapore-based banks may enter into Diminishing Musharaka financing and Spot Murabaha transactions. In addition, |

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| | | MAS has ensured equal tax, regulatory and liquidity treatment of the Singapore dollar sukuk with Singapore Government Securities. Taken together, these various changes will allow banks to conduct a wide range of Islamic financing activities, and to have greater flexibility in structuring instruments to meet their risk management needs. |
| **6.** | **FLB initiatives – update** | **Financial Law Board** |
| a. | Updates on Japanese sovereign immunity legislation | The Japanese Government submitted the bill of the sovereign immunity legislation based on the United Nations Convention on Jurisdictional Immunities of States and Their Property (hereinafter the “UN Convention.”) to the Diet in February 2009. The bill was adopted by the Diet on April 17 and was promulgated on April 24 as the Law concerning the Civil Jurisdiction of Japan over Foreign States Etc. (The law No.24 of 2009) (Hereinafter referred to as the “Sovereign Immunity Law”). Besides, the Diet authorized the Government to ratify the UN Convention on June 10, 2009.<br><br>The date of enforcement of the law will be determined by a cabinet order. The date of enforcement shall be within one year from the date of promulgation (i.e. no later than April 23, 2010). |

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| | | The main points of the law are as follows (preliminary English translation from the original Japanese text)[1].<br><br>(1) "Foreign State Etc." shall be, as a general rule, immune from the civil jurisdiction of Japanese courts (i.e., jurisdiction, preventive measure and civil execution) unless otherwise prescribed by the law (Article 4). The exceptions to the general rule include, *inter alia*,<br><br>✓ Express consent to exercise of jurisdiction by (i) an international agreement (e.g., treaty), (ii) by a written contract or (iii) by a declaration before the court or a written communication to the court or the opponent (Article 5, Paragraph 1)<br><br>✓ Constructive consent to exercise of jurisdiction (e.g., filing of a law suit) (Article 6, 7)<br><br>✓ "Commercial transactions" (Article 8) and;<br><br>✓ Employment contracts (Article 9).<br><br>(2) "Foreign State Etc." shall include "Other entity granted an authority to exercise sovereign power to the extent that it performs an act in the exercise of such sovereign power" (Article 2, Item 3). An explanatory report for the Sovereign Immunity Law written by officials of the Ministry of Justice explicitly states that "a foreign central bank having a separate legal personality which conducts the monetary policy of its home country could fall within the |

[1] The Law will be officially translated into English and will be made publicly available on the Government's website in due course as a series of English translation of Japanese statutes.

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| | | definition of the "other entity" under the Sovereign Immunity Law" (Preliminary English translation from the original Japanese text) [2].<br><br>(3) Property of a "Foreign State Etc." shall NOT be immune from preventive measure or civil execution (pre-judgment or post-judgment measures of constraint) if the "Foreign State Etc." explicitly gives a consent by (i) an international agreement(e.g., treaty), (ii) a written contract, (iii) an arbitration agreement, or (iv) by a declaration before the court or a written communication to the opponent after a dispute concerning such preventive measure or civil execution has arisen (Article 17, Paragraph 1).<br><br>(4) Property of a "Foreign State Etc." shall NOT be immune from preventive measure or civil execution, if such property is specifically in use or intended for use by the Foreign State Etc. "for a purpose other than non-commercial purposes" (Article 18). However, "property of a foreign central bank or a monetary authority equivalent to the central bank of a foreign State" shall NOT be considered to be property specifically in use or intended for use by the Foreign State Etc. "for a purpose other than non-commercial purposes" (Article 19). |
| b. | Amendment to "Financial Instruments and Exchange Act" in | On June 17 of 2009, the bill for amendment of the "Financial Instruments and Exchange Act" (FIEA) was enacted, which establishes regulatory frameworks for (i) regulation of credit rating |

[2] Eiji Nishiwaki (Attorney, Civil Affairs Bureau, Ministry of Justice) and Tomohiro Yoneyama (ibid.) at page 43 of NBL No.908 (June 1, 2009).

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| | 2009 | agencies (CRAs), (ii) mutual entry between financial instruments exchanges and commodity exchanges, and (iii) the alternative dispute resolution (ADR) system in the financial sector. The amended Act shall come into force on the day specified by Cabinet Order within a period not exceeding one year from the date of promulgation, unless otherwise determined[3].<br><br>The regulatory framework for CRAs is consistent with "Code of Conduct Fundamentals for Credit Rating Agencies" revised by IOSCO in May 2008 and can be positioned as an equivalent to those developed in the US and Europe. The main pillars of the regulatory framework are as follows:<br><br>(Introduction of the registration system)<br><br>・ While a registration is not compulsory for CRAs to assign credit ratings, financial instruments business operators are prohibited from using credit ratings assigned by unregistered CRAs unless (i) they inform investors that the credit ratings do not conform to the regulatory framework for the rating process and (ii) they provide specific explanations regarding the rating methodologies, assumptions, data and limitations of the credit ratings.<br><br>・ Requirements for registration consist of development of control system and establishment |

[3] Part of the amendment including the provisions with respect to the restriction on use of credit ratings assigned by unregistered CRAs and the obligation of a financial instruments business operator to make an agreement with a designated ADR body come into force on the day specified by Cabinet Order within a period not exceeding one and half year from the date of promulgation.

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| | | of local commercial presence.<br>(Duties of registered CRAs)<br>・ With a registration with the Financial Services Agency of Japan ("FSA"), CRAs shall be qualified as "Credit Rating Service Provider" (CRSP). Under the amended Act, CRSP are subject to duty of good faith, timely and periodic information disclosure, establishment of internal control systems (independence / prevention of conflicts of interest / quality control and fairness of rating process / compliance with rating policies, etc.), and prohibition of certain acts (e.g. close relationship with issuers of financial instruments to be rated).<br>(Inspection and supervision of CRSP)<br>・ The amended act provides for (i) the obligation of CRSP to submit periodic business reports to FSA, (ii) on-site inspections by the FSA, and (iii) order to improve business operations issued by FSA, etc.<br>The amended act enables financial instruments exchanges to operate commodity markets, upon authorization from FSA, by themselves or through their subsidiaries or sister companies that belong to the same group under a holding company structure. It also clarifies that a clearing organization for transactions of financial instruments is allowed to operate clearing business for transaction of commodities upon approval of FSA.<br>With regard to financial ADR system, the amended Act enables FSA to designate organizations |

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| | | for resolution of complaints and disputes on financial products and services which satisfy certain requirements specified in the amended Act ("designated ADR body"). In the case that more than one designated ADR bodies exist for a certain financial industry segment, a financial instruments business operator in the segment shall make an agreement with one of them which obligates the operator to accept the procedures provided by the body, provide relevant explanation and documents to the body and respect its findings. It also provides for the obligations of designated ADR bodies to submit periodic business reports, on-site inspections, and order to improve business operations, etc. |
| c. | Move toward Reform of the Japanese Law of Obligations | The Japanese Law of Obligations, a part of the Civil Code is expected to be fundamentally reformed after 110 years of enactment in 1896.<br><br>In 2006, the Ministry of Justice announced that it would consider a fundamental reform of the law, which led the establishment of the "Japanese Civil Code (Law of Obligations) Reform Commission" by law academics. The commission published the report on the basic reform plan (hereinafter, "report") in April 2009 after 2 and half year examination. Since the senior advisor and counselor from the Civil Affairs Bureau of the Ministry of Justice participated in the working groups of the commission, the commission is regarded as actually sponsored by the Ministry of Justice, and thus the reform will take place based on the report. Reportedly, the deliberation at the Legislative Council would start this coming autumn. |

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| | | Among the wide range of issues covered by the report, the followings particularly need considerations in connection with financial transactions.<br><br>(Adhesive terms and conditions (Covenant))<br><br>・ The report proposes that the law should require a person who uses covenant, set of model clauses which is supposed to be used in the contracts with unspecified number of clients, to disclose its content to them and obtain their approvals for the use of it in advance.<br><br>(Set-off)<br><br>・ The report proposes that set-off may be effected by a third party (other than an obligor) which is a holder of claims against the obligee to the same extent as if the obligation of the obligor had been performed by such third party.<br><br>・ In practice, a bank and its customer enter into a set-off agreement to the effect that the obligations of both parties become due and suitable for set-off when a provisional seizure is filed or attachment is made in relation to a customer's claim against the bank (e.g. deposits). The reform draft provides that the bank can assert a set-off against the relevant attaching obligee only where the obligations of the bank and its customer emerged from certain transactions which they have entered into continuously.<br><br>(Multilateral obligation netting) |

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| | | • Multilateral obligation netting among three or more parties follows the following two serial steps; firstly, the obligations of a participant (A) owed to other participants (Bs) are replaced by the obligations of A owed to the CCP and the obligations of CCP owed to Bs. Secondly, set-offs take place between CCP and each participant respectively. To ensure the legal certainty of such operations, especially in case of insolvency of a party involved, the report proposes to give statutory backing on an agreement on the replacement of the obligations in the first step.<br>(Assignment of nominative claims)<br>• The report shows the conditions under which assignment of "nominative claims" (a terminology used in the Japanese Civil Code for credit claims) shall be effective even if the parties have agreed to prohibit assignment. If a nominative claim is assigned despite such agreement, the obligor may assert the agreement against the assignee. The obligor, however, may not assert such agreement against the assignee where (i) the obligor consents to the assignment, (ii) the assignee does not know the existence of such agreement, or (iii) the assignment has been perfected against third parties and bankruptcy proceedings are commenced against the assignor.<br>• The current laws provide three methods to perfect assignment of nominative claims against third parties; (i) notice to the obligor with an officially fixed date stamp, (ii) |

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| | | acknowledgement of the obligor with an officially fixed date stamp; and (iii) assignment registration with public register. The report proposes that assignment of nominative claims may not be asserted against any other third party unless assignment registration is made. In addition, the assignor of nominative claims may assert being an obligee against the obligor by giving notice with or without a certificate of assignment registration.<br><br>(Deposit for consumption of money in a liquid deposit account)<br><br>・ The report clarifies the legal relationship with regard to a liquid deposit account. For example, the money credited to a liquid deposit account is merged into the existing amount of understanding to create a new outstanding claim, and the performance of monetary obligation by wire funds transfer into an obligee's liquid account comes into effect when such new outstanding claim is created unless otherwise agreed. The report also provides that an agreement on deposit for consumption of money in a liquid deposit account remains effective even after attachment is made with regard to the outstanding claim in the account. |
| d. | Industry initiatives for Electronically Recorded Claims related businesses | An "Electronically Recorded Claim"(hereinafter, "Electronic Claim") is a new financial means introduced by a statute for facilitating business activities including fund raising by eliminating inconveniences of using commercial bills, promissory notes or "nominative claims" (a |

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| | | terminology used in the Japanese Civil Code for credit claims). Use of commercial bills or promissory notes has been dramatically decreased in the recent decades due to (i) costs of creating, storing and delivering physical certificates, (ii) risks of loss or theft, and (iii) burden of stamp duties. Besides, use of nominative claims is impeded due to (i) costs of checking existence and the holder of the claims and (ii) risk of double transfer of the claims.<br><br>The Electronically Recorded Claims Act was enacted in June 2007 and became effective in December 2008. English translation of the Act is available at the Government's website (www.japaneselawtranslation.go.jp/?re=02).<br><br>An Electronic Claim has the following key characteristics:<br><br>• It is accrued when an electronic claim record-keeping institution (designated by the Financial Services Agency of Japan ("FSA")) makes an "electronic accrual record" on its book upon request of the obligor and the obligee.<br><br>• An Electronic Claim can be assigned when a record-keeping institution makes an "electronic assignment record" upon request of the assignor and the assignee. Once the electronic assignment record is made, the assignment of an Electronic Claim becomes effective and can be set up (or perfected) against both the obligor of the Electronic Claim and third parties.<br><br>• An Electronic Claim shall be extinguished when payment is made by the obligor unlike |

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| | | electronic accrual record and electronic assignment record. To avoid double payments by the obligor which may typically happen when the extinguished Electronic Claim is assigned to a third party before the electronic payment record is made, the Act ensures the simultaneity of the payment and the electronic payment record. If the payment of an Electronic Claim is made via a financial institution in accordance with a tri-party contract regarding the settlement of remittances among a record-keeping institution, the obligor and the financial institution, an electronic payment record will automatically be made by a notice from the financial institution to the record-keeping institution without a request from the obligee.<br><br>With the entry into force of the Act, the Japan Electronic Claim Organization which is a subsidiary of the Bank of Tokyo-Mitsubishi UFJ has been designated as a record-keeping institution in June 2009. The Sumitomo Mitsui Banking Corporation, the Mizuho Bank, and the Japanese Bankers Association expressed their intentions to go into Electronic Claim related businesses within three years time.<br><br>Those financial institutions etc., intend to make use of an Electronic Claim typically as a substitute for (i) commercial bills or promissory notes, (ii) factoring arrangements, and (iii) securitization of accounts receivables and syndicated loans. |

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| **7.** | **FMLC initiatives – update** | **Financial Markets Law Committee** |
| a. | UK Banking Act and the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 | New Banking Act 2009 is now in force. In the process of the Dunfermline resolution, the UK government had also put in place secondary legislation: applying the bank insolvency and administration procedures to building societies and enabling the Financial Services Compensation Scheme (FSCS) to fund a resolution. These orders will be further debated in the UK Parliament and are currently under consultation.<br>There are still issues going forward with the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 (the 'Safeguards Order'); the BBA and LIBA made submissions to the Banking Liaison Panel (BLP) outlining issues to be addressed with the Safeguards Order (e.g. the list eligible financial contracts).<br><br>The BLP agreed to discuss the following issues in relation to the Order:<br>carve-outs for small companies<br>• the public debt carve-out<br>• 'retail property' – FSCS eligible definition;<br>    ▪ 'small businesses'; to consider their regulatory capital treatment<br>    ▪ to consider whether the 'retail' carve-out from set-off and netting protection in the |

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| | | Order should capture 'small businesses' that are part of larger groups<br>• Relevant financial contracts, including the extent to which the MiFID definitions of financial instrument do not cover a range of transaction types that can be covered in netting arrangements<br>▪ Spot FX<br>▪ Derivative FX<br>▪ Certain commodity/bullion contracts<br>▪ Longevity contracts<br>• Concerns over the 'relating solely to' language in the carve-out for 'non-financial contracts'. |
| b. | Unsettled OTC Cash Equity Trades in Euroclear UK and Ireland | The FMLC has been considering various proposals to prevent uncertainty and market confusion arising again in relation to unsettled OTC trades in the event of the administration of a large financial institution in the future. A paper on this issue has now been drafted and circulated to FMLC members for their comments. |
| c. | Investment Firm Insolvency Proposals (client assets issue) | On 11 May 2009, HM Treasury published a paper headed 'Developing Effective Resolution Arrangements for Investment Banks', which sets out HM Government's initial thinking as to the reforms which may need to be considered in developing effective resolution arrangements for investment banks. This paper can be accessed via the following link: http://www.hm- |

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| | | treasury.gov.uk/consult_investment_banks.htm. The paper discusses certain issues that were highlighted by the Lehman Brothers International (Europe) Limited collapse, including the treatment of monies and assets belonging to the bank's clients and the open or un-reconciled OTC trading positions following the bank's collapse. The deadline for the submission of responses to the consultation was 10 July 2009. HM Government intend to review responses and produce a more detailed consultation paper in the early autumn.<br>The FMLC published a paper on 17 July 2009 which responds to the consultation's questions which are relevant to the treatment of client money and assets. |
| **8.** | **Other issues** | |
| a. | Date and Organisation of Next meeting | The FMLG kindly offers to organise and host the next conference. |