SUMMARY MINUTES

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

Thursday, 14 January 2010, 8am-10 am EST

1.	**EFMLG initiatives – update**	**European Financial Markets Lawyers Group**
a.	On-going reform of European financial supervision: recent steps	Since the release in February 2009 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 has adopted on 23 September a package of legislative proposals concerning both macro-prudential and micro-prudential supervision. As regards macro-prudential supervision, this package comprises two 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. 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 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 (ESAs). These three authorities will replace the three current advisory committees of supervisors with reinforced responsibilities. The Swedish Presidency of the Council during the second semester of 2009 has treated this dossier as a priority matter and reached a compromise on the ESRB texts on 15 October. Another compromise was reached on the ESAs texts on 2 December. The package of five proposals is currently under examination in first reading by the newly-elected European Parliament. The ECB has adopted two opinions on these texts, one on the ESRB on 26 October and another one on the ESAs on 8 January (CON/2009/88 and CON/2010/5 respectively). The ECB broadly supports the two proposed ESRB regulations and decided that it stood ready to ensure the secretariat of the ESRB and to support the ESRB. The ECB also broadly welcomes the proposed institutional framework for the ESAs. In terms of timetable, it is now expected that the legislative package will be adopted this summer. The current compromise on the ESAs regulations provides in this respect that these regulations will apply from 1 January 2011 and that the ESAs will be established on 1 January 2011.
b.	Up-date on the EFMLG initiatives on standard market documentation	On 15 September 2009, the EFMLG organised a high-level legal symposium hosted by Calyon in London, in which various representatives from market and banking associations such as the International Swaps and Derivatives Association, Inc. (ISDA), the Securities Industry and Financial Markets Association (SIFMA), the International Capital Markets Association (ICMA), the International Securities Lending Association (ISLA), the European Banking Federation and

		the European Savings Banks Group, and from various major financial institutions, companies, legal groupings and international law firms participated. The main purpose of the symposium was to discuss the lessons to be learned from the financial crisis regarding specific provisions commonly used in financial transactions documentation, also with a view to identifying potential divergences between various master agreements and discussing the need for harmonization, if any. The EFMLG will shortly render a report the purpose of which is to provide a summary of the discussion and identify areas in which, in the view of EFMLG, there is a need for action. The report will focus on five aspects that all standard master agreements have in common: (i) definition of bankruptcy-related events of default; (ii) procedures for terminating master agreements by notice; (iii) operation of automatic early termination clauses; (iv) calculation of close-out amounts, including valuation of securities and currency conversion; and (v) resolution of collateral and margin disputes. The participants of the legal symposium of 15 September 2009 agreed to reconvene the forum mid-2010 in order to monitor and evaluate the progress made until then in this area.

c.	EU Framework on cross border crisis management in the banking sector	Marek Svoboda (ECB) outlined the main content of the recent Commission Communication on an EU Framework on cross border crisis management in the banking sector published on 20 October 2009. In this public consultation document, the Commission sets out the main issues and possible improvements to the crisis management of cross border banks in the three main areas of early intervention, bank resolution and insolvency proceedings. The Commission believes that changes are needed to make crisis management, resolution or winding up of failing cross border banks more effective across the EU. Some of the current supervisory tools, for managing crisis stricken banks have proved not always to live up to the task. The objective of a future EU framework of measures should therefore be twofold: to enable banks to fail “safely” without systemic repercussions and second to give supervisors an adequate ‘tool kit’ of measures to move into banks with problems to stabilise the situation. The Commission paper does not indicate any policy preference as to any particular measures(s). It asks interested parties to respond to a set of questions on a range of possible initiatives to improve crisis management at cross border banks, e.g. ‘living wills’, intra group transfers regime, derogations from certain shareholder rights in case of emergency bank restructuring and enhanced coordination between national insolvency proceedings for entities within a banking group. The consultation period is due to end shortly. The ECB is preparing a response to the Communication as regards the position of the Eurosystem.
d.	Ensuring efficient, safe and sound derivatives markets: EU initiatives	Inigo Arruga Oleaga (new EFMLG Secretary, ECB) provided an overview of the Commission Communication on Ensuring efficient, safe and sound derivatives markets. This Communication

		contains the calendar of intended draft European Union legislation on market infrastructure for derivatives (CCPs, trade repositories) starting with legislation on CCP requirements (safety, authorization, mandating CCPs to clear standardized derivatives) by 2010. He indicated that the EFMLG set up a Task Force on this topic. He also highlighted that the Commission intends to develop the technical details for the improvement of the derivatives markets in cooperation with the G-20.

2.	**FMLG initiatives – update**	**Financial Markets Lawyers Group**
a.	Regulatory reform update	In December 2009, the U.S. House of Representatives passed a comprehensive financial regulatory restructuring bill (H.R. 4173). The U.S. Senate is expected to submit a markup of its own bill by the end of January or beginning of February; the timing of the release of the Senate bill will depend on the status of health care legislation. It is not clear if political forces will push regulatory reform faster, and the U.S. Treasury Department may use the current majorities to push reform and not wait for Congress to act in an election year as it becomes more difficult to muster Congressional reform. The U.S. Congress is eager to extinguish the "too big to fail" concept, and H.R. 4173 creates a lot of hurdles in order to curtail central bank support for institutions that are "too big to fail." H.R. 4173 would provide regulators with the ability to force divestitures by firms that are "too big to fail." Discussions have also included separating banking and securities as well as creating a special court of large bank insolvencies.
b.	Compensation horizontal	Compensation for bankers remains an incendiary topic in the United States. The Federal Reserve released proposed guidance on incentive compensation in October, which was based on principles issued by the Financial Stability Board ("FSB") in April 2009 and the FSB's implementation standards for those principles, issued in September 2009. The purpose behind the guidance is to ensure that incentive compensation programs do not undermine the safety and soundness of banking institutions and also take into consideration risks taken by those employees (both executives and non-executives on both an individual and aggregate basis) who

		can create material risks for their firms. The Federal Reserve has committed to undertake two supervisory initiatives: (1) a special horizontal review of 28 large complex banking organizations ("LCBO"); and (2) a review of compensation practices at regional and community banking organizations in the regular risk-focused examination process. For the LCBO horizontal review, firms have been asked to complete questionnaires and be interviewed by Federal Reserve staff. Questions are designed to determine how far off firm policies are from principles set forth in the guidance, and a gap analysis will also be performed by each LCBO. The guidance and the incentive compensation horizontal review is meant to address the "first mover" problem and also the fact that it became clear that many incentive compensation programs at firms had overcome risk controls at the firm. The Federal Reserve's authority to undertake the compensation horizontal review is rooted in Section 8 of the Federal Deposit Insurance Act, which allows the Federal Reserve to take action against firms that are engaging in or about to engage in unsafe and unsound practices. The review only covers incentive compensation arrangements, which hinges on achievement of certain metrics, e.g., sales and revenue. Firms being reviewed include state member banks, Edge and agreement corporations, U.S. operations of foreign banks with a branch, agency or commercial lending company in the U.S., and bank holding companies. Following analysis of the incentive compensation arrangements, the Federal Reserve will monitor the arrangements of firms going forward as part of their examination process.
c.	Scheduled termination of foreign	The foreign central bank swaps are set to expire on February 1, 2010. The Federal Reserve

	central bank swaps	currently has lines with 14 foreign central banks.
3.	**HKMA initiatives – update**	**Hong Kong Monetary Authority**
a.	Consultation on Guideline on a Sound Remuneration System	The Hong Kong Monetary Authority (HKMA) has launched a consultation on the Guideline on a Sound Remuneration System (the "Guideline"). The Guideline had been developed on the basis of the recommendations issued by the Financial Stability Board, which had been endorsed by the G20 as an international standard on sound remuneration practices. The main objective of the Guideline was to ensure that banks and deposit-taking companies (collectively, the "authorized institutions") in Hong Kong had in place remuneration systems that were consistent with and promoted effective risk management. The HKMA would take into account the potential risks that might arise from the authorized institutions' remuneration systems in its risk-based supervision of the institutions. The Guideline was intended to apply to all authorized institutions in Hong Kong, including both locally incorporated authorized institutions and local branches of foreign banks. Where an authorized institution in Hong Kong was part of a banking group (i.e., a subsidiary of a banking group or a branch of an overseas-incorporated bank), the institution might adopt the remuneration policy formulated at the group level provided that it could demonstrate to the HKMA's satisfaction that the relevant group remuneration policy was broadly consistent with

		the Guideline, having regard to local circumstances. The Guideline set out the following key principles on a sound remuneration system, which served to provide broad guidance on the governance and control arrangements for, and operations of, authorized institutions' remuneration systems:- (i) Governance – formulation of remuneration policy; board oversight (including the establishment of a remuneration committee); and the role of risk control functions (including risk management, financial control, compliance and internal audit) in respect of an authorized institution's remuneration system. (ii) Structure of remuneration – proportionate balance of fixed and variable remuneration; use of instruments for variable remuneration; and exceptional use of guaranteed minimum bonuses. (iii) Measurement of performance for variable remuneration – pre-determined criteria for performance measurement; adjustments to performance assessment in respect of current and potential risks and the overall performance of an authorized institution and relevant business units; and the exercise of judgement in the process of determining variable remuneration. (iv) Alignment of remuneration payouts to the time horizon of risks – deferment of variable remuneration (including minimum vesting period and pre-defined performance conditions); "claw-back" provision and restriction on hedging exposures in respect of the unvested portion of deferred remuneration.

		(v) Adequate disclosure on remuneration – disclosure in respect of the design and implementation of remuneration systems; and aggregate quantitative information on remuneration broken down by senior management and by other employees whose activities could have a material impact on the risk exposure of an authorized institution. A copy of the Guideline could be found on the HKMA's website (http://www.info.gov.hk/hkma/index.htm). The HKMA intended to issue the Guideline in the first quarter of 2010. Upon issuance of the Guideline, the HKMA expected all authorized institutions to take prompt action to implement the Guideline with a view to achieving full compliance within 2010. The HKMA would continue to monitor developments and would make changes to the Guideline as appropriate, having regard to local circumstances.
b.	Report on the Second Phase of the Review of the Deposit Protection Scheme	The Deposit Protection Board (the "Board") decided in mid-2008 to conduct a two-phase review of the Deposit Protection Scheme (the "Scheme") in Hong Kong to enhance its effectiveness and efficiency. The first phase, which was completed in the first quarter of 2009, focused on improving the protection provided by the Scheme by enhancing its coverage, including the protection limit, the types of products and the institutions covered. In August 2009, the Board commenced the second phase of the review by publishing a consultation paper containing a package of recommendations to strengthen the operation of the Scheme.

		In November 2009, the Board published a report on the public consultation on the second phase of the review of the Scheme (the "Report"). The Report covered the following areas:- (i) Target size of the Scheme fund – the Board considered that setting the target size of the Scheme fund as a percentage of the aggregate amount of deposits it protected was an important design feature of the Scheme to ensure that the financial resources available to it were commensurate with its potential obligations as the deposit market changed in size. (ii) Reduction in the contribution rates – in the first phase of the review, it was recommended that the protection limit be increased from HK$100,000 to HK$500,000. The Board therefore proposed cutting the contribution rates by 65% to offset the impact on banks of the costs of implementing the new protection limit. Based on the Board's estimation, if the contribution rates were reduced by 65%, it would require two more years to reach the target size of the Scheme fund, i.e., by 2018. (iii) Processes for determining compensation – to maintain a high level of transparency in the application of any of the flexibilities in the processes for determining compensation, the Board would, in the course of a payout, regularly update the public on the progress made in the determination and payment of compensation. It would also set out the standards and conditions for applying the flexibilities on the Board's payout policies and procedures as guidance. (iv) Representation arrangements – the Board suggested confining the option of making negative disclosure (i.e., to make disclosure when a deposit was not protected by the Scheme) on an account basis to disclosures made to institutional clients only who were generally in a better

		position than ordinary retail depositors to understand the risks of their investments, including bank deposits. On the other hand, it was recommended that the banks be required to make positive disclosures to their customers on the protection status of their deposits. The Board would also consult the relevant parties, including the industry and the Consumer Council, when ironing out the detailed standards on the size and location of Scheme disclosures and the restrictions on the use of the term “structured deposit” to ensure the requirements are effective, practical and cost-amicable to implement. A copy of the Report could be found on the Board’s website (http://www.dps.org.hk). The Board intended to submit the legislative proposals for effecting all the changes concluded in the consultation on both phases of the review to the Hong Kong Legislative Council in the first quarter of 2010.
4.	**SNB initiatives – update**	**Swiss National Bank**
a.	Investor protection – legislative proposal for a new legal regime	The current legislation on investor protection is limited in time up until December 2010. Work is now in progress to revise the existing investor protection regime entirely as the Federal Council has expressed its concern that this regime might not be sufficient. The **problems with the current regime are threefold**: **First**, 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. **Second**, the overall ceiling of the complementary deposit guarantee scheme of currently CHF 6 billion might not be increased at will without putting the other banks at risk. **Third**, the current system might not be sufficient to fully satisfy all preferential deposits in case of the insolvency of one of the big banks in Switzerland. In September the Federal Council opened a **public consultation on a proposal for a new legal regime**. The proposed investor protection system basically provides for two consecutive steps: The **first step** consists of a public fund to secure 3% of all preferential deposits which corresponds to approximately CHF 9.75 billion. Two thirds of this amount will be funded by the banks which have to pay annual contributions. For the remaining third the banks have to pledge securities. The **second step** comes into effect in case the fund should not be sufficient: One option is that the Swiss Confederation advances the required additional amount. Another option is that the Swiss Confederation guarantees the required additional amount. Both options would be compensated for by annual premiums paid by the banks. The financial crisis has shown that the existing investor protection regime requires the backing up of the Swiss Confederation when the financial system had to be stabilised by helping UBS. The new proposal therefore makes the already existing *implicit* state guarantee *explicit* and requires the banks to provide compensation

		for such guarantee. The contribution of each bank will be calculated according to the deposits placed with that bank and the bank's risk situation. The risk situation will be determined pursuant to the equity capitalisation, the leverage ratio, guarantees by third parties such as the cantons and the increase in preferential deposits. The public consultation ended at 31 December 2009. The results have not been published yet. However, the reactions of the various stakeholders in Switzerland have been very restrained. It is therefore unclear if the proposed legal regime will come into force as it currently stands. It is likely that the proposed regime will be changed substantially given the reactions during the public consultation.
b.	Bank insolvency – legislative proposal for an amendment of the existing legal regime	As part of the proposed new legal regime on investor protection the Federal Council also proposed various changes to the Swiss Federal Banking Act dealing with the insolvency and winding up of a distressed bank. The proposed changes – inter alia – deal with the following issues: • The wording of the provision regarding **finality of transfer instructions** will be clarified as the interpretation of this provision has given rise to difficulties in the past. The new wording is based on the wording used in the EU-Settlement Finality Directive. • Several changes will be made in regard to the **reorganisation of a troubled bank**. In

		particular, based on the reorganisation plan parts of the bank or its assets can be transferred to another bank or entity which will succeed the distressed bank (so-called **bridge-bank-authority**). Also, as part of the reorganisation plan debts may be transformed into equity making the creditors to shareholders of the distressed bank (so-called **debt-equity-swap**). Moreover, a debt-equity-swap or the transfers of assets to a bridge bank do not constitute a default event under the existing **netting arrangements**. This provision would be mandatory and would override any existing default clauses to the contrary. This particular provision is still under review and the SNB has expressed its doubts as to whether regulation in this area is the right way to go. • The **creditors** which represent at least half of the bank's non-preferential debts **can reject the reorganisation plan** in which case the bank will be wind up. • Finally, the Swiss supervisory authority may **recognise orders of foreign authorities** regarding the bankruptcy or insolvency of a foreign bank without a subsidiary or branch in Switzerland. In this case the bank's assets located in Switzerland can be made available to the foreign estate of the bank if certain requirements are met. In particular the interests of the Swiss creditors have to be taken into account adequately in the foreign proceedings. As the proposed changes to the Swiss Federal Banking Act are part of the proposed new legal regime on investor protection it is unclear if and when these changes will come into force. Should the proposal on investor protection be dropped the changes to the Banking Act would

		possibly be dealt with separately.
5.	**MAS initiatives – update**	**Monetary Authority Singapore**
a.	The Establishment of the Chiang Mai Initiative Multilateralization	MAS had previously updated on the Chiang Mai Initiative following the meeting of the Finance Ministers of ASEAN + 3 in February 2009. Following the conclusion on all the main components of the Chiang Mai Initiative Multilateralization (CMIM) at the ASEAN+3 Finance Ministers' Meeting in May 2009, the CMIM Agreement has been signed. ASEAN + 3 comprises the ASEAN member states, China, Japan and Korea. The CMIM will strengthen the region's capacity to safeguard against increased risks and challenges in the global economy. The core objectives of the CMIM are – to address balance-of-payments and short-term liquidity difficulties in the region; and (ii) to supplement the existing international financial arrangements. The CMIM, with the total size of USD 120 billion will provide financial support through currency swap transactions to the CMIM participants facing balance-of-payments and short-term liquidity difficulties. Each CMIM participant is entitled, in accordance with procedures and conditions set out in the

		Agreement, to swap its local currency with the US Dollars for an amount up to its contribution multiplied by its purchasing multiplier.
b.	Policy Owners' Protection Fund Schemes and Insurance Resolution	The MAS updated on two sets of measures to strengthen the protection of insurance policy owners. Both consultation papers can be found on MAS' website. **PPF Schemes** The Policy Owner's Protection Fund, by providing compensation to policy owners in the event of the default of a registered insurer, helps to alleviate the loss of insurance coverage to individual policy owners, limit the potential disruption to the society and economy, and enhance public confidence in the insurance sector. The Insurance Act provides for separate PPF schemes for life and general insurance to compensate policy owners of life policies and compulsory insurance policies, respectively. Among the issues reviewed, MAS is proposing to provide for 100% coverage of protected liabilities of all life, and accident and health policies under the PPF life insurance scheme. For consistency, MAS is also proposing to cover 100% of liabilities of all protected lines under the PPF general insurance scheme. The consultation paper also sets out proposals relating to the implementation details of the PPF schemes which include governance and administration of the schemes, management of the PPF

		funds, collection of levies, payouts using PPF funds and priority ranking of liabilities.
c.	Insurance Resolution	In conjunction with the review of the PPF schemes, MAS also intends to enhance our powers relating to the resolution of insurers. This will strengthen MAS' ability to secure continuity in insurance coverage, particularly for life policies. Continuity in coverage is important because policies written by life insurers tend to be long-term in nature, and early termination of the policies could cause a substantial loss to the policy owner due to a low surrender value or inability to take up new insurance cover.
6.	**FLB initiatives – update**	**Financial Law Board**
a.	Changes in Japan's bill-making process under the rule of the new ruling coalition	— In Japan, most of the bills submitted to the Diet are Cabinet bills. Regarding financial-related cabinet bills, in most cases, the Financial Services Agency (the "FSA") used to prepare draft bills in accordance with a report or recommendation by the Financial System Council (an advisory body to the state minister for financial services). Those draft bills were subject not only to a prior examination by the ruling parties (namely, Liberal Democratic Party and its allies) but also to an approval by a meeting of Administrative Vice-Ministers of all the ministries before submitted to the Cabinet meeting for approval. — Under the rule of the new ruling coalition (the Democratic Party of Japan and its allies) since September 2009, a lot of changes have been observed in (i) the bill-making process

		and (ii) the role of the Financial System Council. (1) Changes in the bill-making process — Under the rule of the new ruling coalition, three political appointee posts of each ministry (namely, the minister, vice-ministers and parliamentary secretaries) take the lead in preparing draft bills through discussions with the ruling parties and other related parties. Prior examination by the ruling parties as well as meetings of Administrative Vice-Ministers of all the ministries has been abolished. It is those political appointees of relevant ministry that have responsibility of submitting the draft bills to a Cabinet meeting for approval. The new ruling coalition underlines the importance of parliamentary deliberations in the Diet and recognizes the possibility of amendments to the bills after parliamentary deliberations. (2) Changes in the role of the Financial System Council — On October 30, 2009, Prime Minister Hatoyama stated before the Diet that councils and other advisory bodies for ministries had been encouraging the bureaucrat-led policymaking, and hence the councils shall be operated with the initiative of politicians and the role of the councils shall be reviewed from this perspective. — In line with such idea, a bill to amend the Financial Instruments and Exchange Act in response to the global financial crises are now being considered and to be drafted by the FSA without consulting the Financial System Council.

b.	New financial legislation by the new ruling coalition	— At the very first session of the Diet for the new ruling coalition held between October and December 2009, the Diet has enacted two acts in the area of financial law. (1) The Act for Suspending Disposals of Shares of Japan Post Group — On October 30, 2009, the Government submitted the bill for suspending disposals of shares of the Japan Post Group (i.e. Japan Post Bank, Japan Post Insurance and their holding company, Japan Postal Holding.) to the Diet. The bill was enacted as the "Act for Suspending Disposals of Shares of Japan Post Group" (hereinafter the 2009 Act) and was put in force from December 30, 2009. — The Japan Post group was on its process toward full privatization in accordance with the Postal Service Privatization Act (Act No. 97 of 2005, hereinafter the 2005 Act) enacted under the Koizumi's cabinet. Under the 2005 Act the following schedule was envisaged; (i) Shares of Japan Post Holdings (currently fully owned by the Government) shall be decreased as soon as possible but more than one third of the whole shares shall be retained by the government. (ii) Shares of Japan Post Bank and Japan Post Insurance (currently fully owned by Japan Post Holdings) shall be disposed of by the end of September 2017.

		(iii) Those three companies shall be listed in the fiscal year of 2010 at the earliest. — The 2009 Act is only intended to suspend the ongoing privatization process of Japan Post Group pursuant to the 2005 Act for some time. A new bill for reviewing the postal privatization will be submitted to the Diet at an early stage of the ongoing ordinary session of the Diet. (2) The Act for Facilitating SME (Small and Medium-sized Enterprises) Finance — On October 30, 2009, the Government submitted the bill for facilitating finance for small and medium-sized enterprises (SME) etc. to the Diet. The bill was enacted as the “Act for Facilitating Finance for Small and Medium-sized Enterprises (SME) etc.” and was put in force from December 4, 2009. — The Act is applicable to all the deposit-taking financial institutions (i.e., banks and cooperative-type credit institutions) and is intended to stabilize the nation’s employment by facilitating finance for SME and mortgage loan debtors until end March 2011. The main points of the Act are as follows (An outline of the Act in English is available at http://www.fsa.go.jp/en/refer/diet/173/01.pdf); ・ Financial institutions shall make efforts to facilitate finance for SME or mortgage loan debtors by an appropriate measure including alteration of terms and conditions if SME or mortgage loan debtors ask financial institutions to do so.

		• Financial institutions shall build up appropriate internal systems in order that they can properly and promptly carry out such measures as mentioned above. The progress of building up such internal systems as well as the implementation of such measures shall be disclosed to the public and reported to the FSA. With the entry into force of the Act, the inspection manuals and regulatory guidelines of the FSA were revised in order that supervisory authorities concentrate on examining whether financial institutions make efforts as required by the Act. At the same time, the FSA has relaxed standards for assessment of nonperforming loans to support financial institutions' such efforts.
c.	Updates on Reform of the Japanese Law of Obligations	— On October 28, 2009, at the general meeting of the Legislative Council of the Ministry of Justice, the Minister of Justice consulted with the Council for the revision of the Law of Obligations, which has hardly been revised since its enactment in 1898. — In response to this consultation, the "Working Group on Civil Code (Law of Obligations)" was established and it started deliberations for the fundamental reform of the Japanese law of obligations in November 2009. The working group consists of law academics, practicing lawyers, judges, executives and legal counsels of the banking sector and business the business sector, a consumer affairs consultant and a delegate of labor union, and the officials of the Ministry of Justice and the Cabinet Legislation Bureau.

		— The reform will be centered on the provisions concerning contractual obligations which are profoundly related to peoples' daily lives and economic activities. Besides, some relevant parts of the general principles such as judicial acts and extinctive prescription will also be examined. — So far, the first and second meetings were held in November 24 and December 22. As for the schedule, the secretaries of the working group proposed not to set a deadline for publication of the preliminary draft of the revised law to secure enough time for deliberation. They also proposed to publish the interim note for the points at issue after about one year and half. Regarding the general purpose of the reform of the Law of Obligations, the working group discussed based on the sample list of the points at issue presented by the secretaries. Reportedly, a variety of views on this issue were given, which are for example, the necessity for modernization of the provisions which are no more compatible for the current economic premise of the society, improvement of transparency by accommodating a vast array of norms the courts have created with the law, etc. — In its deliberation, the report published by the "Japanese Civil Code (Law of Obligations) Reform Commission" which we explained in the video conference of September 2009 would be one of major reference materials, together with the reports by other groups of legal scholars, the Japanese bankers association, bar associations etc.

7.	**FMLC initiatives – update**	**Financial Markets Law Committee**
a.	Banking resolution arrangements for Insolvent Investment Firms (including Cross-Border Bank Resolutions)	On 20 October 2009, the European Commission published a communication paper entitled "An EU Framework for Cross-Border Crisis Management in the Banking Sector". The paper supports the view that in the light of the recent financial crisis and particularly the events surrounding the failure of Fortis, Lehman and the Icelandic banks, there is a need for an adequate EU regulatory framework to maintain the financial stability of the banking system across the European Union. The paper does not offer concrete legislative proposals but invites views and comments on the policies set out therein. • The first objective is an early intervention, covering actions by supervisors aimed at restoring the stability and financial soundness of an institution when problems are developing, together with intra-group asset transfer between solvent entities for the purposes of financial support. These actions would be taken before the thresholds conditions for resolution are met, and before the institution is or likely to become insolvent. The new European Banking Authority could play a role in coordinating supervisory early intervention in a cross-border group. • The second objective is to make it possible for cross-border banks to fail without serious impact on financial stability.

		• The third objective covers the reorganisation and winding up that takes place under the applicable insolvency regime. To evidence experience and expertise on the matter, the FMLC is to send a letter to the European commission attaching the FMLC's comments and papers in each case with regards to its work on Banking Reform - Depositor Protection and Landsbanki Freezing Order 2008, as such matters raised similar issues to those which are currently contemplated by the Commission's communication paper. As the communication is consultative, the question of what tools will be needed as part of a cross-border crisis management framework remains open at this stage. The FMLC is concerned that certain tools, which are already known to many insolvency regimes in the world, may be completely new to the U.K as there are significant differences between the existing tools and systems for crisis management across Member States. A recent study by the IMF has suggested that authorities should at least have powers to facilitate or effect private sector acquisitions, transfer business to a temporary structure (such as a "bridge bank") or to separate clean and toxic assets between "good" and "bad" banks through a partial transfer of assets and liabilities. The FMLC has raised questions regarding any bank resolution tools that involve transfer of assets that may interfere with the rights of stakeholders (creditors and shareholders'). It is vital that any EU resolution framework incorporates adequate safeguards to protect those interests.
b.	The proposed Alternative Investment Fund Managers	On 30 April the European Commission published the Directive on Alternative Investment Fund Managers ("AIFM"). The aim of the Directive on is to create a "comprehensive and effective

	Directive	regulatory and supervisory framework for AIFM in the European Union. The draft directive will apply to fund managers of hedge funds, private equity funds, commodity funds, real estate funds, infrastructure funds (among others) that are not currently regulated under the Undertakings for Collective Investment in Transferable Securities and offshore closed-end funds of the type commonly used as wrappers for structured products sold to retail investors in the UK. Fund managers falling within the Directive will be subject to increased regulation. In particular they will need to: • register and seek government authorisation (the fund itself will not need to be registered); • report on a regular basis to the regulator on the principal markets in which it trades, its principal exposures, performance data, governance of the fund, arrangements for the valuation and safe keeping of assets and concentrations of risk; • disclose to investors information on risk, return and liquidity, fees, charges and expenses associated with the investment, the characteristics of the fund, conflicts of interest, the identity and ability of service providers and the risk management systems to be employed. Any preferential treatment provided to one investor must be disclosed to the others; • comply with minimum capital requirements (currently stated to be €125,000 but higher if the assets under management exceed €220 million); and

		• have robust systems in place to manage risk, liquidity and conflicts of interest. There are a number of uncertainties and ambiguities in the European Commission's proposal and the Council of the European Union has published multiple revised presidency compromise proposals. The Secretariat has circulated to selected experts in the field a draft paper containing its own analysis of certain core areas of the Directive which would, in the Secretariat's view, create significant legal uncertainty, unless they are appropriately amended. The key issues currently identified in the draft paper, which have not been adequately addressed by the presidency compromise proposals, include, *inter alia*, the uncertain scope of the Directive, the ambiguous depositary-related provisions and the inconsistent application of Community law as between the Directive and existing financial services directives such as the Prospectus Directive and the Transparency Directive. Comments and contributions have been received from the experts involved and have been incorporated.
c.	The calculation of the Solvency capital requirement under the Solvency II framework directive	This initiative relates to the Solvency II Framework Directive and, in particular, the standard formula proposed by the Committee of European Insurance and Occupational Pensions Supervisors ("CEIOPS") for calculating the Solvency Capital Requirement (the "SCR") of insurance undertakings. In the latter half of 2010, it is expected that the European Commission shall adopt Level 2 implementing measures with respect to the calculation of the SCR. The FMLC has a particular concern regarding the standard formula proposed by CEIOPS for

		calculating the SCR. The FMLC is of the view that the formula is deficient as it fails, in certain circumstances, to take into account factors which are specific to large international insurers and which have the effect of reducing the insolvency risk to which such insurers are exposed. Most notably, CEIOPS treatment of geographical diversification and personalised scenarios in the standard formula has been highlighted for the FMLC's consideration. CEIOPS has omitted to recognise the fact that insurance undertakings with concentrated risk in a particular geographical region can be significantly more exposed to insolvency risk than those insurance undertakings that have geographically diversified their risk. As a result, such geographically diversified undertakings will be required to hold significantly more capital than they would otherwise be obliged to hold if the standard formula took into account their geographical diversification. The FMLC is considering how best to address this with CEIOPS. Furthermore, CEIOPS proposes that the standard formula non-life catastrophe risk sub-module capital charge shall be estimated through the application of standardised EU-based scenarios, rather than on the basis of personalised scenarios put forward by individual insurance undertakings. The FMLC is concerned that a significant proportion of non-life catastrophe risk for EU insurers resides outside Europe and it is therefore unrealistic to assume that EU standard scenarios will ever represent a significant portion of the risk it is intended to measure. The use of standardised EU-based scenarios will lead to large international insurers facing capital charges which have been calculated on an incorrect basis. The FMLC is of the view that the direct application of the standard formula to large insurance

		undertakings will have the effect of imposing incredibly burdensome and arguably inappropriate capital requirements on such undertakings. The indirect application of the standard formula to large insurance undertakings may, in the event of public disclosure, result in a loss of public confidence in the viability of those undertakings, jeopardising their position in the market. This, in turn, could result in a systemic failure leading to widespread consequences for the wholesale financial markets. The Committee has yet to consider whether a letter highlighting the FMLC's concerns should be sent to the European Commission prior to its adoption of Level 2 implementing measures on the calculation of the SCR.