

## Financial Markets Law Committee (“FMLC”)

### Banking Scoping Forum

Date: Thursday 14 September 2017

Time: 2.00pm to 3.30pm (U.K.)

Location: Bank of England, Threadneedle Street, London, EC2R 8AH



#### In Attendance:

Jan Putnis (Chair)

Aatif Ahmad

Alex Biles

Clare Dawson

Thomas Donegan

Leland Goss

Etay Katz

Slaughter and May

Barclays Bank Plc

Ashurst LLP

Loan Market Association

Shearman & Sterling LLP

International Capital Market Association (“ICMA”)

Allen & Overy LLP

Venessa Parekh

Thomas Willett

FMLC

FMLC

#### Regrets:

Paul Gough

Charles Gray

Simon Hills

Ian Jameson

Dorothy Livingston

Thomas Lodder

Oliver Moullin

Bob Penn

Monica Sah

Mitja Siraj

Julia Smithers Excell

The Bank of New York Mellon – London Branch

Sullivan & Cromwell LLP

British Bankers' Association

Sumitomo Mitsui Banking Corporation Europe Limited

Herbert Smith Freehills LLP

Barclays Bank Plc

Association for Financial Markets in Europe (“AFME”)

Cleary Gottlieb Steen & Hamilton LLP

Clifford Chance LLP

FIA

JP Morgan

Registered Charity Number: 1164902.

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## Minutes:

### 1. Introduction.

1.1. Jan Putnis opened the meeting and delivered a brief introduction.

### 2. Administration:

#### a. a short presentation on key FMLC statistics (Venessa Parekh);<sup>1</sup>

2.1. Venessa Parekh presented a selection of FMLC statistics covering the legal uncertainties analysed by the FMLC since 2003, FMLC publications, FMLC events, the international connections the FMLC have forged, and a glance at funding and expenditure.

#### b. present the draft 2018 Forward Schedule;<sup>2</sup>

2.2. The draft 2018 Forward Schedule was presented to the Forum members.

2.3. These dates will be recirculated for comment and confirmed at the Q4 meeting on Thursday 14 December.<sup>3</sup>

#### c. suggestions for the 2018 Forward Agenda.<sup>4</sup>

2.4. The Secretariat invited members to suggest items for the 2018 Forward Agenda.

### 3. The Prudential Regulation Authority (“PRA”) consultation paper on the minimum requirement for own funds and eligible liabilities (“MREL”) – buffers.

3.1. Although no significant issues of legal uncertainty were identified, owing to the consultation paper’s proposing mainly technical amendments, one participant raised the question of how MREL would operate in conjunction with the proposals made by HM Government by means of the European Union (Withdrawal) Bill.

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<sup>1</sup> Please see Appendix I below.

<sup>2</sup> *Ibid.*, slide 10.

<sup>3</sup> If you have any suggestions or queries regarding the draft 2018 Forward Schedule, please contact Thomas Willett at [forums@fmlc.org](mailto:forums@fmlc.org).

<sup>4</sup> If you have any suggestions for the 2018 Forward Agenda, please contact Thomas Willett at [forums@fmlc.org](mailto:forums@fmlc.org).

**4. The recent [report](#) published by the Basel Committee on the implementation of Basel Standards.**

4.1. The Forum members considered the report published by the Basel Committee on the implementation of Basel standards; they did not, however, identify any issues of legal uncertainty and decided that this topic did not need to be discussed further.

**5. Resolution planning guidance for global banks and reports on the implementation of resolution by the Financial Stability Board (“FSB”)**

5.1. One Forum member queried whether there should be more consistent practices under the resolution regime. For instance, the participant highlighted that there could be inconsistencies concerning the extent to which discretion can be lawfully applied when analysing the qualitative triggers in a firm’s consideration of whether a recovery response is necessary.

5.2. Another Forum member asked if transfers of accounts would be recognised in English Law should no post-Brexit deal be reached. One participant suggested that the concept of partial universal succession could be applied in this instance to facilitate the transfer of assets without third-party consent.

5.3. The attendees agreed that cross-border recognition with Brexit would be a significant area for the FMLC’s Brexit – BRRD and CIWUD Working Group to consider.

**6. Any other business.**

6.1. One member addressed the proposed new moratorium tools in the Risk Reduction Measures package. They highlighted that there could be legal uncertainty where the proposal would provide supervisory authorities with a power to suspend payment and delivery obligations for a maximum of five business days, prior to resolution, compared to the existing two day resolution moratorium.

6.2. An issue with MiFID II’s conditions concerning clients’ payments for research was also brought to the group’s attention. Under these conditions, an investment firm will need to set up a research payment account funded by specific research charges billed to the firm’s clients. One participant emphasised that this condition could be impossible to comply with the Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (“**PRIIPs**”). This, however, was identified as a conflict issue rather than an issue of legal uncertainty.

- 6.3. Another participant raised the topic of ring-fencing legislation in regards to which several legal complexities are well recognized. It was highlighted that the legal uncertainties would endure even on transposition of this legislation by means of the European Union (Withdrawal) Bill. It was resolved that Mr Putnis would send more details on this topic to be discussed further at the December Forum meeting.
- 6.4. The last topic considered was the change in control regime, which stipulates that dual regulated firms such as banks that are endeavouring to acquire control in a firm must seek its approval from the PRA first. Primary issues of when to apply for approval and how certain acquisition structures are treated were identified by the group. Mr Putnis volunteered to prepare some related points for discussion at the December meeting.

# Did you know ..?

## A quick glance at some FMLC numbers

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**Venessa Parekh, Research Manager**

**Registered Charity Number: 1164902.**

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# Addressing legal uncertainty



Since 2003, the FMLC has analysed and made recommendations to resolve legal uncertainties in 212 disparate topics.

Solvency II  
Brexit  
E.U. Data Protection Reform  
Market Abuse Regulation  
EMIR  
Emissions Allowances  
Benchmarks Reform  
Capital Markets Union  
Sovereign Debt Collective Action Clauses  
Bail-in  
Rome I  
Bank Reform (Ring Fencing)  
International Coordination of Law and Regulation  
Regulation of Credit Rating Agencies  
MiFID II  
Bank Recovery and Resolution  
Financial Market Infrastructures  
Virtual Currencies

# FMLC research is conducted through:

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## Scoping Forums

- Banking
- Brexit
- Buy-side
- Infrastructure
- Insurance
- Fintech
- Sovereign Debt
- Quarterly Discussion Forum (closed)

27

## Working Groups

- ... were established since the beginning of 2016:
- 7 Working Groups are still active;
  - 5 deal with matters related to Brexit; and
  - 9 have published and are anticipating further work.

# FMLC Publications

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22

publications were produced in 2016

69

pages in our longest paper

5

publications were on the topic of benchmarks reform



# 2016-Present FMLC Events

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10

formal events were held

45

guest speakers across all events

4

events examined legal uncertainties arising from Brexit

176

guests attended the 2016 Spring Colloquium on the anticipated U.K. referendum. This was the FMLC's most successful event in the past 3 years

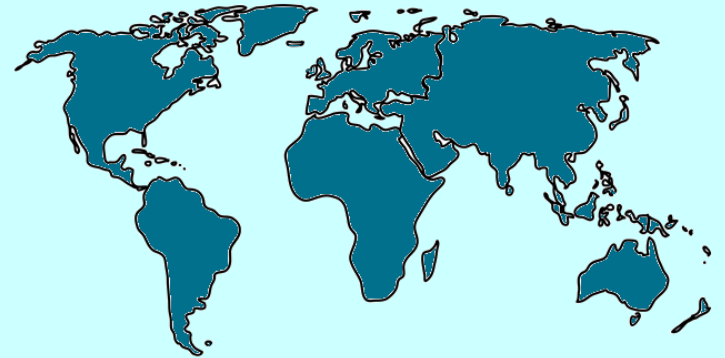
# International connections

18 speeches were given by the FMLC CEO in 5 different countries

4 calls are held every year with the Financial Markets Lawyers Group ("FMLG") (New York)

3 sister organisations (associated with the Federal Reserve, the ECB and the Bank of Japan) participate in an annual conference with the FMLC

7 jurisdictions (E.U., Hong Kong, Japan, Switzerland, Singapore, U.K. and U.S.) hold a biannual information-exchange video conference



# People and the FMLC

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39 patron organisations

35 average number of members per Scoping Forum

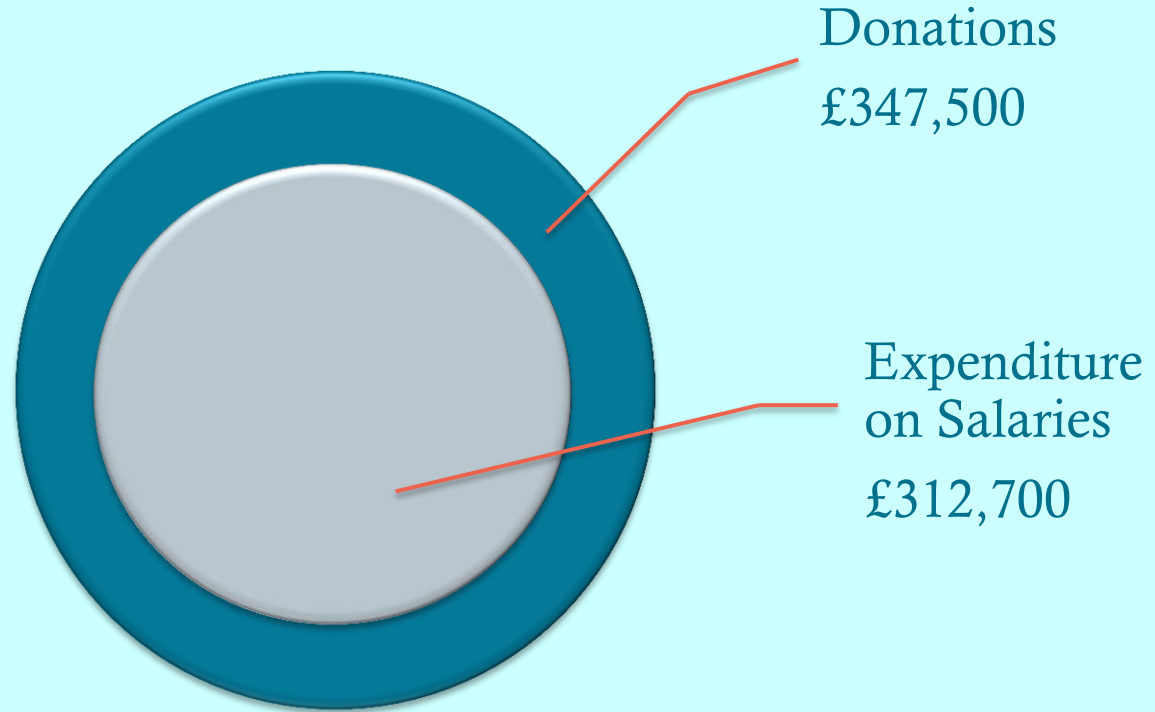
26 Committee Members

15 average number of members per Working Group

11 staff at the FMLC Secretariat (plus one volunteer!)

# Looking under the hood ...

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89% of the FMLC's charitable income is spent on Secretariat salaries

# You can get involved in the FMLC's work by becoming a:

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- **patron**—for a sample Patrons' Newsletter, a copy of the FMLC donation pack and any other enquiries, please contact: Barbara Martin ([patrons@fmlc.org](mailto:patrons@fmlc.org));
- **stakeholder**—for a sample Stakeholders' Newsletter and any other enquiries, please contact: Rachel Toon ([executivesupport@fmlc.org](mailto:executivesupport@fmlc.org));  
or
- **recipient to our general mailing list**—should you wish to receive regular notifications about new FMLC publications, please contact: Amy Shaw ([secretarial@fmlc.org](mailto:secretarial@fmlc.org)).

# 2018 Forward Schedule

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**Tuesday 20 March**

2.00pm to 3.30pm (U.K.)

**Tuesday 19 June**

2.00pm to 3.30pm (U.K.)

**Tuesday 18 September**

2.00pm to 3.30pm (U.K.)

**Tuesday 11 December**

2.00pm to 3.30pm (U.K.)

# Conclusion / The End

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**Financial Markets Law Committee**

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