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## UK Government Considers Radical Changes to Approved Persons Regime

The U.K. government recently published its response to the Parliamentary Commission on Banking Standards' (the Commission) final report and recommendations, which partly cover the U.K.'s Approved Persons regime.

The Approved Persons regime is a system of individual registration and standards for directors, senior management and customer-facing employees of U.K. financial services firms.

The government agrees with the Commission's conclusion that, in light of the 2008-09 U.K. banking failures, the regime has failed. The government will, therefore, work with the Prudential Regulation Authority and the Financial Conduct Authority to create a new framework for regulating banking conduct standards for individuals. **In addition, the U.K. government will consult with U.K. regulators before deciding whether to widen application of the proposed reforms to the non-banking sector.** Although detail is awaited, a broad outline of the possible reforms is given below:

- A new "Senior Persons Regime" to cover "persons with responsibility within the firm for managing the business and the key risks that the firm faces." This will clearly cover those who sit on governing bodies and direct reports to the boards. However, it remains to be seen whether the new regime will cover anyone less senior than those already caught by the Approved Person regime's "systems and controls," "significant management" and "required"<sup>1</sup> controlled functions;
- Senior Persons will require prior regulatory approval, as is currently the case under the Approved Persons regime. In addition, U.K. regulators will be given the power to make approval of Senior Persons subject to conditions or time limits;
- New criminal sanctions for "reckless misconduct in the management of a bank" for individuals who are performing Senior Person functions. This proposed measure is designed to meet political and public concern about issues arising from the U.K. banking crisis. However, it is not clear what "reckless misconduct" would practically look like and whether it would be used to cover board decision subsequently found to be mistaken. It is not clear how such an offence could be successfully proved before a jury, although the Financial Conduct Authority's chief executive was recently quoted as saying that the offence's presence on the statute book would itself be a deterrent;
- Consideration of whether to implement the Commission's recommendation that remuneration obtained as a consequence of reckless misconduct should be recovered;

<sup>1</sup> The required functions include: compliance oversight; money laundering reporting officer; CASS operational oversight function; and those responsible for the submission and administration of LIBOR and other specified benchmarks.

- Reverse the burden of proof so that Senior Persons will be deemed to have contravened regulatory requirements in their areas of responsibility unless they can demonstrate that they took all reasonable steps to prevent the contravention occurring or continuing;
- Replace the existing Approved Persons code with banking standards rules. Regulators will be able to take disciplinary action against individuals who are not Senior Persons or subject to prior regulatory approval when they have “breached the new banking standards rules or are knowingly concerned in a breach of regulatory requirements.” However, the proposal to reverse the burden of proof in disciplinary cases will not apply to individuals who are not Senior Persons;
- Extend the time limit for taking regulatory action against Senior Persons for breaches of regulatory requirements; and
- Finally, the government will ask U.K. regulators to explore with non-U.K. regulators the possibility of exchanging information about misconduct published in national registers of financial services employees and separately consider whether there would be benefits in including more information in public registers.

### Comment

These proposals are still at an early stage of development. Although they are likely to be applied to the U.K. banking sector, it is too early to say whether they will be extended to fund managers, broker-dealers, insurers and non-bank intermediaries. There has been no public call for extending criminal sanctions for poor management decisions to non-bank senior managers and, therefore, it is hoped that application of this offence will not be extended. It is also unclear whether the new standards will be an enhancement or simply a repackaging of current Approved Persons standards. These points will become clearer when the government reports back with its proposed legislation. Nevertheless, the new standards are part of a continued flow of new regulatory controls across the EU and North America, the pace of which may not abate for some time to come.