

FINANCIAL SERVICES (BANKING REFORM) ACT 2013

EXPLANATORY NOTES

COMMENTARY

Part 4 – Conduct of Persons Working in Financial Services Sector

Amendments of FSMA

Section 23: Power to give approval subject to conditions or for a limited period

178. *Section 23* amends section 61 of FSMA. Section 61 provides for the circumstances in which a regulator may grant an application for approval made under section 60, and provides that the firm or the candidate may appeal under standard FSMA procedures if an application is rejected.
179. *Subsection (2)* inserts a new section 61(1) providing that, if a regulator receives an application for an individual to perform a designated senior management function in relation to a relevant authorised person, the regulator may only grant the approval in two cases. The first case restates the existing FSMA test which applies to all applications: the regulator can grant approval if it is satisfied the individual is fit and proper. The second case adds a new test: the regulator can grant approval if it is satisfied that the candidate will be fit and proper if the application is granted subject to conditions. This test would only apply in relation to applications to perform senior management functions in relevant authorised persons.
180. *Subsection (4)* inserts new subsections (2B), (2C) and (2D) into section 61. *Section 61(2B)* provides that, for an application to perform a senior management function in a relevant authorised person, the regulators may grant approval conditionally or subject to time limits. *Section 61(2C)* provides that a regulator may only exercise the new powers where it is desirable to do so to advance an appropriate regulatory objective.