
FINAL NOTICE

Forexex Limited
23 Kirkwall Spur
Slough
SL1 3XY

22 July 2015

ACTION

1. By an application dated 10 September 2014 ("the Application") Forexex Limited ("Forexex") applied under Regulation 12 of the Payment Services Regulations 2009 ("the PSRs") for registration as a small payment institution and to perform the following payment services:
 - (1) Money Remittance
2. The Application is incomplete.
3. For the reasons listed below and pursuant to Regulation 12 of the PSRs, the Authority has refused the Application.

SUMMARY OF REASONS

Forexex has failed to provide the information required by the Authority and so the Authority has concluded that Forexex does not meet the 'conditions for registration as a small payment institution' as set out in Regulation 13 of the PSRs.

4. By its Warning Notice dated 12 May 2015 ("the Warning Notice") issued pursuant to Regulation 9(7) of the PSRs, (as modified by Regulation 14), the Authority gave notice that it proposed to refuse the Application and that Forexex

was entitled to make representations to the Authority about that proposed action.

5. As no representations have been received by the Authority from Forexex within the time allowed by the Warning Notice, the default procedures in paragraph 2.3.2 of the Authority's Decision Procedure and Penalties Manual apply, permitting the Authority to treat the matters referred to in its Warning Notice as undisputed.
6. By its Decision Notice dated 12 June 2015 ("the Decision Notice"), the Authority gave Forexex notice that it had decided to take the action described above.
7. Forexex had 28 days from the date the Decision Notice was given to refer the matter to the Upper Tribunal (formerly known as the Financial Services and Markets Tribunal). No referral was made to the Upper Tribunal within this period of time or to date.
8. Under section 390(1) of the Act, the Authority, having decided to refuse the Application and there having been no reference of that decision to the Tribunal, must give Forexex Final Notice of its refusal.

DEFINITIONS

9. The definitions below are used in this Final Notice.

"the PSRs" means the Payment Services Regulations 2009

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority

"the Act" means the Financial Services and Markets Act 2000 (as modified and applied by the PSRs)

"Mr Ahmadi" means Mr Mohammad Masood Ahmadi, the sole director of Forexex Limited

"the MLRs" means the Money Laundering Regulations 2007

FACTS AND MATTERS

10. The Authority requested further information from Forexex in order to complete the Application but, despite several attempts to elicit a reply, has had no response to its queries. Details of all the communications between the Authority and Forexex are set out below:

- (1) On 5 December 2014, the Authority sent an email to Forexex, using the email address provided in the Application, requesting further information in respect of the Application. This included requiring Forexex to provide:
 - a. confirmation of its successful registration under the MLRs for the proposed payment services activities;
 - b. details of Forexex's turnover;

- c. clarification on information provided in the PSD Individual Application form submitted on 10 September 2014, specifically on knowledge and experience;
 - d. clarification of the applicant's accounting reference date;
 - e. a brief description of the business model or business plan; and
 - f. details of Forexex's complaints procedure.
- (2) On 15 January 2015 the Authority sent a chaser email to the applicant requesting an update on the progress with providing responses.
- (3) On 5 February 2015 the Authority called Forexex on the mobile number provided in the Application. This number was vacant and as such a voice message could not be left.
- (4) On 5 February 2015, the Authority sent a letter to Forexex by first class mail. The letter outlined that the Application remained incomplete but that even so, the PSRs require that it be determined within 12 months. It added that, in the absence of a response, the FCA could not be satisfied that the applicant's controllers, directors and management demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory systems and that this was relevant to the Authority's assessment of whether they are fit and proper/of good repute. The letter stated that, in these circumstances, the Authority would be minded to recommend to the Authority's Regulatory Transactions Committee that it issue a Warning Notice to refuse Forexex's Application. The letter requested a response by 20 February 2015 and also included copies of the emails that had previously been sent to Forexex. An up to date UK landline telephone number was also requested.
- (5) Having received no response to this letter, on 20 February 2015 the Authority emailed Forexex again outlining that the Application remained incomplete but that, even so, the PSRs require that it be determined within 12 months. The letter added that, in the absence of a response, the Authority could not be satisfied that the applicant's controllers, directors and management demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory systems and that this was relevant to the Authority's assessment of whether they are fit and proper/of good repute. The email stated that, in these circumstances, the Authority would be minded to recommend to the Authority's Regulatory Transactions Committee that it issue a Warning Notice to refuse Forexex's Application. An up to date UK landline telephone number was also requested and this email was also sent in a letter on the same day by special delivery and separately first class post with the previous emails enclosed. Both the email and letter requested a response by 6 March 2015.
- (6) On 6 March 2015 a further letter was sent to Forexex by special delivery post and separately first class post. The letter outlined that the Application remained incomplete but that even so, the PSRs require that it be determined within 12 months. The letter added that, in the absence of a response, the Authority could not be satisfied that the applicant's controllers, directors and management demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory systems and that this was relevant to the Authority's assessment of whether

they are fit and proper/of good repute. The letter stated that, in these circumstances, the Authority would be minded to recommend to the Authority's Regulatory Transactions Committee that it issue a Warning Notice to refuse Forexex's Application. The letter requested a response by 20 March 2015 and also included copies of the emails that had previously been sent to Forexex. An up to date UK landline telephone number was again requested.

11. The Authority has received no response to any of the communications set out above.
12. The Application for registration as a small payment institution, made under the PSRs, was received on 10 September 2014.

CONCLUSIONS

13. Pursuant to Regulation 13(1) of the PSRs the Authority may refuse an application for registration as a small payment institution only if any of the conditions in paragraphs (2) – (6) of Regulation 13 are not met. The Regulations and Authority guidance relevant to this Warning Notice are referred to in Annex A.
14. On the basis of Forexex's failure to reply to the Authority's correspondence in relation to the Application (which evidences a failure to demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory system) and to provide the information requested, the Authority considers that the following conditions in Regulation 13 of the PSRs are not met:
 - (1) Regulation 13(2), which requires that Forexex must provide all information requested within Regulation 12(4);
 - (2) Regulation 13(3), which requires that the monthly average over the period of 12 months preceding the application of the total amount of payment transactions executed by the applicant, including any of its agents in the United Kingdom, must not exceed 3 million Euros;
 - (3) Regulation 13(4A), which requires that the Authority must be satisfied that the persons having a qualifying holding in Forexex (namely Mr Ahmadi) are fit and proper having regard to the need to ensure the sound and prudent conduct of the affairs of a small payment institution;
 - (4) Regulation 13(4B) which requires that the Authority must be satisfied that the persons responsible for Forexex (namely Mr Ahmadi) are of good repute and possess appropriate knowledge and experience to provide payment services; and
 - (5) Regulation 13(6) which requires that the applicant must comply with a requirement of the Money Laundering Regulations 2007 to be included in a register maintained under those Regulations where such a requirement applies to the applicant.

IMPORTANT NOTICES

15. This Final Notice is given to Forexex pursuant to Schedule 5 Part 1 (7) of the PSRs (which incorporates section 390(1) of the Act).

Publication

16. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Final Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Forexex or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
17. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

18. For more information concerning this matter generally, contact James Borley, Manager, Permissions at the Authority (direct line: 020 7066 5340/email: james.borley@fca.org.uk).

Val Smith
on behalf of the Regulatory Transactions Committee

ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE

Relevant Statutory Provisions

The Payment Services Regulations 2009

1. Regulation 9(2) of the PSRs (as applied by regulation 14 to applications for registration as an SPI) provides that the Authority may determine an incomplete application if it considers it appropriate to do so, and it must in any event determine any such application within 12 months beginning with the date on which it received the application.
2. Regulation 9(8)(a) of the PSRs (as applied by regulation 14) provides that "The must, having considered any representations made in response to the Warning Notice if it decides to refuse the application or impose a requirement, give the applicant a Decision Notice".
3. Regulation 12(1) requires an application for registration as a small payment institution to contain, or be accompanied by, the information required by the Authority.
4. Regulation 12(4) states that at any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
5. Regulation 13(1) states that the Authority may refuse to register an applicant as a small payment institution only if any of the conditions set out in paragraphs (2) to (6) are not met.
6. Regulation 13(2) states that the application must comply with the requirements of, and any requirements imposed under, regulation 12.
7. Regulation 13(4B) states that the applicant must satisfy the Authority that -
 - a) where the applicant is a body corporate, the directors;
 - b) the persons responsible for the management of the institution; and
 - c) where relevant, the persons responsible for the management of payment services,are of good repute and possess appropriate knowledge and experience to provide payment services.
8. Regulation 13(5) requires that the applicant's head office, registered office or place of residence, as the case may be, must be in the United Kingdom.
9. Regulation 14 provides for regulations 7 to 11 to apply to registration as an SPI as they apply to authorisation as a payment institution (subject to certain modifications).
10. Schedules 5, Part 1 (7) states that Part 26 of the Act applies with the modifications detailed.

Financial Services and Markets Act 2000

11. Part 26 section 390(1) states that if the Authority has given a person a Decision Notice and the matter was not referred to a Tribunal within the time required by the Tribunal Procedure Rules, the Authority must give the person concerned a Final Notice.
12. Part 26 section 391(4) states that the Authority must publish such information about the matter to which a final notice relates as it considers appropriate.
13. Part 26 section 391(6) states that the Authority may not publish information if publication would, in its opinion, be unfair to the person with respect to whom the action was taken or prejudicial to the interests of consumers.
14. Part 26 section 391(7) states that information is to be published in such a manner as the Authority considers appropriate.

Relevant Guidance

"The Authority's role under the Payment Services Regulations 2009 – Our approach"

15. In exercising its powers in relation to the approval of an application for registration as a small payment institution, the Authority must have regard to guidance published in the Authority's 'Our approach' document, including the section titled 'Authorisation and registration'. The version of the 'Our approach' document current at the date of the application was dated June 2013.
16. The paragraphs relevant to the refusal of the Application are set out below (references to 'we' are references to the Authority).
17. Paragraph 3.104: The applicant must satisfy the Authority that any persons having a qualifying holding in it are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of the payment institution. This comprises two elements: firstly, the applicant will need to assess whether any persons (or entities) have a qualifying holding in the applicant and notify the Authority of the identity of such persons; and secondly, the Authority will undertake an assessment of the fitness and propriety of any such persons (or entities).
18. Paragraph 3.105: A 'qualifying holding' is defined in the PSRs by reference to Article 4(11) of the Banking Consolidation Directive as a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking. We refer to people with a qualifying holding as 'controllers'.
19. Paragraphs 3.109 (for controllers) and 3.110 (for directors and all persons responsible for the management of the payment institution): The factors that the Authority will have regard to when making the fit and proper assessment are:
 - honesty, integrity and reputation
 - competence and capability; and

- financial soundness.
20. Paragraphs 3.114 and 3.115: the applicant must satisfy the Authority that its directors and any other persons who are or will be responsible for the management of the PI or its payment services activities, are of good repute and possess appropriate knowledge and experience to perform payment services. This incorporates two elements: firstly, identification by the applicant of those with responsibility for the payment service activities of the payment institution. All such individuals need to be included in the application (such an individual is referred to as a 'PSD Individual'). Secondly, the applicant, together with the PSD Individual, must provide full and complete information to the Authority about all PSD Individuals in order to satisfy the Authority as to the reputation, knowledge and experience of these individuals.
21. Paragraph 3.126: In determining the honesty, integrity and reputation of an individual, the matters that we will have regard to include, but are not limited to:
- relevant convictions or involvement in relevant criminal proceedings or investigations;
 - relevant civil or administrative cases;
 - relevant disciplinary action (including disqualification as company director or bankruptcy);
 - whether the individual has been a director or senior manager in an entity that has been put into liquidation, wound up or is or has been the subject of an investigation by an inspector under company or any other legislation; and
 - information (including relevant shareholdings) relevant for assessing potential conflicts of interest with another entity.
22. Paragraph 3.130: In determining an individual's competence, capability and experience, the Authority will have regard to whether the individual has the:
- knowledge;
 - experience; and
 - training,
- to be able to perform the activity of providing payment services.
23. Paragraph 3.102: The location of the head office, registered office or principal place of business is to be supplied as part of the contact details. The PSD does not define what is meant by a firm's 'head office'. This is not necessarily the firm's place of incorporation or the place where its business is wholly or mainly carried on. Although the Authority will judge each application on a case-by case basis, the key issue in identifying the head office of a firm is the location of its central management and control, that is, the location of: the directors and other senior management, who make decisions relating to the firm's central direction, and the material management decisions of the firm on a day-to-day basis; and the central administrative functions of the firm (for example, central compliance, internal audit).

24. Paragraph 3.6: At any time after receiving an application for authorisation or registration (or a variation of either of these) and before determining it, we can require the applicant to provide such further information as we reasonably consider necessary to enable us to determine the application.
25. Paragraph 3.143: We have to make a decision on a complete application within three months of receiving it. An application is complete when we have received all the information and evidence needed for us to make a decision. We will let the applicant know if we need more information.
26. Paragraph 3.144: In the case of an incomplete application, we must make a decision within 12 months of receipt. However, if that date is reached and discussions with the firm have not resulted in us receiving all the information we need to make our decision, it is likely that an incomplete application will result in a refusal. This is because it is unlikely we will have been able to satisfy ourselves that the applicant has met the authorisation/registration requirements.
27. Paragraph 3.150: We can refuse an application when the information and evidence provided does not satisfy the requirements of the PSRs. When this happens we are required to give the applicant a Warning Notice setting out the reason for refusing the application and allowing 28 days to make a representation on the decision.