
FINAL NOTICE

Khyber Travel & Exchange Limited
656 Kingsbury Road
Kingsbury
London
NW9 9HN

4 September 2013

ACTION

1. By an application dated 30 March 2012 ("the Application") Khyber Travel & Exchange Limited ("Khyber Travel") 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 13 of the PSRs, the Authority has refused the Application.

SUMMARY OF REASONS

4. By its Warning Notice dated 21 June 2013 ("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 Khyber Travel was entitled to make representations to the Authority about that proposed action.
5. As no representations have been received by the Authority from Khyber Travel 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 06 August 2013 ("the Decision Notice"), the Authority gave Khyber Travel notice that it had decided to take the action described above.
7. Khyber Travel has not referred the matter to the Tribunal within 28 days of the date on which the Decision Notice was given to Khyber Travel. .
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 Khyber Travel Final Notice of its refusal.
9. The Authority decided to refuse the Application and to give this Final Notice as Khyber Travel has failed to provide the information required by the Authority and the Authority has accordingly concluded that it cannot ensure that Khyber Travel satisfies and will continue to satisfy the 'Conditions for registration as a small payment institution' set out in Regulation 13 of the PSRs in that:
 - (1) The Authority is not satisfied that Mr Abdul Wakil Jabarkhyl, being a person with a qualifying holding in Khyber Travel, is fit and proper, having regard to the need to ensure the sound and prudent conduct of the affairs of a small payment institution, pursuant to Regulation 13(4A).
 - (2) The Authority is not satisfied that Mr Abdul Wakil Jabarkhyl, being a director of and a person responsible for the management of Khyber Travel, is of good repute pursuant to Regulation 13(4B).
 - (3) Regulation 13(2) of the PSRs requires that Khyber Travel provide all information requested within Regulation 12(4).
 - (4) Regulation 13(5) of the PSRs requires that the applicant's "*head office, registered office or place of residence, as the case may be, must be in the United Kingdom*". Given the failure to respond to correspondence directed to the UK postal address provided in the application papers, there are doubts as to whether those address/contact details are accurate and whether Khyber Travel's head office is in the UK.

DEFINITIONS

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

"the Application" means the application submitted by Khyber Travel & Exchange limited on 30 March 2012.

"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 PSRs" means the Payment Services Regulations 2009

"Mr Jabarkhyl" means Mr Abdul Wakil Jabarkhyl and the applicant who is the sole director with 100% qualifying holding

"the MLRs" means the Money Laundering Regulations 2007

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber)

FACTS AND MATTERS

11. Khyber Travel's Application for registration as a small payment institution, made under the PSRs, was received on 4 April 2012.
12. The Authority requested further information from Khyber Travel in order to complete the Application but, despite several attempts to elicit a reply, the Authority has no substantive response to its queries. Details of all the communications between the Authority and Khyber Travel are set out below:
 - (1) On 8 May 2012, the Authority sent an email to Khyber Travel (using the email address provided in the Application) requesting further information supported by documentary evidence (where applicable) relating to the following:
 - a. Khyber Travel's turnover;
 - b. disclosure of any spent or unspent convictions in relation to the individual(s) responsible for the operation and management of Khyber Travel;
 - c. confirmation of its successful registration under the MLRs for the proposed payment services activities (which is as condition of registration – regulation: 13(6) of the PSRs 2009);
 - d. a description of Khyber Travel's business model;
 - e. details of Khyber Travel's complaints procedures;
 - f. confirmation as to whether Khyber Travel would be 'opting-in' or 'opting-out' of the safeguarding arrangements for customer funds; and
 - g. the telephone number for Khyber Travel's head office.
 - (2) On 8 June 2012 the Authority called Khyber Travel (on the mobile contact number provided in the Application). The 'phone was answered by an individual who identified himself as Mr Jabarkhyl's solicitor. The solicitor acknowledged that Mr Jabarkhyl was his client but said that he was not representing Mr Jabarkhyl on this matter and that the Authority should seek alternative ways to contact Mr Jabarkhyl.
 - (3) On 8 June 2012, an email was sent to Khyber Travel by the Authority (to the email address provided in the Application). In that email the Authority:
 - a. reminded Khyber Travel that the Application remained incomplete as the Authority was still waiting for full and clear responses to the questions sent to Khyber Travel on 8 May 2012;
 - b. advised Khyber Travel that, in the absence of a full response to the outstanding questions, the Authority would be minded to refuse the Application; the emails explained the steps that would be taken in the absence of a response which included the issuing of a Warning Notice to Khyber Travel setting out the reasons for refusal by the Authority.

- (4) On 22 June 2012, the Authority sent a letter to Khyber Travel, (one copy by special delivery and a further copy by first class post) requesting a reply to previous correspondence, as the Authority had not yet received a satisfactory response to the questions asked of the Applicant. This letter was sent to both Khyber Travel's registered office and head office addresses as provided in the Application. The Authority also sent a copy of the same letter to Mr Jabarkhyl's residential address which had been obtained from Companies House.
- (5) On 6 July 2012, the Authority sent a letter by first class post to both Khyber Travel's registered office and head office addresses as provided in the Application. A copy was also sent to Mr Jabarkhyl's residential address (see paragraph (4) above). In this letter, the Authority sought to:
- a. remind Khyber Travel, that the Application remained incomplete as the Authority was still waiting for full and clear responses to the questions previously posed;
 - b. inform Khyber Travel that, if the Application remained incomplete, the Authority would determine the Application on the basis of the information provided;
 - c. highlight to Khyber Travel that its failure to respond to the Authority's queries raised significant concerns as to whether its 'mind and management', i.e. head office, was at the address provided to the Authority in the Application; and
 - d. advise Khyber Travel that, in the absence of receiving a full response to the outstanding questions, the Authority would be taking steps to refuse the Application which would include issuing a Warning Notice to Khyber Travel setting out the reasons for refusal by the Authority.
- (6) On 13 July 2012, the Authority received an email from Khyber Travel (dated 11 July 2012) which was sent to the Authority's Firm Contact Centre mailbox. The email reply was in response to the questions raised by the Authority on 8 May 2012 (see paragraph 12(1) above). However, Khyber Travel did not answer the questions satisfactorily. In particular, Khyber Travel failed to provide the Authority with details of the following:
- a. confirmation of any spent or unspent convictions relating to the individual(s) responsible for the operation and management of Khyber Travel;
 - b. written proof of Mr Jabarkhyl's residential address, as the proof of address provided was that of Edgware Accountants Ltd;
 - c. a clear copy of Mr Jabarkhyl's proof of identification;
 - d. a detailed description of Khyber Travel's business model or business plan;
 - e. an operation helpline number for handling customer complaints in line with Khyber Travel's complaints handling procedure (the telephone number provided by Khyber Travel was a mobile telephone number that was inoperative); and

- f. confirmation as to whether Khyber Travel would be opting in or out of the safeguarding arrangements for customer funds.
- (7) On 4 September 2012, an email was sent to Khyber Travel (to the email address provided in the Application). In that email the Authority requested clarification and additional information in respect of the following:
- a. the landline contact telephone number for Khyber Travel's head office. This information was previously requested (see paragraph 12(1) above) but was omitted from Khyber Travel's response dated 11 July 2012);
 - b. clarification of Khyber Travel's Money Laundering Regulations registration, as the information provided suggested that a) it had not yet registered for payment services in its own right; b) the MLR registration it had provided included registration details of other small payment institutions;
 - c. disclosure of any spent or unspent convictions in relation to individual(s) responsible for the operation and management of Khyber Travel. This information was previously requested (see paragraph 12(1) above) but was omitted from Khyber Travels' response dated 11 July 2012);
 - d. an explanation of Khyber Travel's online transaction services and banking arrangements; and
 - e. further clarification of Khyber Travel's complaints handling procedures.
- (8) On 26 September 2012, the Authority sent a letter by post to Khyber Travel's head office address (as provided in the Application), as it had not received a reply to the information request above. Khyber Travel was further reminded that the Application remained incomplete as it had not provided a response to the outstanding questions contained in previous correspondence. In this letter, the Authority offered Mr Jabarkhyl the opportunity to meet with the Authority to discuss the Application with a view to expediting and resolving the Authority's outstanding queries.
- (9) On 1 October 2012, the Authority's letter addressed to Khyber Travel's head office dated 26 September 2013 was returned to the Authority marked as "*addressee gone away*".
- (10) On 26 September 2012, the Authority contacted a Mr Mohammed of Edgware Associates/Accountants Ltd who had provided the attestation for some of the supporting documentation provided by Khyber Travel as part of its Application. Mr Mohammed acknowledged that Mr Jabarkhyl was a client and said he would convey a message through Mr Abdul Yosefzey ("Mr Yosefzey") (one of his colleagues who oversaw Mr Jabarkhyl's accounts) asking Mr Jabarkhyl to contact the Authority.
- (11) On 8 October 2012, an email was sent to Khyber Travel (to the email address provided in the Application). In this email, the Authority requested from Mr Jabarkhyl additional information under regulation 125A of the PSRs 2012 (which came into force on 1 October 2012). The information sought from Khyber Travel included:
- a. a full response to the outstanding issues set out in the Authority's email dated 4 September 2012 (see paragraph (7) above);

- b. a programme of operations detailing the main business activities of Khyber Travel;
 - c. an organisational structure chart;
 - d. PSD Individual application forms to be completed by persons who would be responsible for the management and operation of Khyber Travel's payment services; and
 - e. information on each person(s) with a 'qualifying holding' in Khyber Travel's business and whether they are fit and proper persons.
- (12) On 12 December 2012, the Authority contacted Mr Yosefzey, (see paragraph (10) above) by telephone. Mr Yosefzey confirmed that he had tried to contact Mr Jabarkhyl but had no success and suspected that Mr Jabarkhyl was abroad. Mr Yosefzey informed the Authority that, as he had been unable to contact Mr Jabarkhyl, the Authority should proceed with its due process.
- (13) On 19 December 2012, the Authority sent an email to Khyber Travel (to the email address provided in the Application) requesting a response to outstanding questions.
- (14) On 4 January 2013, the Authority sent a letter by special delivery to Khyber Travel's head office address as provided in the Application requesting a reply to the questions asked in previous correspondence. A copy of this letter was also posted to Mr Jabarkhyl's residential address (see paragraph (4) above).
- (15) On 5 January 2013, the Authority's letter dated 4 January 2013 addressed to Khyber Travel's head office was returned to the Authority marked as "*addressee gone away*". On 21 January 2013, the Authority sent another reminder letter by post to both Khyber Travel's head office and Mr Jabarkhyl's home address as provided in the Application requesting a reply as it had not received a response to the outstanding questions previously requested. A copy of this letter was also sent to Mr Jabarkhyl's residential address. The Authority has not received a response to this letter.
13. The Authority has received no substantive response to any of the communications set out above.

CONCLUSIONS

14. Pursuant to Regulation 13(1) of the PSRs the Authority may refuse an application for registration as an authorised 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.
15. On the basis of Khyber Travel'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 various of the information requested, the Authority considers that the following conditions in Regulation 13 of the PSRs are not met:

- (1) Regulation 13(4A), which requires the Authority must be satisfied that the persons having a qualifying holding in Khyber Travel (namely Mr Jabarkhyl) are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of a small payment institution;
- (2) Regulation 13(4B), which requires that the Authority must be satisfied that the persons responsible for Khyber Travel (namely Mr Jabarkhyl) are of good repute and possess appropriate knowledge and experience to provide payment services;
- (3) Regulation 13(2), which requires that Khyber Travel must provide all information requested within Regulation 12(4); and
- (4) Regulation 13(5), which requires that the applicant's "*head office, registered office or place of residence, as the case may be, must be in the United Kingdom*". Given the failure to respond to correspondence directed to the UK postal address provided in the papers accompanying the Application, there are doubts as to whether those address/contact details are accurate and whether Khyber Travel's head office is in the UK.

IMPORTANT NOTICES

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

Publication

17. 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 the 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 Khyber Travel or prejudicial to the interests of consumers.

Authority contacts

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

Graeme McLean
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 a 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 Authority 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(4A) states that where the applicant is a partnership, an unincorporated association or a body corporate, 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 a small payment institution.
8. Regulation 13(4B) states that the applicant must satisfy the Authority that -
 - (1) where the applicant is a body corporate, the directors;
 - (2) the persons responsible for the management of the institution; and
 - (3) 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.
9. 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.
10. 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).

11. Regulation 125A(1) states that where the applicant has applied for registration as a small payment institution before 1 October 2012 and its application has not been determined before that date, it must provide the Authority with the information referred to in paragraphs 1, 7, 8 and 9 of Schedule 2 to the extent relevant to the applicant.

Financial Services and Markets Act 2000

12. 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.
13. 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.
14. 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.
15. 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”

16. 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 January 2012.
17. The paragraphs relevant to the refusal of the Application are set out below (references to ‘we’ are references to the Authority).
18. 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.
19. Paragraph 3.98: of the ‘Our approach’ document refers to Regulation 13(5) of the PSRs and states that: “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:
 - a. 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

- b. the central administrative functions of the firm (for example, central compliance, internal audit).”
20. Paragraph 3.105: 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.
21. Paragraph 3.106: 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.
22. Paragraph 3.113: 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.
23. The document “Authority’s role under the Payment Services Regulations 2009 - Our approach” dated October 2012 provides (in addition to guidance in the same substantive terms as that above) the following guidance on Regulation 13(4A):
- a. Paragraph 3.94 states that where the Applicant is a partnership, an unincorporated association or a body corporate, 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 a small payment institution.
 - b. Paragraph 3.96 makes clear that the requirement under Regulation 13 (4A) (as explained in paragraph 3.94) applies to applicants with an outstanding application for SPI status as at 1 October 2012.
 - c. Paragraph 3.108 states that for each qualifying holding in the applicant, a registration application must contain: the size and nature of the qualifying holding; and evidence of the suitability of each controller taking into account the need to ensure the sound and prudent management of a small payment institution.
 - d. Paragraph 3.109 states that the term ‘fit and proper’ is one that the Authority uses frequently in the context of individuals approved under the Financial Services and Markets Act 2000 (FSMA). Interpretation of this term, which is used in regulation 13(4A) in relation to controllers, means substantially the same for small PIs as it does for individuals approved in FSMA firms and refers to the section of the Authority’s Handbook entitled “FIT” in this regard.
 - e. Paragraph 3.110 states
- “The term ‘fit and proper’, which is used in Regulation 13(4A), incorporates the following essential factors:
- honesty, integrity and reputation;
 - competence and capability; and

- financial soundness

of the person with a qualifying holding taking into account the need to ensure the sound and prudent management of a small PI [small payment institution]”.

24. The October 2012 version of the document provides the following guidance on Regulation 13(4B):

- a. Paragraph 3.114 states that under Regulation 13(4B), the applicant must satisfy the Authority that its directors and/or the persons who are or will be responsible for the management of it and its payment services, are of good repute and possess appropriate knowledge and experience to perform payment services.
- b. Paragraph 3.119 states that the Authority considers the term ‘of good repute’ to include the essential factors relating to fitness and propriety in relation to controllers.