



Financial Services Authority

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**FINAL NOTICE**

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**Mr Moinul Islam  
7E18HT6 Ltd  
104a Cowley Road  
Uxbridge  
Middlesex  
UB8 2LX**

11 June 2012

**ACTION**

1. By an application dated 4 January 2011 (“the Application”) Mr Moinul Islam (“Mr Islam”) 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 FSA has refused the Application.

## **SUMMARY OF REASONS**

4. By its Warning Notice dated 29 February 2012 (“the Warning Notice”) issued pursuant to Regulation 9(7) of the PSRs, (as modified by Regulation 14), the FSA gave notice that it proposed to refuse the Application and that Mr Islam was entitled to make representations to the FSA about that proposed action.
5. As no representations have been received by the FSA from Mr Islam within the time allowed by the Warning Notice, the default procedures in paragraph 2.3.2 of the FSA’s Decision Procedure and Penalties Manual apply, permitting the FSA to treat the matters referred to in its Warning Notice as undisputed.
6. By its Decision Notice dated 3 April 2012 (“the Decision Notice”), the FSA gave Mr Islam notice that it had decided to take the action described above.
7. Under section 133(1) of the Act, Mr Islam 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 FSA, having decided to refuse the Application and there having been no reference of that decision to the Tribunal, must give Mr Islam Final Notice of its refusal.
9. The FSA decided to refuse the Application and to give this Final Notice as Mr Islam has failed to provide the information required by the FSA, and the FSA has accordingly concluded that Mr Islam does not meet the ‘Conditions for registration as a small payment institution’ set out in Regulation 13 of the PSRs on the basis that Mr Islam has failed to demonstrate that his head office, registered office or place of residence, is in the United Kingdom.

## **DEFINITIONS**

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

“the PSRs” means the Payment Services Regulations 2009

“the FSA” means the Financial Services Authority

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

## **FACTS AND MATTERS**

11. The Application for registration as a small payment institution, made under the PSRs, was received on 11 January 2011.
12. On 31 May 2011 Mr Islam sent an email to the FSA by which he advised, “*I have changed my business details now so please can you send ALL correspondence to the new address*” and gave the details set out at the head of this Decision Notice. On 1 June 2011 Mr Islam sent an email to the FSA by which he sought confirmation that

*“the change of contact details [had] been noted”*. The FSA duly processed this request for a change of correspondence address.

13. Further information was requested from Mr Islam to complete the Application but the applicant has not responded. Details of all the communications between the FSA and Mr Islam are set out below:

- (1) On 3 June 2011 the FSA sent an email to the email address provided by Mr Islam in the Application and also to the email address from which he sent the emails referred to in paragraph 12 above. By this email the FSA acknowledged receipt of the Application and the fee. The email requested additional information from Mr Islam in respect of a number of matters, including:
  - a. his business;
  - b. his fraud management procedures;
  - c. his complaints procedures;
  - d. whether Mr Islam intended to opt in to the safeguarding provision for client funds (Mr Islam did not indicate in the Application whether he planned to opt in for safeguarding); and
  - e. the correct financial year end date
- (2) On 19 July 2011 the FSA sent a further email (attaching a copy of the email dated 3 June 2011) to Mr Islam informing him that the FSA was still awaiting a full response to the questions that had been asked on 3 June 2011 and that, in the absence of a full response to the email and/or subsequent attempts to contact him, the FSA would continue to determine the application on the limited information provided and would be minded to refuse the application and issue a Warning Notice. The FSA received no response.
- (3) Having received no response to its earlier email, on 19 August 2011 the FSA sent a letter to the postal address provided in the email dated 31 May 2011. In that letter the FSA:
  - a. referred to its outstanding queries sent by email of 3 June 2011, to which it stated a response was required;
  - b. noted that the FSA is required to determine an incomplete application within 12 months of its receipt;
  - c. stated that, in the absence of a full response to the outstanding queries, the FSA would recommend that the Application be refused; and
  - d. stated that a refusal of the Application would result in the issuing of a Warning Notice, on which Mr Islam would be entitled to make representations.

- (4) On the same date the FSA tried to contact the applicant on the telephone number provided. An automated response stated that the number was not in service.
- (5) No further correspondence was received from Mr Islam and on 10 November 2011 the FSA sent Mr Islam another letter in which it:
  - a. referred to its outstanding queries;
  - b. noted that the FSA is required to determine an incomplete application within 12 months of its receipt;
  - c. stated that, in the absence of a full response to the outstanding queries, the FSA would determine the Application on the basis of the incomplete information provided;
  - d. noted that Mr Islam's failure to respond to the FSA's queries raised significant doubts as to the accuracy of the address/contact details provided to the FSA in the Application;
  - e. noted the FSA's view that Mr Islam had not demonstrated his compliance with regulation 13(5) of the PSRs; and
  - f. stated that, in light of the above matters, the FSA would look to recommend refusal of the Application, which would result in the issuing of a Warning Notice if the recommendation was accepted by the decision-maker.
- (6) No response having been received, on 9 January 2012 the FSA sent Mr Islam another letter in which it:
  - a. referred to its outstanding queries;
  - b. noted that the FSA is required to determine an incomplete application within 12 months of its receipt;
  - c. stated that, in the absence of a full response to the outstanding queries, the FSA would determine the Application on the basis of the incomplete information provided;
  - d. noted that Mr Islam's failure to respond to the FSA's queries raised significant doubts as to the accuracy of the address/contact details provided to the FSA in the Application;
  - e. noted the FSA's view that Mr Islam had not demonstrated his compliance with regulation 13(5) of the PSRs; and
  - f. stated that, in light of the above matters, the FSA would look to recommend refusal of the Application, which would result in the issuing of a Warning Notice if the recommendation was accepted by the decision-maker.

14. The Warning Notice was issued to Mr Islam on 29 February 2012. This was returned to the FSA on 23 May 2012 marked as ‘not called for’.
15. As at the date of this Final Notice, the FSA has not received any response (substantive or at all) to any of the communications set out above.

## **CONCLUSIONS**

16. Pursuant to Regulation 13(1) of the PSRs the FSA may refuse an application for registration as a small payment institution if any of the conditions in paragraphs (2) – (6) of Regulation 13 are not met. The Regulations and FSA guidance relevant to this Final Notice are referred to in Annex A.
17. The FSA considers that an applicant’s head office is the location of the firm's central management and control, which includes the directors and other senior management and central administrative functions of the firm.
18. On the basis of the facts and matters described above, Mr Islam has failed to respond to the FSA’s questions. Mr Islam’s failure to respond to the FSA’s questions raises significant doubts that the address/contact details provided are accurate and that Mr Islam’s central management, administrative functions and head office are in the UK.
19. Mr Islam has therefore failed to meet the condition in Regulation 13(5) that requires that the applicant’s *“head office, registered office or place of residence, as the case may be, must be in the United Kingdom”*.

## **IMPORTANT NOTICES**

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

## **Publication**

21. 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 FSA must publish such information about the matter to which the Final Notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to Mr Islam or prejudicial to the interests of consumers.

## **FSA contacts**

22. For more information concerning this matter generally, contact Jonathan Bromberger, Manager, PSD Department at the FSA (direct line: 020 7066 9080 /email: [jonathan.bromberger@fsa.gov.uk](mailto:jonathan.bromberger@fsa.gov.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 “[t]he 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 12(1) requires an application for registration as a small payment institution to contain, or be accompanied by, the information required by the FSA.
3. Regulation 12(4) states that at any time after receiving an application and before determining it, the FSA may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
4. Regulation 13(1) states that the FSA 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.
5. Regulation 13(2) states that the application must comply with the requirements of, and any requirements imposed under, regulation 12.
6. Regulation 13(5) requires that the applicant’s head office or place of residence, as the case may be, must be in the United Kingdom.
7. 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).
8. Schedule 5, Part 1 (7) states that Part 26 of the Act applies save for the modifications detailed.

#### *Financial Services and Markets Act 2000*

9. Part 26 section 390(1) states that if the FSA 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 FSA must give the person concerned a Final Notice.
10. Part 26 section 391(4) states that the FSA must publish such information about the matter to which a final notice relates as it considers appropriate.
11. Part 26 section 391(6) states that the FSA 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.
12. Part 26 section 391(7) states that information is to be published in such a manner as the FSA considers appropriate.

## Relevant Guidance

### *“The FSA’s role under the Payment Services Regulations 2009 – Our approach”*

13. In exercising its powers in relation to the approval of an application for registration as a small payment institution, the FSA must have regard to guidance published in the FSA’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 May 2010.
14. The paragraphs relevant to the refusal of the Application are set out below (references to ‘we’ are references to the FSA).
15. Paragraph 3.7: 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
16. Paragraph 3.91: The location of the head office, registered office, or principal place of business is to be supplied as part of the contact details.
17. Paragraph 3.97: 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.
18. Paragraph 3.98: 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.
19. Paragraph 3.105: 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.