
FINAL NOTICE

Safari General Trading Ltd
146 Seven Sisters Road
London
N7 7PL

12 July 2012

ACTION

1. By an application dated 26 May 2011 (received by the FSA on 7 June 2011) (“the Application”) Safari General Trading Ltd (“Safari”) 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 12 April 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 Safari was entitled to make representations to the FSA about that proposed action.

5. As no representations have been received by the FSA from Safari 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 7 June 2012 ("the Decision Notice"), the FSA gave Safari notice that it had decided to take the action described above.
7. Under section 133(1) of the Act, Safari 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 Safari Final Notice of its refusal.
9. The FSA decided to refuse the Application and to give this Final Notice as Safari has failed to provide the information required by the FSA, and the FSA has accordingly concluded that Safari does not meet the 'Conditions for registration as a small payment institution' set out in Regulation 13 of the PSRs on the basis that:
 - (1) Safari has failed to comply with the requirements imposed under regulation 12 of the PSRs, in particular the requirement in regulation 12(4) that provides 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.
 - (2) Safari has failed to demonstrate that its 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 7 June 2011.
12. Further information was requested from Safari to complete the Application but the applicant has not responded. Details of all the communications between the FSA and Safari are set out below:

- (1) On 8 August 2011 the FSA sent an email to Safari (using the email address provided in the Application) requesting further information in respect of Safari's application. This included seeking:
 - a. Safari's brief business model/plan;
 - b. Safari's fraud management controls;
 - c. Safari's complaints procedures; and
 - d. confirmation of Safari's proposed plan in respect of the safeguarding provisions, including which of the safeguarding methods Safari intended to use .
 - e. the correct financial year end date (Safari provided an Accounting Reference date in the application that did not match that listed on Companies House).
 - f. a request that the director sign the declaration part of the application (Section 7) again and attached a blank copy of the declaration page for signature.

- (2) No response having been received, a further email was sent to Safari at the same address on 7 November 2011. In that email the FSA:
 - a. referred to its outstanding queries sent by email of 8 August 2011;
 - b. noted that the Application remains incomplete and that, in the absence of a full response, the application would not be progressed;
 - c. noted that the FSA is required to determine an incomplete application within 12 months of its receipt;
 - d. referenced the fact that, in the absence of a full response to the outstanding queries, the FSA would be minded to refuse the Application; and
 - e. stated that a refusal of the Application would result in the issuing of a Warning Notice, on which Safari would be entitled to make representations.

- (3) The FSA also made a telephone call to the landline number provided in the Application on 7 November 2011. However, the number provided by Safari was incorrect.

- (4) Following these various (unsuccessful) attempts by the FSA to make contact with Safari, on 21 November 2011 the FSA wrote to Safari at the address of its registered office. The letter was sent special delivery. In that letter the FSA:
 - a. referred to its outstanding queries sent by email of 8 August 2011;
 - b. noted that the FSA is required to determine an incomplete application within 12 months of its receipt;

- c. referenced the fact that, in the absence of a full response to the outstanding queries, the FSA would be minded to refuse the Application on the grounds that Safari had failed to provide the information needed in order to determine the application; and
 - d. stated that a refusal of the Application would result in the issuing of a Warning Notice, on which Safari would be entitled to make representations.
- (5) No response having been received, on 20 December 2011 the FSA wrote to Safari at the postal address provided in the Application. In that letter the FSA:
- 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. referenced the fact 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 Safari's failure to respond to the FSA's queries raises significant doubts as to the accuracy of the address/contact details provided to the FSA in the Application;
 - e. noted Authorisations' view that Safari had not demonstrated its 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.

13. The FSA received no response to any of the communications set out above.

CONCLUSIONS

14. 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.
15. On the basis of the facts and matters described above, Safari has failed to respond to the FSA's questions at all.
16. Safari failed to respond to any of the requests for further information in respect of Safari's application. These included:
- a. Safari's business model/plan;
 - b. Safari's fraud management controls;
 - c. Safari's complaints procedures;

- d. confirmation of Safari's proposed plan in respect of the safeguarding provisions, including which of the safeguarding methods Safari intended to use;
 - e. the correct financial year end date (Safari provided an Accounting Reference date in the application that did not match that listed on Companies House); and
 - f. a request that the director sign the declaration part of the application (Section 7) again and attached a blank copy of the declaration page for signature
17. In light of the above, Safari has failed to provide the FSA with (in response to supplemental questions) the further information that the FSA requested of Safari and which the FSA reasonably considers necessary to enable it to determine the application. Safari has therefore failed to meet the condition set out in regulation 13(2) of the PSRs.
18. Further, the FSA's document entitled "The FSA's role under the Payment Services Regulations 2009 – Our Approach" (August 2011), indicates at paragraph 3.99 that the 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.
19. Safari's failure to respond to the FSA's questions raises significant doubts that the address/contact details provided are accurate and that Safari's central management, administrative functions and head office are in the UK.
20. Safari has therefore failed to meet the condition in Regulation 13(5) that requires that "its head office, registered office or place of residence, as the case may be, must be in the United Kingdom".

IMPORTANT NOTICES

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

Publication

22. 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 Safari or prejudicial to the interests of consumers.

FSA contacts

23. For more information concerning this matter generally, contact Jonathan Bromberger, Manager, PSD Team at the FSA (direct line: 020 7066 9080 /email: jonathan.bromberger@fsa.gov.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 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 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 FSA.
4. 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.
5. 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.
6. Regulation 13(2) states that the application must comply with the requirements of, and any requirements imposed under, regulation 12.
7. 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.
8. 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).
9. Schedules 5, Part 1 (7) states that Part 26 of the Act applies save for the modifications detailed.

Financial Services and Markets Act 2000

10. 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.
11. 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.

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 proposal to refuse the Application are set out below (references to ‘we’ are references to the FSA).
15. 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.
16. 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.
17. 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.
18. 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.