

FINAL NOTICE

Sagarmatha Services Limited
114 Dunkirk Square
Burgoyne Height
Dover
Kent
CT15 5LU

9 February 2012

ACTION

1. By an application received by the FSA on 4 August 2010 (“the Application”) Sagarmatha Services Limited (“Sagarmatha”) 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 FSA has refused the Application.

SUMMARY OF REASONS

4. By its Warning Notice dated 14 July 2011 (“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 Sagarmartha was entitled to make representations to the FSA about that proposed action.
5. As no representations have been received by the FSA from Sagarmartha 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 13 December 2011 (“the Decision Notice”), the FSA gave Sagarmartha notice that it had decided to take the action described above.
7. Under section 133(1) of the Act, Sagarmartha 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 Sagarmartha Final Notice of its refusal.
9. The FSA has decided to refuse the Application and to give this Final Notice as Sagarmartha has failed to provide the information required by the FSA, and the FSA has accordingly concluded that Sagarmartha 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) Sagarmartha 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) Sagarmartha has failed to provide the information requested and so has not demonstrated 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

FACTS AND MATTERS

- 10.1. The Application for registration as a small payment institution, made under the PSRs, was received on 4 August 2010.
- 10.2. Further information was requested from Sagarmatha to complete the Application, but Sagarmatha has not responded. Details of all the communications between the FSA and Sagarmatha are set out below:
 - (a) On 12 August 2010 the FSA’s Authorisations Division sent Sagarmatha an acknowledgement email.
 - (b) On 12 August 2010 the FSA’s Authorisations Division also sent an email to Sagarmatha containing questions resulting from the Application.
 - (c) Sagarmatha responded on 14 August 2010 with answers to the questions set out in the email of 12 August 2010.
 - (d) On 18 August 2010 the FSA’s Authorisations Division emailed Sagarmatha follow-up questions in relation to the application.
 - (e) Sagarmatha responded on 20 August 2010 with answers to the email of 18 August 2010.
 - (f) On 30 November 2010, the FSA’s Authorisations Division emailed Sagarmatha requesting further information about Sagarmatha and its procedures. The email set out 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, which would likely result in the issuing of a Warning Notice. The FSA received no response.
 - (g) On 4 January 2011 the FSA’s Authorisations Division sent Sagarmatha an additional email setting out that there was missing information and outlining that, in the absence of a full response to this email or subsequent attempts to contact Sagarmatha, the FSA would be minded to refuse Sagarmatha’s application and issue a Warning Notice. The FSA received no response.
 - (h) On 18 January 2011, the FSA’s Authorisations Division sent a letter to Sagarmatha by special delivery to the address provided to the FSA in Sagarmatha’s application. The letter stated that the information requested on 30 November 2010 remained outstanding in respect of the application and that without a full response the FSA would be minded to refuse

Sagarmatha's application and issue a Warning Notice. The FSA received no response.

- (i) On 18 January 2011 the FSA's Authorisations Division telephoned Sagarmatha using the mobile and landline numbers provided in Sagarmatha's application. There was no answer or option to leave a message.
- (j) On 8 February 2011 the FSA's Authorisations Division telephoned Sagarmatha's accountant; who had also attempted to contact Sagarmatha, but had not received a response.
- (k) On 23 March 2011 the FSA's Authorisations Division telephoned Sagarmatha again on both the mobile and landline numbers. There was no answer or option to leave a message.
- (l) A further email was sent to Sagarmatha on 23 March 2011, again stating that the FSA still required further information and advising that, without a full response, the FSA would be minded to refuse Sagarmatha's application and issue a Warning Notice.
- (m) As at 14 July 2011, the FSA had not received a response to the queries set out in its email of 30 November 2010. Further, all attempts to contact Sagarmatha on the telephone numbers provided in Sagarmatha's application had been unsuccessful and the FSA accordingly concluded that Sagarmatha did not meet the 'Conditions for registration as a small payment institution' set out in Regulation 13 of the PSRs. The Warning Notice was issued.

CONCLUSIONS

11. 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.
12. 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.
13. On the basis of the facts and matters described above, Sagarmatha has failed to respond to the FSA's correspondence.
14. Sagarmatha's failure to respond to the FSA's correspondence raises significant doubts that the address/contact details provided are accurate and that Sagarmatha's central management, administrative functions and head office are in the UK.

15. Sagarmatha 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

16. This Final Notice is given to Sagarmatha 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 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 you or prejudicial to the interests of consumers.

FSA contacts

18. 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).

James Borley
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 “[t]he applicant’s head office, registered 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. Schedules 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 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
14. registration’. The version of the ‘Our approach’ document current at the date of the application was dated May 2010.
15. The paragraphs relevant to the refusal of the Application are set out below (references to ‘we’ are references to the FSA).
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.