
FINAL NOTICE

Ndukuman Tropical Trading Enterprise Ltd
8 Hector Street
London
SE18 1QU

29 November 2012

ACTION

1. By an application dated 1 December 2011 (“the Application”) Ndukuman Tropical Enterprise Limited (“Ndukuman Tropical”) 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. For the reasons listed below and pursuant to Regulation 13 of the PSRs, the FSA has refused the Application.

SUMMARY OF REASONS

3. By its Warning Notice dated 05 September 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 Ndukuman Tropical was entitled to make representations to the FSA about that proposed action.

4. As no representations have been received by the FSA from Ndukuman Tropical 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.
5. By its Decision Notice dated 18 October 2012 ("the Decision Notice"), the FSA gave Ndukuman Tropical notice that it had decided to take the action described above.
6. Under section 133(1) of the Act, Ndukuman Tropical 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.
7. 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 Ndukuman Tropical Final Notice of its refusal.
8. The FSA decided to refuse the Application and to give this Final Notice as Ndukuman Tropical has failed to provide the information required by the FSA, and the FSA has accordingly concluded that it cannot ensure that Ndukuman Tropical satisfies and will continue to satisfy the 'Conditions for registration as a small payment institution' set out in Regulation 13 of the PSRs:
 - (1) Ndukuman Tropical 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) Ndukuman Tropical has failed to demonstrate that its head office, registered office or place of residence, is in the United Kingdom as required by regulation 13(5) of the PSRs.

DEFINITIONS

9. 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

10. The Application for registration as a small payment institution, made under the PSRs, was received on 8 December 2012.

11. Further information was requested from Ndukuman Tropical to complete the Application but the applicant has not responded. Details of all the communications between the FSA and Ndukuman Tropical are set out below:
- (1) On 16 December 2011 the FSA sent an email to Ndukuman Tropical (using the email address provided in the Application) requesting further information in respect of Ndukuman Tropical's application, including:
 - a. Ndukuman Tropical's turnover for each of the previous 12 months;
 - b. disclosure of any spent and unspent convictions by individuals responsible for the management or operation of Ndukuman Tropical; and
 - c. documentary proof of the UK residential address of the directors responsible for the operation and management of Ndukuman Tropical.
 - (2) The Managing Director of Ndukuman Tropical, Mr Dodou A. B. Ndow ("Mr Ndow") replied on 17 December 2011 stating: *"I am currently away and will put together all the required information soonest [sic]."*
 - (3) No response having been received, on 16 January 2012 the FSA attempted to call Ndukuman Tropical using the mobile number provided in the Application, however the telephone was not answered. The FSA then called the landline number provided in the Application and the telephone was answered by a lady who identified herself as Mr Ndow's wife. A message was left with her asking Ndukuman Tropical to reply to the FSA's email of 16 December 2011.
 - (4) No response having been received, on 6 March 2012 the FSA made a further telephone call to the mobile number provided in the Application and spoke to a man who identified himself as Mr Ndow. The FSA referred to the message left with his wife and Mr Ndow replied that he had not been in the country then but had returned in February and would provide details to the FSA at his earliest.
 - (5) No response having been received, on 14 May 2012 the FSA made an attempt to contact Ndukuman Tropical by means of the landline number provided in the Application, but the telephone was unanswered. On the same day, the FSA made a telephone call to the mobile number provided in the Application and it was answered by an individual who identified himself as an employee of Ndukuman Tropical. The FSA asked him why his mobile number was provided on the application form instead of that of Mr Ndow, who was identified as the contact person for the Application. The individual explained that his number was used because Mr Ndow did not have a mobile number when the Application was submitted, but that he would ask Mr Ndow to contact the FSA.
 - (6) On 15 May 2012 the FSA made another attempt to contact Ndukuman Tropical on the mobile and landline numbers provided in the Application. The mobile number was not answered and the landline number had a long engaged tone.
 - (7) On the same day the FSA sent an email to Ndukuman Tropical (using the email address provided in the Application). In that email the FSA;

- a. referred to its outstanding queries;
 - b. noted that the Application remained incomplete;
 - c. noted that the FSA is required to determine an incomplete application within 12 months of its receipt;
 - d. stated that, in the absence of a full response to the outstanding queries, the FSA would recommend that the Application be refused; and
 - e. stated that a refusal of the Application would result in the issuing of a Warning Notice, on which Ndukuman Tropical would be entitled to make representations.
- (8) No response having been received, on 8 June 2012 the FSA wrote to Ndukuman Tropical at 8B Hector Street, Plumstead, London, SE18 1QU, which is the company's address according to the Money Service Business Register. The contents of the letter were the same as the email dated 15 May 2012.
- (9) No response having been received, on 25 June 2012 the FSA wrote to Ndukuman Tropical at the above address and 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. noted that the FSA is required to determine an incomplete application within 12 months of its receipt;
 - d. noted that Ndukuman Tropical'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. stated that, in light of the above, if there was no response 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.
- (10) No response having been received, on 24 July 2012, the FSA sent a further letter to the address provided in the Application. In that email the FSA:
- a. referred to and enclosed its outstanding queries;
 - b. noted that the Application remained incomplete;
 - c. noted that the FSA is required to determine an incomplete application within 12 months of its receipt;

- d. stated that, in the absence of a full response to the outstanding queries, the FSA would recommend that the Application be refused; and
 - e. stated that a refusal of the Application would result in the issuing of a Warning Notice, on which Ndukuman Tropical would be entitled to make representations.
12. As at the date of this Final Notice, the FSA has not received a substantive response to the queries set out in its email of 15 May 2012 and no response at all to any of the letters as detailed above, the Warning notice sent out on 06 September 2012 and the Decision Notice sent out on 18 October 2012.

CONCLUSIONS

13. Pursuant to Regulation 13(1) of the PSRs the FSA 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 FSA guidance relevant to this Final Notice are referred to in Annex A.
14. On the basis of the facts and matters described above, Ndukuman Tropical has failed to respond substantively to the FSA’s questions and the FSA is of the view that the conditions in Regulations 13(2) and 13(5) are not met.
15. After the application was received and before it was determined, the FSA requested that Ndukuman Tropical provide it with further information about directors’ addresses and previous convictions which was reasonably considered necessary to enable it to determine the Application. Ndukuman Tropical has failed to furnish the information required and therefore has not satisfied the condition in regulation 13(2).
16. 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 the central administrative functions of the firm.
17. Ndukuman Tropical’s failure to furnish proof of the directors’ addresses and reply to correspondence raises significant doubts that the address/contact details provided are accurate and that Ndukuman Tropical’s central management, administrative functions and head office are in the UK.
18. Ndukuman Tropical has therefore failed to satisfy 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

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

Publication

20. 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 Ndukuman Tropical or prejudicial to the interests of consumers.

FSA contacts

21. 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 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 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.
3. 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.
4. Regulation 13(2) states that the application must comply with the requirements of, and any requirements imposed under, regulation 12.
5. 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.
6. 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).
7. Schedule 5, Part 1 (7) states that Part 26 of the Act applies with the modifications detailed.

The Financial Services and Markets Act 2000

8. 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.
9. 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.
10. 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.
11. 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”

12. 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 August 2011.
13. The paragraphs relevant to the refusal of the Application are set out below (references to ‘we’ are references to the FSA).
14. 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
15. Paragraph 3.99: 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 FSA 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:
 - 1) the directors and other senior management, who make decisions relating to the firm’s central direction, and the management decisions of the firm on a day-to-day basis; and
 - (2) the central administrative functions of the firm (for example, central compliance, internal audit)
16. Paragraph 3.106: 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 3.107: 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 3.114: 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.