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**FINAL NOTICE**

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**Jean Binga  
Yan International Communications Ltd  
Britannia House  
960 High Road  
London  
N12 9RY**

**29 August 2012**

**ACTION**

1. By an application dated 8 September 2010 (“the Application”) Yan International Communications Ltd (“Yan”) 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. The FSA has concluded that Yan does not satisfy the ‘Conditions for registration as a small payment institution’ set out in Regulation 13 of the PSRs for the reasons set out more fully in the Warning Notice dated 6 June 2012 (“the Warning Notice”) and the Decision Notice dated 11 July 2012 (“the Decision Notice”).

5. Yan has not met the condition in regulation 13(2) of the PSRs on the basis that Yan has failed to comply with requirements imposed under regulation 12(4) of the PSRs.
6. In addition to this, Yan failed to provide the FSA with details of a material change affecting a matter contained in the information provided in the Application as required by regulation 16 of the PSRs.
7. By its Warning Notice dated 6 June 2012, 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 Yan was entitled to make representations to the FSA about that proposed action.
8. As no representations have been received by the FSA from Yan 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.
9. By its Decision Notice dated 11 July 2012, the FSA gave Yan notice that it had decided to take the action described above.
10. Under section 133(1) of the Act, Yan 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.
11. 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 Yan Final Notice of its refusal.
12. The FSA decided to refuse the Application and to give this Final Notice as, on the basis of the facts and matters described below, the FSA has concluded that it cannot ensure that Yan satisfies and will continue to satisfy the 'Conditions for registration as a small payment institution' set out in Regulation 13 of the PSRs.

## **DEFINITIONS**

13. 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**

14. The PSRs included transitional provisions allowing SPIs which met certain conditions to continue to provide payment services without registration until 25 December 2010. The FSA advised (in the May 2010 PSD Approach document)

that, to ensure that an application for registration as an SPI could be processed before this date, a complete application had to be submitted before 25 September 2010.

15. Notwithstanding that it was dated 8 September 2010, the Application was received by the FSA after that deadline, on 11 October 2010.
16. The Application was incomplete. In response to question 2:2 of the Application, which asks the applicant to confirm that none of the individuals responsible for the management or operation of the business had been convicted of money laundering, terrorist financing or other financial crimes, Yan had answered “No”. The notation on the application beside this box provides that if the answer is no “*we won’t be able to register you.*”
17. The Application includes the following words above the declaration: “*You must notify us immediately of any significant change to the information provided. If you do not, the application may take longer to be processed.*”
18. On 17 December 2010 the FSA sent an email to Yan (using the email address provided by Yan) acknowledging receipt of the Application and the fee. The email stated that:
  - a) the Application had been submitted after the deadline and was unlikely to be processed before the expiry of the transitional provisions;
  - b) to be eligible to continue to provide payment services under the transitional provisions an SPI needed to:
    - (1) have been registered with HMRC by 25 December 2007; and
    - (2) meet the conditions in regulations 13 (3) to (6) of the PSRs;
  - c) an SPI which was not eligible under the transitional provisions should not conduct payment services activities until the application had been determined.

The email also sought further information about Yan and its procedures.

19. Yan was first registered with HMRC under the Money Laundering Regulations 2007 (“MLRs”) on 1 July 2009 and therefore was never eligible to continue providing payment services under the transitional provisions.
20. No response was received to the FSA’s email of 17 December 2010. The FSA sent a further email to Yan at the same email address on 22 March 2011 pointing out that the transitional provisions had expired on 25 December 2010 and that unregistered firms, even if the transitional provisions had applied to them, should have ceased all payment services activities from that date. The FSA also sought a response to the questions raised in the email of 17 December 2010 and further information about Yan and its procedures.
21. On 14 March 2011 the British Transport Police seized USD23,155, which Mr Jean Binga, the Managing Director of Yan (“Mr Binga”), later maintained was Yan’s weekly takings, from Mr Binga’s wife at the Eurostar terminal. The details are set out

in the Information which was sworn in support of an application to detain the money under the Proceeds of Crime Act 2002. Yan did not disclose the details of this investigation to the FSA as he was obliged to do under regulation 16.

22. An email was received from Yan on 12 July 2011 responding to the questions posed on 17 December 2010 and 22 March 2011.
23. On 10 October 2011 the FSA contacted Mr Binga by telephone and advised him that the ongoing proceedings against him had come to its attention. Mr Binga confirmed the information that the FSA had received.
24. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 was amended by the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2011/1800 with effect from 21 July 2011 such that the FSA acquired the power to consider both spent and unspent convictions as part of its assessment of the Application.
25. On 21 December 2011, the FSA sent Yan an email to the email address last used by Mr Binga outlining the amendment to the Rehabilitation of Offenders Act 1974 (Exemptions Order) 1975 and requesting disclosure of all relevant matters in relation to the individuals responsible for the operation or management of Yan including any spent and unspent convictions and any current court proceedings.
26. No response having been received, the FSA telephoned Mr Binga on 28 December 2011 using the telephone numbers provided in the Application. The FSA left a message on the landline number provided. The mobile number was 'vacant'.
27. No response having been received, on 4 January 2012 the FSA made a further telephone call to the landline number provided in the Application and discussed with Mr Binga the email sent on 21 December 2011.
28. The FSA received an email response from Yan on 5 January 2012 which did not answer the question. Mr Binga stated: *"...I found your question irrelevant and not applicable because this change of law cannot be applied in retrospect to my application for small payment institution"*. He concluded: *"I suggest that you do your own research since you have the power to do so."*
29. In an email on 6 January 2012, the FSA wrote again to Yan explaining the relevance of the question and pointing out the "No" answer to question 2.2 of the Application. The FSA emphasised the changes to the Rehabilitation of Offenders Act 1974 (Exemptions Order) 1975 and asked once more whether Mr Binga had any spent and/or unspent convictions to disclose in light of these circumstances.
30. Mr Binga responded on 7 January 2012: *"I am writing to confirm that none of the individual [sic] responsible for management or operation of Yan international [sic] Communication ltd business activities has been convicted of offenses [sic] relating to money laundering or terrorist financing or other financial crime."*
31. On 24 January 2012, the FSA sent a letter to the address provided in the Application enclosing a Criminal Records Bureau ("CRB") form for completion. This was

returned to us by the Royal Mail in February 2012 with a Royal Mail sticker stating, “*We were unable to deliver this item because [it was] refused*”.

32. The FSA wrote to Mr Binga on 9 February 2012 seeking clarification of the response he provided in his email of 7 January 2012. In the email the FSA asked:
  - i. whether Mr Binga’s response included ‘spent’ convictions under the amended Rehabilitation of Offenders Act 1974 (Exemptions Order) which came into effect from 21 July 2011;
  - ii. whether Mr Binga’s response applied to him as the sole director of Yan;
  - iii. whether Mr Binga was aware of Regulation 13(8) which defines ‘financial crime’; and
  - iv. the reasons behind the CRB form being returned as refused by the receiver.
33. A response was received from Mr Binga on the 9 March 2012 stating: “*...I found your question irrelevant, and my answer is very clear on [the] specific question asked by your colleague. In relation with [sic] your CRB form [it was] never received and how can I refuse a document which I don’t know the contain of it? [sic]*”
34. On 22 March 2012, the FSA wrote a further email to Yan giving one final opportunity to disclose any relevant matters in relation to spent and unspent convictions and to complete a CRB form.
35. The FSA made subsequent attempts to contact Yan. On 12 April 2012 the FSA made a telephone call to both the landline number and the mobile number provided in the Application. A voice message could not be left on the landline messaging service as the voice mailbox was full and the mobile number provided was vacant. A follow up email was sent to Yan later that day using the usual email address outlining the problems with the telephone numbers and also seeking a response to the email of 22 March 2012.
36. No response having been received from Mr Binga, the FSA sent a minded to refuse letter to Yan on 19 April 2012 by both first class and special delivery to the postal address provided in the Application. The letter stated that the FSA would recommend to the RTC that it issue a Warning Notice proposing to refuse the Application on the grounds that Yan does not satisfy regulation 13 of the PSRs. The same information was also sent by email.
37. As at the current date, the FSA has not received a substantive response to the questions set out in its emails of 21 December 2011 and 9 February 2012. Yan has failed to co-operate with the FSA.
38. On 16 April 2012, the Westminster Magistrates Court made an order against Mr Binga for forfeiture of USD 23,155 which the court held to be “recoverable property” for the purposes of section 298 of the Proceeds of Crime Act 2002.

## **CONCLUSIONS**

39. 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.
40. The FSA requested that Yan provide it with further information about previous convictions which was considered necessary to enable it to determine the Application but Yan has failed to furnish the information required and therefore has not satisfied the condition in regulation 13(2).
41. In addition to this, under regulation 16 of the PSRs if there is a material change affecting a matter contained in the information provided in the Application, Yan had a continuing obligation to provide the FSA with details of the change, without undue delay. The facts and matters which pertained to the seizure of USD 23,155 on 14 March 2011 and the subsequent investigation were material changes affecting the matters in the Application. Yan did not disclose these matters to the FSA without undue delay.

## **IMPORTANT NOTICES**

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

### **Publication**

43. 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 Yan or prejudicial to the interests of consumers.

### **FSA contacts**

44. For more information concerning this matter generally, contact Jon Bromberger, Manager, Regulatory Transactions & Systems Support at the FSA (direct line: 020 7066 9080 /email: jonathan.bromberger@fsa.gov.uk).

**Val Smith**  
**Chair of the Regulatory Transactions Committee**

## ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE

### Relevant Statutory Provisions

#### *The Payment Services Regulations 2009*

1. From 1 May 2009, firms could apply for, *inter alia*, registration as an SPI under the PSRs. From November 2009 the PSRs came into effect in full.
2. The list of activities which constitute payment services are set out in Schedule 1 of the PSRs. These activities include:
  - a) money remittance.
3. Regulation 123 of the PSRs provides that a person who:
  - a. immediately before 25th December 2007 was lawfully providing payment services in the United Kingdom; and
  - b. meets the conditions set out in regulation 13(4) to (6)
4. 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.
5. 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.
6. 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.
7. 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.
8. Regulation 13(2) requires that the application must comply with the requirements of, and any requirements imposed under, regulation 12.
9. Regulation 13(4) requires that none of the individuals responsible for the management or operation of the business has been convicted of -
  - a. an offence under Part 7 of the Proceeds of Crime Act 2002 (money laundering) or under the Money Laundering Regulations 2007;
  - b. an offence under section 15 (fund raising), 16 (use and possession), 17 (funding arrangements), 18 (money laundering) or 63 (terrorist finance: jurisdiction) of the Terrorism Act 2000;

- c. an offence under the 2000 Act;
  - d. an offence under regulation 3, 4 or 6 of the Al-Qaida and Taliban (Asset-Freezing) Regulations 2010, or regulation 10 of the Al-Qaida (Asset-Freezing) Regulations 2011;
  - da. an offence under section 11, 12, 13, 14, 15 or 18 of the Terrorist Asset-Freezing etc. Act 2010 (offences relating to the freezing of funds etc. of designated persons);
  - e. an offence under these Regulations [ or the Electronic Money Regulations 2011] ; or
  - f. any other financial crimes.
10. Regulation 13(8) states that in paragraph (4) “*financial crime*” includes any offence involving fraud or dishonesty and, for this purpose, “*offence*” includes any act or omission which would be an offence if it had taken place in the United Kingdom.
11. Regulation 16 requires that if at any time after an applicant has provided the FSA with any information and before the FSA has determined the application there is, or there is likely to be, a material change affecting any matter contained in that information; or it becomes apparent to the applicant that the information is incomplete or contains a material inaccuracy, the applicant must provide the FSA with details of the change, the complete information or a correction of the inaccuracy without undue delay or as soon as the applicant is aware of such change.
12. The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2011/1800 amended article 3 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 to exempt questions asked by the FSA in relation to spent convictions but only if:
- (i) the person questioned is informed at the time the question is asked that, by virtue of this Order, spent convictions for relevant offences are to be disclosed; and
  - (ii) the question is asked in order to assess the suitability of the individual to whom the question relates to have the specified status, which includes directors and persons responsible for the management of small payment institutions.
13. Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2011/1800 amended article 4 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 to exempt any decision by the Financial Services Authority to refuse an application for registration as a small payment institution under the PSRs by reason of, or partly by reason of, a spent conviction of an individual, or of any circumstances ancillary to such a conviction or of a failure to disclose such a conviction or any such circumstances.



14. Schedule 5, Part 1 (7) states that Part 26 of the Act applies with the modifications detailed.

***The Act (ie the Financial Services and Markets Act 2000)***

15. 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.
16. 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.
17. 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.
18. 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”***

19. 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.
20. The paragraphs relevant to the refusal of the Application are set out below (references to “we” are references to the FSA).
21. Paragraph 3.8 of that Approach document as issued in May 2010 provides some guidance on Regulation 16 of the PSRs. It states that *“If there is any material change, deficiency or inaccuracy in the information provided in connection with an application before we have issued our decision on it, a firm must notify us. The requirement also applies to material changes to supplementary information provided due to an earlier material change.”*
22. Paragraph 3.9 adds: *“The notification must include details of the change, the complete information or a correction of the inaccuracy (as the case may be) and must be made without undue delay.”*