

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

PUBLIC NOTICE

Regulatory Action against Temple Asset Management Limited

On 13 April 2017, the Malta Financial Services Authority (“MFSA” or “the Authority”) has taken the following regulatory action against Temple Asset Management Limited (“the Company” or “Temple”):

- i. **Cancellation of the investment services licence granted to the Company, in terms of Article 7(2) of the Investment Services Act, Chapter 370 of the Laws of Malta (“ISA”); and**
- ii. **An administrative penalty of €612,473.85 in terms of the powers granted to the Authority both under Article 16A of the Investment Services Act and under regulation 4 of Subsidiary Legislation 370.33, *Investment Services Act (UCITS Administrative Penalties, Measures and Investigatory Powers) Regulations*.**

The Authority investigated the manner in which Temple executed its role/function as Investment Manager of Falcon Funds SICAV plc (“Falcon” or “the Scheme”) and *inter alia* it conducted three onsite visits (on 1 July 2016; 13 September 2016 and 14 October 2016) at Temple’s offices focusing on the manner in which Temple was managing Falcon’s portfolio.

The Company was found to be in breach of 23 different Standard Licence Conditions of Part BII of the Investment Services Rules for Investment Services Providers (“the Rules”) and Part BII of the Investment Services Rules for Retail Collective Investment Schemes (“the UCITS Rules”).

Standard Condition	Licence	Brief description
SLC 1.07 of Part BII of the Rules		General requirements - Lack of co-operation with the Authority in an open and honest manner
SLC 1.13 of Part BII of the Rules		General requirements - Lack of co-operation with the Authority during an inspection or other enquiry

Standard Condition	Licence	Brief description
SLC 1.10(j) of Part BII of the Rules		General Requirements - Lack of approvals/ notifications sought from/ notified to the Authority
SLC 1.11(i) of Part BII of the Rules		General requirements – Failure to seek written consent from the Authority to appoint Portfolio Manager
SLC 2.29 of Part BII of the Rules		Permanent risk management function – Failure to establish and maintain a risk management function which is hierarchically and functionally independent from the operating units
SLC 2.40 of Part BII of the Rules		Assessment, monitoring and review of risk management policy – Failure to notify the Authority of material changes to the risk management process
SLC 2.32 (a) - (c) of Part BII of the Rules		Permanent risk management function - Shortcomings re risk reporting and lack of adherence to the risk management policies
SLC 3.18 of Part BII of the Rules		Duty to act in the best interest of UCITS and their Unit-holders – Failure to ensure fair, correct and transparent pricing models and valuation systems
SLC 3.23 of Part BII of the Rules		Due diligence requirements – Failure to formulate forecasts and perform analysis of illiquid assets
SLC 3.20 of Part BII of the Rules (in the instance of at least nine different securities)		Due diligence requirements – Failure to undertake due diligence and ongoing monitoring of investments
SLC 3.07 of Part BII of the Rules		Independence in conflicts management – Failure to ensure procedures and measures which provide for relevant persons engaged in activities involving conflict of interest carry out such activities independently as possible
SLC 3.11 of Part BII of the Rules		Management of activities giving rise to detrimental conflicts of interest - Senior management failed to take necessary decision where the arrangement made by the Company for the management of conflicts of interest was not sufficient
SLC 3.12 of Part BII of the Rules		Management of activities giving rise to detrimental conflicts of interest – Failure to notify the investors of situations mentioned in SLC 3.11
SLC 5.01 of Part BII of the Rules		Financial resources – deficit in financial resources requirement
SLC 2.19(a) of Part BII of the Rules		Permanent compliance function – Failure to ensure that the compliance function has access to all relevant information

Standard Condition	Licence	Brief description
SLC 2.03(c) and (d) of Part BII of the Rules		Administrative procedures and internal control mechanisms - Lack of internal control mechanisms and effective internal reporting
SLC 2.12 (c) and (e) of Part BII of the Rules		Control by senior management and supervisory function – Failure to ensure an effective compliance function and failure to approve and review on periodic basis the adequacy of internal procedures for undertaking investment decisions for each managed UCITS
SLC 2.13 (a) of Part BII of the Rules		Control by senior management and supervisory function - Lack of assessment and periodic review of the effectiveness of policies, procedures and arrangements
SLC 3.08(d) of Part BII of the Rules		Independence in conflicts management – Failure to ensure measures which prevent or limit any person from exercising inappropriate influence on relevant persons carrying out portfolio management activities
SLC 3.21 of Part BII of the Rules		Due diligence requirements – Failure to ensure adequate knowledge and understanding of the assets in which the UCITS are invested in
SLC 12.5 of the UCITS Rules		Failure to comply with the custodian’s directions
SLC 12.20 of the UCITS Rules		Failure to notify the Authority of breaches of SLCs or Constitutional Documents
SLC 2.18 of Part BII of the Rules		Permanent compliance function – Failure to establish and maintain a permanent and effective compliance function which monitors the adequacy and effectiveness of the measures, policies and procedures; and to advise and assist the relevant persons for carrying out their activities

The Company is authorised by the Authority to manage AIFs and UCITS, and as a Super Management Company, i.e. a company licensed to provide management services to AIFs and UCITS, the Authority would reasonably have expected the Company to demonstrate a culture that supports effective compliance – clearly this was lacking as evidenced by the broad range of breaches that were recorded touching practically all facets of the Company’s business as a regulated entity. Moreover, Temple failed to maintain an adequate internal control environment and for a number of months, the Company relied heavily on one person, for both portfolio management and risk management – a situation that was untenable given the manifest conflicts of interest that arose.

The quantum of the administrative penalty for each breach has been determined in accordance with Regulation 7 of the Investment Services Act (UCITS Administrative Penalties, Measures and Investigatory Powers) Regulations and Appendix 5 to Part B of the Investment Services Rules for Investment Services Providers. In this regard, the following factors were considered:

- (a) The gravity and duration of the breach in question;
- (b) The degree of responsibility of Temple for the infringement as delegated Investment Manager of Falcon Funds SICAV plc;
- (c) The financial strength of Temple;
- (d) The damage to other persons and the market, in particular the significant losses sustained by the investor;
- (e) The level of cooperation with the MFSA; and
- (f) The failure by Temple to implement remedial actions to rectify the breaches and to prevent repetition after the breach had been identified.

This notice is being published in terms of the powers vested in the Authority under Article 16(8) of the Malta Financial Services Authority Act.

The Authority's decision to cancel the Company's licence shall not become operative until the expiration of the period within which an appeal lies and, if an appeal is made within such period, the decision shall become operative on the date of the decision of the Tribunal dismissing the appeal or the date on which the appeal is abandoned.

Communications Unit
Malta Financial Services Authority
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