

Private Funds in Gibraltar

Overview

A private fund is established under section 6(3)(c) of the Collective Investment Schemes Act which refers to private funds as “private schemes”, In essence, these are collective investment schemes that are not listed on a stock exchange and can have no more than 50 investors.

With the introduction of Alternative Investment Fund Directive (AIFMD) legislation in July 2013 private funds are required to register with the regulator, the Gibraltar Financial Services Commission (GFSC), providing a description of investment strategy, instruments and markets in which the fund operates. The AIFMD required a private fund to be monitor, on an ongoing basis, the level of its assets under management, ensuring that where the €100 million threshold (for unlevered assets) is reached, the fund complies with associated AIFMD requirements.

There are no restrictions under the Collective Investment Schemes (CIS) Regulations 2011 on what type of vehicle which can be used to establish a private scheme. However, a private scheme may not establish itself as a protected cell company.

Common types of legal forms used are:

- A Gibraltar private limited company has a separate legal personality and thereby the ability to make a legal claim or have a legal claim made against it in Gibraltar;
- A unity trust is not considered as having a distinct legal personality and would typically be structured to take advantage of the tax transparency of the trust vehicle. This may give rise to benefits arising from the application of fiscal arrangements between the investor’s jurisdiction of residence and the jurisdiction where the investment is made. A Unit Trust can be formed under Gibraltar trust law via the execution of a Trust Deed;
- A Gibraltar limited partnership would allow an investor to participate as a limited partner, whereas the general partner would usually be a Gibraltar limited company. A Gibraltar limited partnership has a distinct legal personality and most tax authorities accept them as tax transparent.

Requirements

A Private Scheme in Gibraltar is not required to appoint a fund administrator or produce audited accounts (although in most cases this is highly desirable). There is also no requirement to appoint locally resident licensed directors, custodians or an investment manager. The Private fund can be self-managed by its directors. The directors are required to produce an offering document in order to ensure that investors have sufficient information to evaluate the offer.

Private schemes however, are generally within the scope of AIFMD and will therefore be subject to registration with the FSC or will be required to apply for an In-Scope Alternative Investment Fund Manager (AIFM) licence.

Private schemes do not have statutory restrictions governing investment or leverage. A private scheme is not required by statute to make any filings or returns under the CIS Regulations. Having said this, if the private scheme is established as a Gibraltar limited company, it is required, under section 153(1) of the Companies Act, to file annual returns with the Gibraltar Registrar of Companies.

Shares

The fund typically contains two classes of shares:

- ordinary/management shares which will belong to the promoter of the Fund;
- preference shares which investors can subscribe to and, in this way, invest in the Fund.

The ordinary/management shares will usually have all of the voting rights and, as such, the promoter can control the Fund. It also entitles the holder of these shares to charge management and performance fees. Having said this, this does not provide entitlement to dividends or profits.

The preference shares are redeemable shares which will entitle the investor to redeem his shares at the Net Asset Value (NAV) and, in such case, the Fund would be an open-ended scheme. On the other hand, the shares need not be redeemable and the investors then could only withdraw their investments by selling their shares to other investors or upon liquidation of the Fund. This would be a closed ended fund.

Bankers

The Fund will need banking facilities. In Gibraltar, such services are provided by the Gibraltar International Bank and Turicum Bank. Banking services can also be provided by banks outside Gibraltar.

Marketing a Private Fund in Gibraltar

Private Fund in Gibraltar may be offered to an identifiable category of investors whose number is fewer than 50 such as, family, friends or close clients of the promoter of the fund. After one year from the offer date a private scheme can be converted into an Experienced Investor Fund (EIF). Other than the restriction on the limited nature of promotion, there are no restrictions on the type of investor who can participate or the minimum investment size.

Main Advantages of Private Funds

- They are fast to set up;
- They do not need to apply for authorisation to the (Gibraltar) Financial Services Commission to begin its investment activities;
- It is not a mandatory requirement to appoint a fund administrator;
- They do not require a custodian/depositary;
- Does not require Gibraltar resident directors;
- It is not a mandatory requirement to produce audited accounts.

For more information on how Zeta can assist you please contact our Business Development department on bd@zeta-financial.com.

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