

Private Funds in Malta

Overview

A Collective Investment Scheme may apply for recognition by MFSA as a Private Scheme in terms of the Investment Services Act (Recognition of Private Collective Investment Schemes) Regulations, 2002. A Collective Investment Scheme recognised as a Private Fund does not require a Collective Investment Scheme Licence.

A Fund is considered to be a Private Collective Investment Scheme if it satisfies all of the following criteria:

- The number of participants in the Scheme is limited to fifteen individuals;
- The participants are close friends or relatives of the promoters;
- The Scheme is essentially private in nature and purpose;
- The Scheme does not qualify as a Professional Investor Fund (PIF); and,
- Satisfies any other conditions in the regulations or imposed by the MFSA.

Criteria for a Private Fund

A Private Fund is subject to “lighter touch” regulation than an Alternative Investment Fund, for example:

- A prospectus is not required;
- The appointment of a custodian or a manager is not mandatory; and
- There is no investment or borrowing restrictions.

Application and Licensing

A Private Fund must apply for “Recognition” from the Malta Financial Services Authority (MFSA). The following documents are required:

- A letter applying for the recognition accompanied by a description of the Scheme (details of the investment objectives and policies);
- A copy of the document of constitution of the Private Fund;
- A completed personal questionnaire in respect of the persons responsible for the Private Fund and the proposed investors, together with a confirmation that the investors are all relatives or friends of the promoter and that the Scheme satisfies the prescribed criteria for Private Schemes and will continue to do so on an on-going basis unless advance notice is given to the MFSA.

A Private Fund set up as a company will be taxable at 35%. However, it is possible to structure the fund so that it achieves an effective tax rate commonly ranging between 0% and 6.25%, the exact rate depending upon the nature and source of the income.

Private Schemes escape most of the licence requirements applicable to PIFs, including the need to appoint a licensed fund manager or have an investment committee. So, in effect the fund manager may be an individual who need not be licensed but who should, of course, have some experience in the proposed investment activity of the private fund.

Form and Structure

Under Maltese law, a Private Fund may be constituted in the form of:

- An investment company, generally in the form of a SICAV with variable share capital;
- A commercial partnership;
- A unit trust; or,
- A mutual fund established by way of contract (referred to in civil law jurisdictions as *fond commun de placement*).

Private Funds have also been established as unit trusts. A Fund may be constituted as a standalone fund or as an “umbrella” type structure, whereby the assets and liabilities of each sub-fund are treated as a patrimony separate from the assets and liabilities of each other sub-fund of the Fund – thereby segregating risks and rewards. Each sub-fund would not, however, have a legal personality distinct from other sub-funds set up under the same umbrella structure.

The proposed Directors and participants of a Private Fund must be approved by the MFSA after satisfying the applicable “fit and proper” requirements. To this end, the MFSA will generally limit its due diligence procedures to determining the integrity of the persons concerned and unlike in the case of fully licensed schemes, the MFSA will not assess the competence of the persons responsible for managing the Scheme, and will not subject the Scheme to any investment or borrowing restrictions or other conditions other than those applicable to Private Funds.

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

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