

A large, abstract graphic of a network or sphere made of interconnected blue cubes and lines, positioned in the upper right background.

South Africa

Regulation

FUNDS AND FUND MANAGEMENT 2010

2.1 Type of funds

A collective investment scheme is defined as a scheme, in whatever form, including an open-ended investment company, in pursuance of which members of the public are invited or permitted to invest money or other assets in a portfolio, and in terms of which:

- two or more investors contribute money or other assets to and hold a participatory interest in a portfolio of the scheme through shares, units, or any other form of participatory interest; and
- the investors share the risk and the benefit of investment in proportion to their participatory interest in a portfolio of a scheme or on any other basis determined in the deed.

In South Africa, the majority of collective investment schemes are organized in the form of unit trust funds and are governed by the Collective Investments Schemes Control Act (Act 45 of 2002) (CISCA). Unit trust funds are administered by a registered management company regulated by the CISCA.

2.2 Laws

Funds are governed primarily by the CISCA. The main provisions of the CISCA are dealt with in the sections that follow.

In addition to this, the Association for Savings and Investments of South Africa (ASISA), an industry body, has and continues to release various standards and guidelines which management companies are encouraged, and members are required, to comply with.

2.3 Managers, trustees, and custodians

Managers

The CISCA sets out the requirements to act as a manager of a fund. In summary, the Act requires that the manager be a company registered in terms

of the Companies Act, 1973 and requires the company to maintain sufficient capital and reserves as set out in such Act. The Cisca also requires a manager to administer a collective investment scheme honestly and fairly, with skill, care, and diligence and in the interests of investors and the industry. The Financial Advisory and Intermediary Services Act (FAIS) also requires the disclosure of certain information before entering into a transaction with an investor and sets out specific duties with which a manager must adhere to.

The Financial Services Board (FSB) has, in a recent circular to managers, encouraged them to establish effectively functioning audit committees. The main purpose of the audit committee would be to assist the board of directors to satisfy itself as to the adequacy and effectiveness of internal controls at the manager. The circular indicates that the majority of audit committee members should not be employees of the manager.

Trustees

In terms of the Cisca, a trustee must be:

- a public company;
- a company incorporated under a special Act;
- a bank; or
- a registered domestic insurer.

The trustee may not be connected to the management company, either as a holding or subsidiary company. The company or institution must maintain paid-up share capital and unimpaired reserves of at least ZAR 10 million.

2.4 Investment restrictions

Investment restrictions are detailed in the subordinate legislation to the Cisca that covers the following:

- Limits regarding the inclusion of securities issued by any one concern as a percentage of the market value of the fund
- Limits regarding the inclusion of securities issued by any one concern as a percentage of any one class of securities issued by that concern
- Limits regarding the aggregate amount of securities of any one class issued by a concern within the same group as the manager across the portfolios in all schemes administered by the manager

- Limits regarding the aggregate amount of securities of any one class issued by a concern other than a concern within the same group as the manager across the portfolios in all schemes administered by the manager
- The extent to which financial instruments (futures, options, warrants, etc) may be included in the portfolio.
- Instruments and exposure limits to instruments of certain ratings that may be included in a money market portfolio or foreign money market portfolio
- Limits on the inclusion of a participatory interest by a fund of funds in other funds
- Restrictions on the inclusion of non-equity securities

Where funds are marketed by a manager to retirement funds, the investment of the funds must comply with the investment restrictions laid down in the Pension Funds Act.

2.5 Borrowing

Where insufficient liquidity exists in a portfolio or where assets cannot be realized to repurchase or cancel participatory interests, the manager may borrow up to 10 percent of the market value of the portfolio for such repurchases or cancellations until such time as assets can be realized to repay the loan.

2.6 Accounts and prospectus

Audited financial statements must be prepared and sent to the regulator within three months of the relevant year-end. These financial statements are made available to investors on request and an abridged report is required to be sent to unitholders in terms of the regulations.

As part of its registration documentation, a collective investment scheme must submit a prospectus to the Registrar of Collective Investment Schemes (the Registrar). All information to be published needs to be lodged with and approved by the Registrar.

The Cisca requires that the registrant shall lodge with the Registrar an application for such registration in the prescribed manner and form, disclosing the prescribed particulars. The lodging of this form is a requirement of the Financial Services Board and the information incorporated therein includes names of trustees, business plans, etc.

2.7 Supervision

The supervisory authority is the Financial Services Board (FSB). The management company is required to submit quarterly compliance reports to the FSB as well as submit annual financial statements of the management company and all its funds. The contact details of the FSB are set out below:

Financial Services Board
PO Box 35655, Menlo Park, Pretoria
0102 RSA
Telephone +27 12 428 8000.
e-Mail: <http://www.fsb.co.za>

2.8 Fund ownership

There are no restrictions on the percentage of participatory interests in a fund, which may be held by one person or by a group of persons. A collective investment scheme is required to have two or more investors. A fund of funds is required to have an interest in not less than two portfolios. Feeder funds, which invest in only one underlying fund, are allowed. Feeder funds are often set up to enable investors to invest smaller amounts in a fund that has a high minimum investment limit. The feeder fund pools smaller investments to re-invest in a fund with a high minimum.

2.9 Fund structure

Funds of funds and umbrella funds are permitted.

All units issued by the manager must be registered in the unitholder's name, the details of which are required to be recorded in a unitholder register maintained by the manager.

Hedge funds are permitted and will be regulated by the Cisca if the fund meets the definition of a collective investment scheme as defined by the Cisca. Currently, most hedge funds are structured by way of entities that fall outside the ambit of Cisca and are, as such, unregulated. While the funds themselves remain unregulated, the providers of such funds are required to register with the FSB as a specialized category of financial services provider in terms of the FAIS Act.

2.10 Stock exchange

Generally, the requirements for obtaining a stock exchange listing for property unit trusts and open ended investment companies are the same as those for other publicly-traded companies. Unit trust funds are not listed on the JSE, but their daily price is published in the press.

2.11 Anti-money laundering legislation

The Financial Intelligence Centre Act imposes certain legal obligations on financial services entities (accountable institutions) to implement specific anti-money laundering measures. Regulations, in terms of the legislation, set out the minimum standards with which an accountable institution's internal rules and processes must comply. Specifically, these relate to how client identities are to be verified and client transactions recorded. The legislation also requires the institution to report suspicious transactions.

2.12 Fund set-up

The time required to establish a regulated fund will range from three months to one year. This depends on the Registrar who is required to ensure that the manager is licensed as such, the trust deed is adequate, the trustees are qualified, and he/she is satisfied that the business will be run on sound economic principles.

There are various legal and registration costs involved in the initial establishment and on-going administration of a management company and its funds. The costs are determined by the regulator and are stipulated in Board Notice 103 of 2005, a copy of which can be obtained on the Financial Services Board website – www.fsb.co.za.

There would be additional legal costs (including costs to obtain required property valuations for a property unit trust) and audit related costs (including the cost of obtaining an audit certificate that capital and investment requirements have been adhered to) connected with the initial registration.

2.13 Foreign funds

A collective investment scheme carrying on business outside of South Africa may, upon proof of registration in the relevant foreign jurisdiction, apply to the Registrar to be allowed to carry on a collective investment scheme locally. The Registrar is empowered to stop the foreign collective investment scheme operating locally if a local manager may not register a scheme of a similar nature in the jurisdiction of the foreign scheme. The Registrar may also withdraw approval at any time if it is in the interests of the investors, where the manager has submitted inaccurate or misleading information or where the prescribed conditions are no longer met.

2.14 Use of the internet

The internet is widely used as a marketing tool for the sale of investment funds and the usage continues to increase. There are no specific legal regulations that deal with transactions over the internet as the sale of investment funds over the Internet falls under the supervision of the Financial Services Board.

All advertising must, however, be carried out subject to the requirements set out in the CISCA.

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