

GUIDANCE NOTE
FINANCIAL SERVICES BOARD
REPUBLIC OF SOUTH AFRICA



COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002
(NO 45 OF 2002)

NO. 2

DECEMBER 2013

**GUIDANCE NOTE ON APPLICATIONS FOR APPROVAL OF FOREIGN COLLECTIVE
INVESTMENT SCHEMES IN ACCORDANCE WITH THE COLLECTIVE INVESTMENT
SCHEMES CONTROL ACT, 2002 ("THE ACT")**

1. This document serves to provide guidance with respect to making an application for approval of a foreign collective investment scheme in terms of section 65 of the Act.
2. When any person wishes to promote a foreign collective investment scheme ("the scheme") for investment by members of the South African public, the person must ensure that the scheme has been approved by the Registrar in accordance with the provisions of section 65 of the Act.
3. As stipulated at section 65(1)(a) the application must be in the form determined by the Registrar.
4. The applicable conditions determined by the Registrar in accordance with section 65 will be applicable to any application for approval of a scheme. In addition to the prescribed conditions, applicants are also advised to refer to this guidance note.
5. Terms used in this document have the same meaning as those defined in the Act and the applicable conditions. A reference to the registrar means the Registrar of Collective Investment Schemes.

6. An operator applying for the approval of its scheme must be authorised and supervised by a regulator that has a regulatory environment of similar standing as the regulatory environment in South Africa.
7. In assessing whether a regulatory environment is of similar standing the registrar will consider the following:
 - 7.1. the environment with legislation governing the regulator and the activities that it regulates;
 - 7.2. the responsibilities of the regulator are clear and objectively stated;
 - 7.3. the regulator is operationally independent and accountable in the exercise of its functions and powers.
 - 7.4. the regulator has adequate powers, proper resources and the capacity to perform its functions and exercise its powers.
 - 7.5. the regulator adopts clear and consistent regulatory processes.
 - 7.6. the staff of the regulator observe the highest professional standards, including appropriate standards of confidentiality;
 - 7.7. the regulator has or contributes to a process to monitor, mitigate and manage systemic risk, appropriate to its mandate;
 - 7.8. the regulator has or contributes to a process to review the perimeter of regulation regularly;
 - 7.9. the regulator seeks to ensure that conflicts of interest and misalignment of incentives are avoided, eliminated, disclosed or otherwise managed;
 - 7.10. the regulator is able to conduct supervisory visits and investigations; and
 - 7.11. the operator is registered by the regulator and reports regularly to the regulator, at least once a quarter.

8. In considering the application for approval the Registrar will need to know whether the scheme is available for investment in its domicile of registration. To this end the applicant needs to indicate:
 - 8.1. whether members of the public where the scheme is registered are able to invest in the scheme;
 - 8.2. the target market of the scheme in its domicile of registration and whether this is the same market to be targeted in South Africa.
9. The representative agreement
 - 9.1. An operator may wish to enter into a representative agreement for purposes of promoting investments in South Africa.
 - 9.2. An operator must enter into a representative agreement with a local manager of a collective investment scheme and the agreement should contain at least the following information:
 - 9.2.1. an undertaking from the operator that it will comply with the provisions of section 65 of the Act;
 - 9.2.2. an undertaking from the operator indemnifying the local manager against non-compliance with the provisions of section 65;
 - 9.2.3. an undertaking by the local manager to use its reasonable endeavours to ensure compliance by the operator with the provisions of section 65; and
 - 9.2.4. an undertaking by the local manager to compensate the investor for any loss suffered which is attributable directly to non-compliance by the operator with the provisions of section 65, provided the investor has no other recourse or legal remedy against the operator.
10. The representative office
 - 10.1. The operator may establish a representative office.
 - 10.2. Where the operator establishes a representative office, the office must register in terms of the Companies Act, 2008.
 - 10.3. The representative office may be used for conducting other financial services business however in this instance the operator must ensure that it maintains the prescribed minimum share capital.

10.4. Where the operator conducts other financial services business the operator or the prescribed officer must:

10.4.1 advise the Registrar to this effect; and

10.4.2 comply with relevant legislative and regulatory requirements in respect of that business.

10.5. The applicant must, for purposes of the application, submit a draft copy of the Memorandum of Incorporation. The applicant will be required to submit the final approved Memorandum after approval by the Companies and Intellectual Property Commission (CIPC) in South Africa.

11. UCITS compliant schemes

11.1. The Registrar is not averse to investments in UCITS compliant schemes considering that these schemes are intended for investment by retail investors. The Registrar is however cautious of permitting investments in UCITS compliant schemes which make use of expanded investment powers and would thus like to limit investment in such schemes to the extent that these schemes are riskier than the traditional vanilla investments available in South Africa. Accordingly the Registrar will consider more favourably UCITS compliant schemes provided that:

11.1.1. derivatives are not used to leverage the portfolio and are covered at all times; and

11.1.2. investment in synthetic instruments is not permitted.

12. List of Similarities and differences

The applicant will be required to provide a document listing the similarities and differences between the applicant scheme and a comparable collective investment scheme in South Africa. In this regard applicants are advised to make use of the pro-forma document provided by the Registrar and available on the FSB website (www.fsb.co.za) on the CIS page.


13. Categorisation of schemes

13.1. Once a scheme has been approved the Registrar will categorise it according to the types of collective investment schemes available in South Africa, namely collective investment scheme in securities, collective investment scheme in property or collective investment scheme in participation bonds or a declared collective investment scheme. A declared collective investment scheme will be named on declaration by the Minister.

13.2. The categorisation means that if a scheme conforms to the requirements of a type of scheme it will be categorised accordingly e.g. if a scheme conforms to the requirements for a collective investment scheme in securities it will be categorised as such.

14. Application Fee

The applicant must ensure that an application for approval is accompanied by the prescribed application fee.



REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES