SOUTH AFRICA:
A GUIDE TO INTERNATIONAL FUND DISTRIBUTION

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irish funds

ABOUT IRISH FUNDS

Established in 1991 the Irish Funds Industry Association (Irish Funds) is the representative body of the international investment fund community in Ireland. We represent the fund promoters / managers, administrators, custodians, transfer agents and professional advisory firms involved in the international funds industry in Ireland, with more than 14,000 funds and net assets of more than €5.2 trillion. The objective of Irish Funds is to support and complement the development of the international funds industry in Ireland, ensuring it continues to be the location of choice for the domiciling and servicing of investment funds. Through its work with governmental and industry committees and working groups, Irish Funds contributes to and influences the development of Ireland's regulatory and legislative framework. Irish Funds is also involved in defining market practice through the development of policy and guidance papers and the promotion of industry-specific training.

Our Mission

We are the voice of the Funds and Asset Management industry in Ireland.

Our Vision

Ireland will be the premier location to enable and support global investing through its reputation for trust, capability and innovation.

Our Values

- **Collaboration** – we succeed together and in working with others
- **Commitment** – to achieving better outcomes for investors
- **Dedication** – to member interests
- **Excellence** – in delivering and enhancing our capabilities
- **Integrity** – in everything we do
- **Society/Community engagement** – we give back
- **Transparency** – In who we represent, our interests and our decisions

INTRODUCTION

South Africa's funds industry assets under management in March 2021 totalled over 2.8tn Rand which represented a 16% growth from June 2019.

85% of assets are held in domestic funds. The domestic market has a 37% retail vs 63% institutional split.

DOMESTIC FUNDS

Retail: **37%**

Institutional: **63%**

Information accurate as at March 2021

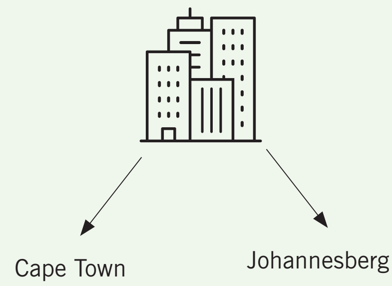
A breakdown by asset type is included below, with flows over the last 12 months moving towards interest bearing products.

Asset Type	ZAR	%
Equity	691,191	24%
Multi Asset	1,303,132	45%
Real Estate	47,926	2%
Interest Bearing	822,467	29%
Total	**2,864,716**	

Market overview source: ASISA website published statistics March 2021.

SOUTH AFRICA RANKS #1 IN THE AFRICA REGION

Main Financial Centres

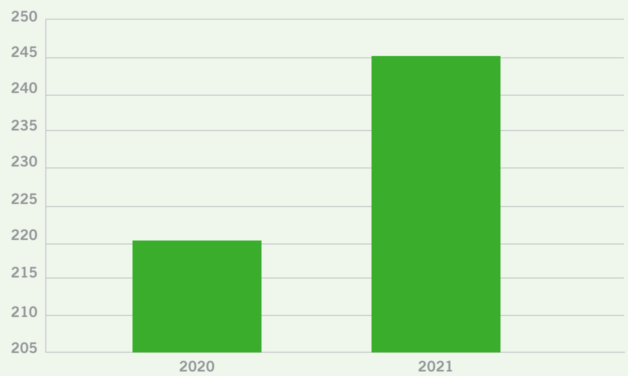


Funds are generally distributed in South Africa via the usual channels, ie, banks, insurance companies, pension funds and independent financial advisors.

More detail on the main distribution channels is included on Page 9.

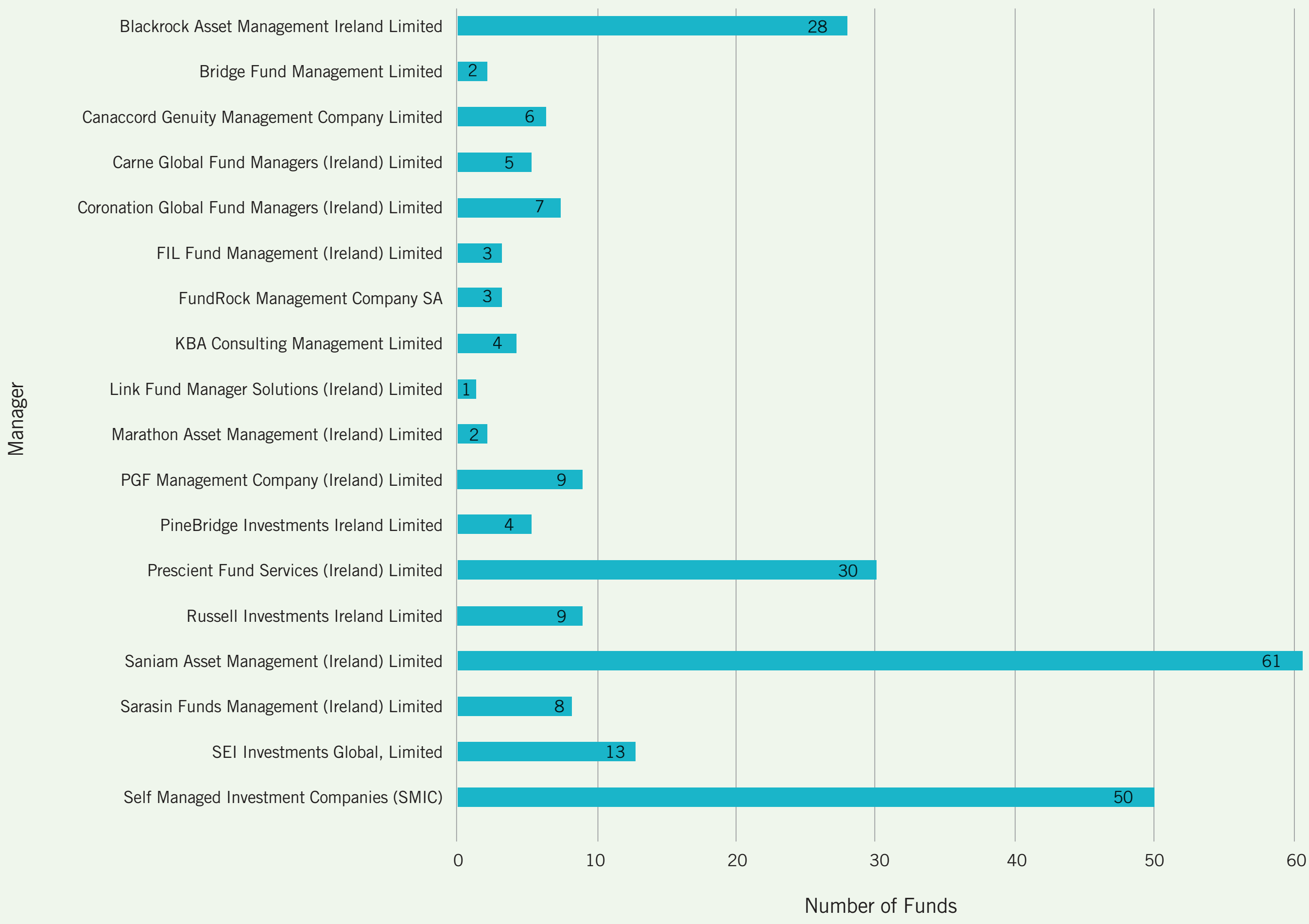
Key Figures

Number of Irish Funds Registered for Sale in South Africa



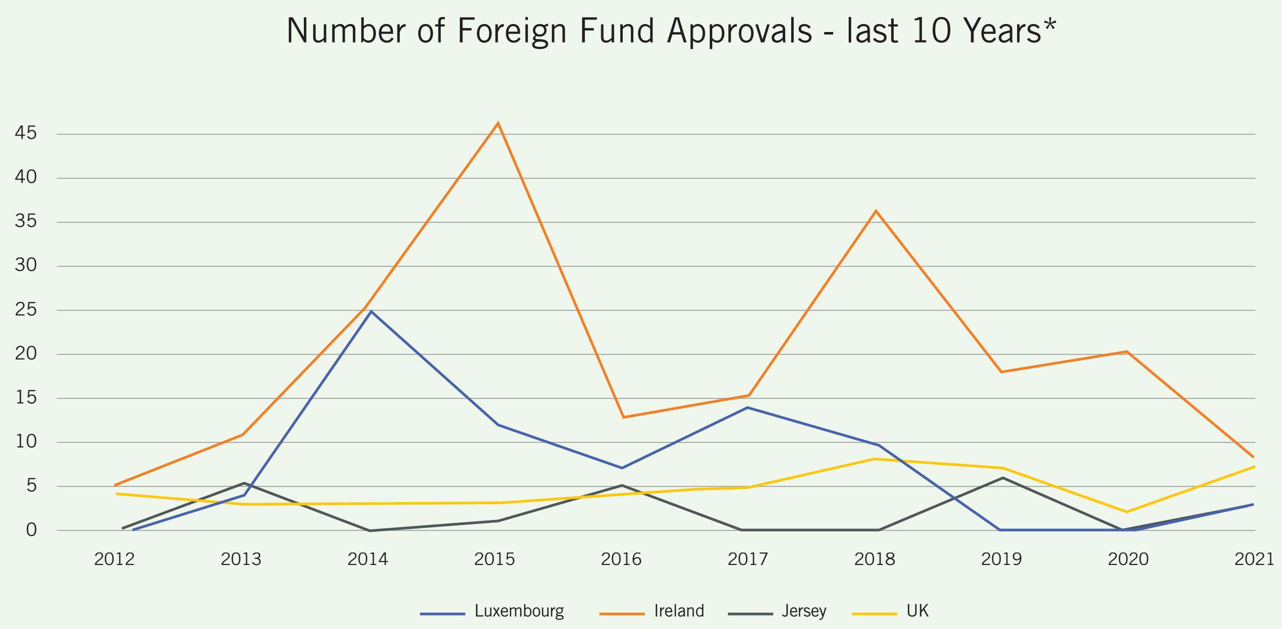
IRISH FUNDS APPROVED IN SOUTH AFRICA

The below provides a view of the managers which have obtained Section 65 approval for their Irish funds in South Africa.



Source data: based on Financial Sector Conduct Authority (South Africa) (https://www.fsca.co.za)
Information contained in this section is accurate as at May 2020

FOREIGN FUNDS APPROVED BY SOUTH AFRICA REGULATOR FOR DISTRIBUTION IN SOUTH AFRICA



* Since 2012, Ireland has consistently remained the domicile with the most funds approved by the South African Financial Sector Conduct Authority.

REGULATORY ENVIRONMENT

The Collective Investment Schemes Control Act (CISCA) regulates the management and distribution of Collective Investment Schemes in South Africa. The Financial Sector Conduct Authority (FSCA) is responsible for supervision of this act.

Below are the types of schemes that you can register under CISCA:

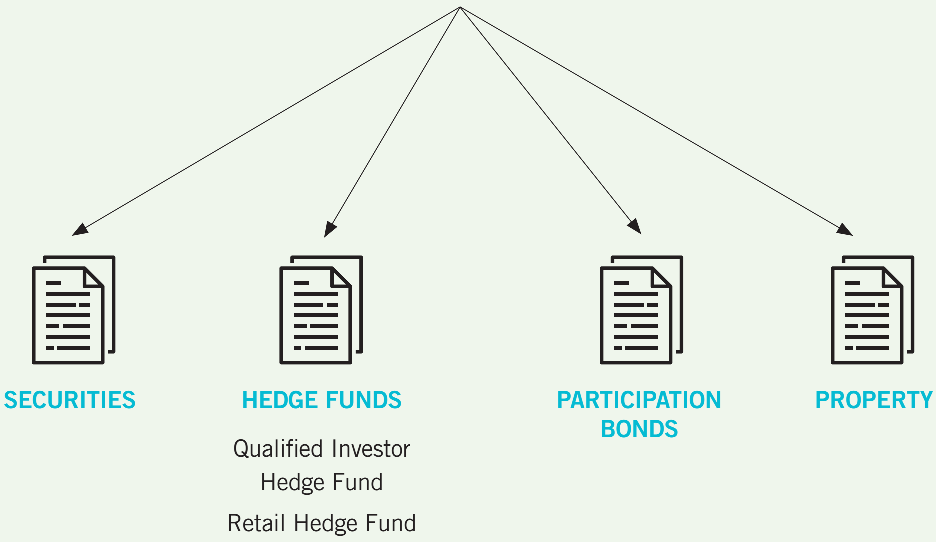
Collective Investment Scheme in Securities

Collective Investment Scheme in Participation Bonds

Collective Investment Scheme in Property

Collective Investment Scheme in Qualified Investor Hedge Funds

Collective Investment Scheme in Retail Hedge Funds



Section 65

The key section of CISCA governing the registration and marketing of foreign collective investment schemes is Section 65 of the Act.

As outlined in the bar chart on page 3, there has been a reasonably steady increase in the number of Irish funds registered for sale in South Africa, here is why:

- Local asset consultants require a fund to be S65 approved before they will consider adding it to their approved funds list for allocations.
- South Africa is often seen as the gateway to the rest of Africa for international fund managers
- More rigorous compliance regimes worldwide are driving funds that may already have South African investors to officially register these funds in South Africa

ROLE OF THE REPRESENTATIVE OFFICE

Representative Office

The manager applying for approval of a scheme must either enter into a representative agreement with a South African entity already approved by the FSCA or establish and maintain a representative office in South Africa. This is applicable to all foreign funds registered in South Africa.

The representative office:

- Is responsible for using its reasonable endeavors to ensure compliance by the Manager with the provisions of Section 65 and any applicable board notices;
- Provides an undertaking to compensate the investor for any loss suffered which is attributable directly to non-compliance by the Manager with the provisions of Section 65, provided an investor has no other recourse or legal remedy against the manager.

Ongoing obligations

Below are some of the ongoing obligations of the Foreign Manager (Operator), in respect of which the Representative Office provides guidance and assistance:

- Quarterly statistics need to be furnished to the FSCA within 30 days of each quarter end.
- Any changes to the prospectus or supplementals need to be notified to the FSCA
- All marketing material used in soliciting investments from members of the public in South Africa needs to conform to the requirements determined by the FSCA and be submitted to the FSCA. This includes the Minimum Disclosure Document (or MDD as it is generally referred to).

A MDD needs to be made available at least quarterly and contain certain disclosures, including but not limited to:

- Full disclosure of fees associated with the most expensive class marketed
- Distributions over the last 12 months and frequency, if applicable
- Highest and lowest actual annualised performance figures since inception
- Asset allocation
- Certain mandatory disclaimers

INITIAL APPLICATION
SOUTH AFRICA

Application needs to be made to the FSCA for all foreign collective investment schemes who wish to “solicit investments” into their funds from members of the public in South Africa. There are certain conditions set out by the FSCA for approval of these schemes.

- The manager of the scheme must be authorised and supervised by a regulator which has a regulatory environment of similar standing as the regulatory environment of South Africa.
- The scheme must be available for investment in its domicile of registration; and be promoted in South Africa to the same type of investors under the same or substantially similar requirements and conditions relating to the type of investors as in its domicile of registration.
- The FSCA needs to be satisfied that
  - the scheme is sufficiently liquid to meet investor redemptions;
  - the scheme does redemptions at regular intervals;
  - the scheme does not permit investment in an instrument that compels the acceptance of physical delivery of a commodity and the scheme particulars or prospectus prohibits it from accepting physical delivery;
  - the assets of the relevant fund are properly protected by application of the principle of segregation and identification.

Cost of Registration

Initial*

Registration fee

For the scheme (incl 1 portfolio)

R 73,560

For an additional portfolio

R 20,980

Ongoing quarterly levy*

per stand alone fund / umbrella fund

R 11,594

per scheme

R 6,288

each portfolio

0.00031231%

of net assets managed on behalf of South African Investors

Representative Office

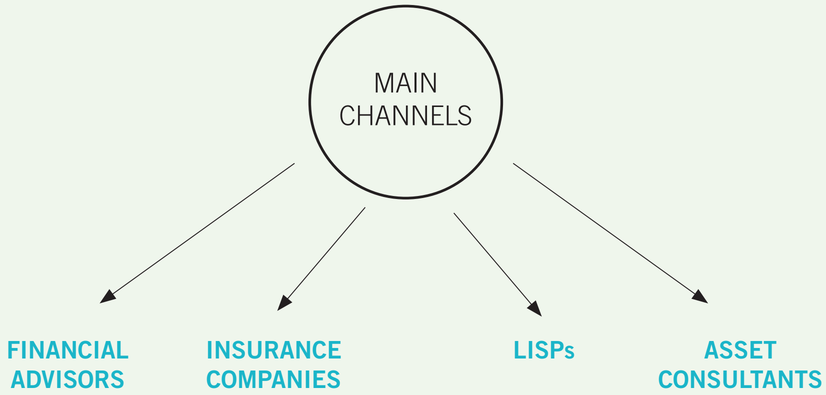
Indicative only

R 153,000 – R 286,000

per annum

* Costs effective as at June 2021

MAIN DISTRIBUTION CHANNELS



Financial Advisors

South Africa has a well-developed financial services market with the majority of investors making use of financial advisors.

Insurance Companies

Offshore funds can be accessed via endowment policies issued by some of the offshore branches of South African Insurance Companies.

Linked Investment Services Providers (LISPs)

Some South African platform providers have also created platforms specifically to house offshore funds.

Asset Consultants

Access to the South African Pension Fund market is generally gained through a select number of institutional consultants.

Local CIS funds

Many of the multi asset domestic funds which are managed according to prudential guidelines invest up to 30% of their underlying assets in offshore fund.

LEGAL STRUCTURES
IRELAND

Ireland is internationally recognised as one of the world's most advantageous jurisdictions in which to establish international investment funds. Mutual funds can be established using a variety of legal structures in Ireland, including investment companies, Irish collective asset management vehicles (ICAVs), unit trusts, investment limited partnerships and common contractual funds. These fund vehicles may be regulated as UCITS or AIFs.

Investment Company/ Variable Capital Company

Companies are registered under a series of Acts called the Companies Acts. The shareholders of the company enjoy limited liability. The main aim of funds set up as investment companies is the collective investment of its funds and property with the aim of spreading investment risk. A company is managed for the benefit of its shareholders.

Variable capital companies can repurchase their own shares and their issued share capital must at all times be equal to the net asset value of the underlying assets. All UCITS funds and many AIFs are marketed to the public, therefore most companies are set up as public limited companies.

Irish Collective Asset-Management Vehicle (ICAV)

The ICAV is a new corporate vehicle designed specifically for Irish investment funds, it sits alongside the public limited company (plc), and provides a tailor-made corporate fund vehicle for both UCITS and AIFs. It is not impacted by amendments to certain pieces of company legislation that are targeted at trading companies.

Non-Irish investment companies can migrate into Ireland and become an ICAV as part of a single process. The purpose of the vehicle is to minimise the administrative complexity and cost of establishing and maintaining collective investment schemes in Ireland. For further information on ICAV registration please see the CBI website.

Unit Trust

Unit Trust is a contractual fund structure constituted by a trust deed between a trustee and a management company (manager) under the Unit Trusts Act, 1990. A Unit Trust is not a separate legal entity and therefore the trustee acts as legal owner of the fund's assets on behalf of the investors. Since the Unit Trust does not have legal personality, it cannot enter into contracts.

A separate management company is always required and managerial responsibility rests with the board of directors of the management company. This separate management company can also be used to manage other UCITS and AIFs. The trust deed is the primary legal document which constitutes the trust and it sets out the various rights and obligations of the trustee, the management company and the unit holders.

Investment Limited Partnership (ILP)

An investment limited partnership is a partnership of two or more persons having as its principal business the investment of its funds in property of all kinds and consisting of at least one general partner and at least one limited partnership. The limited partner is equivalent to the shareholder in a company while the general partner would be the equivalent of the Management Company in a unit trust.

The main advantage of a limited partnership is that the partnership does not have an independent legal existence in the way that a company does. All of the assets and liabilities belong jointly to the individual partners in the proportions agreed in the partnership deed. Similarly the profits are owned by the partners. Each partner is entitled to use any tax reliefs and allowances the partnership is entitled to as agreed between each partner, subject to any tax rules governing the allocation of the reliefs and allowances.

An ILP can only be established as an AIF and is authorised and regulated by the Central Bank.

Common Contractual Fund (CCFs)

A CCF is a contractual arrangement established under a deed, which provides that investors participate as co-owners of the assets of the fund. The ownership interests of investors are represented by 'units', which are issued and redeemed in a manner similar to a unit trust. The CCF is an unincorporated body, not a separate legal entity and is transparent for Irish legal and tax purposes.

As a result, investors in a CCF are treated as if they directly own a proportionate share of the underlying investments of the CCF rather than shares or units in an entity which itself owns the underlying investments. A CCF can be established as a UCITS fund (Undertakings for Collective Investment in Transferable Securities) or an AIF (Alternative Investment Fund). Tax transparency is the main feature, which differentiates the CCF from other types of Irish funds. The CCF is authorised and regulated by the Central Bank.

PROSPECTUS DISCLOSURES

Managers of UCITS and RIAIF seeking to market in South Africa will need to apply to FSCA for permission to do so as outlined earlier in this document. For funds applying as Collective Investment Schemes in Securities the FSCA may require changes to the relevant prospectus to demonstrate consistency and compliance with its own local rules, for example, it may require that the prospectus provide that:

- A fund may not, in aggregate, invest more than 20% of its net assets in any one collective investment scheme.
- Where the fund may invest into other collective investment schemes:
  - the investment objectives, policies and restrictions of any underlying collective investment scheme must be consistent with those of the relevant fund;
  - the fund must provide for daily or weekly redemptions;
  - the fund may not invest in unregulated or hedge funds;
  - the fund may not acquire any investment which involves the assumption of unlimited liability.
- Use of FDI by the fund is restricted to efficient portfolio management and hedging only.
- The fund is restricted to long only investment strategies. All FDI are required to be fully covered either by cash or by similar securities.
- The use of OTC FDI is limited to unlisted forward currency, interest rate or exchange rate and index swap transactions.
- The fund may not be geared or leveraged through investment in any security, including but not limited to FDI.
- The fund will not invest in securities that compel the fund to accept physical delivery of a commodity.

Naturally, changes to the prospectus can impact on approval timelines and speed to market and so should be discussed with a local advisor in the early stages of the FSCA application process.

SPECIAL CONSIDERATIONS

Considerations when selling to Retail Investors:

The FSCA is open to approving UCITS compliant schemes as in general the UCITS regulations are somewhat aligned to those of the Collective Investments Schemes Control Act. However, they are cautious of permitting investments in UCITS compliant schemes with extended investment powers and accordingly will look to ensure that the UCITS fund offering documents precludes the use of leverage, ensures derivatives are covered at all times and does not permit investment in synthetic instruments.

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