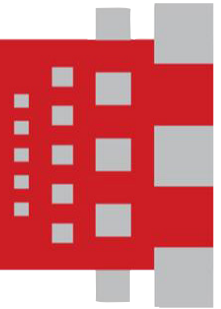


The logo for FISA, consisting of the letters 'FISA' in a white, sans-serif font inside a white rectangular box. A small registered trademark symbol (®) is located at the top right of the box.

FISA®

THE FIDUCIARY INSTITUTE OF SOUTHERN AFRICA



THE HISTORY OF THE
**TRUST COMPANY
MOVEMENT**
IN SOUTH AFRICA



THE HISTORY OF THE TRUST COMPANY MOVEMENT IN SOUTH AFRICA

After Jan Van Riebeeck had established a support station at the Cape of Good Hope in **1652**, it was only a matter of time that some form of legal system had to be introduced, namely Roman-Dutch law. Part of this legal heritage was the introduction in **1673** of the system of Weeshere (Orphan Masters) to the Cape to administer monies belonging to orphans, widows and persons under tutelage. The government office was known as the Weeskamer (Orphan Chamber) and also dealt with deceased estates and the investment of money. History has it that the secretary of the Weeskamer, one Jacob Lever, was arrested in **1736** for allegedly having stolen one hundred and twenty-three thousand gulden.

The Cape Colony remained under Dutch rule until **1795** before it fell to the British Crown, reverting back to Dutch rule in **1803** and again to British occupation in **1806**, officially becoming a British colony in **1815**. Although the laws relating to persons, property and succession preserved their predominantly Roman-Dutch character, some legislative changes did take place during the colonial period. On the basis of the Law Charter of **1828**, the Supreme Court determined in **1829** that a person could be admitted as an attorney after five years of in-service training as a clerk.

A proclamation by King William IV on **4 March 1832**, was followed on **5 July 1833** by an Ordinance issued by the Governor of the Cape, Sir Lowry Cole, abolishing the Orphan Chamber. The functions of the erstwhile Chamber were to be fulfilled in future as part of the duties of the Master of the Supreme Court of the Cape Colony. As all deceased estates had to be administered by an executor under the supervision of the Master, the need for a formal structure was created. The rapid economic growth and the accompanying need for specialised financial services, created business opportunities for corporative structures to be created. These formal legal entities could provide the necessary security for trust, administration and other fiduciary services. This resulted in the establishment of the first trust company, not only in South Africa, but in the world, on **22 April 1834** in Cape Town, namely the South African Association for the Administration and Settlement of Estates. The functions of the South African Association for the Administration and Settlement of Estates almost mirrored that of the old Orphan Chamber.

The company drafted wills, administered estates and looked after trusts for those unable to attend to their own affairs. Gradually, the concept of a corporate entity attending to fiduciary matters spread across the Cape Colony before migrating to Australia, New Zealand, Canada and the United States. The concept of corporate trusteeship was introduced in England around 1887, a Public Trust office was founded in New Zealand in 1872 and the first trust company in Australia in 1879. In the United States the role of trust companies started developing in the early 1900's. At the end of the 19th century, South African trust companies and boards of executors were well respected and delivered an important administrative and financial service to the public, with a presence all over the Cape Colony, such as Cape Town, Port Elizabeth, Graaff-Reinet, Grahamstown, Malmesbury, Paarl and Kimberley. Their primary function was the administration of deceased estates and the estates of minors or persons under administration, but they also delivered various services of a financial nature. Between 1834 and 1899 approximately 30 trust companies and boards of executors were established in South Africa. Since 1877 attorneys in the Cape Colony had to pass a practical examination to be admitted and in terms of Act 27 of 1883, a university law examination was instituted and the in-service training was reduced to three years. The shortage of qualified attorneys in the 19th century, in particular in rural areas, contributed to the formation of more trust companies and boards of executors.

This rapid expansion led to the Association of Trust Companies (ATC) being formed on 10 October 1932 in Cape Town, with forty-two trust companies and boards of executors in the Union of South Africa accepting membership of the Association. The Association had several special purpose committees and played an important role in influencing some key legal and administrative developments in the fiduciary environment. Membership of the ATC was corporate, with around 50 members in the early 1960s. As the smaller trust companies and boards of executors were taken over in a wave of corporatisation since the mid-1960s, the number of ATC members fluctuated and gradually decreased, holding steady at between 10 and 20 corporate institutions.

With the introduction of the Attorneys' Admission Amendment and Legal Practitioners' Fidelity Fund Act 19 of 1941, it made no sense for new trust companies to be formed after 31 December 1938, as they were thenceforth prohibited from advertising their trust company activities. The Bank Act of 1942 also ended the unregulated practice of banking by trust companies and boards

of executors in South Africa. Trust companies had to decide whether they were primarily banking institutions or bona fide trust companies. The regulatory development of the banking sector “heralded the beginning of the end of trust companies and boards of executors as independent financial institutions,” with trust services in many cases “being reduced to subsidiaries of larger financial services groups. “

Turning fifty years old in **1982**, the ATC closed a time capsule, which was a historic cache of goods and information, intended as a deliberate means of communication with a future audience and a way of recording change over time. The capsule was opened during a black-tie event at the Hilton Hotel in Sandton in **March 2000** as a Y2K project, and the contents, plus many new memorabilia, placed in another time capsule, which will be opened in **2032**, the centenary year of the ATC. *

In **2001**, with the appointment of a permanent Secretary, the operations of the ATC became more centralised and in **2003** the idea was mooted of promoting the concept of a fiduciary profession built on individual membership. The **Fiduciary Institute of Southern Africa (FISA)** was duly constituted, with industry veteran Nico Botha coming up with the name. **FISA** formally “took over the book” from the ATC on **1 June 2008**. For a few years **FISA** allowed for both corporate and individual membership, until the constitution was changed in **December 2011** and a resolution adopted at the AGM in **March 2012** to focus solely on individual membership.

The sound objective of this development was to allow for the professional development of fiduciary practitioners, with the introduction of the designation of **Fiduciary Practitioner of South Africa®** being the ultimate standard towards which members should strive. The establishment of **FISA®** has brought together fiduciary practitioners, chartered accountants, attorneys and financial planning professionals, serving the public with integrity and diligence in the fields of estate planning, wills, trusts, deceased estates, and beneficiary funds.

*The second time capsule includes the logos of the following companies represented on metal plaques around the base of the capsule: ABSA Trust, BOE Private Bank, Fairheads International Trust Co., FBC Fidelity Bank, Fedsure Trust, First Trust, Graaffs’ Trust Limited, Investec, Legatus Trust, Marriott Trust, Old Mutual Unit Trust, Personal Trust, Sanlam Trust, Sentinel Investment Trust Company, Standard Trust Limited, Syfrets Trust Limited, Trustee Board Limited.