



Role of Trustees in the Capital Markets in Kenya, & Cytonn Weekly #31/2021

Focus of the Week

On 29th June 2021, the President of Kenya assented to the **Finance Act, 2021** which amongst other changes, introduced provisions for the registration and regulation of corporate trustees in the retirement benefits industry. While registered companies were allowed to act as corporate trustees under the previous Retirement Benefits Act, the Finance Act now clearly outlines the registration process of trustees, as well as the criteria for their suitability. Additionally, in 2020, the Capital Markets Authority (CMA) granted a no-objection to Goal Advisory Africa Limited, the first non-banking institution, to act as a Collective Investment Scheme (CIS) Corporate Trustee. Traditionally, only banks had been allowed to act as CIS trustees, with only 5 licensed banks approved to offer trusteeship services. Key to note, there are other types of trustees who do not need approval or licensing such as trustees of private trusts, charities, and endowment funds.

It is due to these recent developments that we chose to take an in-depth look into the roles of trustees in the Kenyan capital markets and the legal framework around the operations of trustees. We shall do this in five sections, namely:

- i. Introduction,
- ii. Legal Framework and the Role of Trustees in the Kenyan Capital Markets,
- iii. Case Study - India,
- iv. Challenges in the Kenyan market and Recommendations, and,
- v. Conclusion.

Section I: Introduction

The main role of capital markets is to link suppliers of capital, for example individual investors, pension schemes or SACCOs with users of the capital i.e. people who are mainly in the production of goods and services across various sectors. See our previous release, **The Role of Kenya's Capital Markets on Economic Growth** on this for more details. Investments can be through directly buying into capital market securities such as debt or equity securities or indirectly through investment vehicles managed by professional investments managers. The investment vehicles can be Unit Trust Funds, Pension Funds or Real Estate Investment Trusts.

We look below at these three investment vehicles and their respective governance structures:

Investment Vehicle	Unit Trusts Funds (UTFs)	Pension Funds	Real Estate Investment Trusts (REITs)
Objective	Return generation and high liquidity	Retirement savings and long term return generation	Return generation through Real Estate investments
Regulatory Body	Capital Markets Authority (CMA)	Retirement Benefits Authority (RBA)	Capital Markets Authority (CMA)

Investment Vehicle	Unit Trusts Funds (UTFs)	Pension Funds	Real Estate Investment Trusts (REITs)
Governance Structure	<ul style="list-style-type: none"> • Trustee • Fund Manager • Custodian 	<ul style="list-style-type: none"> • Trustee • Fund Manager • Administrator • Custodian 	<ul style="list-style-type: none"> • Trustee • REIT Manager • Structural Engineer
Established by	Trust Deed	Trust Deed	Trust Deed
Minimum Capital Requirement	Not prescribed in law	Kshs. 10.0 million	Kshs. 100.0 million

Section II: Legal Framework and the Role of Trustees in the Kenyan Capital Markets

The key role of Trustees is informed by the form of the trust as an investment vehicle. A trust is an unincorporated body unlike a company, and cannot hold assets or enter into contracts in its name. The Trustees, therefore, hold the legal title to the trust's assets on behalf of the trust's beneficiaries who in this case may be the persons contributing to the pension fund or the investors in a UTF.

Another key role of the trustee is to ensure that the trust is managed in accordance with the applicable laws and regulations (if regulated), the incorporation documents and in general with the requisite due diligence and care. For regulated funds this is done through exercising oversight on the Fund Manager and for UTFs the trustee is required to report annually to holders in the annual report on whether the fund manager has managed the scheme in accordance with the rules and if not what steps have been taken.

It is important to note that while a trustee may delegate some duties such as communication with stakeholders, they cannot delegate the functions of oversight or fiduciary responsibility in relation to the trust fund. It is also key to note that because the trust is not separately existent from its trustees, it is therefore implied that a trust must have active trustees at all times. This ensures that the trust does not cease even during a change of trustees exposing the beneficiaries to the risk of property loss. For unit trust funds, this is clearly outlined in the **Capital Markets (Collective Investment Schemes) Regulations, 2001**. Below we look at the different types of trustees in the Kenyan capital markets, their qualification requirements and industry statistics:

A. Unit Trust Funds (UTFs) Trustees

UTF Trustees are tasked with ensuring that the Funds they are in charge of are running well and in accordance with the applicable laws and regulations. Similar to the Unit Trust Funds, UTF trustees are approved by the Capital Markets Authority (CMA) under the **Capital Markets (Collective Investment Schemes) Regulations, 2001**. As per the current regulations, the Trustee should be either a bank or a financial institution. The CMA is however considering expansion of the eligibility criteria to include institutions that have the requisite professional and technical capacity. Below are some of the qualifications being considered that a company has to meet before qualifying to be a UTF trustee:

- i. The applicant should demonstrate that the designated person(s) have adequate experience and understanding of the capital markets as well as operations of collective investment schemes,
- ii. The applicant should have in place professional indemnity or lines of credit to fully cover the risk in the event of professional negligence,
- iii. The applicant should demonstrate of the financial and technical capability to undertake trustee business effectively,
- iv. The designated persons carrying out the trustee tasks within the institution should;
 - a. Have adequate knowledge in capital markets operations and specifically the operation and management of Collective Investment Schemes,

- b. Have experience of not less than 5 years in managing investment portfolios, and,
- c. Be a holder of at least Chartered Institute for Securities & Investment (CISI) level two certification.

It is with this foresight that CMA, in 2020, approved – Goal Advisory Africa Limited – as a Trustee of a CIS. There are currently 6 approved Unit Trust Funds trustees and the table below provides a breakdown of the market-share of each approved trustee by number of Collective Investment Schemes overseen and Assets Under Management (AUM):

Collective Investments Scheme (CIS) Trustees Market Share

Year	Collective Investment Scheme	No. of Collective Investment Schemes	Market Share by AUM
1	KCB Trustee Services	11	87.6%
2	Stanbic Bank Kenya Ltd	2	7.7%
3	Cooperative Bank of Kenya	2	2.5%
4	Goal Advisory (A) Ltd	1	0.9%
5	HF Bank	0	0.0%
6	NatBank Trustee Services	0	0.0%
7	Others (Non-corporate trustees & not appointed, unclear)	3	1.4%
Total No. of Collective Investment Schemes		19	100.0%

From the above table, it's clear that the market is concentrated with KCB Trustees controlling almost 90% of the market.

We view the beginning of acceptance of Corporate Trustees as a step in the positive direction since the structure of UTFs includes a Custodian / a Bank who holds custody of the assets on behalf of the Trust. The Trustee's role should then be focused on oversight of the Fund Manager's assets which is a professional and technical role, without focus on huge minimum capital requirements; this reduces the reliance on banks who to a large extent may be viewed as competitors in savings mobilization.

The most fundamental change that is need in UTF trust is to clearly enact eligibility and the process of becoming a UTF Trustee, similar to what RBA has done. It is noteworthy that while the UTF industry assets remain a paltry Kshs. 111.1 billion, pension assets now stand at Kshs. 1.4 trillion. Clarity and predictability is essential to capital markets growth.

B. Real Estate Investment Trust (REITs) Trustees

As earlier discussed in our, Real Estate Investment Trusts (REITs) in Kenya research note, REITs are regulated collective investment vehicles which invest in real estate and whose promoters source funds to build or acquire real estate assets, which they sell or rent to generate income. The income generated is then distributed to the investors as returns from investing in REITs. The property is held by a trustee on behalf of unit holders and professionally managed by a REIT manager.

In Kenya, the Capital Markets Authority (CMA) is the governing and regulating body for REITs and as such, it is the body that registers and approves REIT trustees. According to the **Capital Markets (Real Estate Investment Trusts) (Collective Investment Schemes) Regulations, 2013**, a REIT trusteeship applicant must meet the following minimum requirements in order to be considered for licensing:

- i. The applicant should be a bank, or, a subsidiary of a bank; or a company that has sufficient financial, technical and operational resources and experience necessary to enable it to effectively conduct its business and carry out its obligations as a trustee of a real estate investment trust and real estate investment trust scheme,
- ii. The applicant should be independent of the promoter, the REIT manager and any property manager, valuer or project manager certifier of the real estate investment trust scheme,
- iii. The applicant should have a minimum issued and paid-up capital and non-distributable capital reserves of at least Kshs 100.0 mn

Due to the highly inhibitive minimum capital requirement of Kshs 100.0 mn, there are only 3 licensed REIT trustees in Kenya, namely, Housing Finance Company (K) Limited, Co-operative Bank of Kenya Limited and Kenya Commercial Bank Limited. It is not surprising that all of them are banks given the high capital requirements, essentially limiting the qualification of a REIT Trustees to a bank. According to a paper by Chartered Institute for Securities and Investments (CISI) UK, the reason for the dominance of banks and insurers as trustees of United Kingdom (UK) unit trusts is because the Trustee holds the assets of the Trust on behalf of the REIT unitholders, so you need an entity that unitholders can “trust” because it is heavily regulated or holds sufficient assets of its own. We note that with the use of a Custodian to hold legal title to these assets, on behalf of the Trustee, the Trustee’s role then becomes primarily oversight which is professional and technical in nature similar to that of a REIT Manager whose minimum capital requirement is Kshs 100.0 mn and the high minimum capital requirements fall away. In this regard, the use of a Professional Indemnity Cover can also be adopted.

The most fundamental change that is required in the reduction of minimum capital to allow for Corporate Trustees, the high levels of capital essentially reduce the Trustee role to banks. It is no wonder that the REIT market, after 8 years, has only managed to raise a paltry Kshs. 13.1 bn billion as of June 2021 and so far does not appear to be gaining traction.

C. Pension Funds Trustees

The retirement industry in Kenya is governed and regulated by the Retirement Benefits Authority (RBA). RBA has been keen in promoting good governance by continuously updating the regulations and enforcing the same in the schemes.

The recently assented **Finance Act, 2021**, codified the eligibility requirements for a pension corporate trusteeship applicant, as below:

- a. The applicant must have such minimum paid up share capital as may be prescribed by the Retirement Benefits Authority. The required minimum paid up share capital is currently Kshs 10.0 mn,
- b. The applicant should be capable of meeting the obligations to members and sponsors as specified in the scheme rules,
- c. The applicant should have the professional and technical capacity and adequate operational systems to perform its functions,
- d. The applicant should not have been a corporate trustee of any scheme which has been deregistered, wound up or placed under an interim administrator due to any fault, either fully or partially, of the corporate trustee,

- e. The applicant should not have been involved in the management or administration of a scheme which was deregistered for any failure on the part of the management or the administration thereof,
- f. The applicant should have in its board of directors and senior management such number of persons as may be prescribed who are academically and professionally qualified in matters relating to administration of schemes, insurance, law, accounting, actuarial science, economics, banking, finance or investment of scheme funds, and,
- g. The applicant should meet any other requirements prescribed by the Retirement Benefits Authority during the application process.

It is important to note that in Kenya, umbrella pension funds and occupational pension schemes may make use of individual trustees to govern umbrella schemes while Individual Pension Schemes (IPPs) cannot. This is probably because for occupational and umbrella schemes, the Trustees are employees of the sponsoring employer if an occupational scheme or participating employers for Umbrella schemes, meaning they have a strong moral duty towards their fellow employees as opposed to IPPs where there is no common bond. It is indeed this principle that informs the member based governance structures of SACCOs.

There are currently at least 11 approved institutions acting or who have acted as pension corporate trustees in Kenya, it is noteworthy that unlike in UTFs and REITS where Trustees are mostly banks, Pensions has a balanced mix of both banks and corporates trustees, hence the larger pool of Trustees for pension funds to choose from:

- i. Corporate & Pension Trust Services Limited,
- ii. ICEA Lion Trust Company Limited,
- iii. Kenya Commercial Bank (KCB) Trustee limited,
- iv. Kingsland Court Trust & Benefits Services Limited,
- v. Enwealth Financial Services Limited,
- vi. Octagon Pension Services Limited,
- vii. Natbank Trustee and Investment Services Limited,
- viii. Stanbic Bank Kenya Ltd,
- ix. Cooperative Bank of Kenya.
- x. Standard Chartered Bank Kenya, and,
- xi. Jubilee Insurance.

D. Bond Trustees

A bond trustee is a trustee that is appointed by the issuer of a corporate bond and acts as an intermediary between the issuer and the bondholders, representing the interests of the bondholders. The bond trustee also monitors the compliance of the bond issuer as per the trust deed set out. These trustees may also enforce the covenants of the trust deed on behalf of each bondholder, and, coordinating and disseminating information. However, in Kenya, they do not exercise any oversight role as once the funds are raised they are directly deployed to the bond issuer. Additionally, there is no approval regulations set out for bond trustees.

Some of the bond trustees active in the Kenyan market include; (i) MTC Trust & Corporate Services Limited, and, (ii) Ropat Trust Company Limited.

The most important improvement for Bond Trustees would be to have an approval process and a register of approved Bond Trustees.

E. Payment Service Providers (PSPs) Trustees

The national payments system in Kenya is made up of the Central Bank of Kenya, the Government, commercial banks, financial institutions and the payment system providers. All payment service

providers are licensed and regulated by the Central Bank of Kenya and some common examples of PSPs in Kenya include Mpesa, Paypal and PesaLink. A PSP establishes a trust through a trust deed and ensures all funds are held in the trust fund. The PSP must ensure that, in accordance with the trust deed and rules, it appoints a broad-based board of trustees which consists of people with adequate professional credentials and experience in offering trusteeship services, of credibility, integrity, and not contravened any provision made by or under any law designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice. The **National Payment Systems Regulations, 2014**, also allow a registered company to be a payment service provider trustee, provided that its designated staff meet the aforementioned criteria set out by the Central Bank of Kenya and similar to what is required a board of individual trustees. The trust deed for each payment service provider contains the duties, responsibilities and the extent of liability of Trustees and the particulars of the management arrangement between the trustee, the provider and the customers.

Some of the currently active PSP corporate trustees include: Goal Advisory, MTC Trust & Corporate Services Limited and Octagon Africa. There is currently no centralized database for the active payment service providers' trustees licensed by the Central Bank of Kenya, which we believe should be remedied to ensure payment service providers customers and stakeholders can verify the licensing status of the personnel and companies in charge of their funds.

The most important improvement for PSP Trustees would be to have an approval process and a register of approved PSP Trustees.

Regulatory framework Summary

In the exercise of their functions Trustees are primarily governed by the Trust Deed which sets out their powers and duties and where they are licensed or approved the sector specific laws for example for UTFs, the CIS Rules, and for pensions, the specific rules under the Retirements Benefits Act. We provide a summary below:

Trustees	UTF Trustees	Pension Funds Trustees	Real Estate Investment Trusts (REIT) Trustees	PSP Trustees
Type of Trust	Unit Trust Fund (UTF)	Pension Funds	Real Estate Investment Trusts	Payment Service Providers
Regulatory Body: Primary	Capital Markets Authority (CMA)	Retirement Benefits Authority (RBA)	Capital Markets Authority (CMA)	Central Bank of Kenya (CBK)
Secondary	Central Bank of Kenya (CBK)	Capital Markets Authority (CMA)	Central Bank of Kenya (CBK)	-
Applicable Laws	<ul style="list-style-type: none"> i) Capital Markets (Collective Investment Schemes) Regulations, 2001 - Provision of Trustee Services ii) The Capital Markets Act iii) Companies Act, 2015 - Registration of the company iv) Income Tax Act - Tax purposes v) Banking Act - Applicable to banking institutions 	<ul style="list-style-type: none"> i) Retirement Benefits Regulations - Provision of Trustee Services under the Individual retirement benefit schemes regulations, and the occupational retirement benefits schemes regulations. ii) The Capital Markets Act iii) Companies Act, 2015 - Registration of the company iv) Income Tax Act - Tax purposes 	<ul style="list-style-type: none"> i) Capital Markets Real Estate Investment Trusts (CIS) Regulations, 2013 - Provision of Trustee Services ii) Companies Act, 2015 - Registration of the company iii) Income Tax Act - Tax purposes iv) Banking Act - Applicable to banking institutions 	<ul style="list-style-type: none"> i) National Payment System Regulations, 2013 - Provision of Trustee Services ii) Companies Act, 2015 - Registration of the company iii) Income Tax Act - Tax purposes iv) Banking Act - Applicable to banking institutions
Tenor	Determined by the Trust Deed	Term shall not exceed 3 years, but may be renewed	Determined by the Trust Deed	Determined by the Trust Deed

Trustees	UTF Trustees	Pension Funds Trustees	Real Estate Investment Trusts (REIT) Trustees	PSP Trustees
Remedies by the primary governing body in case of breach of trust	- Fines, - Suspension, and, - Removal of Trustee			

In exercising their duties, trustees act as fiduciaries and have a duty of due diligence and care. Trustees are also governed by the **Trustees Act, 2012**. The Trustees Act of Kenya grants various powers to appointed trustees to enable them conduct their roles; some of the powers include such as (i) The power to make investments as authorized by the trust deed and in compliance with the Act. Trustees are expected to diversify the investments appropriately, and, choose investments suitable to the trust they manage, (ii) Power to employ agents such as advocates, banks, stockbrokers and fund managers to help them carry out their roles, (iii) power to delegate the trust to a temporary trustee during absence abroad of longer than one month. Here the delegation is made by power of attorney and begins immediately the trustee leaves the country and ends upon the coming back of the delegating trustee into the country. The delegating trustees remain liable for all acts and defaults of the temporary trustee, and, (iv) the power to act jointly with another trustee in holding the tenancy of properties under the trust. The Trustees Act limits the number of trustees running a trust to a maximum four, that is either four individuals or four corporate trustees. Key to note is that, the appointment of a trustee may in some instances be done by a court of law, whereby it is deemed inexpedient or difficult to replace or appoint a new trustee after the previous trustee has been convicted of a felony, has gone bankrupt or in cases of corporations, has been liquidated.

In the capital markets, however, trustees are governed primarily by the governing body of the type of trust they are in charge of. The regulatory framework for trustees in the Kenyan capital markets, in our view, could be streamlined and harmonized to make it easier for registration of Corporate Trustees with a view to enhancing options in the market and eventually contributing to expanding and deepening of capital markets.

Section III: Case Study - India

India commands a fair share of the global economy, 3.1% based on 2020 GDP figures provided by the **World Bank**, and as such its capital markets also play a significant role in the world's financial markets. We chose India for our case study as it has a similar structure as Kenya's when it comes to the trustees' role in the capital markets that is both countries provide for a distinct role for a Custodian especially in the governance structure of a REIT. The roles of the trustee are generally very similar as well with the core duties being oversight, duty of care and to operate diligently, and, ensuring compliance to regulations. Key market regulators in the Indian capital markets include the Securities and Exchange Board of India (SEBI), the Reserve Bank of India (RBI), and the Department of Company Affairs (DCA).

Similar to Kenya, India's has the **Indian Trusts Act, 1882** that provides for the existence of trusts, trustees and regulations pertaining to the relationship between a trustee and beneficiaries. However, when it comes to the capital markets, the **Securities and Exchange Board Of India (Debenture Trustees) Regulations, 1993** provides for the eligibility criteria of CIS, REITs and Bond trustees in the country. The qualifications for a trustee applicant include:

- a. The applicant must be one of the following four institutions; (i) a bank, (ii) a public financial institution, (iii) an insurance company, or (iv) a body corporate,
- b. The applicant must have a minimum capital of 2 crore rupees (Kshs 29.3 mn),
- c. The applicant should have the necessary infrastructure like adequate office space, equipment, and manpower to effectively discharge his activities,
- d. The applicant should have a minimum of two persons who have experience in matters which are relevant to a debenture trustee, and,

e. The applicant should have at least one person qualified in law.

In the table below we provide a summary of the governance structure and the main roles of CIS and REIT trustees in India:

Investment Vehicle	Collective Investment Schemes	Real Estate Investment Trusts
Promoter	Collective Investment Management Company	Sponsor (may be an individual or a company)
Legal Document	Trust Deed	Trust Deed
Key parties in the government structure	<ul style="list-style-type: none"> • Collective Investment Management Company - Actively manages the CIS portfolio adhering to the investment guidelines • Trustee - Legal owner of the assets in trust for the benefits of unitholders. Oversees the functions of the Collective Investment Management Company and other service providers. The trustee is accountable for, and is the custodian of the funds and property in the scheme. The custodial function is sometimes delegated through appointment of a custodian • Custodian - The custodian holds the assets of the trust 	<ul style="list-style-type: none"> • Sponsor - Set up the REIT and appoints trustee. The sponsor must hold not less than 5% of the total units in the REIT • Trustee - Legal owner of the assets in trust for the benefits of unitholders. Oversees the functions of the managers, custodian and other service providers • Manager - Manages the REIT portfolio, makes investments decisions and ensures reporting and disclosures • Custodian - The custodian holds the assets of the trust
Qualification to be a Trustee	Persons registered as debenture trustees	Persons registered as debenture trustees
Removal of Trustees	<p>A trustee may be removed;</p> <ol style="list-style-type: none"> 1. By unitholders through a general meeting resolution, 2. If the trust corporation is being wound up, 3. The trustee may wish to resign voluntarily, in which case a three-month notice is required. A new trustee should be appointed within the three months, and, 4. Through a court of law directive 	

Lessons Kenya can borrow from India's Capital Markets Trustee Regulations:

1. **Reduced minimum capital requirement for REITs trustees** - The Indian legal framework requires the minimum capital to be Kshs 29.3 mn for REITs, CIS and Bond trustee. We believe that if Kenya were to mirror the same or reduce our capital requirement even further, it would allow for more corporate trustees to be licensed and incentivize offering of more investment products in the market. This is especially in lieu of the fact that in the past licensed REIT managers have been unable to launch REITs due to the limited trustees' options and the Kshs. 100.0 mn capital requirement,
2. **Harmonize the capital requirements across various market** - As discussed above, in India, REITS, CIS and Bonds Trustees have the same capital requirements. In Kenya the minimum for CIS and Bond trustees is not known, the REITs its Kshs. 100 mn and for Pensions is Kshs. 10.0 mn,
3. **Open up trustee qualification to non-banking institutions** - India's trustee requirements specifically mention that a body corporate that is not necessarily a banking institution, insurance firm or a public financial institution, may become a trustee. We can borrow from this as Kenya, especially to allow other technically and professionally capable firms to become trustees. This will reduce the current dependency on banking institutions to provide trustee services increasing competition and efficiency of the provision of trustee services, and,
4. **Creation of Bond Trustees regulations** - The corporate bonds market in Kenya has struggled

in recent years due to defaults and collapse of issuers such as Chase Bank and Imperial Bank Limited. In the period January to June 2021, the percentage of corporate bond turnover in the secondary bond markets stood at only 0.1%, indicating low investor interest and confidence. We believe, like in India, creation of clear Bond Trustee regulations that all bond trustees and bond issuers have to meet and adhere to, will help increase the effectiveness and performance of the corporate bonds market in Kenya boosting investor confidence.

Section IV: Challenges in the Kenyan market and Recommendations

While the regulatory framework of trustees is indeed adequate in the Kenyan markets, we believe that there are still challenges existing that if addressed would help trustees carry out their roles more effectively, and increase vibrancy in the Kenyan capital markets. These include:

- a. **High minimum capital requirements for a REIT trustee of Kshs 100.0 mn:** This essentially limits the eligible trustees to only banks, efficiently eliminating corporate trustees and other fund managers. A proposed solution, is to allow the use of a Custodian in the REIT structure who must be a bank or financial institution to hold legal title to the assets of the REIT on the Trustee's behalf who holds beneficial ownership on the unitholders behalf. This way the role of the Trustee is primarily oversight, where emphasis can be placed on professional and technical expertise as opposed to assets holdings or capital and the minimum capital requirement can be reduced to match what is required of a fund manager, to Kshs. 10.0 mn,
- b. **Lack of clear corporate trustee regulations:** We note that apart from pension trustees, the registration requirements for corporate trustees in Kenya remain unclear or non-existent. We believe more specificity would go a long way, in reducing any ambiguity and subjectivity in the registration process and operations of trustees, especially for UTF and REIT Trustees,
- c. **Low investor awareness:** This is in relation to unit trusts and pension funds mainly which have a high number of retail clients who do not understand fully the governance structure of the unit trust and pension schemes, and do not understand fully the role of trustees. Given the importance of trustees in protecting these clients' funds in their oversight role, we believe more can be done with regards to public information drives. One of the ways this can be done is through more webinars that are open to the public, and in which discussions are held on the various investment products and their respective governance structures. These may be conducted by the regulatory bodies as well as the industry players, and,
- d. **Transparency of information:** This is especially in relation to pension, UTF and payment service providers' corporate trustees, where there is a lack of centralized database of licensed corporate trustees. This makes it hard for interested investors to verify the licensing and compliance status of the trustees.

Section V: Conclusion

According to the Organisation for Economic Co-operation and Development (OECD), *"The growth of CIS is one manifestation of the growing reliance on capital markets and on institutional investors, as opposed to on-balance sheet lending by banks, in financial intermediation. Intermediation through the capital market has the potential to promote greater efficiency in the economy, provided that a sound institutional, legal and regulatory framework is in place. Additionally, intermediation through the capital markets can best promote efficiency in the real economy if institutional investors and asset managers can be relied upon to deploy assets on behalf of investors"*. Further, according to a survey carried out by the Kenya National Bureau of Statistics (KNBS), safety of one's investments was ranked the top consideration by the sampled Kenyans when choosing a savings instrument. Safe investments refer to investments whereby the chances of an investor losing their principal is very low and that is the main role of a trustee at all time - oversight to ensure the Fund Manager invests the fund's assets with the necessary prudence and due care. **In this regard the role of the Trustee as a critical party in the governance of CIS and other investment funds cannot be over-emphasized. Trustees also ensure that other service providers are performing their**

functions accordingly and facilitate communication with the investors.

As discussed in Section IV, more may be need to be done in order to increase vibrancy in the capital markets, especially improvements in investor awareness and reduction of minimum capital requirements. In the long term, more flexible forms of Collective Investment Schemes such as the corporate model that utilizes a custodian and an independent board of directors exercises the supervisory role, as opposed to a Trustee may be one of the models adopted as witnessed in the UK and USA.

In summary, a more competitive and predictable trustee environment, will likely lead to more innovation and better services by trustees and growth in capital markets.

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