

COLLECTIVE INVESTMENT SCHEME AS A TOOL FOR ECONOMIC INCLUSION AND DEVELOPMENT IN NIGERIA

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ABSTRACT

There are two major challenges to doing business in Nigeria: lack of capital and managerial expertise. With the large population of Nigeria, and by implication, the size of her market, Collective Investment Scheme (CIS), as regulated under the Investment and Securities Act (ISA) 2007, provides the necessary platform to overcome the two challenges above. Where the two challenges are overcome, the CIS can be a tool for economic inclusion and development in Nigeria. This study, therefore, examines the Collective Investment Scheme (CIS) in Nigeria, a business package aimed at economic inclusion and development. CIS, regulated by the Securities and Exchange Commission, offers three types of schemes with potential benefits for investors and addressing housing deficits. The CIS is a vital tool for economic inclusion and development of Nigeria. Its domicile in the Nigerian Capital Market (NCM) is to ensure its success as the funds are only invested in securities of choice for profits. The regulatory expertise and wide powers of the Securities and Exchange Commission (SEC) in the regulation of CIS are for the success and sustenance of the scheme *via* systemic scrutiny of the CIS managers and their operations. However, a comparison with Mauritius reveals some shortcomings. The doctrinal research method is adopted in this study. This doctrinal research adopts a comparative analysis to identify areas for improvement. The study finds that while CIS has advantages, it also has demerits. Recommendations are proffered to enhance the Nigerian CIS scheme, including addressing regulatory gaps and improving investor benefits.

Keywords: Collective investment scheme, Economic inclusion, Portfolio manager, Custodian, Unit trust scheme

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INTRODUCTION

This study aims to examine the utility of Collective Investment Scheme (CIS) as a tool for economic inclusion and development in Nigeria. This will be done through the assessment of the legal and institutional frameworks for the regulation of CIS towards attaining economic inclusion and development. A comparative analysis of the CIS in Nigeria is carried out with that in Mauritius so as to determine the strengths and/or weaknesses so as to proffer solutions in Nigeria.

This study deploys the doctrinal research method³ which is normative in nature and is basically library-based.⁴ This study analyses primary sources of domestic laws on the subject, and secondary sources which include scholarly works written by experts in the field and other publications by institutional bodies like the Securities and Exchange Commission (SEC). The examination of the primary sources of law is aimed at evaluating the adequacy or otherwise of the laws and the institutions, with emphasis on the effectiveness of CIS as tool for economic inclusion and development in Nigeria. Furthermore, in order to evaluate the efficient regulation of CIS in Nigeria, this study adopts a comparative analysis⁵ of legislative and institutional frameworks on CIS in Mauritius with that in Nigeria.

Collective Investment Scheme (CIS) is one of the methods of raising capital by authorized schemes or corporate bodies duly registered with the Securities and Exchange Commission (SEC) under the CIS. In addition, the CIS also provides investment opportunities to members of the public to invest in any of the schemes by acquiring participatory interests, for profits or income accruals, in a unit trust

³ Khadijah Mohamed, 'Combining Methods in Legal Research,' *The Social Sciences Journal* [2016] 11 (21) 5191-5194; Catherine Dawson, *Introduction to Research Methods: A Practical Guide for Anyone Undertaking a Research Project* (4th edn. How to Content, 2009), 1-158; Paul Chynoweth, 'Legal Research' in Andrew Knight and Les Ruddock (eds.) *Advanced Research Methods in the Built Environment* (3rd edn. Blackwell Publishing Ltd., 2008), 28-38; Khushal Vibhute and Filipos Aynalem, *Legal Research Methods: Teaching Materials* (Chilot Wordpress.com, 2009), 68-100; M. Pickton, 'Writing Your Research Plan,' in M. J. Grant, B. Sen and H. Spring (eds.) *Research, Evaluation and Audit: Key Steps in Demonstrating Your Value* (Facet Publishing, 2013); Michael Salter and Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* (Pearson Education Limited, 2007), 31-118.

⁴ *Ibid.*

⁵ John C. Reitz, 'How to Do Comparative Law,' *The American Journal of Comparative Law* [1998] 46 (4) 617-636.

scheme, open-ended or real estate investments or trust scheme. The CIS is, however, an economic investment package that has not been fully explored in Nigeria but it is an area where the needs of investors and duly registered authorized operators, under the scheme, may put in their money for profits and raise scarce funds or capital with ease respectively. One of the vital signs of a viable society is in the area of engagement in businesses in order to raise the standard of living and contribute meaningfully to the development of society. Society is, however, largely abstract which can only be realized in the interaction and association of human beings including dealing in businesses.

Most businesses are regulated through the instrumentality of the law. Collective Investment Scheme in Nigeria is regulated by the government under the Securities and Exchange Commission (SEC),⁶ which is the apex regulatory authority for the Nigerian Capital Market and foremost regulator of the Nigerian Stock Exchange (NSE).⁷ The Nigerian Stock Exchange (NSE) is the floor where trading in securities takes place. It is also the marketplace where government and quoted corporate bodies in the NSE raise long-term capital, for development, in Nigeria. The capital market has been described as a financial market for long-term maturity financial assets such as government bonds, corporate bonds and equity.⁸

Collective Investment Scheme (CIS) is an investment package, regulated by the Securities and Exchange Commission (SEC) whereby authorized corporate entities invite members of the public through a prospectus to participate, as holders, by investing money and other assets in a portfolio under certain conditions. According to the Investments and Securities Act (ISA), CIS means:

[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:

⁶ Investments and Securities Act (ISA) 2007 (as amended), Cap. I24, Laws of the Federation of Nigeria (LFN), 2004 (as Revised), s. I (1).

⁷ *Ibid*, s. 13.

⁸ J. O. Orojo, *Company Law and Practice in Nigeria* (5th edn., LexisNexis, 2008).

- (a) 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;
- (b) 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 by the deed, but not a collective investment scheme authorized by any other Act.⁹

From the definition above, the investors do not only hold participatory interest in the portfolio or the scheme but also share in the risks and the benefits of investment in proportion to their participatory interests in the portfolio or the scheme. It is in the area of sharing the risks and benefits of the investment that the scheme has the capacity as a tool for economic inclusion and development. Persons of low-income bracket may pool their financial resources together and invest in the scheme thereby increasing their chances of earning additional income. This engenders economic inclusion which results in economic growth in the short run and economic development over time.

A member of the public who has invested in the CIS is a holder of participatory interest in the scheme. A holder, therefore, means any investor or beneficiary who has acquired units of a collective investment scheme and is entitled to a *pro rata* share of dividends, in trust or other income of the securities comprised in the unit.¹⁰ Participatory interest, on the other hand, means any interest, undivided share or shares, whether called participator interest, unit or by any other name, and whether the value of such interest, unit, undivided share or shares remain constant or varies from time to time, which may be acquired by an investor in a portfolio.¹¹ Portfolio investment is an investment in shares or other securities traded on a securities exchange or capital trade point while portfolio means a group of assets including any amount of cash.¹² Portfolios have also been defined as the various securities

⁹ ISA, s. 153 (1).

¹⁰ Ibid, s.152.

¹¹ Ibid.

¹² Ibid, s. 315.

or other investments held by an investor at any given time.¹³ The best explanation of the term ‘portfolio’ is that the holders of the participatory interests do not have daily participatory and physical control over the management of the property or investment in question notwithstanding their rights to be consulted or for them to give directions in respect of the management of the property or investment thereof. An investor will often hold several different types of investments to diversify risks.¹⁴

The study is divided into nine sections. The introduction clarifies the fundamental issues relating to the research problem, the objectives, the research method deployed and other preliminary matters. The section on CIS as a tool for economic inclusion and development highlights the advantages and benefits of the CIS and distinguishes CIS and Ponzi schemes in Nigeria. The CIS is a legally authorized business scheme while the Ponzi schemes are illegal and fraudulent manipulations of ignorant Nigerians in the guise of quick returns on investment. Sections three and four analyze the legal framework and the forms of CIS in Nigeria. In every business venture, there are merits and demerits. This is also true of the CIS and is much acknowledged in the Act.¹⁵ Section five deals with the comparative assessment of the two areas where the CIS in Mauritius has advantages over that in Nigeria. Sections six and seven discuss the advantages and challenges of CIS while sections eight and nine take up the recommendations and conclusion. The recommendations are offered for overcoming some of the identified challenges of the scheme in Nigeria. This study examines the CIS as a tool for economic inclusion and development in Nigeria.

¹³ Bryan A, Garner (ed.), *Black’s Law Dictionary* (8th edn., West Publishing Company, 2004), 1199; G. Bannock, R. E. Baxter and R. Rees, *The Penguin Dictionary of Economics* (2nd edn., Penguin Books Limited, 1978), 350.

¹⁴ Garner, *Black’s Law Dictionary*, 1199.

¹⁵ ISA, s. 153 (1) (b).

CIS AS A TOOL FOR ECONOMIC INCLUSION AND DEVELOPMENT IN NIGERIA

Funds for investment and expert managers in development have always been a challenge in Nigeria. This is so because the interest rates from banks are high in Nigeria. Many investors seeking loans from banks do not have the requisite collateral to secure such loans. The timeframe for repayment of loans from banks are rather short while real investors require long-term capital as loans for their investments. Furthermore, many private investors do not have the expertise to manage businesses especially those businesses that they do not have comparative advantage to manage. The enactment of an Act for the regulatory and institutional frameworks for CIS in 2007 changed the paradigm for economic inclusion and development in Nigeria. CIS had been in existence in Nigeria before 2007 but was only regulated, through the instrumentality of the law, in 2007 *via* the Investments and Securities Act (ISA)¹⁶ and placed under the institutional enforcement of the Securities and Exchange Commission (SEC),¹⁷ the regulator of the Nigerian Stock Exchange (NSE).

Furthermore, the rise in Ponzi schemes in Nigeria made it a necessity to regulate the collective investment climate in the country. The Ponzi schemes defrauded many Nigerians and, instead of taking them above the poverty line, dropped them far below the poverty line. Proshare Research explains Ponzi scheme and its drivers thus:

In recent times, the Nigerian investment market has seen a huge rise in Ponzi schemes that threaten the growth and essence of the capital market. Some analysts believe Ponzi schemes are growing faster than the growth of the Nigerian capital market. Four factors have primarily contributed to the surge in the Ponzi scheme: (1) the enticement of the promised quick and guaranteed returns, (2) poor market information, (3) high risks in the formal capital market, and (4) the absence of regulatory sanctions for market defaulters. Data

¹⁶ Investments and Securities Act (ISA) 2007, Part XIII, ss. 152-196. It is an Act of the national Assembly, made up of the Senate and the House of Representatives. The Act is applicable in all the States of the Federation.

¹⁷ *Ibid*, ss. 1 (1) and 13-14.

cited by the Nigeria Deposit Insurance Company (NDIC) estimated that Nigeria's investment market has lost about N911.45 billion to different Ponzi schemes and other related frauds in the last 23 years as of December 2022. Another report by the Norrenberger Financial Investments Scheme also estimated that as of 2022, Nigerians have lost over N300 billion to Ponzi schemes in five years.¹⁸

The above figures can dampen the investment climate and erode investors' confidence in the country. Ponzi schemes are illegal and unlawful especially as the ISA 2007 makes it mandatory for every corporate entity that intends to carry out any business under the CIS to be registered with the SEC.¹⁹ The investment climate in Nigeria is, however, improving *via* the CIS despite the emergence of Ponzi schemes in the country.

Alan Boswell Group identifies, and we agree totally with them, the benefits and advantages of CIS in Nigeria as follows:

Diversification: By pooling investments with others, you can invest in a broader range of asset types than you could as a single investor.

Opportunity: With large amounts of pooled capital, you can invest in markets that are hard to access directly.

Lower risk: A broader portfolio is generally lower risk than investing in a small number of assets. If one part of the portfolio goes down in value, it may be offset by increases in other parts. However, do remember some ETFs track narrow market segments, making them likely to be more volatile.

Lower cost: Costs are spread among all investors, meaning large transactions, in particular, will cost you less than an individual investor would pay.

¹⁸ Proshare Research, *NCM Outlook Report – State of Ponzi in the Market: Growth of Ponzi Vs Growth of the Market*, 10 March, 2024. Available at [https://proshare.co/articles/ncm-2024-outlook-report-state-of-ponzi-in-the-market-growth-of-ponzi-vs-growth-of-the-market/...](https://proshare.co/articles/ncm-2024-outlook-report-state-of-ponzi-in-the-market-growth-of-ponzi-vs-growth-of-the-market/)

¹⁹ ISA 2007, s. 38.

Expertise: If you choose a scheme such as a unit trust or OEIC with dedicated fund managers, you'll benefit from their experience and expertise. This can lower the risk of your investment.

Simplicity: Whether you choose a scheme with a fund manager or one that passively tracks a market segment, you don't have to spend time on the day-to-day administration of your investments.

Tax efficiency: With the right advice, you can build a tax-efficient investment portfolio.²⁰

The above benefits and advantages of CIS in Nigeria can bring in many Nigerians into the investment net thereby engendering economic inclusion and development in the country. Where the above is attained and institutionalized over time, the CIS can become a tool for economic inclusion and development in the long run. Lamido Yuguda, the Director-General of the Securities and Exchange Commission (SEC) is said to have reported that the collective investment fund has hit over two trillion-naira mark as of November 2023.²¹ A presentation by United Capital shows that the growth of CIS in Nigeria has been substantial, with assets under management increasing from N73.8 billion to N2.2 trillion over the past 12 years.²²

LEGAL FRAMEWORK OF COLLECTIVE INVESTMENT SCHEME IN NIGERIA

The CIS under discussion is a creation of the statute of the National Assembly and is regulated by that Act. Furthermore, it is domiciled in the Nigerian Capital Market for greater scrutiny and integrity of operations. The success of the capital market in any country is a pointer to the level of business development and confidence that investors have in that country's economy. Every country that has

²⁰ Alan Boswell Group, *Understanding Collective Investment Schemes*, 26 May, 2023. Available at [https://www.alanboswell.com/news/collective-investment-schemes/...](https://www.alanboswell.com/news/collective-investment-schemes/)

²¹ *Collective Investment Funds Hit N2.1 tr. on 15 November, 2023*. Available at [punchng.com/collective-investment-fund-hits-N2.1tr/...](https://punchng.com/collective-investment-fund-hits-N2.1tr/) Accessed on 25 February, 2024.

²² Olamide_Ologunagbe, 'How Mutual Funds can Boost Financial Inclusion in Nigeria – Stakeholders,' *Businessday Newspaper* of February 29, 2024. Available at <https://businessday.ng/news/article/how-mutual-funds-can-boost-financial-inclusion-in-nigeria-stakeholders>. Accessed on 15 August, 2024.

a capital market regulates the activities of that market through the Securities and Exchange Commission (SEC) and there is now an international organization known as the International Organization of Securities Commissions (IOSCO) which the Nigerian SEC joined in June 1985²³ and has, since then, been an active participant both at the domestic and global spheres.

The scheme is regulated in Part XIII of the Investments and Securities Act.²⁴ As a general rule, all corporate bodies that the SEC regulates must have been incorporated by the Corporate Affairs Commission (CAC) under the Companies and Allied Matters Act (CAMA)²⁵ and subsequently apply to the SEC for registration in accordance with ISA.²⁶ In the case of the CIS, the SEC registers the manager who is also the issuer of the trust deed or other agreement under which the units or securities are issued. There is an additional provision by which the trust deed or the custodial agreement must be drawn up between the trustees or the custodian and the manager for regulating the operation of the scheme. The trust deed or the custodial agreement must be duly submitted to and registered by the SEC.

The scheme has principles of administration which are aimed at promoting transparency and enhancing the integrity of the scheme which are to the effect that:

A manager shall administer a collective investment scheme:

- (a) honestly and fairly;
- (b) with skill, care and diligence; and
- (c) in the interest of investors and the securities industry.

Every authorized scheme shall adhere to the principle of segregation and identification, as may be prescribed by the Commission from time to time.²⁷

²³ Akaninyene Billy Orok, Enya Gabriel Emori and Itoro Moses Ikoh, 'Collective Investment Fund: An Imperative for Growth in the Nigerian Capital Market,' [2019] (4) (4) *Noble International Journal of Economics and Financial Research*, 36.

²⁴ Part XIII of ISA runs from section 152 to 197.

²⁵ Companies and Allied Matters Act (CAMA), Cap. C20, LFN, 2004 (as amended).

²⁶ ISA, ss. 158 and 160.

²⁷ *Ibid*, s. 155.

Another innovation by the Act in aid of the scheme is the duty of disclosure by the managers to investors before the transaction is entered into. The scheme is not shrouded in secrecy. This is in order to give any investor the opportunity to make an informed choice whether or not to acquire a participatory interest in the scheme.

The Act states that:

Before the manager of a scheme enters into a transaction with an investor:

- (a) information about the investment objectives of the scheme, the calculation of the net asset value and dealing price, charge, risk factor and distribution of income accruals shall be disclosed to the investor; and
- (b) information that is necessary to enable the investor to make an informed decision shall be given to the investor timeously and in a comprehensible manner.²⁸

In addition to the duty to disclose, the Act also imposes other duties on the manager of the scheme thus:

The manager of the scheme shall:

- (a) avoid conflict between the interests of the manager and the interests of an investor;
- (b) disclose the interests of its directors and management to the investor;
- (c) maintain adequate financial resources to meet its commitment and to manage the risks to which its collective investment scheme is exposed;
- (d) organize and control the scheme in a responsible manner;
- (e) keep proper records;
- (f) employ adequately trained staff and ensure that they are properly supervised;
- (g) have well-defined compliance procedures; and
- (h) promote investor education.²⁹

²⁸ *Ibid*, s. 156.

²⁹ *Ibid*, s. 157.

There is the additional obligation of registration, by the manager, of the units or securities of the scheme and the approval, by the Commission, of the prospectus and other offer documents on the scheme.³⁰ There is civil liability for any false information on the prospectus as to its material fact and misleading statements. This is very important because it is the information on the prospectus that makes the investor make the choice whether or not to invest in the scheme.

Furthermore, the Act gives the holder the right to request the manager of the scheme for the redemption of units or securities held by him or her (that is, the investor). The manager cannot suspend or postpone the date of the redemption of such units or securities except during public holidays, emergencies, when the stock exchange is closed or whenever the Commission permits it.³¹ The right of redemption is peculiar only to CIS and it guarantees confidence in the investor that he or she can have access to funds anytime that he or she desires.

To ensure adequate returns on investment, the funds of the scheme can only be invested by the manager in accordance with the trust deed or the custodian agreement with the objectives of safety and maintenance of fair returns on amounts invested.³² In addition, the funds and assets of the scheme can only be invested in the specified areas as issued *via* the guidelines by the Commission though the manager has the power to invest such funds and assets in units of any investment fund provided such investment is within the categories of investments as specified by the Commission and in real estate.³³ The specified areas mandated by the Act are as follows:

Subject to guidelines issued by the Commission, from time to time, the funds and assets of a scheme shall be invested in any of the following:

- (a) bonds, bills and other securities issued or guaranteed by the Federal Government and the Central Bank of Nigeria;

³⁰ Ibid, ss. 161 and 164.

³¹ Ibid, s. 166.

³² Ibid, s. 171.

³³ Ibid, s. 171 (3).

- (b) bond, debentures, redeemable preference shares and other debt instruments issued by corporate entities listed on a securities exchange and registered under this Act;
- (c) ordinary shares of public limited companies listed on a securities exchange and registered under this Act with good track records, having declared and paid dividends in the preceding five years;
- (d) bank deposits and bank securities of which the banks shall be rated by rating agencies registered by the Commission;
- (e) investment certificates of closed-end investment funds or hybrid investment funds listed on a securities exchange and registered under this Act with good track records of earning;
- (f) units sold by open-end investment funds or specialist-open end investment funds listed on the securities exchange and recognized by the Commission;
- (g) real estate investment; and
- (h) such other instruments as the Commission may, from time to time, prescribe.³⁴

The above is not a conclusive list as the Commission can impose additional restrictions aimed at protecting the interest of a scheme or its beneficiaries.³⁵ A closer scrutiny of the above specified areas for investing the funds of the scheme reveals that each area is a high yield investment instrument and they collectively form a preferred investment choice.

Most importantly, the status of assets of the scheme is that the money or other assets received from an investor; and assets of a portfolio are regarded as trust property for the purposes of the Trustee Investments Act.³⁶

The Commission has great powers in supervising the operations of the scheme to ensure its success and the beneficial interests of investors. Apart from the power to register the scheme and regulate its operations, the Commission also has other powers including revocation of authorization of the scheme;³⁷ approval of the

³⁴ Ibid, s. 171 (2).

³⁵ Ibid, s. 171 (4).

³⁶ Ibid, s. 182. Trustee Investments Act, Cap. T22, LFN, 2004 (as amended).

³⁷ Ibid, s. 163.

prospectus and other offer documents on the scheme;³⁸ inspection and investigation;³⁹ cancellation or suspension of the registration of a manager;⁴⁰ objection to the publication or distribution of misleading and objectionable documents;⁴¹ request for audit;⁴² suspension or revocation of the registration of a trustee or custodian;⁴³ power to make regulations on the constitution and management of the scheme;⁴⁴ and power to appoint competent inspectors to investigate and report under the supplemental investigations provisions.⁴⁵

There are other crucial provisions in the Act which are geared towards engendering confidence in the scheme, encouraging the Nigerian public to invest in the scheme thereby building a culture of investment and promoting economic inclusion, and assuring economic development in Nigeria. The legal framework that regulates the CIS is good and aimed at protecting every investment in the scheme, the investors and the society. Apart from the ISA, the Commission regulates the CIS through the Securities and Exchange Commission Rules 2013 and the Rules on CIS (Amendment) 2019.⁴⁶ By effectively regulating the scheme through the SEC in Nigeria, the scheme encourages economic inclusion and economic development in Nigeria.

FORMS OF COLLECTIVE INVESTMENT SCHEME

The Act expressly lists three types of CIS but the Commission has the power to designate any other scheme as constituting a CIS by notice published in the gazette⁴⁷ and can also approve foreign investment schemes to solicit investments in such schemes from investors in Nigeria.⁴⁸ The three types of CIS expressly

³⁸ Ibid, s. 164.

³⁹ Ibid, s. 172.

⁴⁰ Ibid, s. 174.

⁴¹ Ibid, s. 175.

⁴² Ibid, s. 176.

⁴³ Ibid, s. 180.

⁴⁴ Ibid, s. 186.

⁴⁵ Ibid, s. 196.

⁴⁶ Aderonke Alex-Adedipe and Omotola Abudu, 'Regulation of Collective Investment Schemes (CIS) in Nigeria, 2020.' Available at [pavestoneslegal.com/...](http://pavestoneslegal.com/) Accessed on 25 February, 2024.

⁴⁷ ISA, s. 154 (2).

⁴⁸ Ibid, s. 195.

mentioned in the Act, which the Commission may approve, may be administered as:

- (a) unit trust scheme;
- (b) open-ended investment company; or
- (c) real estate investment company or trust.⁴⁹

1. The unit trust scheme is any arrangement made for the purpose, or having the effect, of providing facilities for the participation of the public as beneficiaries under a trust in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever.⁵⁰

2. The open-ended investment company is a company with an authorized share capital whose articles of association authorize the acquisition of its own shares, structured in such a manner that it provides for the issuing of different classes of shares to investors, each class of share representing a separate portfolio with a distinct investment policy.⁵¹ The Act further provides that:

An open-ended investment company shall be registered by the Commission if:

- (a) it is a body corporate in accordance with the Companies and Allied Matters Act;
- (b) it has a capital and reserve as prescribed by the Commission from time to time;
- (c) its articles of association provide that it may acquire its own shares; and
- (d) it satisfies all other conditions which may be prescribed by the Commission from time to time.⁵²

The assets and investments of an open-ended investment company are in the custody of a registered custodian or trustee.⁵³ For the purposes of the CIS, a custodian is a person who has custody as a bailee of securities or certificate issued in the investor's name with the investor's name appearing in the issuer's register

⁴⁹ Ibid, s. 154.

⁵⁰ Ibid, s. 153.

⁵¹ Ibid, s. 153.

⁵² Ibid, s. 192 (1).

⁵³ Ibid, s. 192 (2).

as the beneficial owner of the securities.⁵⁴ On the other hand, trustee, under a unit trust scheme or such other arrangement, means the person in whom the property for the time being, subject to any trust created in pursuance of the scheme, is or may be vested in accordance with the terms of the trust.⁵⁵

3. Generally, real estate has to do with real property, that is, tangible real property that can be seen and touched as against property that cannot be seen and touched like chose in action. A real estate investment company or trust is, therefore, a company that invests in and manages a portfolio of real estate, with the majority of the trust's income distributed to its shareholders.⁵⁶ A real estate investment company or trust, for the purpose of CIS, is:

A body corporate incorporated for the sole purpose of acquiring intermediate or long-term interests in real estate or property development, may raise funds from the capital market through the issuance of securities which shall have the following characteristics:

- (a) An income certificate giving the investor a right to a share in the income of any property or property development; and
- (b) An ordinary share in the body corporate giving the investor voting rights in the management of that body corporate.⁵⁷

Furthermore, a 'trust for sale' may be constituted as a trust for the sole purpose of acquiring property for the benefit of the investors. The trust referred to must have the following characteristics:

- (a) The investors shall acquire units in the trust through which they shall be entitled to receive periodic distribution of income and participate in any capital appreciation of the property concerned; and

⁵⁴ Ibid, s. 153.

⁵⁵ Ibid.

⁵⁶ Garner, 1292.

⁵⁷ ISA, s. 193 (1).

- (b) The investors shall also be entitled to retain control over their investments by investing directly in a property rather than in a portfolio.⁵⁸

As we stated earlier, the types of CIS listed in the Act are not a conclusive listing of available options in Nigeria. The Act empowers the SEC to designate any other type of CIS by publication in the gazette. In practice, there are five types of CIS that operate in Nigeria: Unit Trust Scheme; Venture Capital Funds; Open-Ended Investment Companies; Real Estate Investment Schemes; And Specialized Funds.⁵⁹

The three types of CIS analyzed above sustain our position that the CIS are operated for the benefit of all stakeholders especially that of the investors. This encourages investments, engenders economic inclusion and accelerates economic development in Nigeria.

COMPARATIVE ASSESSMENT OF THE CIS IN NIGERIA AND MAURITIUS

The comparison is related to two aspects, namely: the definition of CIS in the principal Acts and the linking of CIS to the global business environment. The Securities Act of Mauritius 2017 defines CIS in almost the same manner as that in the ISA 2007 in Nigeria but two provisions make that of Mauritius peculiar. They are the definition of CIS and the requirement of obtaining Category 1 Global Business License (GBL1).

The Securities Act of Mauritius 2017 specifically provides that the CIS operation is based on the principle of diversification of risk; and the participants do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management.⁶⁰ The

⁵⁸ Ibid, s. 193 (2) and (3).

⁵⁹ SEC, *Collective Investment Schemes Explained*. Available at [sec.gov.ng/collective-investment-scheme/...](http://sec.gov.ng/collective-investment-scheme/) Accessed on 25 February, 2024.

⁶⁰ Securities Act 2017 (as amended), s. 2

Securities Act 2005 also made provisions for Category 1 Global Business Licensing for qualified CIS corporate entities.⁶¹

Furthermore, the Minister of Finance of Mauritius, acting under section 154 of the Securities Act 2005, made the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008 to make certain the requirements and the procedures for registration and operations of corporate entities under the CIS. The procedures for registration in Mauritius can be summarized thus:

Any CIS or closed-end fund (individually a scheme or collectively schemes) wishing to be approved, registered with, recognized and/or licensed by the Commission under the Securities Act must first apply to the Commission for the authorization as a CIS or closed-end fund in the manner set out in the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008 (the CIS Regulations) and obtain a Category 1 Global Business Licence (GBL1) under the FSA.⁶²

The requirement for obtaining GBL1 in Mauritius is for foreign investors to have confidence in the CIS in Mauritius and invest appropriately. This raises the volume and quality of investment and the benefits for the investors.

These two areas discussed above make the CIS in Mauritius have a comparative advantage over the CIS in Nigeria. Global confidence in the CIS is an advantage that should be tapped into in Nigeria because of the global benefits for the investors and the country at large.

ADVANTAGES OF COLLECTIVE INVESTMENT SCHEME

The CIS has many advantages which are for the benefit of the individual investors, the managers, and the Nigerian society as a whole, some of which include: funds diversification and spread of investment risks; easy to raise capital by pooling investments with other investors; lower investment risks; lower production cost; tax efficiency; managerial expertise; and good investment opportunities.

⁶¹ Ibid.

⁶² Appleby, *Guide to CIS and Closed-end Funds in Mauritius*, 2015, 2. Available at www.applebyglobal.com/ Accessed 5 February, 2024.

Due to these numerous advantages, the CIS is a specialized investment package domiciled in the Nigerian Capital Market (NCM) for the benefit of all stakeholders especially the investors in the scheme. The NCM is the market for raising long-term finances for investment and development in Nigeria. The institutional regulator is the Securities and Exchange Commission (SEC) which is also the regulator of the NCM. The CIS benefits from its nature as a special purpose vehicle (SPV) for economic inclusion and development in Nigeria.

The designation of all the property in the CIS as trust property is better than any other business property. This means that all the business property in the CIS must be administered for the benefit of the investors as the beneficiaries. This engenders economic inclusion and development in Nigeria especially for the investors and other stakeholders in the CIS.

The mandatory prospectus is a very important document. This is because the prospectus, aside the articles of association, assists the investor to make an informed choice on whether or not to invest in the scheme.

The trust deed or the custodial agreement is another crucial document which is drawn up between the trustees or custodians and the manager for regulating the operations of the scheme. The CIS is not a one-man show where a lot of irregularities occur. It is actually a business package whose success cannot be compromised because of the transparency in operations and the trust concept in property holdings.

The investor's right of redemption is a step in the right direction and is aimed at further assurances that the investor can have access to his or her assets at any time and that the investment is safe. This engenders investors' confidence in the scheme.

The wide regulatory powers granted by the Act to the Commission also engender the investors' confidence in the scheme. Nobody or corporation can carry on the business of CIS outside the regulatory supervision of SEC and without registration with SEC.

The duties and obligations of the managers, trustees, custodians and the auditors, including their modes of appointment and qualifications for appointment, are

aimed at building confidence and making the scheme a success for the benefit of all the stakeholders.

The Investments and Securities Tribunal (IST), established under the Act, has jurisdiction, to the exclusion of every other court in Nigeria, to hear and determine any question of law or dispute arising from the administration, management and operation of the CIS. This provision removes the contentious legal issues of the CIS from the umbrella of the regular courts to a special court for speedy, specialized and satisfactory judicial administration.

The CIS has the potential, when fully operational, to engage the general public especially low-income Nigerians to be economically included by acquiring participatory interests in the scheme.

The scheme also has the long-term potential of enhancing the economic development and expanding the investment frontiers of many Nigerians in the country.

The capital-intensive nature of the scheme is further boosted by domiciling the scheme in the Nigerian Capital Market whereby needed capital can be raised easily compared to corporate bodies outside the capital market.

Domiciling the scheme in the capital market where the SEC has greater regulatory powers is an assurance to the general public and other stakeholders that the scheme is meant only for serious-minded businessmen and corporations.

The mandatory designation of specialized areas to invest the funds of the scheme is commendable as there is zero tolerance for failure. This also enhances the chances for success of the scheme.

The obligation of the manager to convene the Annual General Meeting (AGM) for the business activities of the previous business year, not later than four months into the current year, is commendable. This is so in the sense that where the manager fails to hold such a meeting at the appropriate time, the SEC can initiate investigations to protect the interests of the investors.

CHALLENGES TO THE COLLECTIVE INVESTMENT SCHEME

There is no business package or scheme that has advantages that will not also experience some challenges. This is also true of the CIS. The challenges identified in the CIS include the following:

The triple registration requirements, under the Corporate Affairs Commission (CAC), the SEC and registration of the scheme itself with the SEC may become cumbersome thereby discouraging some managers from participating in the scheme.

The definition of the CIS in the Act is very unclear for ordinary investors. This is capable of dissuading potential investors from acquiring participatory interests in the scheme and thereby being excluded from the benefits of the scheme.

There is an urgent need for the SEC to be most effective in the regulation of the scheme especially with the rise in Ponzi schemes in Nigeria to protect the interests of the investors and their investments in CIS.

CONCLUSION

The scarcity of investment funds and the difficulty in obtaining loans for investment, make the CIS a preferred investment option in Nigeria. Furthermore, the flexibility of the CIS in pooling together investment funds and its ability to bring in small stakeholders into the big investment pool make the CIS a veritable platform for economic inclusion and development in Nigeria.

The domicile of the CIS in the capital market is to ensure its success as the funds are only invested in securities of choice for profits. The regulatory acumen and wide powers of the Securities and Exchange Commission (SEC) in the regulation of CIS are for the success and sustenance of the scheme. The three types of the scheme as listed in the Act, and the others that has been approved by the Commission, have the potential to develop individual investors and different sectors of the Nigerian economy. The scheme is strategic for the realization of the diversification of the Nigerian economy which is the economic mantra of the current political administration. This is even more pertinent as the scheme also has the potential to increase the gross domestic product and attract Foreign Direct Investments (FDI) into the country.

A few comparisons with the scheme in Mauritius reveal some *lacunae* in the Nigerian system of the scheme. The Nigerian scheme can be improved *via* an Act of the National Assembly since the scheme is also a creation of an Act of the national legislature. Nigeria can actually be the sub-regional economic hub of the scheme especially where neighboring countries in the West African sub-region are factored into the scheme. In addition, the scheme is, however, not well known among the populace in Nigeria due to lack of the requisite awareness.

Recommendations have been offered for improvements in the scheme in Nigeria for the overall benefits of the individual investors, the managers and other stakeholders within the operational ambience of the scheme. It is our strong economic opinion, based on our legal analyses of the Act, that the scheme is good for Nigerians and Nigeria; and that improvements in the current operations of the scheme can make it better and further the development of the country.

RECOMMENDATIONS

The smooth operations of the scheme are anchored on a number of innovations aimed at placing the scheme at the centre of economic inclusion and development. To achieve the purpose of the scheme, especially in economic inclusion and development, we hereby make the following recommendations for further improvement in the operation of the scheme in Nigeria:

1. Public education on the existence and benefits of the scheme should be carried out by the SEC. This will introduce people who are eager to invest but are yet to find the right option to opt into the scheme, invest in it and share in the benefits.
2. There is the necessity to amend the Act in order to accommodate current global realities in the area of CIS. For example, an all-inclusive definition of CIS is necessary as there is confusion in the current definition contained in the Act. For example, the definition of CIS in Mauritius is very clear and easy to understand as it is defined as follows:

A Collective Investment Scheme:

- (a) means a scheme constituted as a company, a trust, or any other legal entity prescribed or approved by the Commission:
- (i) whose sole purpose is the collective investment of funds in a portfolio of securities, or other financial assets, real property or non-financial assets as may be approved by the Commission;
 - (ii) whose operation is based on the principle of diversification of risk;
 - (iii) that has the obligation, on request of the holder of the securities, to redeem them at their net assets value, less commission or fees; and
 - (iv) where the participants do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management; and
- (b) includes closed-end funds whose shares or units are listed on a securities exchange.⁶³

A mere glance at the above definition makes it very clear to ordinary people the import of its intent which is quite unlike the current definition of CIS in the Nigerian Act.

3. The type of CIS should be revisited so as to capture current global trends within the industry. The 2008 amendment of the CIS law in Mauritius has accommodated other forms of CIS which include Global Schemes, professional CIS, specialized CIS, expert funds, closed-end funds, and other types of specialized CISs.⁶⁴ The inclusion of the new funds further expands the CIS business environment and factors in the expertise of professionals as investors; and all these enhance the market.
4. Nigeria can perform a leading role in CIS in the West African sub-region especially under the Economic Community of West African States (ECOWAS) by listing global schemes as has been achieved in the Southern

⁶³ Appleby, *Guide to CIS and Closed-end Funds in Mauritius*, 2015, 7-11. Available at www.applebyglobal.com/ Accessed 5 February, 2024.

⁶⁴ The Securities (CISs and Closed-end Funds) Regulations 2008 (Mauritius), chapter 16.

African sub-region by Mauritius under the South African Development Commission (SADC). This is because Nigeria has the population and the market, especially in the real sector of the economy. SEC should, therefore, expand the reach of CIS to neighbouring countries, especially in the West African sub-region.

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