

## Association of Global Custodians<sup>1</sup>

### Middle East and Africa Focus Committee (“AGC ME&A”) responding to The Capital Markets Act 2016; Subject to Supplemental Comments

21 June, 2017

**Attention:**

Mrs Nasama Massinda  
Mr Charles Shirma  
Mr Kenneth Nzagi

**Email:**

omaceo@cmsa-tz.org  
cshirima@cmsa-tz.org  
knzagi@cmsa-tz.org  
Kenneth.Nzagi@CMSA.GO.TZ

We refer to our earlier correspondence of 24 April 2017 and the recent meeting on 29 March 2017 with our AGC members and your Mr Shirma and Mr Nzagi.

The AGC ME&A have now had the opportunity to consider the amendments to the Capital Markets Act 2016 (“the Act”) as circulated by the CMSA and provide the following comments that we would be interested in discussing with you further.

#### **Recommendations and Matters for Consideration**

The AGC ME&A considered its recommendations from an overarching international standards perspective. Our objective in considering the various proposals is to ensure (1) smooth facilitation of investment by cross border investors to enable them to effectively manage, transact, execute and settle; and (2) appropriate asset safekeeping-custody services and “sound practices” in respect of aspects of the global financial industry. To that end, we suggest amendments below for your consideration:

#### **a. Part V, 51(1)(d) and Part XVI (190) : Compliance with Anti–Money Laundering Act and the Prevention of Terrorism Act**

This section concerns compliance with the local Anti- Money Laundering Act and the Prevention of Terrorism Act. We would like to ensure that there is harmony as between the requirements of the international sanctions laws and local domestic regulations in Tanzania.

Cross-border investors and financial intermediaries must comply with a series of economic sanctions programs and related laws and regulations which can impose targeted or comprehensive restrictions and blocking requirements on property, clients and transactions/activity associated with designated countries, persons and entities on a global basis.

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<sup>1</sup> The Association of Global Custodians is an informal group of 12 financial institutions that provide securities safekeeping services and asset-servicing functions to primarily institutional cross-border investors worldwide. As a non-partisan advocacy organization, the Association represents members’ common interests on regulatory and market structure matters through comment letters, white papers and interaction with legislative and regulatory authorities and financial industry organizations around the globe. The members of the Association of Global Custodians are: BNP Paribas; BNY Mellon; Brown Brothers Harriman & Co; Citibank, N.A.; Deutsche Bank; HSBC Securities Services; JP Morgan; Northern Trust; RBC Investor & Treasury Services; Skandinaviska Enskilda Banken; Standard Chartered Bank; and State Street Bank and Trust Company. For more information visit [www.theagc.com](http://www.theagc.com).

Cross-border investors and their servicing intermediaries must establish adequate internal procedures and controls to ensure full compliance with these sanctions programs. Entities in breach of economic sanctions programs and laws are subject to regulatory censure and significant financial penalties within their own jurisdictions. Examples of such programs are the U.S. Sanctions Programs administered by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC), the European and other economic sanctions programs.

Embedding the principles of such international sanctions programs within a country's regulatory framework contributes to a safe and sound financial market and facilitates cross-border investment.

The AGC ME&A are very supportive of the CMSA recognising the International Organisation of Securities Commission Organisation (IOSCO) principles and objectives and these being embedded in the Act. To that end, we would appreciate the ability to understand how international sanctions programs are considered in Tanzania and to discuss with you in more detail the current level of international sanctions recognition in Tanzania and its impact on the local regulatory framework.

#### **b. Part V, 53(1): Segregation and Trust Accounts**

The requirement to protect client property by way of segregation and the requirement to (a) deposit all 'assets' received from the client in a separate trust account; and (b) segregate those assets from the 'funds' of the regulated person are captured under Part V.

We would like to note that custodians are traditionally banks and there are clear rules and limitations concerning the deposit of cash with a bank. Additionally, client money deposited at a bank is not held by the bank by way of trust. By its nature, cash on deposit at a bank is a liability of the bank and the depositor has a debtor/creditor relationship with the bank (i.e., the depositor is a creditor).

In a custody situation, the bank has a limited right to apply client funds for settlement obligations and for the payment of fees.

To this end, the AGC ME&A would welcome the opportunity to discuss with you the application of Part V, 53(1) and related provisions of the Act and how other regulations, such as the Client Money Rules under the Financial Services and Markets Act 2000 in the United Kingdom manage this element and would recommend:

- clarifying in Part V, 53(1) that client assets are segregated and identified on the books and records of the custodian as belonging to the client. This position is captured separately in Part V, 51(1)(h)).
- that amendments are made to clearly state that cash is held as Banker on the balance sheet of the custodian in this section.
- that the same terminology is used when discussing the need to segregation client assets from and proprietary assets i.e. we would suggest using the word 'assets' in this context and not 'funds'.

Additionally, we believe that the abovementioned changes to Part V, 53(1) would provide for consistency across the Act. Notably, Part V, 53 (4) (a) places the obligation on the regulated person to deposit money into a 'bank' the day after it is received.

Further, we do not believe that this proposal would be inconsistent to the objectives and principles of IOSCO.

#### **c. Part II 15 (1): Disclosure of Information of Beneficial Owners or Trustee.**

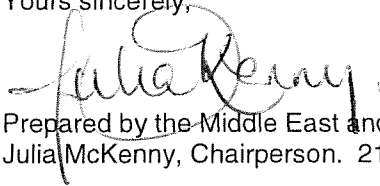
The authority can request, where it considers it necessary for investor protection, the name of beneficial owner or the person for whom the securities transaction had been performed.

The AGC ME&A would like to understand the practical applications of this section. We would request a reasonable timeframe be included, given the extent of the long custody chain in certain circumstances and the time it may take to obtain the data.

The Committee appreciates the opportunity to convey members' views to you on these important matters. Members stand ready to meet with you to discuss the issues identified and the points conveyed<sup>2</sup>. The AGC ME&A communication details are as follows:

Julia McKenny  
Standard Chartered Bank  
Chairperson of AGC ME&A  
Email: julia.mckenny@sc.com

Yours sincerely,



Prepared by the Middle East and Africa Committee,  
Julia McKenny, Chairperson. 21 June 2017

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<sup>2</sup> The Standard Bank of South Africa Limited participated with AGC member banks on the Africa-Middle East Committee in developing the text of this letter.

