THIRD SCHEDULE

(Made under Rule 44 (2))

THE MINIMUM REQUIREMENT OF THE TRUST DEED

Under regulation 12 of the CMS (CIS) Regulations, a deed of trust must contain all information and particulars specified in the Third Schedule to the Regulations.

The requirements stipulated in this schedule are in addition to requirements imposed on a management company and trustee under the law. The contents of this schedule are in addition to and not in derogation of any other duty imposed by any other law.

A management company, or its adviser, should submit an application to register and lodge the deeds in accordance with the requirements and procedures set out in Appendix III of Fourth Schedule.

1.1 Minimum Contents for a Deed

1.2 Covenants of the Management Company

A deed of a real estate investment trust should contain duties of a management company which are prescribed under these Rules and also include, but not limited to, the following covenants:

(a) It should ensure that the fund has, at all times, an appointed trustee;

(b) It should pay the trustee, within 10 days after receipt by the management company, any money which, under the deed, is payable to the trustee;
(c) It should make available, or ensure that there is made available, to the trustee such information as the trustee requires on all matters relating to the fund to which the deed relates;

(d) It should not exercise the voting rights for the units it holds in any unit holders’ meeting, regardless of the party who requested for and called the meeting and the matter or matters that are laid before unit holders;

(e) It should issue a report to the unit holders to be included in the annual report required under regulations 5 (g) of the CMS (CIS) Regulations;

(f) It should ensure that it carries on and conducts its business in a proper, diligent and efficient manner in accordance with the deed, the rules, and securities laws, and efficacious business practices within the real estate investment trust industry;

(g) It should act with due care, skills and diligence in managing the fund and effectively employ the resources and procedures necessary for the proper performance of the fund;

(h) It should observe high standards of integrity and fair dealing in managing the fund to the best and exclusive interest of the unit holders;

(i) It should not take on, lease or otherwise acquire any immovable property or any interest therein, except for the purposes of operating real estate investment trusts and those entered into in the ordinary course of business;

(j) It should ensure that all real estates acquired is insured in the name of the trustee and upon request by the trustee to produce for inspection all relevant insurance policies;

(k) It should take all necessary steps to ensure that the assets of the fund are adequately protected and properly segregated;

(l) It should keep proper accounting records and other records relevant to the fund;

(m) It should take all reasonable steps and exercise due diligence to ensure that the fund’s assets or the units of the fund are correctly valued in accordance with the deed, relevant rules, securities laws or valuation standards;

(n) It should appoint a property manager approved by the trustee to manage real estates held by the fund that possess adequate human resource with necessary qualifications, expertise, and experience in real estate management; and

(o) It should inform the trustee in writing of any acquisition or disposal of investments of the fund within one day after the acquisition or disposal was effected.

(p) In addition to paragraph (4) above, the deed of an unlisted real estate investment trust should also contain the following covenants:

(i) It should not sell any unit of the fund to which the deed relates,

(ii) other than at a price calculated in accordance with the deed;

(iii) It should, at the request of a unit holder, purchase units held by the unit holder, and the purchase price will be a price calculated in accordance with the deed; and
(iv) It should take all reasonable steps and exercise due diligence to ensure that the units of the fund are correctly priced.

1.3 Covenants of the Trustee

A deed of a real estate investment trust should contain duties of a trustee that is prescribed under the CMS (CIS) Regulations and also include, but not be limited to, the following covenants:

(a) It should ensure that the fund has, at all times, an appointed management company;

(b) It should exercise all due care, skill, diligence, and vigilance in carrying out its functions and duties, and in safeguarding the rights and interests of unit holders to which the deed relates;

(c) It should ensure that the management company does not use its position improperly in managing the fund to gain, directly or indirectly, an advantage for itself or for any other person or to cause detriment to the interests of unit holders of such a fund;

(d) It should keep or cause to be kept, proper books of account for all investments and properties of the fund;

(e) It should ensure that proper records are kept of all transactions, dividends, interests, rental, and income received and distributed for the fund to which the deed relates;

(f) It should cause the accounts referred to in (6)(d) to be audited at the end of each financial year by an auditor appointed by the trustee;

(g) It should act as the custodian of the assets of the fund and actively monitor the administration of the fund by the management company to ensure that the interest of unit holders are upheld at all times;

(h) It should retain control of the assets of the fund at all times in the event the function of custody of the investment of the fund is being delegated to any person (where applicable);

(i) It should immediately notify the Authority of any irregularity, breach of the deed, the rules or securities laws, and any other matter properly regarded by the trustee as not being in the interests of unit holders;

(j) It should at all times, through proper and adequate supervision, ensure that the fund is managed and administered by the management company in accordance with the objectives of the fund, deed, rules, and relevant laws and requirements, and acceptable and efficacious business practices within the real estate investment trust industry;

(k) It should take all reasonable steps to ensure that the fund’s assets are correctly valued and is valued in accordance with the deed, relevant rules, securities laws or valuation standards; and

(l) It should ensure that sale, repurchase, creation, and cancellation of units of the fund is in accordance with the deed, the rules and securities laws.

1.4 Joint Covenants of the Management Company and Trustee

A deed of a real estate investment trust should contain covenants of the management company and trustee including, but not be limited to, the following:

(a) The management company and the trustee should safeguard the interests of unit holders;
(b) The management company and the trustee should ensure that for the duration of the fund, there is a registered deed in force at all times;

(c) The management company or the trustee may not exercise the voting rights at any election for the appointment of a director of a corporation whose shares are so held, unless it is sanctioned by the unit holders of the fund by way of an ordinary resolution;

(d) The management company and the trustee should at all times use its best endeavours to list and maintain the listing of the fund on the Dar es Salaam Stock Exchange (DSE) and to comply with the listing requirements; and

(e) The management company, the trustee and any delegate should avoid a conflict of interest and ensure that the fund is not disadvantaged by the transaction concerned.

Other Provisions

A deed of a real estate investment trust should also contain provisions for the following:

(a) Creation of the fund or declaration of trust, which also sets out full particulars of the trust, including precise information as to the circumstances in which the money, securities, investments, and properties subject to the fund are or will be vested in that trustee, and the duties and obligations of the trustee towards;

(b) That the deed–
(i) is binding on each unit holder as if it had been a party to it and that it is bound by its provisions;
(ii) authorizes and requires the management company and the trustee to do the things required or permitted of them by the terms of the deed; and
(iii) is made and governed under the laws of United Republic of Tanzania;

(c) Appointment of a trustee to the fund;

(d) Full particulars of the fund including, but not limited to–
   i. name of the fund;
   ii. investment objective of the fund;
   iii. permitted investments, limits, and restrictions;
   iv. basis for the valuation of the assets of the fund;
   v. if the fund has a limited duration, a statement to that effect;
   vi. the fund’s distribution policy;
   vii. accounting period of the fund; and
   viii. if classes of units are issued, a provision specifying the classes, differences between the classes and rights attached to each class;

(e) Full particulars on circumstances in which, and methods by which, all or any of the investments may be varied;

(f) Full particulars on the provision to be made for investments in property that depreciates in value, including the source from which the replacement is to be made or from which the cost of replacement is to be met. If no provision is made, a statement to that fact must be clearly stated;
(g) For unlisted funds, full particulars on the circumstances in which the management company may be required to repurchase any unit which the unit holder has purchased, and the method of calculation of the repurchase price of the unit;

(h) For unlisted funds, full particulars on its pricing policy, including the method of calculation of the unit price;

(i) Full particulars on the conditions governing the transfer of any unit;

(j) Full particulars on the remuneration of the management company and trustee respectively, including dealing charges (if any) and expenses that are allowed to be paid out of the fund;

(k) Where the deed requires, or confers a right on, unit holders to enter into an agreement in connection with the fund, a provision incorporating the terms and conditions of that agreement;

(l) A declaration that unless the conditions of issue of any unit expressly provide that a certificate not be issued, a certificate should be issued by the trustee to a purchaser of any unit purchased or subscribed for, not more than two months after the issue of the unit;

(m) Circumstances under which the dealing in units can be deferred or suspended;

(n) Circumstances, procedures and processes for termination or winding up of the fund;

(o) Circumstances, procedures and processes for convening of meetings of unit holders, including the manner in which votes may be given at a meeting of unit holders;

(p) Circumstances, procedures and processes for retirement, removal and replacement of the management company and the trustee;

(q) Circumstances, procedures and processes for the appointment, retirement, removal, and replacement of the auditor for the fund;

(r) Specific provisions whereby the management company undertakes to keep and maintain an up-to-date register of unit holders and to make that register available for inspection, free of charge, to any unit holder at any time during ordinary business hours of the management company;

(s) The extent of the indemnity provided by the management company;

(t) Full particulars relating to unit holders’ rights and the extent of their liability; and

(u) Provisions governing the modification of the deed.