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Business Trusts (Amendment) Bill Introduced to Align with Regulatory Regimes for Companies and REITs

Introduction

On 12 September 2022, the Business Trusts (Amendment) Bill ("**Bill**") was tabled in Parliament for First Reading. The Bill seeks to amend the Business Trusts Act 2004 ("**BTA**") which governs the registration and regulation of business trusts ("**BTs**").

Introduced in 2004, a BT is a hybrid structure embodying the features of both a company and a trust. A key advantage of a BT is the ability to pay dividends to unitholders out of its cash profits, unlike a company which may only do so out of accounting profits. Given a BT's similarities with a company, many provisions of the BTA are based on the Companies Act 1967 ("**CA**"). From the time the BTA came into effect, there have been various amendments to the CA, as well as revisions to the real estate investment trusts ("**REITs**") regime.

In view thereof, the Monetary Authority of Singapore ("**MAS**") conducted a public consultation in November 2021 concerning proposed amendments to the BTA, mainly to align it with 2014 and 2017 amendments to the CA pursuant to the Companies (Amendment) Acts, "**CAA**", as well as the regulatory regime for REITs. The amendments to the BTA also seek to streamline and clarify regulatory requirements. The proposed Bill received general support from respondents.

In this Update, we outline certain key amendments to the BTA set out in the Bill.

Alignment with Corresponding Provisions of the CA

A few notable changes to the BTA to align with corresponding provisions of the CA broadly relate to the following main areas:

- (i) **Disclosure requirements and trust administration.** Changes include:
 - Imposing a requirement on every chief executive officer (CEO) of the trustee-manager ("**TM**") of a registered BT to disclose his or her interests in transactions or proposed transactions entered or to be entered into by the TM for or on behalf of the registered BT.
 - Introducing a new requirement for unlisted registered BTs to obtain and maintain information on beneficial ownership of their units. The Bill sets out a new Part 8A to the BTA detailing

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these requirements. For instance, among other things, the TM is required to take reasonable steps to find out and identify the registrable controllers and keep a register of the registered BT's registrable controllers.

- Facilitating the process for electronic transmission of documents and notices. The Bill introduces a new Section 93A under the BTA to allow certain notices or documents to be given, sent or served using electronic communications with the express, implied or deemed consent of the unitholder in accordance with the trust deed of the registered BT.

(ii) **Rights of unitholders and general meetings.** Changes include:

- Including arbitration under the scope of statutory derivative actions.
- Providing the court, in relation to certain applications for winding up a registered BT, with the ability to order a buy-out of the registered BT in lieu of winding up where the court finds it just and equitable to do so.
- Lowering the threshold requirements for demanding a poll at a meeting of the unitholders of a registered BT¹ from 10% to 5% of the total voting rights of all the unitholders having the right to vote at the meeting.
- Simplifying deadlines for annual general meetings and the filing of annual returns by reference to certain specified deadlines after the end of the financial year of the registered BT.

(iii) **Auditors and financial statements.** Changes include:

- Requiring a directors' statement as part of the financial statements, instead of a separate directors' report.
- Deleting replicative legislative requirements regarding independence of auditors under the BTA.
- Codifying the requirement to comply with the Accounting Standards Council (ASC) accounting standards.
- Imposing a requirement on an auditor of a listed registered BT to obtain MAS' consent for resignation.

(iv) **Governance and right of compulsory acquisitions.** Changes include:

- Imposing a prohibition on the improper use of position by an officer or an agent of the TM of a registered BT to gain an advantage for the officer, agent or any person to the detriment of the unitholders of the registered BT.
- Clarifying that, in the event of a takeover, individuals may exercise their right to compulsorily acquire units held by dissenting unitholders.
- Introducing new provisions to govern joint offers and other matters.

¹ On any question or matter other than the election of chairperson of the meeting or the adjournment of the meeting.

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Aligning with Corresponding Provisions of REIT Regulatory Regime

Lowering the threshold to remove TM of BT

BTs share various structural similarities with REITs. For instance, BTs and REITs are usually externally managed – the former by TMs and the latter by REIT managers ("RMs"). Currently, the removal of the TM of a registered BT requires approval by unitholders holding no less than three-fourths of the voting rights. To instil greater market discipline by enabling investors to hold TMs accountable, the Bill introduces provisions to lower this threshold to a simple majority (similar to the removal of a RM).

Simplifying Regulatory Requirements and Other Amendments

The Bill also introduces other amendments to reduce administrative burden, for instance:

- Permitting the passing of resolutions by written means for unlisted registered BTs in accordance with the new and/or amended provisions introduced by the Bill.
- Allowing for the deregistration of a registered BT upon notice of the completion of winding up, such that the TM need not separately apply for voluntary deregistration.

Apart from the above, the Bill also makes other clarificatory amendments, amendments to align with the provisions under the Securities and Futures Act 2001 that are relevant to the regulation of BTs and various amendments consequential to the CAAs.

Further Information

If you have any queries on the above development, please feel free to contact our team members below who will be happy to assist.

Click on the following links for more information:

- MAS media release on "[Explanatory Brief for Business Trusts \(Amendment\) Bill 2022](#)"
- Full text of [Business Trusts \(Amendment\) Bill](#)
- [Consultation Paper on Proposed Amendments to the Business Trusts Act](#)

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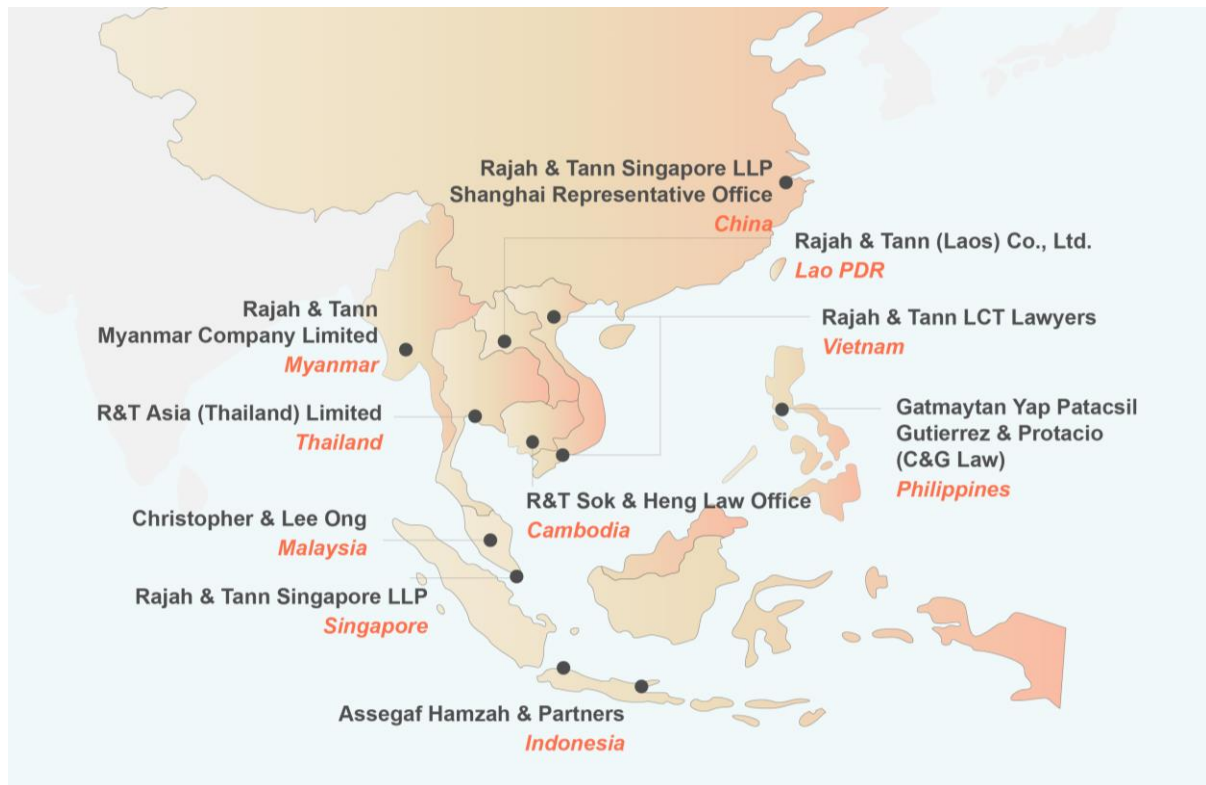
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