

CONSULTATION PAPER

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Consultation Paper on Proposed Amendments to the Business Trusts Act

MAS

Monetary Authority of Singapore

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1 Preface

1.1 The Monetary Authority of Singapore (“MAS”) is consulting on proposed amendments to the Business Trusts Act (Cap. 31A) (“BTA”).

1.2 The proposed amendments mainly seek to align the BTA with the Companies (Amendment) Act 2014, the Companies (Amendment) Act 2017 (collectively, “CAA”) and the regulatory regime for Real Estate Investment Trusts (“REITs”), and to streamline and clarify regulatory requirements in response to industry feedback.

1.3 **Annex A** contains the list of questions asked in this paper. **Annex B** contains the draft revised BTA.

1.4 MAS invites comments from interested parties on the proposals set out in this consultation paper.

Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. As such, if respondents would like:

(i) their whole submission or part of it (but not their identity), or

(ii) their identity along with their whole submission,

to be kept confidential, please expressly state so in the submission to MAS. MAS will only publish non-anonymous submissions. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.

1.5 Please submit your comments to the consultation paper by 27 December 2021 at the following link –

<https://form.gov.sg/6194a47fed7a350012c79620>

1.6 Should you encounter any technical difficulties in your submission, you may submit your comments to –

Corporate Finance and Consumer Department
Monetary Authority of Singapore
10 Shenton Way, MAS Building
Singapore 079117

2 Defined Terms

ACRA	Accounting and Corporate Regulatory Authority
ASC	Accounting Standards Council
BT	A business trust as defined under section 2 of the BTA
BTA	Business Trusts Act (Cap. 31A)
CA	Companies Act (Cap. 50)
CAA	Companies (Amendment) Act 2014 and Companies (Amendment) Act 2017
CEO	Chief Executive Officer
MAS	Monetary Authority of Singapore
REIT	A collective investment scheme — (a) that is authorised under section 286 of the SFA or recognised under section 287 of the SFA; (b) that is a trust; (c) that invests primarily in real estate and real estate-related assets specified by MAS in the Code on Collective Investment Schemes; and (d) all or any units of which are listed for quotation on an approved exchange
SFA	Securities and Futures Act (Cap. 289)

3 Introduction

Background

3.1 The business trust (“BT”) regime was developed in 2004 to establish a new type of business structure for business enterprises. It was envisaged that BTs would be a new asset class for investors and would add depth and vibrancy to Singapore’s capital markets.

3.2 A key advantage of a BT structure is the ability of a trust to pay dividends to unitholders out of its cash profits. In contrast, a company can only pay dividends out of its accounting profits (i.e. after deducting non-cash expenses such as depreciation). The BT structure is thus particularly suited to businesses with stable growth and high cash flow.

3.3 BTs are essentially a hybrid structure combining the elements of a company and a trust. Like companies, BTs operate and run business enterprises. As such, many of the provisions under the BTA are based on provisions under the Companies Act (Cap. 50) (“CA”).

Overview of proposed amendments

3.4 Since the BTA came into operation, there have been amendments made to the CA. There have also been changes made to the governance requirements in respect of REITs and to provisions under the Securities and Futures Act (Cap. 289) (“SFA”) that are relevant to the regulation of BTs.

3.5 In view of the above, as well as feedback from the industry and MAS’ experience in administering the BT regime, we propose to amend the BTA to:

- (i) Align the provisions under the BTA with the relevant provisions under the CA where appropriate, taking into account the CAA¹;
- (ii) Strengthen governance safeguards for BTs by having regard to the governance requirements imposed on REIT managers;
- (iii) Streamline certain regulatory requirements; and

¹ On 20 July 2020, ACRA conducted a policy consultation on potential amendments to the CA recommended by the Companies Act Working Group. On 2 July 2021, ACRA consulted on potential amendments to the CA and the Limited Liability Partnerships Act relating to transparency and beneficial ownership of companies and limited liability partnerships. MAS will consider the potential amendments to the CA and may propose further corresponding amendments to the BTA in the future.

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- (iv) Make clarificatory amendments, amendments to the BTA to align with provisions under the SFA of an administrative nature that are relevant to the BTA, and miscellaneous amendments that are consequential to the CAA.

4 Alignment with the Companies Act

Background

4.1 Given the similarities between BTs and companies, many of the BTA provisions were drafted with reference to the provisions under the CA. There have been amendments made to the CA pursuant to the CAA – the amendments made by the Companies (Amendment) Act 2014 were aimed at ensuring an efficient and transparent regulatory framework for businesses and investors, while those under the Companies (Amendment) Act 2017 comprised amendments to reduce compliance costs and administrative burdens, and increase transparency, with a view to improving Singapore’s business competitiveness.

4.2 It is therefore proposed that similar changes be made to the BTA, including in the following main areas:

- (i) **Disclosures and trust administration.** (a) requiring chief executive officers to disclose interests in transactions; (b) requiring unlisted registered BTs to obtain and maintain information on beneficial ownership; and (c) providing for implied or deemed consent for electronic transmission of notices and documents;
- (ii) **Unitholders’ rights and general meetings.** (a) expanding the scope of statutory derivative actions to include arbitration (in addition to court proceedings); (b) adding an option for a court to order a buy-out of the BT in addition to winding up the BT; (c) lowering thresholds for demanding a poll; and (d) simplifying deadlines for annual general meetings and filing of annual returns;
- (iii) **Auditors and financial statements.** (a) replacing the requirement for a separate directors’ report with a directors’ statement in the financial statements; (b) removing duplication of legislative requirements relating to independence of auditors in the BTA and Accountants Act by deleting the relevant provisions from the BTA; (c) codifying the requirement to comply with accounting standards made or formulated by the ASC; and

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- (d) requiring an auditor of a listed registered BT to seek MAS' consent if the auditor wishes to resign from its position; and
- (iv) **Governance and right of compulsory acquisitions.** (a) prohibiting the improper use of position by an officer or agent of the trustee-manager of a BT ("TM"); (b) clarifying that individuals (and not only corporations) are entitled to exercise the right to compulsorily acquire units held by dissenting unitholders in a takeover situation; and (c) providing new provisions to deal with joint offers among other things.
- (i) Disclosures and trust administration

Extension of disclosure requirements to the CEO

4.3 The disclosure requirements under sections 156 and 165 of the CA were extended to cover the CEO of a company. This is consistent with the disclosure requirements under Part VII of the SFA which requires the directors and the CEO of a listed company to notify the company of their shareholdings.

4.4 Section 156 of the CA provides for disclosures of interests in transactions, property and offices, which might be in conflict with duties or interests as director or CEO. Section 165 of the CA sets out the general duty to make disclosures in relation to shares, debentures, participatory interests, rights, options and contracts as necessary for compliance with section 164 of the CA².

4.5 We propose to similarly extend sections 12 and 13 of the BTA to cover disclosures of interests by the CEO of the TM.

Question 1. MAS seeks views on the proposal to extend the scope of sections 12 and 13 of the BTA to require disclosures of interests by the CEO of the TM of a BT. Please refer to page 28 to 37 of Annex B for the proposed amendments.

² Section 164 of the CA provides that a company is required to keep a register of its director's and CEO's shareholdings.

Register of beneficial ownership

4.6 We propose to introduce a requirement for TMs of unlisted registered BTs to obtain and maintain information on beneficial ownership (“**BO**”)³ of units in the unlisted registered BTs.

4.7 To enhance the transparency of BO in unlisted companies, the CA was amended in March 2017 to require unlisted companies to:

- (i) take reasonable steps to identify their controllers (i.e. persons or legal entities with “significant interest” in, or “significant control” over, the company as defined in the CA⁴) and obtain certain prescribed information on them;
- (ii) maintain registers of their controllers at prescribed places and ensure that the registers are kept updated; and
- (iii) make available such registers to the Registrar of Companies (the “**Registrar**”) and law enforcement authorities on request.

4.8 Substantial unitholders of unlisted registered BTs are currently required under the SFA⁵ to disclose BO information. However, the requirements under the SFA are different from the CA requirements mentioned in paragraph 4.7 above. Given that BTs are an alternative structure to companies for operating businesses, we propose to align the

³ A unitholder of a listed registered BT is required to disclose to the trustee-manager when it becomes a substantial unitholder (i.e. holding at least 5% interest in the voting units), any changes in percentage level, and when it ceases to be a substantial unitholder, under Part VII of the SFA. The trustee-manager is then required to disclose this information to the market. Section 4 of the SFA sets out the circumstances under which a person has an interest in units in a business trust.

⁴ The Sixteenth Schedule of the CA defines “significant interest” to include an individual or legal entity with more than 25% of shares in the company. Similarly, “significant control” is defined to include an individual or legal entity who holds the right to appoint or remove the director or equivalent persons of the company who hold a majority of the voting rights at meetings of the directors or equivalent persons on all or substantially all matters, or has the right to exercise significant influence or control over the company.

⁵ The Securities and Futures (Disclosure of Interests) (Amendment) Regulations 2018 extended the disclosure of interests requirements in Subdivision 2 of Division 1 of Part VII of the SFA to unlisted registered BTs.

BO requirements for unlisted registered BTs with the corresponding CA requirements⁶ for unlisted companies.

Question 2. MAS seeks views on the proposed new Part VIIIA of the BTA that will introduce a requirement for TMs of unlisted registered BTs to obtain and maintain information on beneficial ownership of units in the unlisted registered BTs. Please refer to page 86 to 99 of Annex B for the proposed amendments.

Electronic transmission of notices and documents

4.9 To facilitate electronic communications by companies, section 387C of the CA was introduced to provide for electronic transmission of notices and documents to shareholders with their express, implied or deemed consent in accordance with the company's constitution.

4.10 We propose to introduce a similar provision to allow for electronic transmission of notices and documents to unitholders with their express, implied or deemed consent in accordance with the trust deed of the BT, which is analogous to the constitution of a company.

4.11 For BTs which do not amend their trust deeds to provide for electronic transmission with unitholders' implied or deemed consent, sections 92 and 93 of the BTA which require express consent for publication on a website would continue to apply.

Question 3. MAS seeks views on the proposed new section 93A of the BTA that will enable electronic transmission of notices and documents to unitholders with their express, implied or deemed consent in accordance with the trust deed of the BT. Please refer to page 176 to 177 of Annex B for the proposed amendments.

Restoration of deregistered BT

4.12 We propose to introduce provisions in the BTA to enable BTs that have been deregistered under section 52 of the BTA to be restored by MAS administratively and not be limited to restoration via an application to court as currently provided under section

⁶ With the adoption of this amendment, we will be repealing the Securities and Futures (Disclosure of Interests) (Amendment) Regulations 2018. Listed registered BTs will continue to be subject to the BO requirements under the SFA.

52(4) of the BTA. The proposed provisions are similar to the CA provisions⁷ that allow the Registrar, as a result of its review, to restore companies that have been struck-off if no application has been or is being made to the court to restore the companies.

4.13 An application to the Registrar to administratively restore a company's name to the register under section 344D of the CA may be made whether or not the company has in consequence been dissolved. Applicants are required to complete an application form, supported with documents, for ACRA's review. If the application for restoration is approved, the restoration takes effect as from the date that the notice to the applicant of the Registrar's decision is sent⁸, and the effect of a restoration is that the company is regarded as having continued in existence as if its name had not been struck off the register⁹.

4.14 As section 52 of the BTA requires a BT to be wound up before MAS may deregister it (unlike section 344 of the CA) an application to reinstate a BT that has been deregistered would in all cases be in respect of BTs that have been wound up. Hence, MAS is considering the practicalities of administrative restoration in this context.

4.15 We also propose to introduce a provision to clarify the procedures regarding objections to the deregistration of a BT under section 52 of the BTA. Such clarifications include who may object to the deregistration and how the objection is to be submitted.

Question 4. MAS seeks views on the proposed new sections 52C to 52G of the BTA that will enable a BT that has been deregistered under section 52 of the BTA to be restored by MAS administratively and on the practicalities of administrative restoration of a BT that has been wound up and deregistered. Please refer to page 84 to 86 of Annex B for the proposed amendments.

Question 5. MAS seeks views on the proposed new section 52B of the BTA to clarify the procedures regarding objections to the deregistration of a BT under section 52 of the BTA. Please refer to page 83 of Annex B for the proposed amendments.

⁷ Sections 344 and 344D to 344H of the CA.

⁸ Section 344E(2)(a) of the CA.

⁹ Section 344G(1) of the CA.

(ii) Unitholders' rights and general meetings

Extension of the scope of statutory derivative actions to include arbitration

4.16 In recognition of the increasing use of arbitration as an alternative dispute resolution mechanism, the scope of the statutory derivative action in section 216A of the CA was expanded to allow a complainant to apply to the court for leave to commence an arbitration in the name and on behalf of the company or intervene in an arbitration to which the company is a party for the purpose of prosecuting, defending or discontinuing the arbitration on behalf of the company.

4.17 We propose to align section 42 of the BTA with the amended section 216A of the CA, on which it is based, to allow a complainant to apply to the court for leave to bring an action or arbitration in the name and on behalf of all the unitholders of the BT as a whole or intervene in an action or arbitration to which the TM, on behalf of the BT, is a party for the purpose of prosecuting, defending or discontinuing the action or arbitration on behalf of the TM.

Question 6. MAS seeks views on the proposed expansion of section 42 of the BTA to allow a complainant to apply to the court for leave to start an arbitration in the name and on behalf of all the unitholders of the BT as a whole or intervene in an arbitration to which the TM, on behalf of the BT, is a party for the purpose of prosecuting, defending or discontinuing the arbitration on behalf of the TM. Please refer to page 70 of Annex B for the proposed amendments.

Buy-out remedy where court finds just and equitable

4.18 We propose to amend section 46 of the BTA to provide the court hearing a winding-up application the option to order a buy-out by either one or more other unitholder(s), or by the TM on behalf of the BT, where it is just and equitable to do so, instead of ordering the BT to be wound up. This is in line with the amendments to section 254¹⁰ of the CA on which section 46 of the BTA is based.

4.19 Similar to the amendments to the CA, this amendment will provide the court with an additional remedy which it may invoke at its discretion. As the court will have control

¹⁰ Section 254 of the CA has since been repealed and re-enacted in section 125 of the Insolvency, Restructuring and Dissolution Act 2018.

over the situations under which such an order will be made, and there are legal costs involved in bringing the application to court, these remedies will help safeguard against speculative litigation and prevent abuse by minority shareholders.

Question 7. MAS seeks views on the proposed amendments to section 46 of the BTA to provide the court hearing a winding-up application the option to order a buy-out by either one or more other unitholder(s), or by the TM on behalf of the BT, where it is just and equitable to do so, instead of ordering the BT to be wound up. Please refer to page 73 to 74 of Annex B for the proposed amendments.

Lower threshold for eligibility to demand a poll

4.20 In line with section 178 of the CA, we propose to amend section 56¹¹ of the BTA to lower the threshold for demanding a poll from 10% to 5% of total voting rights of unitholders present at the meeting.

4.21 The rationale for the lowering of the threshold in section 178(1)(b)(ii) of the CA was that there was no compelling reason to maintain the 10% threshold, if shareholders holding less than 10% of the voting rights have the power to call for a poll under the alternative 5-member threshold under section 178(b)(i) of the CA. A lowered threshold of 5% would also be consistent with the 5% threshold adopted for the purposes of notification of substantial shareholdings under the CA.

Question 8. MAS seeks views on the proposed amendments to section 56 of the BTA to lower the threshold for demanding a poll from 10% to 5% of total voting rights of unitholders present at the meeting. Please refer to page 103 of Annex B for the proposed amendments.

Simplify deadlines for annual general meetings and filing of annual returns

4.22 To provide greater clarity for companies and reduce the compliance burden, the CAA simplified the deadlines for companies to hold annual general meetings (“AGMs”) and file annual returns (“ARs”) by aligning the timelines with the company’s financial year end (“FYE”). Listed companies are required to hold their AGMs within 4 months after their FYE and file their ARs within 5 months after their FYE. Non-listed companies are required

¹¹ Section 56 of the BTA stipulates that the trust deed of a BT must provide unitholders with the right to demand a poll at a meeting.

to hold their AGMs within 6 months after their FYE and file their ARs within 7 months after their FYE.

4.23 We propose to similarly amend the equivalent BT provisions to simplify deadlines for TMs to hold AGMs and file annual returns by applying the stipulated timeframes under the CA for listed and non-listed companies, to listed and non-listed registered BTs, respectively.

Question 9. MAS seeks views on the proposal to amend sections 53 and 74 of the BTA to simplify deadlines for TMs to hold AGMs and file annual returns. Please refer to page 99 to 100 and page 121 to 122 of Annex B for the proposed amendments.

(iii) Auditors and financial statements

Replace the requirement for a separate directors' report

4.24 The CAA removed the requirement for a separate directors' report to streamline the number of documents which are required to accompany a set of financial statements. The directors' statement required under section 201(16) of the CA was enhanced¹² to include the disclosures previously required under the directors' report.

4.25 We propose to similarly replace the requirement for a separate directors' report with a directors' statement which accompanies the financial statements of a registered BT. The directors' statement will be enhanced to include the disclosures currently required under the directors' report.

Question 10. MAS seeks views on the proposal to replace the requirement for a separate directors' report in section 76 of the BTA with a directors' statement which accompanies the financial statements of the BT. Please refer to page 131 to 134 of Annex B for the proposed amendments.

¹² The required disclosures are in the new Twelfth Schedule of the CA.

Remove duplicative requirements relating to independence of auditors in the BTA and Accountants Act by deleting relevant provisions from the BTA

4.26 The CAA consolidated the provisions relating to the independence of auditors in section 10 of the CA (“**Auditors’ Independence Requirements**”) in the rules under the Accountants Act, to reduce duplicative requirements. The Auditors’ Independence Requirements are now in the Code of Professional Conduct and Ethics for Public Accountants and Accounting Entities in the Fourth Schedule of the Accountants (Public Accountants) Rules (“**Accountants Rules**”).

4.27 As the Auditors’ Independence Requirements apply to public accountants who audit BTs as well, we propose to align section 81 of the BTA with the amended section 10 of the CA, on which it was based.

Question 11. MAS seeks views on the proposal to align section 81 of the BTA with the amended section 10 of the CA. Please refer to page 144 to 147 of Annex B for the proposed amendments.

Codify requirement to prepare financial statements in accordance with accounting standards made or formulated by the ASC

4.28 MAS announced on 19 January 2017 that registered BTs would be required to adopt the Singapore financial reporting framework that is identical to the International Financial Reporting Standards, in relation to financial statements for annual periods beginning on or after 1 January 2018.¹³ On 29 December 2017, the ASC announced that the new Singapore financial reporting framework would be known as the Singapore Financial Reporting Standards (International) (“**SFRS(I)**”).¹⁴ Concurrently, MAS issued the Guidelines on Accounts of Registered Business Trusts (BTA 10-G01) to provide guidance on the term “true and fair view” in section 76 of the BTA, in view of the adoption of SFRS(I)s by registered BTs.¹⁵

¹³ <https://www.mas.gov.sg/news/media-releases/2017/financial-reporting-for-business-trusts-and-collective-investment-schemes>

¹⁴ [https://www.asc.gov.sg/news-events/local-news/archives/2017/accounting-standards-council-issues-new-singapore-financial-reporting-standards-\(international\)](https://www.asc.gov.sg/news-events/local-news/archives/2017/accounting-standards-council-issues-new-singapore-financial-reporting-standards-(international))

¹⁵ <https://www.mas.gov.sg/regulation/guidelines/guidelines-on-accounts-of-registered-business-trusts-bta-10-g01>

4.29 We propose to amend Part X of the BTA to codify the requirement for registered BTs to prepare financial statements and consolidated financial statements in accordance with such accounting standards as made or formulated by the ASC and align provisions on financial statements in the BTA with those in the CA as appropriate.

Question 12. MAS seeks views on the proposed amendments to Part X of the BTA to codify the requirement for registered BTs to prepare financial statements and consolidated financial statements in accordance with such accounting standards as made or formulated by the ASC and align provisions on financial statements in the BTA with those in the CA as appropriate. Please refer to 125 to 170 of Annex B for the proposed amendments.

Consent for resignation of auditors of listed registered BTs

4.30 We propose to introduce a requirement for an auditor of a listed registered BT to seek MAS' consent if the auditor wishes to resign from its position. This is in line with section 205AB of CA which requires an auditor of a "public-interest company" (which includes a listed company) to seek ACRA's consent before resigning.

4.31 The premature resignation of a listed company's auditors before the end of an engagement would be of interest to regulators. Section 205AB allows ACRA to be involved in the resignation of the auditor of a listed company and in so doing, protect such company from being unfairly left without an auditor. Through the approval process, ACRA may also be alerted to any potential breaches of the CA and the Accountants Act. MAS is of the view that this rationale equally applies to a BT listed on an approved exchange in Singapore and its subsidiaries, and therefore proposes to impose a similar requirement on auditors of listed registered BTs and auditors of their subsidiaries.

4.32 MAS also proposes to allow an auditor of an unlisted registered BT (which is not a subsidiary of a listed registered BT) to resign upon giving notice to the trustee-manager in writing, in alignment with section 205AA of the CA.

Question 13. MAS seeks views on the proposed new sections 82B to 82F to impose a requirement for auditors of listed registered BTs and subsidiaries of listed registered BTs to seek MAS' consent before resigning and to align such provisions with those in the CA as appropriate. Please refer to page 151 to 157 of Annex B for the proposed amendments.

Question 14. MAS also seeks views on the proposed new section 82A in respect of auditors of unlisted registered BTs, aligned with section 205AA of the CA. Please refer to page 151 of Annex B for the proposed amendments.

(iv) Governance and right of compulsory acquisitions

Prohibition on improper use of position by an officer or agent of the TM

4.33 The prohibition in section 157(2) of the CA on the improper use of any information acquired by an officer or agent of the company by virtue of his position was extended to include the improper use by an officer or agent of a company of his position to gain an advantage for himself or for any other person or to cause detriment to the company.

4.34 We propose to align section 11(2) of the BTA with the amended s157(2) of the CA by extending the prohibition of the improper use of information by an officer or agent of the TM to include the prohibition of the improper use of his position as an officer or agent.

4.35 Similarly, we propose to extend section 10(3) of the BTA, which prohibits the improper use of information by the TM, to include the improper use of its position as a TM as well.

Question 15. MAS seeks views on the proposal to align section 11(2) of the BTA with the amendment to s157(2) of the CA and extend the prohibition to include the improper use by an officer or agent of his position as an officer or agent. Please refer to page 27 of Annex B for the proposed amendments.

Question 16. MAS seeks views on the proposal to extend section 10(3) of the BTA to cover the improper use by the TM of its position as a TM. Please refer to page 26 of Annex B for the proposed amendments.

Individual offerors in compulsory acquisitions

4.36 Section 215 of the CA relates to the power to acquire shares of shareholders dissenting from a scheme or contract involving the transfer of all of the shares or all of the shares in any particular class in a company that has been approved by the holders of not less than 90% of the total number of shares or shares of that class, as the case may be. Section 215 of the CA initially applied to the transfer of shares in one company to “another company or corporation”, but was extended by the CAA to include individual offerors to allow this section to be invoked by natural persons.

4.37 Currently, section 40A of the BTA only applies to the transfer of units in a registered BT to a trustee of another trust (including the trustee-manager of another BT

and the trustee of a REIT), or a corporation. MAS is of the view that the rationale to include individual offerors similarly applies to compulsory acquisitions of BTs.

Question 17. MAS seeks views on the proposal to extend the scope of the right of compulsory acquisition under section 40A of the BTA to include individual offerors. Please refer to page 60 of Annex B for the proposed amendments.

Extend the scope of the right of compulsory acquisition to include derivatives of units in a BT

4.38 Section 215 of the CA was also amended to extend the scope of the right of compulsory acquisition to include units of a company's shares as the provision was meant to allow an offeror to take up remaining minority positions in order to complete the takeover of a company.

4.39 MAS is of the view that this rationale applies to compulsory acquisitions of BTs and we propose to extend the scope of the right of compulsory acquisition under section 40A of the BTA to include derivatives of units in a BT which are the BT-equivalent to units of shares in the CA.

Question 18. MAS seeks views on the proposal to extend the scope of the right of compulsory acquisition under section 40A of the BTA to include derivatives of units in a BT. Please refer to page 65 to 66 of Annex B for the proposed amendments.

Joint offers for compulsory acquisitions

4.40 The CAA introduced a provision similar to section 987 of the UK Companies Act 2006, which deals with joint offers, as a new section 215AA of the CA. The intention was to make it clear that where a takeover offer is made jointly by more than one person, all the joint offerors would have the same legal obligations.

4.41 We propose to introduce a similar new provision to deal with joint offers for compulsory acquisitions of BTs.

Question 19. MAS seeks views on the proposed new section 40AA of the BTA which provides for joint offers for compulsory acquisitions of BTs. Please refer to 66 to 67 of Annex B for the proposed amendments.

5 Strengthening governance safeguards for BTs

Background

5.1 BTs are structurally similar to REITs in that both are trusts constituted by a trust deed and are not separate legal entities. Both are usually externally managed where BTs are managed by TMs and REITs are managed by REIT managers (“**RMs**”).

5.2 Given the structural similarities between BTs and REITs, we propose to strengthen the governance requirements for BTs by taking reference from the governance requirements imposed on REITs.

Percentage of voting rights required to remove TM

5.3 Currently, section 20 of the BTA provides that a TM of a BT can only be removed if unitholders holding not less than three-fourths of the voting rights approve a resolution to remove the TM.

5.4 In line with the lower removal thresholds for RMs, we propose to amend section 20 of the BTA to lower the removal threshold in the BTA to a simple majority. This will help to instil greater market discipline by allowing investors to hold TMs accountable for their performance. This means a TM can be removed so long as a resolution to remove the TM is passed by unitholders who hold in total more than 50% of the voting rights of all the unitholders of the BT present and voting at a general meeting.

Question 20. MAS seeks views on the proposal to amend section 20 of the BTA to lower the percentage of voting rights required to remove a TM of a BT to a majority of the voting rights of all the unitholders of the BT present and voting at a general meeting, with no unitholders being disenfranchised. Please refer to page 41 of Annex B for the proposed amendments.

6 Amendments to streamline regulatory requirements

Background

6.1 From our experience in administering the BT regime, we note that certain types of BTs typically apply for certain specific exemptions. To reduce the regulatory burden on the industry and for more efficient administration of the BT regime, we propose to modify certain requirements for such BTs. The key amendments are set out in the ensuing paragraphs.

Provision for passing of resolutions by written means

6.2 To facilitate ease of corporate decision-making and to reduce regulatory burden, we propose to introduce provisions in the BTA to provide for the passing of resolutions by written means.

6.3 This is to allow a TM of a BT with a limited number of unitholders, such as unlisted BTs, to obtain unitholders' approval via written resolutions. We are of the view that the proposal would not be prejudicial to unitholders as it is not practicable for the TM of a BT with a large number of unitholders to pass resolutions by written means.

6.4 We propose to introduce provisions in the BTA to align with sections 184A to 184F of the CA, including the provision of the same approval thresholds to pass written resolutions¹⁶.

Question 21. MAS seeks views on the proposed new sections 63A to 63G to provide for the passing of resolutions by written means. Please refer to page 110 to 115 of Annex B for the proposed amendments.

Provision for deregistration of wound-up BTs

6.5 Currently, when a registered BT is wound up pursuant to section 45(1) of the BTA, the TM would need to separately apply for voluntary deregistration under section 51 of the BTA.

6.6 We propose to introduce a new section 52A of the BTA to provide that MAS may proceed to deregister a BT upon receipt of the notice of completion of its winding up from the TM under section 47(3) or the liquidator under section 48(5) of the BTA. With this amendment, the TM will not need to apply separately for voluntary deregistration.

Question 22. MAS seeks views on the proposed new section 52A of the BTA to provide that MAS may proceed to deregister a BT upon notice of its winding up without the need for the TM to apply for voluntary deregistration. Please refer to page 83 of Annex B for the proposed amendments.

¹⁶ Under the CA, the passing of a special resolution by written means would require approval by shareholders holding at least 75% of the total voting rights who have a right to vote on that resolution in a general meeting. Similarly, the passing of an ordinary resolution by written means would require approval by shareholders holding at least a majority of the total voting rights.

7 Clarificatory amendments, amendments to align with SFA provisions and amendments consequential to the CAA

7.1 We propose to make certain (i) clarificatory amendments to the BTA (ii) amendments to the BTA to align with provisions under the SFA of an administrative nature that are relevant to the BTA and (iii) miscellaneous amendments to the BTA that are consequential to the CAA.

7.2 These amendments include –

- (i) consequential additions to section 2 of the BTA resulting from the CAA;
- (ii) amendments to paragraph 3 of the Schedule of the BTA to clarify that a BT that has received approval-in-principle to be listed on an approved exchange does not fall within paragraph 3 as a type of trust that is not regarded as a BT for the purposes of the Act;
- (iii) amendments to section 104 of the BTA to align with section 326(10) of the SFA so that when MAS makes an application to the court for the grant of an injunction or interim injunction, or for the making of an order or interim order under that section, the court shall not require MAS to give any undertaking as to damages;
- (iv) amendments to section 107 of the BTA to align with section 329(3) of the SFA so that a person who lodges with MAS any document by electronic means shall use due care to ensure that the document is not false or misleading in any material particular;
- (v) amendments to section 109 of the BTA to align with sections 331(3A) and section 331(5) of the SFA, so that when an offence committed by a limited liability partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner or manager of the limited liability partnership, the partner or manager would also be guilty of the offence;
- (vi) amendments to section 112 and section 114 of the BTA to align with section 337 and section 341 of the SFA to clarify that MAS may vary conditions or restrictions to an exemption and that regulations may contain provisions of a savings or transitional nature.

Question 23. MAS seeks views on the proposed (i) clarificatory amendments, (ii) amendments to align with amendments to the SFA that are relevant to BTs and (iii) miscellaneous amendments that are consequential to the CAA. Please refer to page 13 to 18, 185, 187, 188 to 189, 190 to 191, 192 and 193, of Annex B for the proposed amendments.

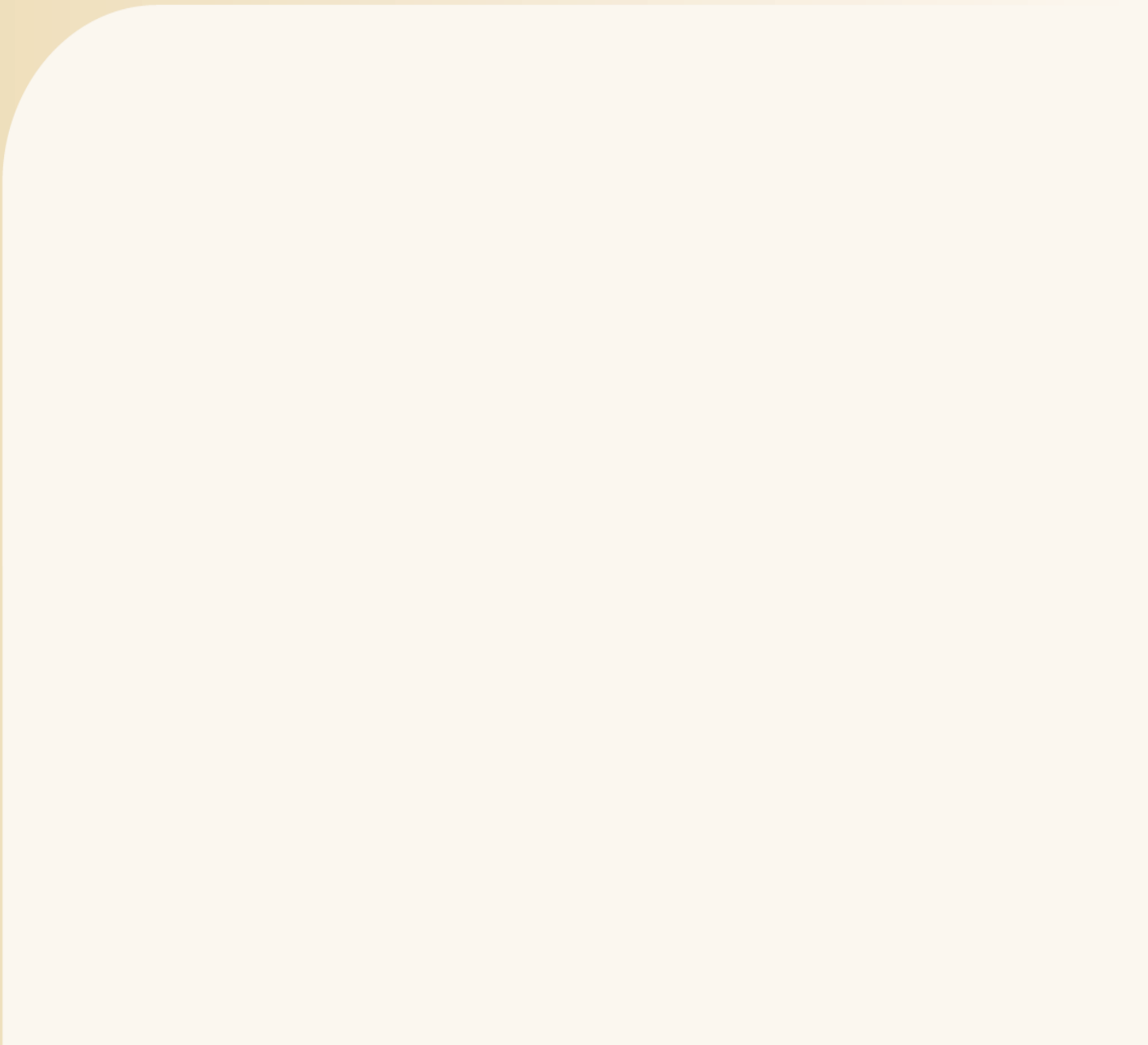
Annex A

LIST OF QUESTIONS

- Question 1.** MAS seeks views on the proposal to extend the scope of sections 12 and 13 of the BTA to require disclosures of interests by the CEO of the TM of a BT. Please refer to page 28 to 37 of Annex B for the proposed amendments.7
- Question 2.** MAS seeks views on the proposed new Part VIIIA of the BTA that will introduce a requirement for TMs of unlisted registered BTs to obtain and maintain information on beneficial ownership of units in the unlisted registered BTs. Please refer to page 86 to 99 of Annex B for the proposed amendments.....9
- Question 3.** MAS seeks views on the proposed new section 93A of the BTA that will enable electronic transmission of notices and documents to unitholders with their express, implied or deemed consent in accordance with the trust deed of the BT. Please refer to page 176 to 177 of Annex B for the proposed amendments.9
- Question 4.** MAS seeks views on the proposed new sections 52C to 52G of the BTA that will enable a BT that has been deregistered under section 52 of the BTA to be restored by MAS administratively and on the practicalities of administrative restoration of a BT that has been wound up and deregistered. Please refer to page 84 to 86 of Annex B for the proposed amendments.....10
- Question 5.** MAS seeks views on the proposed new section 52B of the BTA to clarify the procedures regarding objections to the deregistration of a BT under section 52 of the BTA. Please refer to page 83 of Annex B for the proposed amendments.10
- Question 6.** MAS seeks views on the proposed expansion of section 42 of the BTA to allow a complainant to apply to the court for leave to start an arbitration in the name and on behalf of all the unitholders of the BT as a whole or intervene in an arbitration to which the TM, on behalf of the BT, is a party for the purpose of prosecuting, defending or discontinuing the arbitration on behalf of the TM. Please refer to page 70 of Annex B for the proposed amendments.11
- Question 7.** MAS seeks views on the proposed amendments to section 46 of the BTA to provide the court hearing a winding-up application the option to order a buy-out by either one or more other unitholder(s), or by the TM on behalf of the BT, where it is just and equitable to do so, instead of ordering the BT to be wound up. Please refer to page 73 to 74 of Annex B for the proposed amendments.12

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- Question 8.** MAS seeks views on the proposed amendments to section 56 of the BTA to lower the threshold for demanding a poll from 10% to 5% of total voting rights of unitholders present at the meeting. Please refer to page 103 of Annex B for the proposed amendments. 12
- Question 9.** MAS seeks views on the proposal to amend sections 53 and 74 of the BTA to simplify deadlines for TMs to hold AGMs and file annual returns. Please refer to page 99 to 100 and page 121 to 122 of Annex B for the proposed amendments..... 13
- Question 10.** MAS seeks views on the proposal to replace the requirement for a separate directors’ report in section 76 of the BTA with a directors’ statement which accompanies the financial statements of the BT. Please refer to page 131 to 134 of Annex B for the proposed amendments..... 13
- Question 11.** MAS seeks views on the proposal to align section 81 of the BTA with the amended section 10 of the CA. Please refer to page 144 to 147 of Annex B for the proposed amendments. 14
- Question 12.** MAS seeks views on the proposed amendments to Part X of the BTA to codify the requirement for registered BTs to prepare financial statements and consolidated financial statements in accordance with such accounting standards as made or formulated by the ASC and align provisions on financial statements in the BTA with those in the CA as appropriate. Please refer to 125 to 170 of Annex B for the proposed amendments. 15
- Question 13.** MAS seeks views on the proposed new sections 82B to 82F to impose a requirement for auditors of listed registered BTs and subsidiaries of listed registered BTs to seek MAS’ consent before resigning and to align such provisions with those in the CA as appropriate. Please refer to page 151 to 157 of Annex B for the proposed amendments. 15
- Question 14.** MAS also seeks views on the proposed new section 82A in respect of auditors of unlisted registered BTs, aligned with section 205AA of the CA. Please refer to page 151 of Annex B for the proposed amendments. 15
- Question 15.** MAS seeks views on the proposal to align section 11(2) of the BTA with the amendment to s157(2) of the CA and extend the prohibition to include the improper use by an officer or agent of his position as an officer or agent. Please refer to page 27 of Annex B for the proposed amendments. 16
- Question 16.** MAS seeks views on the proposal to extend section 10(3) of the BTA to cover the improper use by the TM of its position as a TM. Please refer to page 26 of Annex B for the proposed amendments. 16

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- Question 17.** MAS seeks views on the proposal to extend the scope of the right of compulsory acquisition under section 40A of the BTA to include individual offerors. Please refer to page 60 of Annex B for the proposed amendments.17
- Question 18.** MAS seeks views on the proposal to extend the scope of the right of compulsory acquisition under section 40A of the BTA to include derivatives of units in a BT. Please refer to page 65 to 66 of Annex B for the proposed amendments.17
- Question 19.** MAS seeks views on the proposed new section 40AA of the BTA which provides for joint offers for compulsory acquisitions of BTs. Please refer to 66 to 67 of Annex B for the proposed amendments.17
- Question 20.** MAS seeks views on the proposal to amend section 20 of the BTA to lower the percentage of voting rights required to remove a TM of a BT to a majority of the voting rights of all the unitholders of the BT present and voting at a general meeting, with no unitholders being disenfranchised. Please refer to page 41 of Annex B for the proposed amendments.18
- Question 21.** MAS seeks views on the proposed new sections 63A to 63G to provide for the passing of resolutions by written means. Please refer to page 110 to 115 of Annex B for the proposed amendments.....19
- Question 22.** MAS seeks views on the proposed new section 52A of the BTA to provide that MAS may proceed to deregister a BT upon notice of its winding up without the need for the TM to apply for voluntary deregistration. Please refer to page 83 of Annex B for the proposed amendments.19
- Question 23.** MAS seeks views on the proposed (i) clarificatory amendments, (ii) amendments to align with amendments to the SFA that are relevant to BTs and (iii) miscellaneous amendments that are consequential to the CAA. Please refer to page 13 to 18, 185, 187, 188 to 189, 190 to 191, 192 and 193, of Annex B for the proposed amendments.21



Monetary Authority of Singapore