

**RESPONSE TO  
FEEDBACK RECEIVED**

September 2022

**Consultation Paper on  
Proposed Amendments  
to the Business Trusts  
Act**

**MAS**

Monetary Authority of Singapore

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## **1 Preface**

1.1 On 19 November 2021, MAS issued a consultation paper on proposed amendments to the Business Trusts Act 2004 (“**BTA**”). The proposed amendments mainly sought 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.

1.2 The consultation closed on 27 December 2021. MAS thanks all respondents for their feedback. The list of respondents is in Annex A. Full submissions are published in Annex B.

1.3 MAS has carefully considered the feedback and where appropriate, has incorporated them into the proposed Amendment Bill, which can be accessed the following link:

- [Business Trusts \(Amendment\) Bill 2022](#)

1.4 Comments that are of wider interest, together with MAS’ responses, are set out below.

## **2 Alignment with the Companies Act**

2.1 MAS had proposed to align the provisions under the BTA with the relevant provisions under the Companies Act 1967 (“**CA**”) where appropriate, taking into account the CAA. Various amendments were proposed, including the following main areas:

- (i) Disclosures and trust administration;
- (ii) Unitholders’ rights and general meetings;
- (iii) Auditors and financial statements; and
- (iv) Governance and right of compulsory acquisitions.

2.2 The respondents were generally supportive of the above-mentioned amendments. Accordingly, we will proceed with these amendments.

2.3 We have also set out below MAS’ views on two specific matters: (i) penalties for contraventions of requirements to maintain beneficial ownership information, and (ii) administrative restoration of deregistered BTs.

### Disclosures and trust administration

*(i) Penalties for contraventions of requirements to maintain beneficial ownership information*

2.4 MAS had proposed to introduce requirements for TMs of unlisted registered BTs to obtain and maintain information on beneficial ownership (“BO”) of units in the unlisted registered BTs. This was to align the BTA requirements for unlisted registered BTs with the corresponding CA requirements for unlisted companies.

2.5 One respondent asked why the penalties proposed for breaches under the new BO requirements were generally substantially higher than those under the equivalent CA provisions. For example, the proposed new sections of the BTA provide for fines not exceeding S\$25,000 while the equivalent provisions under the CA provide for fines not exceeding S\$5,000.

### MAS’ Response

2.6 The proposed penalties are in line with the penalties for breaches under other comparable provisions in the BTA. For example, section 69 of the BTA, which requires a TM to keep and maintain a register of unitholders of the BT, provides for a fine not exceeding S\$25,000. MAS further notes that ACRA has proposed to increase the maximum fine for the equivalent BO provisions under the CA from S\$5,000 to S\$20,000 in its public consultation on proposals to enhance the transparency of BO of companies and LLPs<sup>1</sup>.

*(ii) Administrative restoration of deregistered BT*

2.7 Currently, BTs that have been wound up<sup>2</sup> and deregistered by MAS under section 52 of the BTA may only have its registration reinstated by order of the court under section 52(4) of the BTA. MAS had considered amending the BTA to empower MAS to administratively reinstate a BT that had been deregistered under section 52, without the need for a court application. MAS has decided not to proceed with this amendment, given

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<sup>1</sup> ACRA’s proposals to enhance transparency of beneficial ownership of companies and LLPs can be found at <https://www.acra.gov.sg/legislation/legislative-reform/listing-of-consultation-papers/public-consultation-on-proposed-legislative-amendments-relating-to-data-digitalisation-and-corporate-transparency-for-a-trusted-and-vibrant-business-environment-in-singapore>. The public consultation closed on 28 January 2022.

<sup>2</sup> Section 52 of the BTA requires a BT to be wound up before MAS may deregister it.

that the relevant applicant would still have to apply to court to reconstitute the wound up BT before its *registration* can be reinstated (just as it would under section 52(4)), as MAS does not have the power to reconstitute a BT.

### **3 Strengthening governance safeguards for BTs**

#### Percentage of voting rights required to remove trustee-manager

3.1 MAS had proposed to lower the percentage of voting rights required to remove a trustee-manager (“**TM**”) from at least three-fourths to a simple majority of the voting rights of all the unitholders of the business trust (“**BT**”) present and voting at a general meeting. The proposal would align the voting percentage required to remove a TM with that for a REIT manager, which is appropriate given the structural similarities between a BT and a REIT. This is intended to help instil greater market discipline by allowing investors to hold TMs accountable for their performance.

3.2 Two respondents commented that the proposed change could reduce the attractiveness of the BT structure and impact the continuity of operations of BTs. They were of the view that the current removal threshold better balances the need to guard against the frivolous removal of a TM with the need to provide sufficient rights to unitholders to remove an inept or poorly functioning TM and noted that underperforming TMs can be held accountable via other measures, such as through adjustment of the performance-based component of the TMs’ fees.

#### MAS’ Response

3.3 MAS notes the feedback on the potential negative impact of the proposed amendment to the attractiveness of the BT structure and on existing BTs. However, the REIT industry’s experience with the simple majority threshold, which has been in place since 2005, suggests that concerns about frivolous attempts to remove the managers have not been borne out in practice. As for concerns relating to the continuity of the operations of the BT in the event of the removal of the TM, MAS notes that these can be addressed through existing provisions of the BTA<sup>3</sup> which require a TM to remain in its role until a replacement TM is appointed.

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<sup>3</sup> Section 18(1) of the BTA provides that a person named as the TM of a registered BT in the register shall remain the TM or temporary TM, as the case may be, until another person is appointed (a)

3.4 We will therefore proceed with the proposed amendment to lower the percentage of voting rights required to remove a TM to a simple majority.

#### **4 Additional feedback**

##### Requirement to publish declarations of distributions to unitholders in newspapers

4.1 Section 33 of the BTA allows a TM to declare a distribution of profits, income or other payments or returns to the unitholders of the BT out of the trust property of the BT, provided that the board of the TM issues a written statement that the board is satisfied that immediately after making the distribution, the TM will be able to fulfil, from the trust property of the BT, the liabilities of the BT as they fall due.

4.2 Section 33(2)(a) of the BTA requires the TM to send to all unitholders a copy of the board's written statement and a written statement disclosing the distribution policy and the measures and assumptions for deriving the amount available to be distributed. In addition, section 33(2)(b) of the BTA requires the TM to give notice of the declaration of distribution to unitholders in one or more local newspapers.

4.3 We have received feedback that section 33(2)(b) of the BTA should be removed since TMs are already required to send copies of the written statements to unitholders in accordance with section 33(2)(a) of the BTA, and for registered BTs which are listed on SGX, such notices would be published on SGXNet. There is also no similar requirement for companies or REITs.

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by the unitholders of the registered BT to be the TM of the registered BT; or (b) by the court under section 21(1) to be the temporary TM of the registered BT, and such appointment shall be effective from the date stated in the resolution of the unitholders or court order as the effective date of the appointment of the TM or temporary TM, as the case may be.

MAS' Response

4.4 MAS has included a provision in the BT(A) Bill amendments to give MAS the flexibility to prescribe, by way of regulations, the modes by which public notifications of a BT's distributions must be made. MAS will consult on the appropriate modes of publication to be prescribed in regulations at a later date.

**MONETARY AUTHORITY OF SINGAPORE**

30 September 2022

**Annex A**

**LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON  
PROPOSED AMENDMENTS TO THE BUSINESS TRUSTS ACT**

1. Allen & Gledhill LLP, which requested for confidentiality of submission
2. M&C REIT Management Limited, which requested for confidentiality of submission
3. NetLink NBN Trust

Please refer to Annex B for the submissions.



**Annex B**

**SUBMISSIONS FROM RESPONDENTS TO THE CONSULTATION PAPER ON  
PROPOSED AMENDMENTS TO THE BUSINESS TRUSTS ACT**

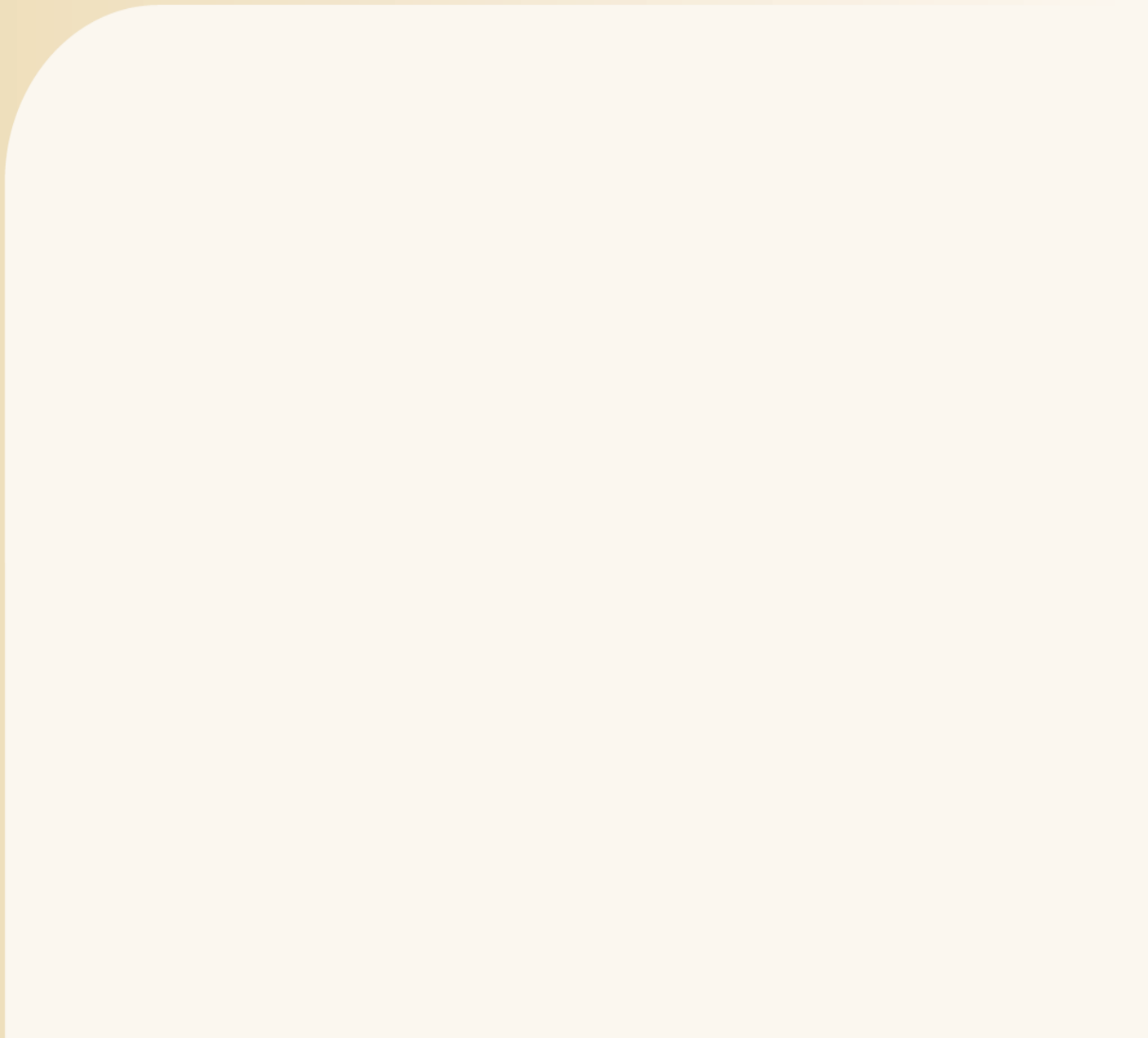
*Note: The table below only includes submissions for which respondents did not request confidentiality.*

<b>S/N</b>	<b>Respondent</b>	<b>Responses from respondent</b>
1	NetLink NBN Trust	<p><b>Question 1:</b> We support the amendments as they will hold trustee-managers to the same standard as other companies under section 156 of the Companies Act (“CA”).</p> <p><b>Question 2:</b> We generally support the amendments as they provide clarity on how the requirements set out in Part XIA of the Companies Act would apply to registered business trusts.</p> <p><b>Question 3:</b> We support the insertion of the proposed section 93A as these amendments will help business trusts to reduce costs, increase efficiency and improve environmental friendliness. For a listed business trust which has a broad and dynamic investor base, these amendments will remove the administrative burdens imposed by the current sections 92 and 93 – for example, entering into a written agreement with each unitholder for the use of website publication. In view of the proposed section 93A, we would like to also suggest amending section 33(2) so that the trustee-manager of a listed business trust can make available the written statements mentioned in section 33(2)(a) on a website, without having to send copies of the written statements to the individual unitholders. In the case of listed business trusts, compliance with section 33(2) requires a duplication of effort, since listed business trusts are already required to make similar announcements under the SGX rules. Our proposed amendments would further lighten the administrative load borne by trustee-managers when carrying out the distribution of profits, and also reduces the expenses that a listed business trust needs to incur.</p>

	<p><b>Question 4:</b> We have no objections to the proposed amendments as they are consistent with the corresponding provisions under the Companies Act.</p> <p><b>Question 5:</b> We have no objections to the proposed amendments.</p> <p><b>Question 6:</b> We have no objections to the proposed amendments.</p> <p><b>Question 7:</b> We have no objections to the proposed amendments.</p> <p><b>Question 8:</b> We have no objections to the proposed amendments.</p> <p><b>Question 9:</b> We have no objections to the proposed amendments.</p> <p><b>Question 10:</b> We have no objections to the proposed amendments.</p> <p><b>Question 11:</b> We have no objections to the proposed amendments.</p> <p><b>Question 12:</b> We have no objections to the proposed amendments.</p> <p><b>Question 13:</b> We have no objections to the proposed amendments.</p> <p><b>Question 14:</b> We have no objections to the proposed amendments.</p> <p><b>Question 15:</b> We have no objections to the proposed amendments.</p> <p><b>Question 16:</b> We have no objections to the proposed amendments.</p> <p><b>Question 17:</b> We have no objections to the proposed amendments.</p>
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