

Why Singapore business trusts are proving popular with sponsors

The recent initial public offerings ("**IPO**") and listing on the Singapore Stock Exchange ("**SGX**") of Religare Healthcare Trust, Ascendas Hospitality Trust and Far East Hospitality Trust, as well as the reported IPOs of others being planned, mark an on-going interest in Singapore business trusts ("**Business Trusts**").

This relative rise in popularity demonstrates that sponsors are reconsidering Business Trusts as potential capital-raising vehicles. Sponsors based in and outside Singapore can and continue to use such vehicles to invest in a wide variety of assets such as infrastructure, property (located in and outside Singapore), hospitality, shipping and aviation (examples are set out in the tables below). Singapore is the only jurisdiction in Asia that currently has a regulatory framework for Business Trusts under the Business Trusts Act (Chapter 31A of Singapore) ("**BTA**").¹

In a typical Business Trust structure, a sponsor company ("**Sponsor**") transfers its cash-generating assets into the Business Trust, which pays for the assets using proceeds raised from the IPO of its units. Sponsors which utilise a Business Trust structure can retain effective control of the assets and derive additional income from the management of the assets after the transfer.

This client briefing describes the basic characteristics and structures of a Business Trust, highlighting key structural issues faced by sponsors, and discusses important considerations in structuring a Business Trust in the Singapore context.

What is a Business Trust?

A Business Trust is created through a trust deed that sets forth, among other things, its governance and investment mandate. A Business Trust is managed by a trustee-manager who is the legal owner and manager of the Business Trust's assets. The trustee-manager receives fees for its services. Most importantly, a Business Trust, unlike a company, is permitted to make distributions from its cash-flows (instead of profits), provided it remains solvent.

Basic Structure of a Business Trust

The structure of a Business Trust depends on the type of assets which it holds, the location of those assets, as well as tax, legal and commercial considerations. The following steps are typically involved in the IPO of units in a Business Trust:

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¹ Source: A Tale of Two Cities: Business Trust Listings and Capital Markets in Singapore and Hong Kong, Norman P. Ho. Hong Kong approved the business trust form on June 2, 2011 in connection with a proposed spin-off of PCCW's telecommunications business into a business trust, but the applicable legal framework for listed-business trusts is still pending legislation. Malaysia is also in the process of establishing a regulatory framework governing business trusts.

- **Incorporation of the Trustee-Manager and Constitution of the Business Trust.** A Sponsor incorporates a company in Singapore which will serve as a trustee-manager that constitutes and manages the Business Trust. Typically, a trustee-manager is a wholly-owned (direct or indirect) subsidiary of the Sponsor. Subsequently, the trustee-manager constitutes the Business Trust by executing a trust deed.
- **Acquisition of Assets by Business Trust.** The trustee-manager offers the units in the Business Trust in an IPO and uses the proceeds to acquire the assets from the Sponsor. Typically, the trustee-manager issues the units in the Business Trust to the Sponsor as partial consideration for such acquisition. It is not uncommon for Sponsors to retain a 25% to 40% interest in the Business Trust immediately following the IPO.

Advantages of a Business Trust

A Business Trust offers numerous advantages to its Sponsors and investors, primarily: (i) an opportunity for Sponsors to extract value from cash-flow generating assets while maintaining control over the transferred assets, (ii) derive additional income from the management of the transferred assets, (iii) flexibility in structuring, and (iv) providing investors an attractive, tax-free return on investment as compared to traditional corporations in Singapore.

- **Extract Value from Cash-Flow Generating Assets.** Often times Sponsors in need of capital have cash-flow generating assets "trapped" within their organisational structure. Sponsors may realise value by concurrently transferring these "trapped" assets into a Business Trust and offering the units in the Business Trust to investors. As such, Business Trusts create liquidity from otherwise illiquid assets and are most suited for Sponsors in capital-intensive businesses such as infrastructure, real estate, aviation and shipping, which tend to have cash-generating assets.
- **Continued Control over the Trust Assets.** Sponsors typically own the trustee-managers and retain controlling unitholdings in the Business Trusts, which affords them sizable influence over the trustee-manager managing the affairs of the Business Trust. Further, to remove the trustee-manager established by a Sponsor requires approval of more than 75% of the unitholders of the Business Trust. However, in all the nine SGX-listed Business Trusts, Sponsors typically retained greater than 25% of the units following the IPO.
- **Additional Income from Management of Trust Assets.** Sponsors can derive additional income from the fees charged by trustee-managers for managing the Trust Assets. Such fees typically comprise a fixed fee and an incentive fee tied to the performance of the Business Trust. Sponsors can also derive income from the provision of additional services (such as operational and maintenance services as well as support services) to the Trust Assets.
- **Flexibility in Structuring.** There are very few restrictions imposed on a Business Trust. There are no restrictions on the type of business activities, on the extent of assets under development, on the leverage/gearing of the Business Trust and on the amount of distributions by the Business Trust.
- **Attractive, Tax-Free Return on Investment.** Investors are attracted to the yields offered by Business Trusts. The trustee-manager has a right to declare distributions from the cash-flows (instead of profits) of the Business Trust. Businesses with depressed net profits from deferred revenues or accounting losses from non-cash expenses, such as depreciation and amortisation, are able to make attractive and stable distributions. Additionally, distributions from a Business Trust are tax-free in Singapore and are not subject to Singapore withholding tax. This tax exemption is applicable to all unitholders regardless of their nationality, identity or tax residence status.

Considerations in Using a Business Trust Structure

While a Business Trust can be an effective capital-raising vehicle, Sponsors should consider the following factors before taking advantage of this structure:

- **Governance of Business Trust.** To address any potential conflict of duties of the trustee-manager to its shareholders and to the unitholders of the Business Trust, the BTA imposes higher corporate governance standards on Business Trusts than on traditional corporations listed on the SGX. The trustee-manager is required, among other things, to have

a majority of independent directors on its board. Additionally, transactions between the Business Trust and its Sponsor are generally structured at arm's length and directors who have an interest in the transaction usually abstain from voting to approve such a transaction as a matter of good corporate governance.

- **Sponsor Support of Business Trust.** To manage potential conflicts of interest between Sponsor and the Business Trust, the Sponsor typically agrees to a non-compete agreement in favour of the Business Trust and may also grant a right of first refusal to the Business Trust on future purchases or sales of assets.
- **Listing Criteria of the SGX.** Effective 10 August 2012, an applicant seeking to list on the SGX will need to demonstrate an operating track record and meet the SGX's requirements either in relation to profitability or market capitalisation at the time of IPO. A Business Trust that does not satisfy these requirements will have to show that it will be able to generate operating revenue immediately upon listing, and will have to have a market capitalisation of no less than S\$300 million at the time of IPO.
- **Sponsor Liability under the Laws of Singapore.** The trustee-manager and its directors have prospectus liability under the Securities and Futures Act of Singapore (the "SFA"). No such liability is imposed on the Sponsor by the SFA, unless the Sponsor is selling its units in the Business Trust as part of the public offering, or has made, and consented to including, any statement in the prospectus which is false or misleading. The Sponsor, its directors and its managers, however, remain subject to civil liability arising from any false or misleading statements made by them in the prospectus. Also, the Sponsor is liable to the Business Trust for contractual claims arising from any breach of contract in relation to the transfer of its assets into the Business Trust, and the Sponsor's directors appointed to the board of the trustee-manager remain subject to prospectus liability.

Business Trusts Reportedly Being Planned

Type	Name	Type of Assets
Aviation Business Trusts	Altitude Aircraft Leasing Trust (sponsor: GE Capital Aviation Services) ²	Aviation
	Investec Aircraft Leasing Trust (sponsor: Investec Bank plc) ³	Aviation
Infrastructure Business Trust	Global Telecommunications Infrastructure Trust (sponsor: Reliance Communications) ⁴	Sub-Sea Telecommunication
Retail Business Trust	Croesus Retail Trust (sponsor: Croesus Group) ⁵	Retail Properties

² Source: [The Wall Street Journal \(Asia\), "Altitude Aircraft Looks to Launch Singapore IPO" – 31 August 2012](#)

³ Source: [International Financing Review, "Investec plans Asia's first aviation trust" – 7-13 April 2012](#)

⁴ Source: [Reuters, "India's Reliance Communications shelves \\$1 billion Singapore IPO" - 20 July 2012](#) (This IPO has been postponed).

⁵ Source: [Bloomberg, "Croesus Said to Seek \\$633 Million in Singapore Property Offering" – 4 July 2012](#)

Business Trusts Listed on the SGX

Type	Name	Type of Assets
Property Business Trusts	Ascendas India Trust	Business Park
	Indiabulls Property Trust	Mixed Commercial
	Treasury China Trust	Mixed Commercial and Office
	Perennial China Retail Trust	Retail
Infrastructure Business Trusts	CitySpring Infrastructure Trust	Gas, Water and Electricity
	K-Green Trust	Water and Power Generation
	Hutchison Port Holdings Trust	Shipping Ports
Shipping Business Trusts	Rickmers Maritime	Marine Transportation
	First Ship Lease Trust	Marine Transportation
Stapled Hospitality Trusts	CDL Hospitality Trust	Hotels
	Ascendas Hospitality Trust	Hotels
	Far East Hospitality Trust	Hotels and Service Residences
Healthcare Business Trust	Religare Healthcare Trust	Hospitals

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