ANDERSON MŌRI & TOMOTSUNE

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Contents

In our first newsletter for 2022, we take a look at the anticipated amendments to the Business Trust Act. These amendments will be of interest to anyone who is managing a business trust and/or who frequently deals with business trust entities. Also, on a lighter note given the recent festive season, we also briefly discuss the duty of care that some of us might owe to our four-legged friends.

I. Proposed Amendments to Business Trusts Act

Henry Tan, Attorney at law

1. Background

The business trust ("**BT**") regime was developed in 2004 to establish a new type of business structure for business enterprises. A BT is a hybrid structure combining the elements of a company and a trust. BTs operate and run business enterprises in much the same way as companies, and many of the provisions under the Business Trusts Act (Chapter 31A of Singapore) (the "**BTA**") are accordingly based on the provisions of the Companies Act (Chapter 50 of Singapore) (the "**CA**").

However, the CA has undergone amendments since the establishment of the BT regime. Governance requirements in respect of real estate investment trusts ("**REITs**") and provisions under the Securities and Futures Act (Chapter 289 of Singapore) (the "**SFA**") that are relevant to the regulation of BTs have also seen changes. Because of these developments, and in consideration of feedback received, the Monetary Authority of Singapore (the "**MAS**") is proposing amendments to the BTA, and has issued a consultation paper on 19 November 2021 (the "**Consultation Paper**") to seek feedback on its proposal.

2. Outline of Proposed Amendments

The MAS is proposing amendments to the BTA to (i) make it in line with the relevant provisions in the CA, taking into account the Companies (Amendment) Act 2014 and Companies (Amendment) Act 2017 (collectively, the "**CAA**"); (ii) strengthen governance safeguards for BTs; (iii) streamline certain regulatory requirements in respect of BTs; and (iv) make clarificatory amendments, align the BTA with certain administrative provisions of the SFA that are relevant to the BTA and make miscellaneous amendments that are consequential to the CAA. These are broadly outlined below.

(i) Alignment with the Companies Act

Given the similarities between BTs and companies, many of the provisions in the BTA were drafted with reference to the CA provisions. As amendments have been made to the CA pursuant to the CAA to ensure an efficient and transparent regulatory framework for businesses and investors, and reduce compliance costs and administrative burdens, the MAS is proposing similar changes to the BTA. These changes will mainly target the following areas:

(a) disclosures and trust administration – requiring (a) the chief executive officer of a BT to disclose his or her interests in the transactions of the BT; (b) unlisted registered BTs to obtain and maintain information on beneficial ownership in the BT; and (c) BTs to provide for implied or deemed consent for electronic transmission of notices and documents;

(b) unitholders' rights and general meetings – (a) expanding the scope of statutory derivative actions to include arbitration (in addition to court proceedings); (b) enabling courts to order a buy-out of a BT (in addition to the winding up a BT); (c) lowering the threshold for demanding a poll in the unitholders' meeting of a BT; and (d) simplifying the deadlines for annual general meetings and filing of annual returns for BTs;

(c) auditors and financial statements – (a) replacing the requirement for a separate directors' report with a directors' statement in a BT's financial statements; (b) removing requirements in the BTA in respect of auditor independence to avoid duplication with the Accountants Act (Chapter 2 of Singapore); (c) codifying the requirement to comply with the accounting standards of the Accounting Standards Council; and (d) requiring an auditor of a listed registered BT to seek the MAS' consent to resign from its position; and

(d) governance and right of compulsory acquisitions – (a) prohibiting an officer or agent of the trustee-manager of a BT ("**TM**") from improperly using his or her position; (b) clarifying that individuals (in addition to corporations) are entitled to exercise their right to compulsorily acquire the BT units of dissenting unitholders in a takeover; and (c) providing new provisions in the BTA to deal with joint offers of takeovers.

(ii) Strengthening Governance Safeguards for BTs

BTs are structurally similar to REITs in that both are trusts constituted by a trust deed and are not separate legal entities. Additionally, both are usually externally-managed.

Given these structural similarities, the MAS is proposing to strengthen the governance of BTs by referencing the governance requirements for REITs.

Currently, under the BTA, a TM of a BT can only be removed by the approval of unitholders holding not less than three-fourths of the voting rights of all the unitholders of the BT present and voting at a general meeting. In line with the lower removal thresholds for REIT managers, the BTA is proposed to be amended to lower the removal threshold in the BTA to a simple majority.

(iii) Streamlining of Regulatory Requirements

As certain types of BTs typically apply for certain specific exemptions, the MAS is proposing to modify certain requirements for such BTs to reduce regulatory burdens and to enable more efficient administration of the BT regime.

Passing of resolution by written means – To facilitate corporate decision-making and reduce regulatory burdens, the BTA is proposed to be revised to permit the passing of written resolutions. This will allow a TM of a BT with a limited number of unitholders, such as unlisted BTs, to obtain unitholders' approval via written resolutions. The BTA is therefore proposed to be amended for alignment with the relevant provisions in CA for the passing of written resolutions.

Deregistration of wound-up BTs – Currently, when a registered BT is wound up pursuant to section 45(1) of the BTA, the TM is required to separately apply for voluntary deregistration of the BT under section 51 of the BTA. A new section 52A is proposed to be inserted into the BTA to enable the MAS to proceed to deregister a BT upon receipt of the notice of completion of the BT's winding up from the TM under section 47(3) or the liquidator under section 48(5) of the BTA. This will obviate the need for the TM to apply separately for voluntary deregistration of the BT.

(iv) Other Amendments

Certain (i) clarificatory amendments to the BTA; (ii) amendments to the BTA for alignment with the relevant administrative provisions of the SFA; and (iii) miscellaneous amendments to the BTA that are consequential to the CAA have also been proposed in the Consultation Paper.

3. Further Information

The Consultation Paper and annexures thereto can be found at the following link:

https://www.mas.gov.sg/publications/consultations/2021/consultation-paper-on-proposed-amendments-to-the-business-trusts-act

Comments to the Consultation Paper can be submitted at the following link: https://form.gov.sg/6194a47fed7a350012c79620

All comments have to be submitted by 27 December 2021.

II. The Duty of Care Owed by Animal/Pet Owners

Varsha Krishnan, Advocate & Solicitor

This article intends to address the much-overlooked issue of the duty of care owed by pet and/or animal owners for their pets/animals (for ease, they shall be collectively referred to as "animal(s)" from here on out).In particular, the question that requires answering is whether when an individual sustains injuries from an encounter with such an animal, whether the animal's owner would be found liable for such damage and injuries. At present, there is a dearth of cases in Singapore that touch on this issue. However, there are certain cases in the UK that are applicable to us, and given that the legal system is based on the English common law, it is possible to gain insight into these issues by looking into UK cases.

Source: Matthias Zomer via pexels

A common factual scenario is traversed in the case of *Christopher Whippey v Andrew Michael Jones* [2009] EWCA Civ 452. In this case, Mr. Jones was running on the road when he had an encounter with Mr. Whippey's Great Dane, which was unleashed. Due to the encounter, Mr. Jones fell down a slope to

a river and broke his ankle. Mr. Jones then brought a claim against Mr. Whippey for his injuries, and claimed that he was liable for the same and had been negligent in his handling of the Great Dane. The Court found that Mr. Whippey was not. In coming to this conclusion, the Court pointed out that it was important to ask, in the circumstances, whether the damage that had been caused to Mr. Jones was one that would have occurred unless Mr. Whippey had taken precautions to prevent it (i.e. by leashing the Great Dane). The Court found that this was not the case, as the Great Dane was not prone to inflicting physical harm on other people in general and had a genteel nature. Therefore, the Court held that there was no reason why Mr. Whippey, as a reasonable dog handler in the park, should therefore have anticipated that if the Great Dane was unleashed, physical harm would result from the Great Dane approaching an adult in the vicinity.

Another factual scenario is whether animal owners would be found liable for injuries caused if they were to escape from the places where they were kept. This was the issue dealt with in the case of *Mirvahedy v Henley and another* [2003] UKHL 16, where a car collided with a horse that was in a panic having escaped from the field in which it was being kept. Given the collision, the driver of the car sustained injuries and sued the keeper of the horses for negligence. In this case, the Court found the keeper liable for damage and injury, given that they were the keeper of the animal, and that the owner took risks in keeping the horse knowing full-well that if the horse should escape it could cause damage and injury to others. The Court also placed emphasis on the fact that it was normal for horses to cause damage when they were in such a state of panic, which was a risk that the keeper of the animal would have been well aware of but chose to risk in any case.

Each factual scenario that arises when dealing with the issue of duty of care with regard to pet handling and owner will always be different. Even in the two cases discussed above, different provisions of the UK Animals Act were relied on, and this was due to the varying nature of the animal involved as well as the circumstances surrounding the injury. While there is no Singaporean equivalent to the UK Animals Act, the same is still very much applicable to our legal system, given that our legal systems draws upon UK cases for insight especially when there are no guiding precedents locally. Given the same, it is important that owners take sufficient care in ensuring that any damage that could occur by their pets and/or animals is mitigated and to insure against the same, to the best of their abilities. For example, if an individual were to keep a pet or animal in the house, and is aware that they were likely to cause injury should they escape, the pet / animal owner takes the risk of being found liable for the same should they escape. However, if such damage occurs outside the usual nature and handling of the pet or animal, it is likely that pet or animal owners shall not be found liable for the same.

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- This newsletter is published as a general service to clients and friends and does not constitute legal advice. Should you wish to receive further information, please contact the following editors:

  Mariko Nagata, Attorney-at-law（mariko.nagata@amt-law.com）
  Leon Ryan, Attorney-at-law（leon.ryan@amt-law.com）
  David Ong, Advocate & Solicitor (david.ong@amt-law.com)
  Adalia Ong, Advocate & Solicitor (adalia.ong@amt-law.com)

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