

A Primer on Real Estate Investment Trusts, Business Trusts and Stapled Trusts in Singapore

Client Alert | September 2, 2021

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1.		INTRODUCTION
1.1		Singapore has become an increasingly popular destination for trust listings in the recent years. Real estate investment trusts ("REITs"), business trusts ("BTs") and stapled trusts are some of the more popular vehicles that property players opt for to tap capital on Singapore Exchange Securities Trading Limited (the "SGX-ST").
1.2		This primer provides an overview of the structure of such vehicles, the main regulations regulating them, the process to getting listed on the SGX-ST as well as the various ways of acquiring control of these vehicles post-listing. This primer also explores the lessons to be learnt from the controversy surrounding Eagle Hospitality Trust ("EHT") and the failed merger between ESR REIT and Sabana REIT.
2.		STRUCTURE
2.1		REIT
	2.1.1	A REIT may generally be described as a trust that invests primarily in real estate and real estate-related assets with the view to generating income for its unitholders.
	2.1.2	It is constituted pursuant to a trust deed entered into between the REIT manager and the REIT trustee.
	2.1.3	The REIT manager manages the assets of the REIT while the REIT trustee holds the assets on behalf of the unitholders and generally helps to safeguard the interests of the unitholders.
	2.1.4	REITs are popular with investors as the income from the assets (after deducting

trust expenses) is distributed to the unitholders at regular intervals. A REIT which distributes at least 90% of its taxable income to its unitholders in the same year in which the income is derived can enjoy tax transparency treatment under the Income Tax Act, Chapter 134 of Singapore. It is also not uncommon for REITs to pledge to distribute the entire of its annual distributable income in the initial period post-listing.

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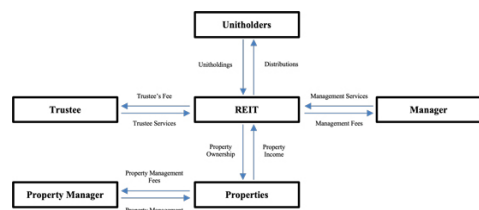
The typical roles in a REIT structure are as follows:

- (a) **REIT Manager:** The REIT manager manages the assets of the REIT and is responsible for the overall strategic direction of the REIT, including asset acquisitions and divestments as well as capital management. In return, the REIT manager charges a management fee which typically comprises a base fee and a performance fee. The REIT manager would typically also be entitled to an acquisition fee, divestment fee and development management fee;
- (b) **Property Manager:** The property manager

manages and maintains the properties of the REIT in return for a property management fee;

- (c) **REIT Trustee:** The REIT trustee holds the assets of the REIT on behalf of the unitholders and generally ensures that the REIT complies with applicable rules and regulations. In return, the REIT trustee is paid a trustee's fee; and

- (d) **Sponsor:** The sponsor is the party that injects the initial portfolio of assets into the REIT and will continue to provide the REIT with a pipeline of assets moving forward. Typically, the sponsor also holds a substantial stake in the REIT and/or the REIT manager.



Typical REIT Structure

2.1.6 SGX-ST-listed REITs typically adopt an external management model where the REIT manager is owned by the sponsor of the REIT. This is in contrast to an internal management model (adopted by a majority of REITs in the United States of America) where the REIT manager is instead owned by the REIT itself. Proponents of an internal management model in Singapore argue that an internal management model avoids conflicts of interest and lowers the fees payable to the REIT manager (which ultimately translates to better returns for unitholders). The success of the Hong Kong-listed internally managed Link REIT, Asia's largest REIT in terms of market capitalization, may bear testament to this. However, whether an internal management model takes off in Singapore remains to be seen. Singapore investors could well prefer sponsor participation due to the various advantages that a sponsor can bring, such as marketability, expertise, support and pipeline of assets.

2.2 BT

2.2.1 A BT is a trust that can generally engage in any type of business activity, including the management of real estate assets or the management or operation of a business.

2.2.2 It is constituted pursuant to a trust deed entered into by the trustee-manager, a single entity that has the dual responsibility of safeguarding

- the interests of the unitholders of the BT and managing the business conducted by the BT.
- 2.2.3 BTs, unlike companies, can make distributions out of operating cash flows (instead of profits). They suit businesses which involve high initial capital expenditures with stable operating cash flows, such as real estate assets.
- 2.2.4 Compared to REITs, BTs are also more lightly regulated and may therefore be preferred for their flexibility. Property BTs often also pledge to provide REIT-like distributions to the unitholders.
- 2.2.5 The typical roles in a BT structure are as follows:
- (a) **Trustee-Manager:** The trustee-manager is both the trustee and the manager of the BT. As trustee, it holds the assets of the BT on behalf of the unitholders and helps to safeguard the interests of the unitholders. As manager, it manages the business and strategic direction of the BT. In return, the trustee-manager is paid a trustee's fee as well as a management fee, which typically comprises a base fee and a performance fee. The trustee

e-manager would typically also be entitled to an acquisition fee, divestment fee and development management fee;

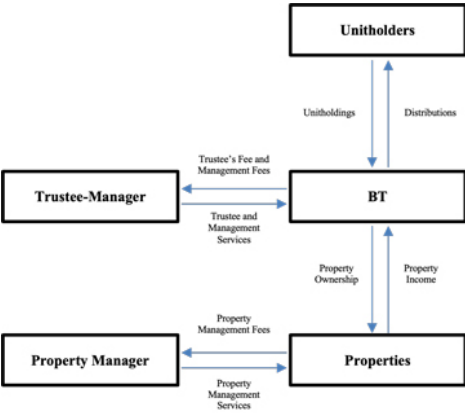
(b)

Property

Manager: In the case of a property BT, a property manager is typically engaged to manage and maintain the properties of the BT in return for a property management fee; and

(c)

Sponsor: The sponsor is the party that injects the initial portfolio of assets into the BT and will continue to provide the BT with a pipeline of assets moving forward. Typically, the sponsor also holds a substantial stake in the BT and/or the trustee-manager.



Typical Property BT Structure
Stapled Trust

2.3

2.3.1

A stapled trust on the SGX-ST typically comprises a REIT and a BT. Pursuant to a stapling deed, units of the REIT and units of the BT are stapled together and cannot be traded separately. The REIT and the BT would continue to exist as separate structures, but the stapled securities would trade as one counter and share the same investor base.

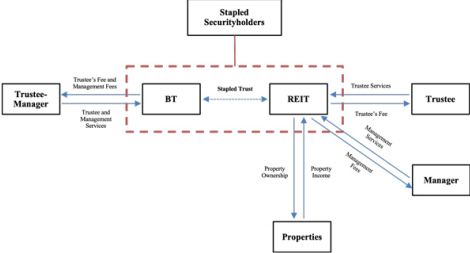
2.3.2

A stapled trust structure may be preferred when an issuer wishes to bundle two distinct (but related) businesses into a single tradeable counter. Such stapled trust structure is commonly adopted for hospitality assets which provide both a passive (through the receipt of rental income from the lease of such assets) and an active (through the management and operation of such assets) income stream.

2.3.3

In such cases, the REIT will be constituted to hold the income-producing real estate assets and the BT will be constituted to either (a) be the master lessee of the real estate assets who will manage and operate these assets or (b) remain dormant and only step in as a “master lessee of last resort” to manage and operate these assets when there are no other suitable master lessees

- 2.3.4
- 2.3.5
- to be found. The presence of a BT also offers flexibility for the stapled trust to undertake certain hospitality and hospitality-related development projects, acquisitions and investments which may not be suitable for the REIT. Investors who value the business and income diversification may therefore find such a model attractive. The typical roles in a REIT and a BT have been discussed above.



Typical Stapled Trust Structure
REGULATIONS

3.
- 3.1

- REIT
- 3.1.1
- 3.1.2
- 3.1.3
- A REIT is regulated as a collective investment scheme under the Securities and Futures Act, Chapter 289 of Singapore (the “SFA”).
- The REIT, the REIT manager and the REIT trustee must comply with the Code on Collective Investment Schemes issued by the Monetary Authority of Singapore (the “MAS”, and such Code on Collective Investment Schemes issued by the MAS, the “CIS Code”), which prescribes the many distinctive characteristics of a REIT.
- For example, Appendix 6 of the CIS Code requires a REIT to, among others:
- (a) enshrine

- certain provisions in the trust deed constituting the REIT (such as the right of unitholders to remove the REIT manager by way of a resolution passed by a simple majority of unitholders present and voting at a general meeting, with no participant being disenfranchised);
- (b) generally have at least 75% of its deposited property invested in income-producing real estate;
- (c) not derive more than 10% of its revenue from sources other than (i) rental payments from the tenants of the real estate held by the REIT or (ii) interest, dividends and other similar payments

- (d) from special purpose vehicles and other permissible investments of the REIT; and not have a gearing ratio exceeding 50% (before 1 January 2022) and 45% (on or after 1 January 2022, except that such gearing ratio may exceed 45% (up to a maximum of 50%) if the REIT has a minimum adjusted interest coverage ratio of 2.5 times after taking into account the interest payment obligations arising from the new borrowings).
- 3.1.4 A REIT manager is required to hold a capital markets services licence (“**CMS Licence**”) for REIT management before it can engage in the regulated activity of REIT management.
- 3.1.5 The Guidelines to All Holders of a Capital

		Markets Services Licence for Real Estate Investment Trust Management (Guideline No. SFA04-G07) set out further guidance relating to, among others, minimum licensing criteria and corporate governance arrangements.
	3.1.6	CMS Licence holders would also need to abide by the Securities and Futures (Licensing and Conduct of Business) Regulations, which set out, among others, requirements relating to licensing, representative notification and key appointments.
	3.1.7	A REIT trustee must be an approved trustee under the SFA. Further requirements of an approved trustee are set out under the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 (the "SF(OI)(CIS)R").
3.2	BT	
	3.2.1	Pursuant to the SFA, a Singapore- constituted BT must be registered by the MAS before its units can be offered to the public. The Business Trusts Act, Chapter 31A of Singapore (the "BTA"), and the Business Trusts Regulations (the "BTR") are the chief regulations governing registered BTs.
	3.2.2	Among others, the BTA and the BTR contain provisions regulating:

- (a) the responsibilities, powers and liabilities of a trustee-manager (including corporate governance arrangements);
- (b) the contents of the trust deed constituting a registered BT;
- (c) the rights of unitholders (such as the right to remove the trustee-manager by way of a resolution passed by unitholders holding in the aggregate not less than three-fourths of the voting rights of all the unitholders who, being entitled to do so, vote in person or where proxies are allowed, by proxy present at a meeting of the unitholders); and
- (d) the winding up of a registered

- BT.
- 3.2.3

The BTA stipulates certain requirements of a trustee-manager. For example, only a company (not being an exempt private company) shall act as trustee-manager of a registered BT. The trustee-manager of a registered BT shall also not carry on any business other than the management and operation of the registered BT as its trustee-manager.
- 3.2.4

The regulations governing a collective investment scheme do not apply to a collective investment scheme that is also a registered BT.
- 3.2.5

Accordingly, BTs can offer issuers with considerably more flexibility as compared to REITs since BTs have no statutory gearing limit and can engage in a wider scope of business activity.

3.3

Stapled Trust

- 3.3.1

A stapled trust that comprises a REIT and a BT would be subject to the respective rules and regulations set out above.
- 3.3.2

Under Appendix 6 of the CIS Code, a REIT may only staple its units with the securities of an entity with active operations only if that entity (a) has business operations that are in the same industry segment as the REIT or (b) is operating a business or providing a service that is ancillary to the assets held by the REIT.

4.

LISTING

4.1

Due Diligence

- 4.1.1 Due diligence is conducted to evaluate an issuer's suitability for listing on the SGX-ST. Under the listing manual of the SGX-ST (the "**Listing Manual**"), the issue manager (who will manage the issuer's listing application) is tasked with the responsibility to "conduct adequate due diligence on the applicant".
- 4.1.2 Through the due diligence process, the issue manager (with the assistance of its advisers and other experts) identifies the necessary information for the preparation of a prospectus. Notably, the SFA imposes on certain persons criminal and civil liabilities for any false or misleading statement in or omission of material information from a prospectus.
- 4.1.3 The issue manager is guided by the due diligence guidelines issued by The Association of Banks in Singapore (the "**ABS Listings Due Diligence Guidelines**"), which the SGX-ST will have regard to when assessing the adequacy of due diligence conducted.
- 4.1.4 Among others, the ABS Listings Due Diligence Guidelines recommend that an issue manager should:
 - (a) review the educationa
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- alifications,
experience
and
expertise
of the
proposed
directors
and
executive
officers of
the issuer
to assess
their
suitability;
 - (b) achieve a
thorough u
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issuer and
its
business
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reasonable
due
diligence
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the
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advisers,
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prospectus
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experts) is
compliant
with law;
and
 - (c) where
there is
reliance on
the reports
and
opinions of

experts,
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measures
to satisfy
itself that
such
reliance is
reasonable
in the circu
mstances
and there
are no
reasonable
grounds to
believe
that the
information
in such
reports
and
opinions is
untrue or
misleading
in any
material
respect or
contains
any
material
omission.

- 4.1.5 In the context of a REIT, property BT or stapled trust listing, due diligence on the initial portfolio of properties is of utmost importance. In this regard, due diligence will generally involve:
- (a) on-site visits to the properties;
 - (b) the engagement of independent property valuer(s) to conduct a valuation of the properties as well as provide a thorough analysis of the properties;
 - (c) the engagement of

legal
advisers to
conduct
legal due
diligence
to, among
others:

- (i) confirm that good title to the properties will be obtained;
- (ii) identify key approvals;
- (iii) confirm that material contracts (such as leases) are legal, binding and enforceable;
- (iv) identify ongoing and past litigation and investigations;
- (v) identify scope of insurance coverage

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technical c
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to assess
the
structural
integrity of
the
properties
and
identify
material
defects;
and
- (e) the engage

ment of environmental consultants to assess the environmental conditions of the properties in order to identify actual and potential environmental liabilities.

4.1.6 Financial due diligence should be conducted with the assistance of reporting accountants to analyze the financial health of the issuer and to prepare the *pro forma* financial information as well as the profit forecast and profit projection sections, which are to be included in the prospectus.

4.1.7 Taxation experts should also be engaged to identify and assess the taxation issues in connection with a listing. To the extent necessary, favorable tax rulings may need to be obtained from the relevant authorities.

4.2

Listing Process

4.2.1 There are quantitative requirements (such as minimum profit, minimum operating track record, operating revenue and minimum market capitalization), among others, which must be met before an issuer can list on the Mainboard of the SGX-ST.

4.2.2 As it is not uncommon for REITs and BTs to

only be constituted shortly prior to listing, the Listing Manual allows REITs and BTs who have a market capitalization of not less than S\$300 million based on the issue price and post-invitation issued unit capital to apply for listing even if they do not have historical financial information, provided they are able to demonstrate that they will generate operating revenue immediately upon listing.

- 4.2.3 To list on the Mainboard of the SGX-ST, the issue manager, on behalf of the issuer, submits the listing application (including Section (A) of the listing admissions pack of the SGX-ST (the “LAP”), which sets out the general information of the issuer and key issues for listing) to the SGX-ST for review.
- 4.2.4 Upon completion of such review, the issuer then submits Section (B) of the LAP (which includes the draft prospectus) to the SGX-ST for review.
- 4.2.5 To shorten time-to-market, Sections (A) and (B) of the LAP may also be submitted together. A pre-lodgment submission to the MAS for the concurrent review of the draft prospectus is typically also made during the submission of Section (B) of the LAP.
- 4.2.6 Prospective cornerstone investors

are then approached at this juncture. A typical cornerstone process involves having the prospective investors execute non-disclosure agreements before they are provided with copies of the draft prospectus. Prospective cornerstone investors may also be given the opportunity to meet with the management team.

4.2.7 During the review process, the regulators may raise queries which the issuer will need to resolve to the regulators' satisfaction. Upon completion of such review (which generally takes at least four weeks from the submission of Section (B) of the LAP), the SGX-ST will issue an eligibility-to-list letter (containing certain conditions) (the "**ETL Letter**"). The MAS will also inform the issuer to proceed with the lodgment of its preliminary prospectus once it has completed its review.

4.2.8 The issuer will thereafter lodge its preliminary prospectus (along with the accompanying documents, such as the product highlights sheet) with the MAS, upon which the preliminary prospectus will be subject to public exposure. Institutional book-building commences at this juncture.

- 4.2.9 The public offer commences only upon the registration of the prospectus by the MAS, which takes place between the seventh and 21st day (both days inclusive) from the date of lodgment of the preliminary prospectus. This may also be extended to a maximum of 28 days if the MAS gives notice of such extension. Pursuant to the Listing Manual, a public offer is required to be open for at least two market days.
- 4.2.10 Upon the close of the public offer and provided the SGX-ST is satisfied that the conditions set out in the ETL Letter have been met, the units or stapled securities will be allotted and listing and quotation of the units or stapled securities may commence.
- 4.2.11 In the case of a REIT, a Singapore-constituted REIT must be authorized by the MAS prior to an initial public offering of units to investors in Singapore. Further, a REIT manager is required to hold a CMS Licence for REIT management before it can engage in REIT management.
- 4.2.12 In the case of a BT, a Singapore-constituted BT would also need to be registered by the MAS prior to an initial public offering of units to investors in Singapore.
- 4.2.13 These applications are made concurrently during the listing

4.3

process.

Prospectus

- 4.3.1 The prospectus is the primary offering document on which investors base their investment decisions. It should generally include all the information that investors and their professional advisers would reasonably require to make an informed assessment of the matters specified under the SFA and the matters prescribed by the MAS.
- 4.3.2 The contents of the prospectus of a REIT, BT and stapled trust are prescribed by, among others, the SFA, the Securities and Futures (Offers of Investments) (Securities and Securities-based Derivatives Contracts) Regulations 2018, the SF(OI)(CIS)R, the CIS Code and the Listing Manual (such rules and regulations regulating the contents of such prospectus, the **"Prospectus Regulations"**).
- 4.3.3 The prospectus of a REIT, property BT or stapled trust will generally include, among others, the following information:
- (a) overview of the issuer's business and organizational structure;
 - (b) risk factors;
 - (c) use of proceeds;
 - (d) ownership

- (e) of the units;
capitalization and indebtedness;
- (f) unaudited *pro forma* financial information;
- (g) management's discussion and analysis of financial condition and results of operations;
- (h) profit forecast and profit projection;
- (i) business and properties;
- (j) formation and structure of the issuer;
- (k) overview of the material agreements relating to the issuer and its properties;
- (l) overview of relevant laws and regulations; and
- (m) expert reports (such as the reporting accountants' reports on the unaudited *pro forma* financial information and the profit forecast and profit

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4.3.4 With respect to risk
factors, the
Prospectus
Regulations generally
require risks specific
to the issuer to be
disclosed. Risk factors
which are typically
included in the
prospectus of a REIT,
property BT or stapled
trust include:

- (a) risks
relating to
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subject to r
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defects);
- (b) risks
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- (c) risks
relating to
the jurisdic
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which the
issuer
operates;
- (d) risks
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investing in
real estate
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the relative
illiquidity of
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rate); and
- (e) risks
relating to
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securities
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change in
taxation
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4.4

Continuing Listing Obligations

Post-listing, REITs, BTs and stapled trusts are subject to continuing listing obligations under the Listing Manual, such as the requirement to announce specific and material information, requirements relating to secondary offerings, interested person transactions and significant transactions, as well as requirements relating to circulars and annual reports.

4.5

Case Study of EHT

4.5.1 Despite the safeguards in the listing framework put in place by the SGX-ST, the case of EHT has illustrated that the continued success of a REIT, property BT or stapled trust which adopts a master lease arrangement will ultimately depend on the commitment and financial strength of the master lessees (who will typically be affiliates of the sponsor).

4.5.2 EHT is a stapled trust, comprising Eagle Hospitality Real Estate Investment Trust (“**EHREIT**”) and Eagle Hospitality Business Trust (“**EHBT**”), which made its debut on the Mainboard of the SGX-ST in May 2019 with an initial portfolio of 18 hotel properties. EHREIT was established with the principal investment

- strategy of investing in income-producing real estate used primarily for hospitality and/or hospitality-related purposes while EHB will initially remain dormant.
- 4.5.3 EHT adopted a master lease arrangement under which affiliates of its sponsor (collectively, the “**Master Lessees**”), Urban Commons, would lease the hotels from EHREIT. The Master Lessees would in turn enter into (a) franchise agreements with various hotel franchisors to operate under their brands and (b) hotel management agreements with third-party hotel management companies to manage the day-to-day operations of each hotel.
- 4.5.4 Indications that things may be less than perfect surfaced shortly post-listing in October 2019 when an article appeared in the press that EHT had been served with a notice of default by the City of Long Beach in respect of one of its properties, The Queen Mary (a hotel operated aboard a historic British ocean liner which had been leased from the City of Long Beach), as a result of failure to make repairs. The same article also quoted a marine survey conducted in 2017 (the “**2017 Marine Survey**”) which alleged that The

Queen Mary was in deteriorating condition and in need of substantial repairs (collectively, the **"Queen Mary Allegations"**).

4.5.5 The Queen Mary Allegations were swiftly disputed by EHT, which clarified that there was no default and that the supposed notice of default was merely a "formal request for information by the City". EHT also called the 2017 Marine Survey's estimate of the scope of work and costs "grossly inaccurate". To substantiate its claims, EHT further relied on an independent structural engineer's report by John A. Martin & Associates, Inc. (which was commissioned by Urban Commons prior to EHT's listing) which concluded that The Queen Mary "remains in excellent structural condition". Despite the assurances from EHT, the price of its stapled securities reportedly fell 14%.

4.5.6 In late 2019 to early 2020, EHT's financial resources started to deplete due to the impact of Coronavirus Disease 2019 and various delinquencies by the Master Lessees. Among others, the Master Lessees (a) breached the master lease agreements by failing to pay rent on time, (b) received notice of default from various

hotel managers due to, among others, failure to provide and/or maintain sufficient working capital for the hotels' operations and failure to pay management fees and (c) received notice of termination from various hotel managers due to failure to cure the default of maintaining sufficient working capital for the hotels' operations. During this period, EHT received a notice of default and acceleration in respect of a US\$341 million loan it had taken out in connection with its listing.

4.5.7 In March 2020, EHT called for a voluntary suspension of trading. In April 2020, EHT established a special committee to safeguard value and conduct a strategic review. EHT subsequently appointed a financial adviser and implemented caretaker arrangements at the hotels which were the subject of the notice of termination by the relevant hotel managers.

4.5.8 In May 2020, the strategic review uncovered that the founders of Urban Commons (in their capacity as directors of various subsidiaries of EHREIT) had, on behalf of these subsidiaries, entered into certain interested person transactions which were prejudicial to the interests of EHT and its minority

- stapled securityholders. This discovery prompted their resignations from the board of directors of the manager of EHREIT (the **"EHREIT Manager"**) and the trustee-manager of EHBT (the **"EHBT Trustee-Manager"**).
- 4.5.9 In June 2020, EHT announced that an initial request for proposal (**"RFP"**) process conducted by its financial adviser was interrupted by Urban Commons' entry into a letter of intent with Far East Consortium International Limited (**"FECIL"**) in relation to FECIL's proposed acquisition of a 70% interest in each of the EHREIT Manager and the EHBT Trustee-Manager. Against this, the MAS and the Commercial Affairs Department of the Singapore Police Force commenced a joint investigation into current and former directors and officers responsible for managing in EHT in connection with suspected breach of disclosure requirements under the SFA.
- 4.5.10 Discussions with FECIL, however, collapsed and the trustee of EHREIT (the **"EHREIT Trustee"**) restarted the RFP process in late 2020, which culminated in the selection of SCCPRE Hospitality REIT Management Pte. Ltd. as the replacement

- manager of EHREIT (the “**SCCPRE Proposal**”). The SCCPRE Proposal was contingent on a number of resolutions being passed at an extraordinary general meeting (“**EGM**”) to be held on 30 December 2020. On or around the same period, EHT terminated the master lease agreements and the EHREIT Trustee also received a directive from the MAS to remove the EHREIT Manager.
- 4.5.11 On 30 December 2020, the EHREIT Manager was removed. However, not all the requisite resolutions for the SCCPRE Proposal were passed at the EGM held on the same day. In view of the absence of a replacement manager and inability to continue as a going concern because of the depletion of funds, EHT filed for insolvency protection under Chapter 11 of the United States Bankruptcy Code.
- 4.5.12 As at the time of writing of this primer, EHT has disposed 15 of its 18 hotel properties and also surrendered The Queen Mary back to the City of Long Beach. Stapled securityholders are, however, not expected to receive the sale proceeds as the cash is insufficient to repay all the claims on EHT.
- 4.5.13 The case of EHT has shown that the

continued success of a REIT, property BT or stapled trust which adopts a master lease arrangement will ultimately depend on the commitment and financial strength of the master lessees. Where a master lease arrangement is adopted, concentration risk is at its highest (given the lack of diversity in lessees) and the ability of the master lessees to keep up with timely rental payments becomes even more important. Rental income is ultimately the chief source of income for a REIT, property BT or stapled trust. As seen in the case of EHT, in certain cases, rental defaults could even result in the REIT, property BT or stapled trust defaulting on its debt obligations and ultimately wind up.

4.5.14 The case of EHT has also resulted in the public calling for the authorities to review the current disclosure regime. In particular, it has been questioned if the rules should also require disclosure of the financials of a sponsor (especially if a master lease arrangement with the sponsor is adopted). Where a master lease arrangement is adopted, valuations of the properties and financials presented in the prospectus would be based on the rental income received under such master lease arrangement. For these figures to

remain accurate, the master lessees need to be able to perform their end of the bargain. Requiring such disclosures would allow investors to better assess a sponsor's financial strength.

4.5.15 Short of any amendment to the disclosure regime, issuers will do well to treat the required disclosures as the minimum standard and aim to go above and beyond in the interests of investors.

5. **Acquiring Control of a REIT, BT or Stapled Trust**

5.1 An acquisition of all the units of a REIT or BT or all the stapled securities of a stapled trust listed on the SGX-ST ("**Target Entity**") may be effected in various ways, such as a take-over offer, a trust scheme of arrangement ("**Trust Scheme**") and a reverse take-over ("**RTO**").

5.2 Any merger or acquisition involving a Target Entity would be subject to the Listing Manual, the CIS Code (in the case of a REIT) and the Singapore Code on Take-overs and Mergers (the "**Take-over Code**"). The Take-over Code is enforced by the Securities Industries Council (the "**SIC**"), which is part of the MAS.

5.3 **Take-over Offer**

5.3.1 Take-over offers of a Target Entity generally take three forms under the Take-over Code – a mandatory offer, a voluntary offer and a partial offer. A mandatory offer is triggered by an acquiror's holdings in a Target Entity. A voluntary offer occurs where the acquiror makes an offer for all the units or stapled securities of a Target Entity and this offer does not trigger the mandatory offer rules in the Take-over Code. A partial offer is

- a voluntary offer for less than 100% of the outstanding units or stapled securities in a Target Entity.
- 5.3.2 The acquiror can stipulate objective conditions for a voluntary offer such as a particular level of acceptances, unitholders' or stapled securityholders' approval and certain regulatory approvals. However, no conditions should be imposed in a mandatory offer other than the mandatory offer being conditional upon the acquiror obtaining acceptances which, together with the units or stapled securities carrying voting rights acquired or agreed to be acquired before or during the offer, will result in the acquiror and parties acting in concert with it holding units or stapled securities carrying more than 50% of the voting rights of the Target Entity.
- 5.3.3 The acquiror can also seek irrevocable undertakings from the unitholders or stapled securityholders of a Target Entity to accept its offer. Such undertakings must be publicly disclosed.
- 5.3.4 The consideration for a mandatory offer should be in cash or accompanied by a cash alternative, while the consideration for a voluntary offer may be in cash or securities or a combination thereof.
- 5.3.5 **Steps**

The principal steps of a take-over offer are as follows:

- (a) **Due Diligence:**
The acquiror may request that it be allowed to conduct due diligence on the Target Entity by notifying the board of directors of the REIT manager or trustee-manager or their advisers;
- (b) **Offer:** The acquiror announces that it wishes to make an offer for the Target Entity, the consideration and any conditions for the offer;
- (c) **Offer**
: The acquiror issues an offer document in compliance with the Take-over Code to all the unitholders or stapled securityholders of the

- (d) Target Entity;
Target Entity Circular:
The Target Entity issues a circular to the unitholders or stapled securityholders containing the advice of the independent financial adviser to the independent directors of the REIT manager or the trustee-manager on the offer and the recommendation of such directors whether or not to accept the offer; and
- (e) **Close of the Offer:**
At the close of the offer, if the conditions of the offer are met, the offer is declared unconditional in all respects, and payment for the units or stapled securities must be

made.

- 5.3.6
- Examples of Take-over Offers

(a)

Take-over of Forterra Trust

(i)

In 2015, New Precise Holdings Limited (“**New Precise Holdings**”), an in direct wholly owned subsidiary of Nan Fung International Holdings Limited, triggered the requirement to make a mandatory offer under the Take-over Code to acquire all the units (othe

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the parties acting in concert with it held units that represented approximately 30.79% of the total number of issued units in Forterra Trust. Accordingly, New Precise Holdings was required under the Take-over Code to make a mandatory offer. At the close of the offer, New Precise Holdings

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(b) **Take-over of Perennial China Retail Trust ("PCRT")**

(i)

In 2015, Perennial Real Estate Holdings Limited ("PREH") proposed to acquire all the units (other than the units that were already owned, controlled or agreed to be acquired by PREH and the parties acting in connection with it) in PCRT, a SGX-ST-li

(ii) At the close of the offer, PRE H and the parties acting in concert with it owned units representing approximately 96.32% of the total number of issued units in PC RT. PRE

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Trust Scheme

5.4.1 In a Trust Scheme, the acquiror typically acquires all the units or stapled securities of a Target Entity in consideration for cash and/or the issuance of new securities of the acquiror to the existing unitholders or stapled securityholders of the Target Entity. A Trust Scheme will typically be adopted in a situation where the acquiror wishes to acquire all the units or stapled securities of a Target Entity.

5.4.2 A Trust Scheme will typically require:
(a) the approval by the unitholders or stapled securityholders of the Target

- Entity to amend the trust deed constituting the Target Entity to include provisions that will facilitate the implementation of the Trust Scheme;
- (b) the approval by a majority in number of the unitholders or stapled securityholders of the Target Entity representing at least three-fourths in value of the units or stapled securities held by the unitholders or stapled securityholders present and voting either in person or by proxy at the meeting of the unitholders or stapled securityholders to be convened to approve the Trust Scheme; and
- (c) the grant of the order of

- the High Court of the Republic of Singapore (the “**High Court**”) sanctioning the Trust Scheme.
- 5.4.3

All Trust Schemes are subject to compliance with the Take-over Code although the SIC may, subject to conditions, exempt a Trust Scheme from selected provisions of the Take-over Code, such as those relating to the timetable of the offer.
- 5.4.4

Steps

The principal steps of a Trust Scheme are as follows:

(a)

Implementation Agreement:

The acquiror and the Target Entity will typically enter into an implementation agreement setting out the terms and conditions on which the Trust Scheme will be implemented;

(b)

Trust Scheme Announcement:

The Target Entity announces that it wishes to propose
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- the Trust Scheme to its unitholders or stapled securityholders;

(c) **Court Application to Convene Meeting:**
The Target Entity files with the High Court an application for an order to convene a meeting for its unitholders or stapled securityholders to approve the Trust Scheme (the “**Trust Scheme Meeting**”);

(d) **Trust Scheme**

: The Target Entity issues a scheme document to its unitholders or stapled securityholders which typically sets out the terms and conditions of the Trust Scheme, its rationale and gives

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Scheme:

The Target Entity files with the High Court the results of the Trust Scheme Meeting and an application for the High Court to sanction the Trust Scheme; and

- (g) **Court Order Sanctioning the Trust Scheme:**
The High Court grants an order sanctioning the Trust Scheme.

5.4.5 **Examples of Trust Schemes**

- (a) **Merger of CapitalLand Mall Trust (“CMT”) and CapitalLand Commercial Trust (“CCT”)**

- (i) In 2020, CMT merged with CCT by a Trust Scheme (the “CMT-CCT Trust Scheme

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The High Court sanctioned the CCT-MT-CCT Trust Scheme and CCT was subsequently delisted. Following CCT's delisting, the enlarged trust was renamed Capitala

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5.5

RTO

5.5.1

In a RTO, the acquiror transfers to a Target Entity certain assets in consideration for new units or stapled securities in the Target Entity, following which the acquiror may be required to make, or may decide to make, a take-over offer for all the remaining units or stapled securities of the Target Entity that it does not hold. The acquiror will thereafter hold all the units or stapled securities of the Target Entity.

5.5.2

A RTO will typically require the approval of the SGX-ST and the

- unitholders or stapled securityholders for (a) the acquisition of the assets from the acquiror and (b) the issuance of new units or stapled securities in the Target Entity to the acquiror and listing of such units or stapled securities on the SGX-ST.
- 5.5.3 The principal steps of a RTO are the same as a take-over offer (as set out in paragraph 5.3.5 above) with a preliminary step of the Target Entity (a) acquiring the assets from the acquiror and (b) issuing new units or stapled securityholders in the Target Entity to the acquiror.
- 5.5.4 As at the time of writing of this primer, there has only been one instance of an acquiror attempting to carry out a RTO of a Target Entity, which was eventually aborted.
- 5.5.5 In 2016, following a Lone Star Funds' affiliate's acquisition of all the real estate assets in Saizen REIT's portfolio in Japan, Saizen REIT announced that it had entered into an implementation agreement with Sime Darby Property Singapore Limited ("SDPSL"), Sime Darby Eastern Investments Private Limited and Perpetual Corporate Trust Limited (in its capacity as trustee of Sime REIT Australia) in respect of Saizen REIT's proposed

- acquisition of some of SDPSL's industrial properties in Australia (the "**Properties Acquisition**"). The Properties Acquisition was part of a proposed RTO of Saizen REIT by SDPSL.
- 5.5.6 However, this transaction was eventually aborted as Saizen REIT, without delving into the specifics, announced that "it [was] not possible to complete the [Properties Acquisition and the RTO] by the long-stop date of the implementation agreement".
- 5.6 **Which method to adopt?**
- 5.6.1 Whether a take-over offer, a Trust Scheme or a RTO should be adopted ultimately depends on the commercial objective of the acquiror. If the acquiror wishes to acquire *all of the units or stapled securities* of a Target Entity, a Trust Scheme may be preferable, evident in how almost all the mergers involving REITs or BTs in Singapore till date were implemented by a Trust Scheme.
- 5.6.2 However, if the acquiror wishes to acquire only some of the units or stapled securities of a Target Entity, a partial offer would be preferable. A RTO is generally not adopted as the acquiror will have to provide certain assets prior to the take-over.
- 5.6.3 The composition of unitholders or stapled securityholders of the

Target Entity would also be a relevant consideration, such as whether there are any minority unitholders or stapled securityholders which could potentially reject the take-over offer or vote against the Trust Scheme at the Trust Scheme Meeting. If so, it would be prudent for the REIT manager or the trustee-manager to engage with these minority unitholders or stapled securityholders and require them to sign irrevocable undertakings to accept the offer or vote in favor of all resolutions relating to the Trust Scheme prior to the announcement of the take-over offer or the Trust Scheme. If there is any resistance, the REIT manager or the trustee-manager should also work together with the potential acquiror to sweeten the deal.

5.6.4

An example of minority unitholders derailing the implementation of a Trust Scheme could be seen in the failed merger between ESR REIT and Sabana REIT.

- (a) In 2020, ESR REIT and Sabana REIT issued a joint announcement of ESR REIT's intention to merge

with Sabana REIT by a Trust Scheme (the “**ESR-Sabana Trust Scheme**”) with ESR REIT acquiring all the units in Sabana REIT for a consideration per unit of 0.94 units in ESR REIT (the “**ESR Consideration**”). The ESR-Sabana Trust Scheme required the approval by, among others:

(i) the unit holders of Sabana REIT holding in aggregate 75% or more of the total number of votes cast for and

against the resolution to approve the amendments to the trust deed constituting Sabana REIT to include provisions that will facilitate the implementation of the ES-Sabana Trust Scheme (the “

Sabana REIT Trust Deed Amendments Resolution”); and a majority

(ii)

in number of the unit holders of Sabana REIT representing at least three-fourths in value of the units held by the unit holders of Sabana REIT present and voting either in person or by proxy at the Trust Scheme Meeting (the “**Sabana REIT Trust Scheme Resolution**”).

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Prior to the Sabana REIT EGM, Black Crane Investment Management Limited (“**Black Crane**”) and Quartz Capital Management Ltd (“**Quartz Capital**”), who collectively hold approximately 10% of the issued units in Sabana REIT, were vocal of their objections to the merger and embarked on a bruising campaign against the merger, which included:

- (i) Black Crane and Quartz Capital issuing a letter to the

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(ii) Black Crane and Quartz Capital issuing a letter to the MAS and the SGX-ST on 17 August 2020 highlighting, among others, the “significant conflict of interest and corporate governance issues resulting from ESR Cayman Limited c
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- (d) Both the
ESR REIT
Manager
and the
Sabana
REIT
Manager
attempted
to put out
the fire
created by
Black
Crane and
Quartz
Capital
through a
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(A)
there
were
“strict
internal
controls”
in
both
ESR
REIT
and
Sabana
REIT,
(B)
ESR
Cayman
Limited’s
stake
in
the
Sabana
REIT
Manager
is
held
through
an
independent
third
party
trustee
licensed
in
Singapore,
(C)
there
are
no
overlaps
in
the
management
teams
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both
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ESR
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(e) Suffice to
say both
the ESR
REIT
Manager’
s and the
Sabana
REIT
Manager’
s efforts
were not
successful
against
Black
Crane’s
and
Quartz
Capital’s
onslaught
s on the
merger.

(f) If the
Sabana
REIT
Manager
had
engaged
with Black
Crane and
Quartz
Capital
prior to
the annou
ncement
of the
Trust
Scheme,
perhaps
this
debacle
would not
have
occurred,
with no ink
spilled

and no
sharp exc
hanges
between
both
sides.

Even if the
Sabana
REIT
Manager
was not
able to
engage
with Black
Crane and
Quartz
Capital
prior to
the annou
ncement
of the
Trust
Scheme
due to
perhaps c
onfidential
ity
reasons, it
should
have done
so the
moment
the first
signs of
resistance
surfaced.
Instead of
going on
the
defensive,
the
Sabana
REIT
Manager
could
have
engaged
with Black
Crane and
Quartz
Capital,
while simu
ltaneously
working
with the
ESR REIT
Manager
to

sweeten
the deal.

It is crucial
to note
that
Quartz
Capital
had on 14
November
2019
proposed
that ESR
REIT
merge
with
Sabana
REIT "in a
cash and
unit transa
ction
where
0.92 units
of ESR
REIT and
S\$0.067
of cash
will be exc
hanged
for one
unit of
Sabana
REIT" so
as to
"solve the
critical
issue of o
verlapping
investmen
t
mandates
between
the two
trusts".
This may
suggest
that the
minority u
nitholders
' principal
objection
lay in the
offer price
and if
there were
any sweet
eners to
the deal,
such as

revising
the offer
price, the
minority u
nitholders
' could
likely be
struck by
cupid's
arrow and
agree to
the
merger.
After all,
no one is
entirely
immune
from
cupid's
arrow.

Introduc
g deal sw
eeteners
is not unc
ommon. In
the
merger of
CMT and
CCT, the
respective
REIT
managers
worked
together
and sweet
ened the
deal by
ensuring a
higher
accretion
to their
respective
distributio
n per unit
and the
manager
of CMT
also
waived
the
acquisition
fees due
from CMT
that
amounted
to approxi
mately
S\$111.2

million. In the take-over of Forterra Trust, New Precise Holdings raised its cash offer from S\$1.85 to S\$2.25 per unit.

If the foregoing actions were taken, the merger could perhaps have succeeded. More importantly, the Sabana REIT Manager would not be caught in the situation it is in after the failed merger – dealing with the reputational fallout arising from the failed merger and the adversarial stance of Black Crane and Quartz Capital, as well as the increased public scrutiny on its management of Sabana

REIT.

Black
Crane and
Quartz
Capital,
perhaps e
mboldene
d by the
failed
merger,
have
repeatedly
opposed
certain ma
nagement
decisions
of the
Sabana
REIT
Manager
since the
failed
merger.
Recently,
after Mr.
Chan Wai
Kheong
was
appointed
as an inde
pendent n
on-
executive
director of
the
Sabana
REIT
Manager,
Black
Crane and
Quartz
Capital re
quisitione
d an EGM
on 2
August
2021 to
pass a
resolution
that the ap
pointment
of Mr.
Chan Wai
Kheong
“be
endorsed
by the ind
ependent

unitholder
s". Black
Crane and
Quartz
Capital hig
hlighted
that Mr.
Chan Wai
Kheong
was
arguably
not indepe
ndent and
there
exists a
"real and
significant
risk" of a
conflict of
interest as
he "had
received a
substantia
l premium
of approxi
mately
S\$22
million
over
market
price from
ESR
Cayman
[Limited]
and is
also a sub
stantial
unitholder
of AIMS
APAC, a
major
competitor
to Sabana
REIT".

The
Sabana
REIT
Manager
rejected
convening
the EGM
stating,
among
others,
that (i) the
unitholder
s have
"the oppo

rtunity to
vote in
relation to
the endors
ement of
Mr. Chan
Wai
Kheong
as an inde
pendent
director by
the next
annual
general
meeting”
and (ii) “it
would be
in the best
interest of
unitholder
s for the
[Sabana
REIT
Manager]
to be
allowed to
focus on
improving
Sabana
REIT’s pe
rformance
and
results
instead of
convening
[the
EGM]”.
(g) Whether
the failed
merger is
a victory
or pyrrhic
victory for
the unithol
ders of
Sabana
REIT
remains to
be seen. It
is neverth
eless a
cautionary
tale of the
importanc
e of consi
dering the
compositi
on of the u
nitholders

or stapled securityholders and engaging any minority unit holders or stapled securityholders prior to announcing any take-over offer or Trust Scheme. Where necessary, deal sweeteners should be introduced.

- 5.6.5 If the acquiror wishes to gain control of the *management* of a Target Entity, a more cost effective alternative to acquiring the units or stapled securities in the Target Entity would be to acquire the shares of the REIT manager and/or trustee-manager of the Target Entity. As a REIT manager manages the business of a REIT and a trustee-manager manages the business of a BT, such an acquisition allows the acquiror to effectively control the Target Entity. Additional approvals (such as approval from the MAS in relation to an acquisition of shares of a REIT manager) may however be required.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these issues. Please feel free to contact the Gibson Dunn lawyer with whom you usually work, or the authors of this primer in the firm's Singapore office:

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Related Capabilities

[Real Estate Investment Trust \(REIT\)](#)