## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreword</td>
<td>2</td>
</tr>
<tr>
<td>A. What is a REIT?</td>
<td>3</td>
</tr>
<tr>
<td>B. Should I do a REIT?</td>
<td>5</td>
</tr>
<tr>
<td>C. Do I qualify?</td>
<td>8</td>
</tr>
<tr>
<td>D. What must I do?</td>
<td>11</td>
</tr>
<tr>
<td>E. What is life after listing a REIT?</td>
<td>13</td>
</tr>
<tr>
<td>F. What about business trusts?</td>
<td>16</td>
</tr>
<tr>
<td>G. What about collective investment schemes other than REITs?</td>
<td>20</td>
</tr>
<tr>
<td>H. CNP’s experience</td>
<td>25</td>
</tr>
<tr>
<td>I. Glossary</td>
<td>27</td>
</tr>
</tbody>
</table>
Foreword

The lawyers at Colin Ng & Partners LLP ("CNP") have a wealth of experience in the areas of funds management and real estate transactions. We have an established record in providing assistance to foreign and local clients and are proud to have been involved in various aspects of advising and/or representing clients in property trust matters in Australia, China, Hong Kong, India, Japan, Malaysia, and Singapore, including advising in relation to setting up and listing a cross-border real estate investment trust ("REIT") in Singapore.

This Guide provides information about three alternative legal structures for funds management, e.g. the Business Trust ("BT"), the Collective Investment Scheme ("CIS") and the REIT (a form of CIS). The Guide sets out the pros and cons of each structure and in relation to each provides information regarding regulatory requirements and, in the case of listed REITs, information about SGX listing requirements.

The information contained here is not a substitute for advice from your professional advisers. If you require specific advice on any aspect of funds management, our Corporate Finance team will be pleased to assist you.

July 2011
A. What is a REIT?

1. Introduction

REITs were first introduced in the USA in 1960 as a means for average investors to pool their capital for investment into large-scale income producing commercial properties. In the past decade, the global REIT market has registered healthy growth, particularly in the USA and Australia. The success of the market in these countries has motivated Asian and European jurisdictions to facilitate their own REIT markets through judicious regulation and tax incentives.

2. Development

The REIT market in Singapore has developed quickly within a short period. Since the launch of the first REIT in July 2002, Singapore is now the largest REIT market in Asia ex-Japan, with 19 listed REITs and a total market capitalisation of more than S$23 billion as of September 2009. Singapore-listed REITs offer investors access to a diversity of real estate assets including retail malls, office buildings, industrial properties, hotels, serviced apartments and hospitals.

3. Parties involved in setting up a REIT

Typically, the parties involved in a REIT are the sponsor, manager (responsible for investment strategies, recommending acquisitions and disposals of properties, accounting, compliance and investor relations), trustee (responsible for looking after the interests of the unitholders and holding the REIT properties on trust), property managers (responsible for all maintenance, administration, rentals and improvements of the real estate assets of the REIT), underwriters, issue managers, financial advisers, legal advisers, tax and accounting consultants, valuers and other experts where required.

4. How are listed REITs different from unit trusts?

Like unit trusts, REITs in Singapore are managed by fund managers and trustees approved by MAS. Although REITs and conventional unit trusts investing in securities are regulated under the same regime (i.e. the CIS regime), they differ in important respects.

Unit trusts normally own a portfolio of securities, while REITs primarily own physical real estate assets and real estate-related assets. Units in unlisted unit trusts can only be bought and sold through the fund managers of the unit trusts at their net asset value, i.e. prices usually quoted at the end of each trading day. By contrast, units in listed REITs can only be bought and sold on a stock exchange (in Singapore, SGX) during exchange trading hours at market prices.

5. Structure

A REIT is generally structured as a CIS and constituted either as a trust (unit trust) or a company. A REIT is a vehicle for investment in a portfolio of real estate assets, usually established with a view to generating income for unitholders. REITs in Singapore are constituted as unit trusts and are regulated under the CIS regime. They can be listed or unlisted. REITs in Singapore to date have been listed REITs. The units of listed REITs will be quoted for trading on SGX and bought and sold at market prices like any other listed securities.

The majority of a REIT’s assets in Singapore must comprise real estate or real estate-related assets. These may include commercial, retail, industrial and residential properties that are located within a specified country or region. Ownership of the real estate can be direct (held by the trustee of the REIT) or indirect (held via a special purpose vehicle of which the trustee is the shareholder).
The trust is governed by a trust deed. The trustee of the trust holds the legal title to the trust property and the unitholders have the beneficial ownership of the trust property.

6. **Example of a typical REIT structure**
B. Should I do a REIT?

1. **Advantages** - REITs are popular for many reasons, including the following:

   (a) **Liquidity**

   A real estate property is normally an illiquid asset. However, by trading units in listed REITs on a stock exchange, real estate investments become liquid assets unlike other traditional real estate investment vehicles and partnerships.

   (b) **Tax transparency**

   In Singapore, a tax ruling will need to be obtained. Generally, tax transparency will be granted on the taxable income of a REIT that is distributed to unitholders such that the REIT will be taxed at the unitholder’s level and not at the REIT level (trust level). Once tax transparency is obtained, distributions to individuals (local or foreign) are tax exempt and non-individuals (mostly corporates) are taxed on the gross amount of distributions made out of taxable income. Distributions to foreign non-individuals may be subject to Singapore withholding tax.

   Distributions made out of capital gains are tax exempt in Singapore (provided IRAS is willing to treat gains by a REIT as capital gains). A REIT can also obtain a stamp duty waiver.

   For cross-border REITs, tax may be imposed in the foreign jurisdiction where the properties are located. A tax ruling may exempt property-related income from further tax in Singapore.

   (c) **Portfolio diversification and professional management**

   REITs typically own multi-property portfolios with diversified tenant pools, thus reducing the risks of reliance on a single property and tenant in the case of a directly owned real estate asset. REITs allow investors the opportunity to buy into properties managed by professional property management companies.

   (d) **Participation in the property market**

   Most REITs are structured around large properties. With REITs, investors have the opportunity to own stakes in properties that would otherwise be unavailable to them. Anyone from institutions to members of the public can invest in real estate through REITS.

   (e) **Income distribution**

   REITs normally have regular cash flows. In most cases, most of the revenues are derived from rental payments under contractually binding lease agreements with specific tenure. Investors should therefore study the occupancy rates of properties acquired by the REIT.

   (f) **Distribution yield**

   Mandatory high distribution rules make REITs attractive to investors interested in yield.

   (g) **Performance monitored**

   Regulators, independent directors, analysts, media and auditors monitor REIT performance. The manager will often have a stake in the REIT to ensure alignment of interests. Investors gain protection through the regulation of stock markets and collective investment laws and regulations.
Low leverage

There are mandatory debt ratio limits in most countries (in Singapore, 35% but this can be exceeded up to a maximum of 60% if rating requirements are satisfied).

Mandatory AGMs

With effect from 1 January 2010, REITs were required to hold Annual General Meetings (AGMs) once every calendar year and not more than 15 months from the last preceding AGM. In line with SGX's rule on the timing of AGMs for other listed issuers, REITs have to hold their AGMs within 4 months from their financial year end. Mandatory AGMs enhance corporate governance for REITs by providing an important channel for communication between REIT managers and unitholders, allowing REIT managers to be more accountable to unitholders. AGMs also provide a regular opportunity for REIT managers to seek general mandates from unitholders for the issuance of new units and thus accord greater flexibility for equity raising.

Extension of Takeover Code to REITs

The Securities Industry Council ("SIC") which administers the Singapore Code on Take-overs and Mergers ("Takeover Code") provides guidance that the provisions of the Takeover Code apply to REITs.

The SIC requires that parties engaged in a take-over or merger transaction, involving a REIT, comply with the Takeover Code. In particular, parties intending to (i) acquire 30% or more of the total units of a REIT; or (ii) when holding not less than 30% but not more than 50% of the total units of a REIT, acquire more than 1% of the total units of the REIT in any six-month period, should make a general offer for the REIT.

The extension of the Takeover Code by the SIC to REITs only applies to acquisition of units in a REIT, and does not extend to acquisition of a controlling stake in the manager of a REIT. A REIT manager is required to hold a capital markets services ("CMS") licence. No person shall enter into any arrangement to obtain effective control (20% or more) of a capital markets services licence holder, unless that person has obtained the prior approval of the MAS to his entering into the arrangement. The legislative intent appears to be to ensure that the control of the licence is in the hands of a fit and proper person.

Trust schemes as applicable to REITs and Business Trusts

A merger or privatisation of a Business Trust or REIT may be effected via a trust scheme (a trust schemes is considered an offer under the Takeover Code). This involves an amendment to the trust deed to include provisions that will allow a specific merger or privatisation to take place. Such trust schemes are subject to unitholder approval. Given that dissenting unitholders will lose their units compulsorily once the trust scheme is approved, the SIC has expressed its concern via a practice statement that the trust scheme should be fair and reasonable.

The SIC requires two conditions to be met for a trust scheme for a Business Trust or REIT to be exempted from certain provisions of the Takeover Code:

(a) the trust scheme be approved by a majority in number representing three-fourths in value of unitholders or class of unitholders present and voting either in person or by proxy at a meeting convened to approve the trust scheme; and
(b) the trustee or trustee manager obtains Court approval for the trust scheme.

(Squeeze-outs and minority oppression protection)

There are statutory provisions for compulsory acquisitions of minority unitholdings of a REIT. An offeror who is making a general offer for units in a REIT will be able to compulsorily acquire the units of the dissenting minority if he has obtained acceptances in respect of more than 90% of the units offered.

The new regime also allows a REIT unitholder to apply to court for an order to seek judicial redress where he has been oppressed, his interests have been disregarded, or where a resolution/act unfairly discriminates or is otherwise prejudicial to him. This is similar to the provision currently in force in Section 41 of the Business Trust Act ("BTA") and Section 216 of the Companies Act.

2. Disadvantages - Some of the risk factors which affect returns on REITs are:

(a) Rise/fall in rental income and property prices resulting from a change in market conditions. As REITs are intended to invest primarily in real estate assets, a decline in the general level of real property prices could adversely affect the value of a REIT. The overall depth and liquidity of the real estate market and other assets in which REITs are invested may fluctuate and this could correspondingly affect the depth and liquidity of trading in REITs.

(b) The overall performance or expected performance of the real estate sector and other related sectors, or the general economic climate and outlook.

(c) Wear and tear or disasters which damage physical real estate assets owned by the REIT.

(d) Substantial increase/fall in interest rates, making listed REITs less/more attractive as an investment instrument.

(e) Professionalism and experience affecting the performance of the property management firm.

(f) Quality of assets owned by the REITs, affecting sustainability and stability of revenues.

(g) Laws and taxation changes affecting real estate property prices which might impact on returns on REITs. REITs participating in properties or investments outside Singapore may be subject to the risks of fluctuations in currency values, differences in generally accepted accounting principles, or local economic or political events in the countries in which those properties or investments are located.
C. Do I qualify?

If I decide to set up a REIT, what do I need to do to qualify?

1. Regulatory framework

REITs in Singapore are governed primarily by the SFA and its relevant regulations, by the CIS Code (in particular the Property Funds Guidelines) and by SGX listing requirements.

REITs that are to be offered to the retail market in Singapore must be authorised by MAS if constituted in Singapore or recognised by MAS if constituted outside Singapore. Before making an application for listing a REIT, it is important to ensure it is eligible for listing on SGX.

2. Approval by MAS

The manager of a REIT is responsible for making an application to MAS for approval of a REIT.

(a) Authorisation

MAS may authorise a REIT if it is satisfied:

(i) the REIT is constituted in Singapore;

(ii) the REIT, its manager and the trustee have complied with the SFA and CIS Code requirements;

(iii) the trustee of the REIT is a trustee approved by MAS;

(iv) the manager of the REIT has met the following SFA and CIS code requirements:

- it is the holder of a capital markets services (CMS) licence. After 1 August 2008, any person who carries on a business in REIT management is required to hold a CMS licence for carrying out such activities and each of its professional employees (or those engaged in investment management, financing, marketing and investor relations functions) is required to hold a CMS representative’s licence.

- it is a corporation with a physical office in Singapore, and with minimum shareholders’ funds of S$1 million;

- it has a resident CEO;

- it has at least 2 full time professional employees engaged in investment/asset management, financing, marketing and investor relations activities;

- the manager, as well as its CEO, directors and professional employees meet the fit and proper criteria set out in the Guidelines on Fit and Proper Criteria issued by MAS; and

- it has a minimum 5 year track record in managing property funds or has appointed advisers or employed persons with at least 5 years experience in investing in and/or advising on real estate;
(v) the manager and the trustee of the REIT have entered into a trust deed constituting the REIT, which contains prescribed covenants that comply with the SFA and the CIS Code.

(b) Recognition

MAS may recognise a REIT if it is satisfied that:

(i) the REIT is constituted outside Singapore;

(ii) the laws and practices of the foreign jurisdiction under which the REIT is constituted and regulated afford to investors in Singapore protection equivalent to that provided to them under Singapore laws and regulations applicable to REITs;

(iii) the REIT has appointed a Singapore representative who is able to carry out certain statutory functions such as facilitating the issue and redemption of units, sending reports and accepting service of process. The representative may be an individual resident in Singapore or a Singapore company or a foreign company registered under the Companies Act;

(iv) the manager of the REIT:

• is licensed or regulated in its home jurisdiction;
• meets MAS fit and proper criteria; or
• its related company manages at least S$500 million of discretionary funds in Singapore; and

(v) the REIT, its manager and the trustee, where applicable, have complied with the SFA and CIS Code requirements.

(c) Timeframe

MAS may take at least 45 days to process an application for the authorisation or recognition of a REIT.

3. Listing requirements

REIT issuers seeking admission to the Official List of SGX are required to comply with the following requirements:

(a) A REIT denominated in Singapore dollars:

(i) must have a minimum asset size of at least S$20 million;

(ii) must ensure that at least 25% of its units are to be held by 500 public unitholders;

(iii) must limit its investments in companies related to its substantial unitholders’ investment managers or management companies to a maximum of 10% of gross assets;

(iv) must abide by the same investment and borrowing restrictions prescribed by the CIS Code; and

(v) must restrict investments in unlisted securities to 30% of gross assets.
(b) **A REIT denominated in a foreign currency:**

(i) must have a minimum asset size of US$20 million (or equivalent in other currencies);

(ii) must have a spread of unitholders, necessary for an orderly market in the REIT; and

(iii) must have facilities for the transfer and registration of securities in Singapore if it is established in a foreign country.

(c) **Other requirements**

Other listing requirements include the following:

(i) investment objectives and policies for new REITs must not be changed in the first 3 years unless approved by special resolution of an extraordinary general meeting of the unitholders;

(ii) the person responsible for managing the investments of the REIT must be reputable, have satisfactory experience in managing REITs and a track record of at least 5 years in managing investments; and

(iii) the investment manager (if there is no management company), sponsor or trustee must be reputable and have an established track record in managing investments and have been operating for at least 5 years.
D. What must I do?

A REIT issuer has an important role and responsibility in the process of obtaining a listing.

1. Prospectus requirements

A REIT issuer must ensure that the prospectus complies with SFA, CIS Code, SGX Listing Manual and the IOSCO Document requirements. It must contain certain information including any material information investors would reasonably require to make investment decisions, for example details of distribution policy and dates, borrowing powers, capitalization, financing, investment objectives, policy, particulars and risks, use of REIT proceeds, ownership of units issued by the REIT, interested party transactions, details of properties to be injected into the REIT, pro forma balance sheets, profit projections, details of sponsor, manager and trustee, fees payable, material agreements and experts’ statements.

2. Listing procedures

The usual steps in the listing process for a REIT are as follows:

(a) The issuer submits a listing application prepared in compliance with SGX Listing Manual requirements together with the supporting documents.

   (i) **Documents to be submitted with the listing application**

   One copy of the following documents must be submitted together with the prescribed listing fee:

   - prospectus;
   - compliance checklist;
   - trust deed;
   - memorandum and articles of association, if applicable; and
   - annual accounts for last 5 financial years, if applicable.

   (ii) **Timeframe**

   SGX normally takes four weeks to decide on an application from the date of its submission.

(b) SGX considers the application and may grant approval in-principle (with or without conditions).

**Documents to be submitted after approval in-principle**

The following documents should be submitted to SGX after the REIT receives approval in-principle:

- the signed listing undertaking;
- a specimen of the certificate to be issued; and
- 120 copies of the prospectus.
(c) The final copy of the prospectus must be lodged with MAS and SGX. Registration of the document with MAS will take place between 14 and 21 days of lodgment unless extended by MAS to 28 days.

(d) On satisfaction of all conditions, the REIT is admitted to the Official List.

(e) The REIT may invite subscription for its units.

(f) The REIT may allot and issue units.
E. **What is life like after listing a REIT?**

1. **Who is responsible?**

   For a listed REIT different people or entities, including the manager, directors and substantial unitholders (i.e. unitholders holding more than 5% of the REIT’s units) have continuing obligations after listing.

2. **Manager’s obligations**

   (a) The manager of a REIT is primarily responsible for compliance with post listing obligations contained in the following statutory, regulatory and other relevant documentation:

   (i) the SGX Listing Manual;

   (ii) the SFA;

   (iii) the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 (as amended by the Securities and Futures (Offers of Investments) (Collective Investment Schemes) (Amendment) Regulations 2009);

   (iv) the CIS Code;

   (v) the Code of Corporate Governance;

   (vi) the trust deed; and

   (vii) the prospectus.

   (b) Some continuing obligations are periodic and others are event specific.

   (i) **Periodic obligations include:**

      - financial statement announcements on a quarterly and half yearly basis;
      - distributions to unitholders must be announced;
      - preparation of financial reports and announcements of net asset value;
      - a full valuation of each of the REIT’s real estate assets to be conducted once a year by a valuer; and
      - at financial year end the issue of an annual report containing information required under the Property Funds Guidelines of the CIS Code and under the SGX Listing Manual (for example, the chairman’s statement, audited accounts, details of all assets of the REIT and description of its corporate governance practices).

      - Holding of an AGM.
(ii) **Specific event obligations include:**

- announcements of any material information;
- announcements of major transactions and interested party transactions and (where certain thresholds are breached) obtaining unitholders approval for these transactions;
- immediate announcement of certain matters including mergers or acquisitions, purchase or sale of a significant asset of the REIT, change in control of the manager and appointment or resignation of directors, CEO, general manager or other executive officers of equivalent rank, company secretary and auditors of the manager; and
- obtaining the trustee’s confirmation, where required, that an interested party transaction is carried out on normal commercial terms.

(iii) **Other obligations**

The manager is required:

- to manage a REIT for the benefit of its unitholders;
- to announce to SGX the particulars of its unitholdings and any changes to such holdings within 2 business days after it acquires or disposes of any such units;
- to implement procedures to minimise potential conflict of interests situations; and
- not to manage any other REIT.

3. **Directors’ obligations**

The directors have certain obligations in relation to their personal dealings. For example, the directors are required to notify the manager, trustee and SGX within 2 business days of their acquisition of units or of any interests in the units of a REIT and/or any change to their interests.

4. **Substantial unitholders’ obligations**

(a) Substantial unitholders are required to notify the manager, trustee and SGX:

- their deemed and direct holdings of the units in the REIT;
- any subsequent change in the percentage level of such holdings; and
- when they cease to be a substantial unitholder (cease to hold 5% or more of the units in the REIT), within 2 business days of acquiring such holdings or such changes or cessation.

(b) The manager must make a separate announcement to SGX in connection with substantial unitholdings upon receiving such notification.
5. **Investment criteria**

In Singapore a REIT must invest primarily in real estate and real estate-related assets. The investment policy of a REIT must be adhered to for the first three years unless an extraordinary general meeting of unitholders agrees to amendments by a special resolution.

(a) **Permissible investments**

The following are permissible investments:

(i) real estate;

(ii) real estate-related assets;

(iii) listed or unlisted debt securities and listed shares of or issued by a local or foreign non-property company;

(iv) government securities; and

(v) cash or cash equivalent items.

(b) **Investment restrictions**

A REIT’s restrictions in relation to its investments include the following:

(i) at least 75% of its deposited property should be invested in income-producing real estate;

(ii) it must not undertake property development activities whether on its own, in joint ventures or by investing in unlisted property development companies, unless the REIT intends to hold the developed property upon completion;

(iii) it must not invest in vacant land and mortgages (except for mortgage-backed securities);

(iv) its investments in uncompleted property developments (local and foreign) should not exceed 10% of its total assets;

(v) for investments in listed or unlisted debt securities and listed shares of or issued by local or foreign non-property companies, government securities and securities issued by supranational agencies or a Singapore statutory board, and cash and equivalent items, not more than 5% of the REIT’s deposited property can be invested in any one issuer’s securities or any one manager’s funds, but note this does not apply to deposits placed with eligible financial institutions and investments in high-quality money market instruments or debt securities;

(vi) not more than 10% of the REIT’s revenue should be derived from sources other than rental payments to be made by tenants and interest, dividends and other similar payments from investments held by the REIT; and

(vii) borrowings and deferred payments (aggregate leverage) must not exceed 35% of the REIT’s deposited property, except if a credit rating has been obtained, in which case the aggregate leverage can be up to 60% of the deposited property.
F. What about business trusts?

1. New investment asset class

The BT is a relatively new investment asset class introduced by MAS. The Business Trust Act (“BTA”) which came into effect in October 2004 provides the framework for the governance of BTs and regulates the rights of unitholders and creditors and the duties and accountability of the trustee-manager and directors of BTs. Pursuant to the BTA, the SFA was amended to regulate public offers of units in BTs in the same way as offers of shares in companies and offers of units in CIS. Investors in BTs have similar statutory protections under the SFA as the subscribers to share offers or to offers of units in CIS.

2. What are BTs?

BTs are business enterprises structured as trusts. They are hybrid structures with elements of both companies and trusts. They are an alternative form of business structure to companies and are already in use in Australia, Canada and USA.

A BT is created by a trust deed under which the trustee-manager has legal ownership of the assets of the underlying business and manages the business for the benefit of the beneficiaries of the trust. The main difference between a BT and a unit trust regulated by the CIS Code is that a BT’s activities are more aligned with those of a company. Like a company, a BT operates and runs as a business enterprise. However, unlike a company, a BT is not a separate legal entity.

MAS has sought to align the BT regime with that of companies as much as possible. For example:

(a) like companies, BTs have to comply with registration requirements;

(b) unitholders of a BT have limited liability as do shareholders of a company;

(c) taxation for a BT is similar to that for a company (single-tier system);

(d) units of a BT can be listed on SGX and are subject to prospectus and disclosure requirements; and

(e) The Takeover Code applies to BTs with a primary listing of their units in Singapore. It also applies, unless waived by the SIC, to Singapore registered business trusts with a primary listing overseas, and unlisted Singapore registered BTs with more than 50 unitholders and more than S$5 million of net tangible assets. Please see paragraph B1(k) above for trust schemes for Business Trusts.

There is provision for foreign-constituted business trusts to be recognised, and which need not to be registered under the BTA, before such foreign business trusts can offer securities to retail investors. This acknowledges the difficulties for foreign constituted business trusts to comply with overlapping provisions under the laws of its home country and the BTA. Recognition requires that the laws and practices of the foreign jurisdiction in question offer protection to Singapore investors which is at least equivalent to that afforded under the BTA. This is similar to the recognition regime for offers of foreign collective investment schemes.
3. **Structure of a BT**

BTs in Singapore are structured with a single responsible entity, the trustee-manager, which is a company incorporated under the Companies Act and it is the manager as well as the trustee of the trust assets of the BT. The trustee-manager has legal ownership of the assets of the underlying business and is responsible for safeguarding the interests of unitholders and managing the business of the BT. Investors can invest in the underlying business by subscribing for units in the BT in a similar way as they invest in shares in a company. Unitholders are granted economic benefits in the form of dividends paid out by the BT.

4. **Advantages of BTs**

The BT structure is an alternative form of business vehicle with favorable characteristics including:

(a) limited liability of unitholders;

(b) dividends can be paid out of cash profits instead of accounting profits; and

(c) investment restrictions applicable to CIS (e.g. debt ratio limit of 35%) will not apply to BTs.

The BTA provides for compulsory squeeze-out acquisitions of minority unitholdings. An offeror who is making a general offer for units in a BT is able to compulsorily acquire the units of the dissenting minority if he has obtained acceptances in respect of more than 90% of the units offered.

5. **Types of businesses suitable for BTs**

Since dividends to unitholders can be paid from cash profits, a BT structure is particularly suited to businesses with high levels of capital investment and strong cash flows such as real estate investment funds, businesses in the utilities sector or infrastructure/asset-backed businesses.

The fact that a BT can pay dividends from its operational cash flow could prove to be important for an infrastructure or asset-backed business, for instance a toll road or ship-owning business. In such a business, depreciating assets can cut into profits but cash revenues will be strong. This enables dividends to be paid to investors from the cash flow of toll revenues or ship lease rentals without having to deduct non-cash expenses such as depreciation of assets as is required for companies which can only pay dividends out of distributable profits.

The BT structure has been popular with the shipping industry in Singapore, which enjoys certain tax incentives. Pacific Shipping Trust was the first shipping BT registered by MAS and listed on SGX. Other shipping funds have since been set up as BTs, including the First Ship Lease Trust and Rickmers Maritime Trust.

6. **Significance for property funds**

A new property trust can elect to be structured and regulated as either a BT or a CIS. A property trust regulated as a BT would have the following advantages over a REIT regulated as a CIS:

(a) It would have no gearing limit. (By contrast, a REIT must comply with the borrowing limit of 35% under the CIS Code, unless it has an appropriate rating.)
What about business trusts?

(b) It would not be subject to business operational restrictions. (By contrast, under the CIS Code a REIT must comply with investment restrictions and permissible investment requirements.)

(c) If it was a property trust, it could actively undertake business operations. For example, it could be involved in property development, management of properties and/or non-property activities such as the raising of funds. (By contrast, a REIT is a passive investment vehicle in that it engages in real estate investments for the collection of rent.)

(d) It could pay dividends from rental income without having to deduct other non-cash expenses.

A property trust regulated as a BT does not enjoy the tax transparency that a REIT does. IRAS' tax treatment for BTs is similar to that for companies, i.e., a single tier taxation system has been adopted so that tax is paid by the trustee-manager at the corporate tax rate and unitholders are not subject to any further tax on the dividends received. BTs have been used to hold foreign real estate assets and have been able to obtain exemption from tax on income derived from foreign real estate – see for example the Indiabulls Properties Investment Trust, which although a BT is similar to a REIT in that it has a policy to distribute 90% of its income. A more recent example of a BT used to hold foreign real estate assets is Perennial China Retail Trust, which, although it has not been accorded tax exemptions in Singapore (it has committed to distribute 90% of its income only in the first 2 years and 50% beyond that) has been able to obtain advance rulings from the Singapore revenue authorities that avoid it being taxed on foreign income used to pay distributions to unitholders.
### 7. Business trusts, REITs and companies

#### 7.1 Comparative table: REITs and business trusts

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<tr>
<th>REIT (Property Fund) Structured as a Collective Investment Scheme</th>
<th>Property Fund Structured as a Business Trust</th>
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<tbody>
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<td>Constituted by a trust deed</td>
<td>Constituted by a trust deed</td>
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<td>Unitholders do not have legal ownership of the assets but have beneficial interests</td>
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<tr>
<td>Manager and trustee of the assets are separate and independent</td>
<td>Single responsible entity, the trustee–manager (&quot;TM&quot;). TM is the manager of the BT and trustee of the trust assets</td>
</tr>
<tr>
<td>Primarily passive investment vehicles</td>
<td>Actively engage in undertaking business operations</td>
</tr>
<tr>
<td>Borrowing and investment restrictions e.g. gearing at no more than 35% (unless trust achieves certain rating)</td>
<td>No regulatory restrictions on borrowing and investments</td>
</tr>
<tr>
<td>Regulated under SFA and CIS Code</td>
<td>Regulated under BTA and SFA</td>
</tr>
<tr>
<td>Can be either unlisted or listed</td>
<td>Can be either unlisted or listed</td>
</tr>
<tr>
<td>Enjoys tax transparency</td>
<td>Single-tier taxation</td>
</tr>
<tr>
<td>No registration requirements</td>
<td>Must be registered</td>
</tr>
</tbody>
</table>

#### 7.2 Comparative table: business trusts and companies

<table>
<thead>
<tr>
<th>Business Trust</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operates as a business enterprise</td>
<td>Operates as a business enterprise</td>
</tr>
<tr>
<td>Not a separate legal entity</td>
<td>A separate legal entity</td>
</tr>
<tr>
<td>Constituted under a trust deed</td>
<td>Created by incorporation and its objectives/ constitution is set out in the memorandum and articles of association</td>
</tr>
<tr>
<td>Investors can invest in a BT by subscribing for its units</td>
<td>Investors can invest in a company by subscribing for its shares</td>
</tr>
<tr>
<td>Unitholders receive dividends. Dividends can be paid out of cash profits</td>
<td>Shareholders receive dividends. Dividends paid from distributable profits only</td>
</tr>
<tr>
<td>Regulated under BTA and SFA</td>
<td>Regulated under CA and SFA</td>
</tr>
<tr>
<td>Single-tier taxation</td>
<td>Single-tier taxation</td>
</tr>
<tr>
<td>Takeover Code applicable to certain Business Trusts</td>
<td>Takeover Code applicable to certain companies</td>
</tr>
</tbody>
</table>
G. What about collective investment schemes other than REITs?

1. What is a CIS?

A detailed definition for a collective investment scheme is contained in the SFA. Essentially, a CIS is an investment scheme or arrangement in which the contributions or payments made by the investors are pooled and professionally managed by fund managers with a view to deriving profits or income from the scheme. The scheme may invest in all kinds of assets, for example equities, bonds, real estate and fixed income securities. Investors do not have day to day control over the management and operation of such schemes.

Large markets for CIS have developed around the world and they are known by different names in different countries. They are often referred to as unit trusts, mutual funds, managed funds or simply funds.

2. Structure

A CIS may be constituted as a trust, company or by statute.

A typical CIS structure has:

(a) a fund manager or investment manager who manages the investment decisions;

(b) a fund administrator who manages the trading, reconciliations, valuation and unit pricing;

(c) a trustee or board which safeguards the assets and ensures compliance with applicable laws and rules;

(d) the shareholders or unitholders who own (or have rights to) the assets and associated income; and

(e) a marketing or distribution company to promote and sell the fund.

3. Unit trust

In Singapore the most common form of CIS structure is a unit trust. The unit trust structure is also common in jurisdictions such as Australia, Ireland, New Zealand, South Africa and the UK. The unit trust industry in Singapore follows the English unit trust model and is distinguished from a company, an association or partnership. In the USA, investment funds structured similarly to unit trusts are known as mutual funds.

A unit trust is a special form of trust constituted by a trust deed in which the trust property is vested in a trustee. In dealing with the trust property, the trustee agrees to abide by the directions of a manager for the benefit of the unitholders who collectively own the beneficial interests in the trust property.

4. Why unit trusts?

(a) Advantages

The unit trust as an investment scheme provides investors with several benefits.

(i) Diversification
A unit trust scheme provides an efficient way for individual investors to diversify their investments. This is especially beneficial to individual investors with limited resources. In the case of most funds, small investors are able to hold a diversified portfolio of stocks of companies that may otherwise be out of their reach and as well are able to diversify the portfolio risks. An individual investor may have to invest in many securities separately at a higher cost to achieve the same diversification.

(ii) Professional management of funds

A unit trust scheme involves professional investment management services and investors benefit from the expertise of full time professional fund managers who cater to investors lacking the knowledge to manage a portfolio.

(iii) Access to foreign markets

Unit trusts are an efficient and effective way to invest in foreign markets.

(iv) Pooling of money

Pooling of monies will provide sufficient assets to enable diversification among various securities. The potential size of investments made with very large amounts of pooled moneys also means that the fund manager will sometimes have access to information which the small investor does not and this may enable the fund manager to respond more quickly to market changes than would otherwise be the case.

(v) Liquidity

Unit trusts are highly liquid and investors can convert their units to cash at any time as fund managers are obliged to buy back the units from investors.

(b) Disadvantages

(i) Costs

Having funds professionally managed comes with a cost. Fees and expenses vary depending on the type of funds, although there are certain restrictions on the fees that may be imposed by fund managers. Most unit trusts in Singapore carry a front-end sales charge ranging between 1% and 5%. Management fees may range between 0.5% and 2.0%.

(ii) Risks

Like other investment instruments unit trusts carry a risk of loss.

(iii) Regulatory framework

Unit trusts in Singapore are heavily regulated and fund managers and trustees must comply with the provisions of the SFA, its regulations, guidelines, notices, practice notes as well as the requirements under the CIS Code.
5. Types of unit trust schemes in Singapore

The majority of unit trusts in Singapore are structured as umbrella funds. An umbrella fund is a group of stand alone sub-funds each having its own investment portfolio, with different investment objectives and strategies but all administered by the same manager. The purpose of this structure is to provide investment flexibility and widen investor choice. Investors in an umbrella fund may invest in one or more of the sub-funds offered and may switch or exchange units of one sub-fund for those of another.

Other types of unit trust structure found in Singapore are single funds and feeder funds. The whole of the trust property of a single fund comprises one fund. The assets of a feeder fund are invested in another fund called the master fund, which may be a single foreign fund or group of foreign funds.

Before the SFA came into effect, feeder funds were common in Singapore as foreign funds could not be offered directly to the public in Singapore. A foreign fund could only be offered through a Singapore based feeder fund with a Singapore manager and trustee investing in the foreign fund.

Foreign funds can now be offered directly to the public in Singapore provided they are approved by MAS as recognised schemes (if offered to retail investors) or as restricted foreign schemes (if offered to accredited investors). MAS will only recognise foreign funds established in jurisdictions in which regulation and supervision of funds is comparable to that of Singapore schemes. For example, MAS usually recognises schemes from foreign jurisdictions such as Luxembourg (mainly SICAVs) and Ireland. For schemes offered to accredited investors or to persons who acquire units for a consideration of at least S$100,000, MAS has introduced a notification regime (including an annual declaration) for restricted schemes, in place of the approval regime for CIS whose distribution is restricted in accordance with section 305 of the SFA. Under the notification regime, restricted schemes need to ensure that the scheme is first entered into the list of restricted schemes maintained by MAS before they can make an offer of units in the restricted scheme. Restricted schemes are not subject to investment guidelines. There is further discussion on restricted schemes under paragraph 8(a) below.

6. Classification of CIS in Singapore

The majority of CIS in Singapore are structured as unit trusts and they are classified according to their investment strategies or objectives either as non-specialised funds or specialised funds. Although all types of unit trust schemes have the same legal characteristics and must comply with the same regulatory requirements under the SFA, under the CIS Code there are specific guidelines for different types of schemes. Under the CIS Code different types of schemes will be subject to different requirements in relation to investment restrictions, borrowing/gearing limits, risk disclosures, permissible activities of fund managers and other operational requirements.

(a) Non-specialised funds

A non-specialised fund is a scheme that invests in a general portfolio of equities and/or fixed income instruments and does not fall within the categories of specialised schemes. These funds are subject to the SFA and the CIS Code.

(b) Specialised funds

Specialised funds focus on specific types of investment. Specialised funds may have a less diversified investment portfolio and pose a higher degree of risk to investors. The property trust (including the REIT), hedge fund, money market fund, capital guaranteed fund, fund of funds, futures and options fund and currency fund are classes of specialised schemes.
7. **Open-end and closed-end funds**

Under the SFA regime open-ended funds (in which the units are redeemable during the life of the fund) are classified as CIS. Closed-end funds (in which units are “exclusively or primarily non-redeemable”) such as venture capital funds do not fall within the regulatory scope of CIS under the SFA.

8. **Regulatory requirements for offers of CIS in Singapore**

(a) **Approvals**

A CIS cannot be offered to the public in Singapore unless MAS has authorised it (if the scheme is constituted in Singapore) or recognised it (if it is a foreign scheme) and a prospectus has been lodged and registered by MAS. The timeframe for registration of a prospectus is 14 to 21 days from the date of its lodgment, although this may be extended to 28 days or longer.

A CIS offered under a restricted scheme to accredited investors or to persons who acquire units for a consideration of at least S$100,000 must be notified to MAS and entered into a list maintained by MAS as a restricted Singapore scheme if constituted in Singapore or as a restricted foreign scheme if it is foreign scheme before offers of units in it can be made. Offers of units in a restricted scheme must be accompanied by an information memorandum, by way of disclosure.

Under a restricted Singapore scheme, the MAS needs to be satisfied that:

(a) there is a manager for the scheme which is:

(i) licensed or regulated to carry out fund management activities in the jurisdiction of its principal place of business; or

(ii) a public company that is exempted from the requirement to hold a capital markets services licence to carry on business in fund management under paragraph 5(1)(d) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10);

(b) the manager for the scheme is a fit and proper person, and in considering if a person satisfies this requirement, the Authority may take into account any matter relating to:

(i) any person who is or will be employed by or associated with the manager;

(ii) any person exercising influence over the manager; or

(iii) any person exercising influence over a related corporation of the manager; and

(c) in the case of a scheme constituted as a unit trust, there is an approved trustee for the scheme approved under section 289 of the Act.

Under a restricted foreign Singapore scheme, the MAS needs to be satisfied that:

(a) the manager is licensed or regulated to carry out fund management activities in the jurisdiction of its principal place of business; and
(b) the manager is a fit and proper person, and in considering if a person satisfies this requirement, the Authority may take into account any matter relating to:

(i) any person who is or will be employed by or associated with the manager;

(ii) any person exercising influence over the manager; or

(iii) any person exercising influence over a related corporation of the manager.

A CIS offered to institutional investors is not required to be authorised, recognised or approved as a restricted scheme and is exempt from the prospectus requirements.

(b) Licensing

Fund managers managing CIS schemes offered to the public in Singapore must be holders of a capital markets services licence or exempt from the licensing requirements.

9. CPF approved unit trusts

CPF approved unit trusts are a special feature of the Singapore unit trust market. These are funds approved by the CPF Board under the CPF Investment Scheme. CPF members are permitted to use their retirement savings (CPF savings) to purchase units in these approved trusts. Fund managers wishing to tap into this market must first have their funds approved by the CPF Board. In addition to meeting the criteria for inclusion in the CPF Investment Scheme and complying with the relevant regulations governing unit trusts, CPF approved unit trusts must comply with the administrative requirements of the CPF Investment Scheme.

Foreign funds that meet the criteria set by the CPF Board may offer their units to CPF members under the CPF Investment Scheme.
H. CNP’s experience

Property trusts are relatively new in Asia. Our lawyers have been involved in various aspects of advising on and/or representing clients in property trust matters in countries in the Asia-Pacific region, including Australia, China, Hong Kong, India, Japan, Malaysia and Singapore.

We have the expertise to advise on all aspects of the property trust/REIT industry, including the acquisition, disposal and leasing of properties, the establishment of listed and unlisted property trusts, initial offerings, capital raisings, financings, underwritings, due diligence, syndications, joint ventures, restructuring, takeover defences, stamp duty implications and ongoing compliance and regulatory issues under Singapore law.

Some of the transactions CNP has been involved in are as follows:

- Acting on the sale and leaseback of industrial premises at 15A Tuas Avenue 18 Singapore 638905 to Mapletree Logistics Trust Management (MapletreeLog) by Jian Huang Engineering.
- Advising a global logistics facilities provider in the sale of its interest in a Japanese real estate joint venture structured through a Singapore trust to the other joint venture partner for a consideration in the region of US$1 billion.
- Advising Ternion Capital Management on an investment from Singapore into Japanese real estate using a bankruptcy remote Tokutei Mokuteki Kaisha (TMK) securitised funding structure.
- Advising MacarthurCook Fund Management on the secondary listing of MacarthurCook Property Securities Fund, the first secondary listing of an Australian trust in Singapore.
- In connection with the Allco Commercial REIT, the first Asia Pacific REIT in Singapore, advising Allco Finance Group as sponsor/manager on the establishment of the REIT, the acquisition and the debt funding of various assets on listing and subsequent to listing and the underwriting of the international offering of units. *Ranked 9th in Asian-Counsel magazine’s Deals of the Year 2006.*
- Advising Allco Funds Management (Singapore) Limited in the establishment of the Allco Property Return on Investment Fund, a US$200 million closed-end unitised investment vehicle investing in real estate opportunities in the Asia Pacific region.
- Acting as international counsel for the YTL Group as sponsor and manager of Starhill REIT, Malaysia’s first international REIT, on the establishment of the REIT and the underwriting of the offering.
- Advising Lend Lease on Lend Lease Asian Retail Investment Fund, a private equity fund which raised S$375 million in its first financial close in 2006 with a second close in 2007.
- Advising Lend Lease on the acquisition of Paradiz Investments Ltd, owner of the Paradiz Centre in Singapore, for an enterprise value of S$138 million, in a joint venture with a private equity fund.
- Advising on the establishment of an Islamic private equity fund managed from Singapore to invest in Asian real estate, and structuring the investment into the initial asset in Thailand.
• Advising an Australian fund management group on regulatory aspects of a proposed Singapore listed infrastructure fund involving an Australian investment advisor.

• Advising on proposals for listing Chinese and Indian asset Singapore REITs.
I. **Glossary**

**BT or BTs:** business trust/s

**BTA:** The Business Trusts Act (Chapter 31A) of Singapore

**CIS:** collective investment scheme/s

**CIS Code:** The Code on Collective Investment Schemes issued by MAS

**Code of Corporate Governance:** Code of Corporate Governance issued by the Committee on Corporate Governance on 4 April 2001, as from time to time amended, modified or supplemented

**Companies Act:** The Companies Act (Chapter 50) of Singapore

**CPF:** Central Provident Fund

**CPF Board:** Central Provident Fund Board

**deposited property:** In relation to a scheme, the total value of the underlying assets of the scheme

**IOSCO Document:** Part 1 of the International Organisation of Securities Commissions Document on International Disclosure Standards For Cross-Border Offerings And Initial Listings By Foreign Issuers as from time to time amended, modified or supplemented

**IRAS:** The Inland Revenue Authority of Singapore

**MAS:** The Monetary Authority of Singapore

**prospectus:** prospectus, offering document or introductory document as defined in the SGX Listing Manual

**REIT or REITs:** real estate investment trust/s

**SFA:** The Securities and Futures Act (Chapter 289) of Singapore

**SGX:** Singapore Exchange Securities Trading Limited or Singapore Exchange

**SGX Listing Manual:** SGX Listing Manual