

Business Trusts Regulations 2005

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BUSINESS TRUSTS ACT 2004
(ACT 30 OF 2004)

BUSINESS TRUSTS REGULATIONS 2005

In exercise of the powers conferred by sections 3, 5, 7, 10, 14, 15, 19, 20, 21, 22, 74, 83, 87, 111 and 114 of the Business Trusts Act 2004, the Monetary Authority of Singapore hereby makes the following Regulations:

PART I

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Business Trusts Regulations 2005 and shall come into operation on 6th January 2005.

Definitions

2. In these Regulations, unless the context otherwise requires —

“associated company” and “chief executive officer” have the same meanings as in section 86(10) of the Act;

“executive director” means a director who is concurrently an executive officer, and “non-executive director” shall be construed accordingly;

“executive officer”, in relation to a corporation, means any person, by whatever name described, who is —

- (a) in the direct employment of, or acting for or by arrangement with, the corporation; and
- (b) concerned with, or takes part in, the management of the corporation on a day-to-day basis;

“immediate family” and “interested person transaction” have the same meanings as in section 86(10) of the Act;

“subsidiary” has the same meaning as in section 5 of the Companies Act (Cap. 50).

When directors considered to be independent from management and business

relationships with trustee-manager

3.—(1) A director of the trustee-manager of a registered business trust is considered to be independent from management and business relationships with the trustee-manager (whether or not the trustee-manager is acting for or on behalf of the registered business trust) if —

- (a) the director has no management relationships with the trustee-manager or with any of its subsidiaries; and
- (b) the director has no business relationships with the trustee-manager or with any of its related corporations, or with any officer of the trustee-manager or any of its related corporations, that could interfere with the exercise of the director's independent judgment with regard to the interests of all the unitholders of the registered business trust as a whole.

(2) Without prejudice to the generality of paragraph (1)(a), a director shall not be considered to be independent from management relationships with the trustee-manager of a registered business trust or with any of its subsidiaries if —

- (a) he is employed by the trustee-manager or by any of its subsidiaries, or has been so employed, at any time during the current financial year or any of the preceding 3 financial years of the trustee-manager;
- (b) any member of his immediate family —
 - (i) is being employed by the trustee-manager or by any of its subsidiaries as an executive officer whose compensation is determined by the board of directors of the trustee-manager or the subsidiary, as the case may be; or
 - (ii) has been so employed at any time during the current financial year or any of the preceding 3 financial years of the trustee-manager; or
- (c) he is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the management of the trustee-manager or any of its subsidiaries.

(3) Without prejudice to the generality of paragraph (1)(b), a director shall not be considered to be independent from business relationships with the trustee-manager or with any of its related corporations, or with any officer of the trustee-manager or any of its related corporations, if —

- (a) he is a substantial shareholder, a director or an executive officer of any

corporation, or a sole proprietor or partner of any firm, where such corporation, sole proprietorship or firm carries on business for purposes of profit to which the trustee-manager or any of its related corporations has made, or from which the trustee-manager or any of its related corporations has received, payments (whether or not the trustee-manager is acting for or on behalf of the registered business trust) at any time during the current or immediately preceding financial year of the trustee-manager; or

- (b) he is receiving or has received compensation from the trustee-manager or any of its related corporations, other than remuneration received for his service as a director or as an employee of the trustee-manager or any of its related corporations, at any time during the current or immediately preceding financial year of the trustee-manager.

When directors considered to be independent from substantial shareholder

4.—(1) A director of a trustee-manager of a registered business trust is considered to be independent from a substantial shareholder of the trustee-manager if he is not that substantial shareholder of the trustee-manager or is not connected to that substantial shareholder of the trustee-manager.

(2) For the purposes of paragraph (1), a person is connected to a substantial shareholder if —

- (a) in the case where the substantial shareholder is an individual, the person is —
 - (i) a member of the immediate family of the substantial shareholder;
 - (ii) a partner of a firm of which the substantial shareholder is also a partner; or
 - (iii) accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the substantial shareholder; or
- (b) in the case where the substantial shareholder is a corporation, the person is —
 - (i) employed by the substantial shareholder;
 - (ii) employed by a subsidiary or an associated company of the