***RE DASIN*: A LANDMARK DECISION SHAPING THE FUTURE OF BUSINESS TRUSTS RESTRUCTURING IN SINGAPORE**

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In *Re Dasin Retail Trust Management Pte Ltd* [2025] SGHC 6 ("***Re Dasin***"), the Singapore High Court (the "**SGHC**") addressed for the first time whether a trustee-manager of a business trust may seek a moratorium and propose a scheme of arrangement under the Insolvency, Restructuring and Dissolution Act 2018 (the "**IRDA**") in respect of debts incurred in its capacity as a trustee-manager. The SGHC held that the liabilities a trustee-manager incurs in such capacity are liabilities of the trustee-manager itself, and not liabilities of the business trust. Consequently, the creditors to whom these liabilities are owed are creditors of the trustee-manager. Given that trustee-managers fall within the ambit of Part 5 of the IRDA, a trustee-manager may apply to the Court for a moratorium under s 64 of the IRDA in connection with an intended scheme of arrangement between the trustee-manager and its creditors.

This case marks a significant development in the regulation of business trusts in Singapore, offering clarity on the treatment of business trusts in financial distress. At the same time, it provides important insights into earlier decisions regarding business trusts which addressed different aspects of the legal framework. While it was previously established that business trusts may be restructured through invoking the Court's inherent supervisory jurisdiction over trusts, this appeared more applicable to the privatisation and merger of business trusts. *Re Dasin*, however, introduces a new dimension to the concept of restructuring business trusts, permitting trustee-managers to utilise familiar mechanisms under the IRDA in respect of debts incurred on behalf of the business trust.

As such, *Re Dasin* expands the range of restructuring options available to business trusts in financial distress, bringing their treatment in line with that of companies under the IRDA and the Companies Act 1967 (the "**Companies Act**"). This enhances the flexibility of business trusts in navigating financial challenges, providing both businesses and investors greater confidence in their long-term sustainability. As a result, *Re Dasin* serves to increase the appeal of business trusts as an alternative, equally viable business structure, contributing to a more diverse and dynamic business landscape in Singapore.

I. FACTS

Dasin Retail Trust Management Pte Ltd ("**DRTM**"), a company incorporated in Singapore, is the trustee-manager of Dasin Retail Trust ("**DRT**"). DRT is a business trust registered under the Business Trusts Act 2004 (the "**BTA**") and listed on the Mainboard of the Singapore Exchange. DRT owns and operates, through wholly-owned subsidies, retail malls in China.[1] DRTM (in its capacity as trustee-manager of DRT) entered into secured facility agreements with banks in Singapore, Hong Kong, and Macau (the "**Offshore Lenders**"); and DRTM's indirect subsidiaries (held as part of DRT) entered into secured facility agreements with banks in China (the "**Onshore Lenders**"). These facilities came to be in default.[2]

The ultimate majority shareholder (Sino-Ocean Capital Holding Limited) and the ultimate minority shareholder (Zhang Zhencheng, "**ZZC**") of DRTM were unable to agree on how the facilities should be restructured, and the relationship among the parties soured. Thereafter, ZZC and his associates commenced winding up proceedings against DRTM.[3] In response, DRTM filed an application seeking,

[1] *Re Dasin Retail Trust Management Pte Ltd* [2025] SGHC 6 ("***Re Dasin***") at [2].
[2] *Re Dasin* at [4]-[13].
[3] *Re Dasin* at [14]-[17].

inter alia, a six-month moratorium under s 64 of the IRDA (HC/OA 1257/2024, "**OA 1257**").[4] The purpose of OA 1257 was to provide DRTM with the time and breathing room necessary to work towards a global restructuring of both liabilities incurred in its capacity as trustee-manager of DRT and liabilities incurred in its personal capacity.[5] The restructuring would involve a scheme of arrangement in Singapore, as well as a separate consensual restructuring with the Onshore Lenders in China.[6]

II. WHETHER DRTM MAY BRING OA 1257 IN RESPECT OF LIABILITIES INCURRED IN ITS CAPACITY AS TRUSTEE-MANAGER

Liabilities incurred by DRTM as trustee-manager of DRT are liabilities of DRTM and the creditors owed those liabilities are creditors of DRTM

First, the SGHC held that the liabilities incurred by DRTM as trustee-manager of DRT were liabilities of DRTM, and the creditors to whom such liabilities were owed were also creditors of DRTM. The SGHC emphasised that a trust is not a legal person, but a relationship where one person holds property on trust for the benefit of another. As such, liabilities incurred by a trustee acting as principal in connection with the administration of the trust are personal liabilities of the trustee. Accordingly, the creditors of such liabilities are creditors of the trustee and may enforce their claims *in personam* against the trustee. However, such creditors may reach trust property by subrogation to the trustee's right of indemnity.[7]

Hence, the liabilities incurred under the facility agreements and the creditors thereof were liabilities and creditors of DRTM, not DRT.[8] This position was not altered by a clause in the respective facility agreements of the Offshore Lenders stipulating that "*any power and right conferred on any receiver, attorney, agent and/or delegate under the Finance Documents is limited to the assets of or held on trust for [DRT] and shall not extend to any personal assets of [DRTM]*". Such a clause merely separated the assets held by DRTM on trust for DRT from those held by DRTM on its own account. It did not have the effect of partitioning liabilities between DRTM and DRT such that DRTM ceased to be personally liable to creditors under their respective facility agreements.[9]

The liabilities incurred by a trustee-manager for the purposes of a business trust may be restructured under the IRDA

Second, the SGHC held that it was permissible for liabilities incurred by DRTM as trustee-manager of DRT to be restructured under the IRDA. Section 64(1) of the IRDA contemplates an application pursuant to a scheme of arrangement between a "company" and its "creditors". The SGHC found that DRTM was liable to be wound up under the IRDA and therefore constituted a "company" under s 63(3) of the IRDA,[10] and that DRTM's creditors included those to whom debts had been incurred by DRTM as trustee-manager of DRT. As such, an intended scheme between DRTM and such creditors could be the subject of an application under s 64 of the IRDA.[11]

In reaching this conclusion, the SGHC distinguished the present case from the restructuring of Eagle Hospitality Real Estate Investment Trust ("**EH-REIT**") in *Re Tantleff, Alan* [2023] 3 SLR 250 ("***Tantleff***"):

(a) *Tantleff* concerned an application for the recognition of proceedings under Chapter 11 of the United States Bankruptcy Code 11 USC (US) (1978) in respect of a EH-REIT in Singapore. It addressed

[4] *Re Dasin* at [19].
[5] *Re Dasin* at [24].
[6] *Re Dasin* at [20].
[7] *Re Dasin* at [38].
[8] *Re Dasin* at [40].
[9] *Re Dasin* at [41].
[10] Section 63(3) of the Insolvency, Restructuring and Dissolution Act 2018.
[11] *Re Dasin* at [46].

the issue of whether real estate investment trusts ("**REIT**") or business trusts fell within the scope of the Model Law on Cross-Border Insolvency (the "**Model Law**"), and not the question at present – whether a trustee-manager of a business trust may apply for a moratorium under s 64 of the IRDA to propose a scheme of arrangement between itself and its creditors in respect of debts incurred for the purposes of the trust.[12]

(b) Trustee-managers of a business trust had been expressly excluded from the application of the Model Law under para 5(1)(*ze*) of the Insolvency, Restructuring and Dissolution (Prescribed Companies and Entities) Order 2020. In contrast, trustee-managers had not been excluded from the application of Part 5 of the IRDA and the regime on schemes of arrangement.[13]

III. WHETHER THE SUBSTANTIVE REQUIREMENTS FOR THE GRANT OF A MORATORIUM WERE MET

OA 1257 was made in good faith

The SGHC found that OA 1257 was made in good faith. While the intended scheme lacked particulars vis-à-vis DRTM's unsecured creditors, the SGHC accepted that such terms were contingent on DRTM's negotiations with its bank lenders, and noted that it was not uncommon for restructuring efforts to be nascent at the stage of applying for a moratorium. Further, the indeterminate composition of the class of unsecured creditors that would be parties to the scheme meant that meaningful engagement with them was not possible at this juncture.[14] Since there were reasonable explanations for the paucity of details and lack of engagement, the SGHC concluded that these omissions were not an indication that DRTM had brought the application in bad faith.

Additionally, the SGHC rejected arguments that the moratorium application was a tactic to delay the winding up proceedings filed against DRTM. The SGHC opined that the fact that DRTM had sought legal advice on restructuring its debts over a period of time was unsurprising given the complexity of the matter, and DRTM had not been idle since it first took advice. In any case, there was nothing inherently wrong with DRTM applying for a moratorium the day before the winding up hearing, as the very purpose of a moratorium is to provide breathing room from ongoing litigation and allow a company to focus on restructuring efforts.[15]

The intended scheme was feasible and merited consideration by the creditors

On a broad assessment, the SGHC found that there was a reasonable prospect of the intended scheme of arrangement working and being acceptable to the general body of creditors.

First, DRTM had received sufficient support from its creditors for the moratorium, including various Offshore Lenders, unsecured creditors in its capacity as trustee-manager of DRT, and unsecured creditors in its personal capacity.[16] The SGHC deemed it inappropriate to undertake a vote count when assessing the level of creditor support for the moratorium at this stage of the proceedings, and thus declined to entertain arguments as to which creditors' votes should be discounted or the extent to which they should be discounted.[17]

Second, there was enough potential for support from the Onshore Lenders to suggest that the intended scheme was not unfeasible or doomed to fail. While the Onshore Lenders were not strictly parties to

[12] *Re Dasin* at [44].
[13] *Re Dasin* at [46].
[14] *Re Dasin* at [54].
[15] *Re Dasin* at [56].
[16] *Re Dasin* at [58].
[17] *Re Dasin* at [59].

the intended scheme, their support was a relevant consideration as the scheme was part of an intended global restructuring.[18] In this respect, the Onshore Lenders had an incentive to support the intended global restructuring, as their potential recovery and ability to take enforcement actions would otherwise be limited.[19] Further, there was no evidence that the Onshore Lenders would be opposed to a restructuring that would complement the scheme proposed in Singapore.[20] However, the SGHC noted that more concrete evidence of the Onshore Lenders' positions might be required if the matter were to progress further.[21]

As an aside, the court declined to consider certain points raised by ZZC, as they were premised on applying a degree of scrutiny beyond that appropriate for a moratorium application.[22] Thus, having found that DRTM had satisfied ss 64(4)(a) and 64(4)(b) of the IRDA, and that the intended scheme was feasible and merited consideration by creditors, the court granted DRTM an order for a moratorium.[23]

IV. DISCUSSION

In Singapore, business trusts are regulated under the BTA. While the BTA provides for matters such as the winding up of business trusts, it is silent in respect of the restructuring of the same. Recognising the need to address this issue, the Securities Industry Council, which administers the Singapore Code on Take-overs and Mergers (the "**Take-over Code**"), promulgated a Practice Statement clarifying that the merger or privatisation of business trusts may be effected by way of a trust scheme, subject to (a) compliance with the Take-over Code; and (b) the trustee-manager obtaining the approval of court under Order 80 of the Rules of Court 2014 (the "**ROC 2014**"), now Order 32 of the Rules of Court 2021.[24]

Indeed, Order 80 of the ROC 2014 was successfully invoked in *Re Croesus Retail Asset Management Pte Ltd* [2017] 5 SLR 811 ("***Re Croseus***") to effect the proposed acquisition of all units in a business trust by a private equity group, wherein the orders granted by the court "largely paralleled that in an application for a scheme of arrangement under s 210 of [the Companies Act]".[25] Although *Re Croseus* provides some clarification as to the regulation of business trusts, it does not answer the question of whether liabilities incurred on behalf of a business trust can be restructured in situations of financial distress, whether under Order 80 of the ROC 2014 (and not Order 32 of the Rules of Court 2021) or otherwise.

Thus, *Re Dasin* marks a significant development in the manner business trusts are treated under Singapore's insolvency laws, particularly with respect to the options for restructuring and relief. The case establishes that, even though the business trust itself lacks a separate legal personality, the trustee-manager of a business trust is entitled to seek reliefs under the IRDA in respect of debts incurred on behalf of the business trust. This decision aligns with the broader trend of harmonising the regulatory treatment of business trusts under the BTA with that of companies under the Companies Act.[26]

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[18] *Re Dasin* at [60].
[19] *Re Dasin* at [61].
[20] *Re Dasin* at [62].
[21] *Re Dasin* at [63].
[22] *Re Dasin* at [64].
[23] *Re Dasin* at [65] and [66].
[24] Securities Industry Council, Monetary Authority of Singapore, "Practice Statement on Trust Schemes in Respect of Mergers and Privatisations" (3 October 2008), <https://www.mas.gov.sg/-/media/MAS/resource/sic/press_releases/Practice-Statement_Trust-Schemes.pdf?la=en&hash=157750946561C40F30EAE68A77AD2E8821D15889> (accessed 31 January 2025).
[25] *Re Croesus Retail Asset Management Pte Ltd* [2017] 5 SLR 811 [6] and [7].
[26] Monetary Authority of Singapore, "Explanatory Brief for Business Trusts (Amendment) Bill 2022" (12 September 2022), <https://www.mas.gov.sg/news/speeches/2022/explanatory-brief-for-business-trusts-bill-2022> (accessed 31 January 2025) at [5] and [6].

It should be noted that the position in *Re Dasin* diverges from the approach in some other jurisdictions – in New York, for instance, business trusts are treated as having a separate legal personality for the purpose of bankruptcy proceedings.[27] Nevertheless, the development in *Re Dasin* is a desirable one as it enhances the ability of business trusts to weather financial difficulties, allowing them to pursue recovery strategies instead of being wound up under the BTA. This allows business trusts to continue operations and preserve value for beneficiaries in the long term, bolstering the viability of business trusts as an alternative business structure and increasing their appeal to investors.

Considering the expanded restructuring toolkit added in Singapore since 2017 (including the extension of the Singapore International Commercial Court's jurisdiction to hear restructuring matters in 2022), *Re Dasin* further underscores the availability of numerous options to assist businesses in financial distress, including trustee-managers of business trusts and REITs. Such a landmark decision bolsters Singapore's standing as a premier restructuring jurisdiction, positioning the country as a hub for resolving complex cross-border financial challenges.

[27] *Rubin and another v Eurofinance SA and others* [2010] 1 All ER (Comm) 81 at [10].