

ROLE OF BUSINESS TRUSTS TO ENHANCE BUSINESS DEVELOPMENT: POTENTIAL CHALLENGES IN THE SRI LANKAN LAW

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ABSTRACT

Trusts Law had used in most of the common law countries in its traditional meaning in past few decades. Nevertheless, the law of trusts is the branch of the law which is developing at a rapid pace and which is highly relevant to modern conditions, not merely to a bygone age. In the modern context, the concept of trust is utilizing as an alternative problem solving mechanism in the several legal sectors such as family, property, commercial transactions, public purposes, and environmental matters. This research has mainly focused on the recent developments of the concept of trusts in commercial transactions with special reference to the business trusts in order to enhance the business development of a country. Business development contains many techniques, which emphasis on researching new types of business with an emphasis on identifying gaps, attracting new customers and penetrating existing markets. Business trust is a crossbreed construction which combines the elements of unit trusts with the elements of a company and it is very useful to build a business relationship that is profitable and sustainable to enhance the business development of a country. Business trust can be considered as the pioneering mechanism, which was inherent from the law of trusts to the commercial world. In introducing this modern concept of business trusts to the Sri Lankan legal context, the major challenge is that the Trusts Ordinance No. 09 of 1917 which comprises very traditional viewpoint on the concept of trusts and yet to be grasped the innovative trusts perceptions. Hence, in the event of hosting Business trusts to Sri Lanka, it should be in a form of either separate Business Trusts Act or possible amendments to the Sri Lankan existing Trusts Ordinance. This paper concentrates on the current usage of business trusts and the contribution of business trusts for the business development by analyzing the laws in different countries and evaluates the challenges in the Sri Lankan Law.

Keywords: Business Trusts, Business Development, Comparative Study, Sri Lankan Perspective

INTRODUCTION

A trust involves a relationship wherein a person called as the settlor transfers a property (movable or immovable) to another person called as the trustee for its management and control for the benefit of someone else called as the beneficiary. The Hague Convention on the Law Applicable to Trusts and their Recognition in 1992 contains the following definition of a trust in Article 02;

“For the purposes of this convention, the term ‘trust’ refers to the legal relationships created - inter vivos or on death - by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose. A trust has the following characteristics-

- (a) the assets constitute a separate fund and are not part of the trustee’s own estate;*
- (b) title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee;*
- (c) the trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law.*

The reservation by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust.”

In the modern context, the practice of the concept of trust may be classified as family, property, commercial and social purposes.¹ However, this paper mainly focuses the usage of trust as an alternative method to enhance the productivity of the commercial transactions in the world. Business trust is the one of these kinds of trusts, which is utilizing as an investment vehicle like unit trust to amplify the business development of a country. This research paper purported to identify the modern developments of the concept of trusts in commercial transactions with special reference to the function of business trusts in the business development process.

THE ROLE OF BUSINESS TRUSTS TO ENHANCE THE BUSINESS DEVELOPMENT OF A COUNTRY

The Trust has been used for many years to protect the properties of its beneficiaries. Today, ‘Business Trusts’ are one of the most important influences, such as unit trusts, from law of trusts to the business world. In the business trusts, the trust is using as a structure to conduct a dynamic business. In the modern use of trust, business trusts are very useful to build a business

¹ Oakley A. J., Parker and Mellows: The Modern Law of Trusts, 9th Edition, Sweet & Maxwell – London, 2008, at p. 06

relationship that is profitable and sustainable to enhance the business development of a country. Here this research paper has mainly focused on the nature of a business trust, the current usage of business trusts and the contribution of business trusts for the business development of a country.

Nature Of The Business Trust

Business trust is a crossbreed construction, which combines the elements of unit trusts with the elements of a company. Usually, 'Trust' is defined as an agreement where a person called the 'Trustee' holds the property for the benefit of others called 'Beneficiaries'. There can be one or more trustees as well as one or more beneficiaries in a trust.² In the business trust, the trustee is considered as the legal owner of the assets is called the 'Trustee manager' and the beneficiaries are called as 'Unit holders'.

Business trusts are generally created under a document called a trust deed. The business trust deed includes the definition of the property of the business trust and the purpose of the business trust. In addition, mainly a business trust deed includes the type of business, the duties of the trustee and the rights of the beneficiaries as well.³

Differences Between Business Trusts And Other Entities

This research paper attempts to analyze whether this concept of business trust is an appropriate structure for the business development of a country than other legal entities. The business trust has many advantages than other forms of business such as sole proprietorship, limited partnership, company, corporation etc.

In the case of Hussey vs. Arnold⁴ the Massachusetts Supreme Court mentioned that, "Business enterprise by using of the business trust could obtain several advantages belonging to corporations, without the authority of any legislative act, and with freedom from the restrictions and regulations imposed by law upon corporations."⁵

In comparing the trust with the corporation, the courts were holding that the business trust is not a corporation because the trust exists by virtue of the common law and not by virtue of legislative Acts as mentioned in the case of Gardiner vs. Gardiner.⁶

Unlike a company, the business trust is not a separate legal entity and it is established and governed by a trust deed that sets out how the business trust operates and drives its business enterprise. The ownership of the company belongs to its members and the ownership of the business trust goes down to the trustee manager. In the sense of a company, since the company is a legal entity, the company should be liable for the debts of the business. However, in the business trust the responsibility goes to the trustee manager. In addition, the responsibility for the management of a business company goes to the board of directors and the management of the business trust goes to the trustee manager.⁷

Not only in a company, i.e. the dividends can only be paid out of available accounting rights, but also business trust can pay distributions to its beneficiaries out of its operating cash flows. If an individual person or a group has decided to conduct a business within the legal framework of a business trust, it affords certain protections and advantages that other legal entities do not have. Because the assets of the business trust belong to the trust alone, personal creditors cannot claim against the personal assets. The trust is not legally required to appoint an auditor, reveal financial statements and pay annual fees to the Registrar and so on. Therefore, the business trust has less administrative costs than a company has.⁸

When considering the current usage of the business trusts, the author has selected two legal regimes, which are Singapore and South Africa, which utilize business trusts in their development process.

The Usage Of Business Trusts In Singapore

In Singapore, business trust is a unique organization among their other business organizations such as sole proprietorship, partnership, limited partnership, limited liability partnership and company.⁹

Business trust is a unique partnership and it is a vehicle to press forward nation building by supporting reconciliation, reconstruction, development and growth. Singapore, reputed for attracting international business, is using the business trust as an innovative investment structure in their economic development. Singapore business trusts are governed under the 'Business

²Ibid, at pp.17-19

³An Overview of the Singapore Legal System (2007), Chapter 14, Forms of Business Organizations, Singapore Academy of Law, Retrieved on September 03, 2011, from <http://www.singaporelaw.sg/content/BA.html>

⁴Hussey v. Arnold, 185 Mass. 202, 70 N.E. 87

⁵Ibid, See further Symmonds F. L, Business Trusts, p. 212, Retrieved from <http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=4178&context=mulr> on 29th November 2011

⁶Gardiner v. Gardiner, 212 Mass.508, 99 N.E.171 (1912), Further reference, Symmonds F.L, Business Trusts, Retrieved from, <http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=4178&context=mulr> on 29th November 2011

⁷Supra 03

⁸A Business Trust as a Legal Entity, SME Toolkit, South Africa, Retrieved from <http://southafrica.smetoolkit.org/sa/en/content/en/5256/A-business-trust-as-a-legal-entity> on September 03, 2011

⁹Supra 03

Trusts Act of 2004'. It has two objectives; to protect the interests of the unit holders and to establish the duties and accountability of the trustee manager of a business trust.¹⁰

According to the Singapore Business Trust Act, business trust should be registered under the Act to make it more reliable to the customers and a registered business trust must have a trustee manager who should be a Singapore registered company.¹¹ The unit holders of a registered business trust have certain rights other than general business trusts. Those are, limited liability, right to remove and replace the trustee manager, right to fair treatment, right to bring a representative or derivative action on behalf of the trust.

The winding up of a business trust in Singapore, is generally according to the trust deed. Notwithstanding that, the unit holders of a registered business trust can direct the trustee manager to terminate the business trust by passing a special resolution. After the winding up of the business trust, the assets that belong to the trust are reversed according to the trust deed. Singapore business trusts are subjected to taxation such as a company. Like a company, in a business trust the trustee manager pays tax on income generated by the trust. Nevertheless, the distributions received by the unit holders are exempted from the tax.¹²

In Singapore, business trusts is mainly used in capital-intensive sectors such as shipping and infrastructure sectors, because various tax incentives may be available in these business trusts.

Business Trusts In The Shipping Sector In Singapore

In the shipping sector, business trusts of ship or container that have been approved as an Approved Ship Investment Vehicle under the Singapore Maritime Finance Incentive Scheme can be benefited by many tax incentives. For example;

- The qualifying charter income received by the business trust would be tax exempt.
- If the business trusts funds the acquisition of vessels through bank lending, the tax on interest payments to the bank would be exempted.

However, these tax incentives could be granted on the approval of the Maritime and Port Authority of Singapore.¹³ For the business trusts to qualify for tax incentives offered under Singapore Maritime Finance Incentive Scheme, the trustee manager should be both incorporated and have a position in Singapore.¹⁴

Business Trusts In The Infrastructure Sector In Singapore

When considering the infrastructure sector of Singapore, certain tax incentives may be available to business trusts with offshore infrastructure assets. An approved trustee manager of a qualifying registered business trust will get a concessionary tax rate of 10 per cent for up to 10 years in respect of infrastructure assets outside Singapore. To get benefits from this deduction, business trust should;

- Be listed in Singapore within one year from the date that the trustee manager is approved and
- Own prescribed offshore infrastructure assets or shares of any company that owns such offshore infrastructure assets.¹⁵

The best example of this kind of business trusts on infrastructure is the launching of port assets of Hutchison Whampoa Limited as a business trust named as 'Hutchison Port Holdings Trust'.¹⁶

In Singapore, business trusts in the above sectors have achieved possible advantages by using business trusts. From these advantages, it has contributed to the business development of Singapore directly from these sectors.

For instance, there is flexibility in the making of distributions to unit holders out of cash flows rather than accounting profits from business trusts of these sectors. The listed business trusts would have access to debt and equity finance through the Singapore Stock Exchange and it could be used to fund further acquisition of assets.¹⁷

The Singapore Stock Exchange gives investors liquidity for their investments and a business trust has no legal restrictions on gearing unlike other structures. The business trust gives investors access to the shipping or infrastructure industry on a small and diversified scale.¹⁸ In addition, in the business trust the asset owner's reputation could be enhanced, which could accelerate future

¹⁰City spring Infrastructure Trust (2008), More on business trust, Retrieved from http://www.cityspring.com.sg/about_bus.html on 04th September 2011

¹¹Supra 03

¹²Supra 03

¹³Singapore Business Trust [September 01, 2010], Norton Rose (Asia) LLP, Retrieved from <http://www.nortonrose.com/knowledge/publications/29416/singapore-business-trusts> at p. 03 - 04

¹⁴ibid, at p. 04

¹⁵Op cit, at p. 03 - 04

¹⁶Hutchison to launch ports business trust in Singapore and rise up to US\$6 billion - is the start of a wave of infrastructure business trusts?, January 2011, at p. 01, Retrieved from, <http://www.nortonrose.com/knowledge/publications/33923/hutchison-to-launch-ports-business-trust-in-singapore-and-raise-up-to-us6-billion-is-this-the-start-of-a-wave-of-infrastructure-business-trusts> on 20th November 2011

¹⁷Supra 13, at p. 03- 04

¹⁸Ibid.

debt and equity fund raisings. Nevertheless, if the business trust is not successful, the asset owner's reputation could be damaged. Therefore, business trusts have given a massive exposure to enhance the business development of Singapore.

However, there are some possible disadvantages in exercising a business trusts as well. There is a problem on the independency of the trustee manager. If the asset owner acts as trustee manager and the asset owner is also a unit holder, it will need to act independently of the asset owner and at least half of its board of directors will need to be independent of the asset owner. This will result, even if the former is the majority unit holder, the asset owner loses the management control of the trustee manager. In addition, if the business trust is to be listed on the Singapore stock exchange there will be highly costs on going compliance with the stock exchange rules. The other factor is that in order to comply with stock exchange rules on disclosures, the activities of the trustee manager will be more open to public scrutiny than in a private company.

Business Trusts In South Africa

There are several programmes in South Africa, which have used business trusts in their development process. 'The Business Trust' in South Africa is a private funded trust. In South Africa, the Business Trust was established in 1999 to assist in creating employments, build capacity, combat poverty and build co-operative relationship between the business and the government.¹⁹

In this manner, the business trust provides the resources to individual companies those can be large or small companies, to accomplish together what they could not do on their own. Because it is believed that much more can be achieved by working together, than by independent action and it will enhance the business development of the country.

Business trusts are financed by South Africa's leading companies and governed by a board of government. Moreover, business leaders and those finances receive support for the programmes in order to enhance the accomplishment of agreed national objectives.

Therefore, South Africa is recently using Business trusts for many development programmes that are conducted with the government. One example is Maruleng and Bushbuckridge Economic Development Initiative (hereinafter mentioned as MABEDI)²⁰ Programme, which aims to model a market development approach to create jobs and reduce poverty in rural areas with significant needs and economic development potential.

This MABEDI Programme has been created between the business trust and the department of corporate governance of South Africa. The objective of this programme is to initialize a market-based enterprise development approach to local economic development in one of South Africa's poverty nodes in Maruleng and Bushbuckridge. The main purpose of this programme is to enhance business development by improving productivity and market access for smallholder farmers and attract investment for land reform projects.²¹

Support Programme for Accelerated Infrastructure Development (hereinafter mentioned as SPAID)²² is another programme that aims to mobilize an increased private sector involvement to meet the infrastructure targets of the government. The SPAID is a partnership between the Business Trust and the South African Government and the objective of this programme is facilitating the creation jobs and the development of human capacity in South Africa.²³

The Tourism Enterprise Partnership²⁴ is another programme initiated by the business trust to promote tourism development in South Africa. The purpose of this is to encourage, facilitate the growth, and expand tourism enterprises to increase and broaden demand for tourism activity. This aims at creating jobs and thereby reducing unemployment and poverty. This programme supports firms in the tourism sector to conclude commercially viable transactions.

These are the programmes used by the South African government interconnected with the business trust to achieve business development. It also seeks to increase the capacity for individuals and organizations whilst focusing on job creation through economic growth, enterprise development to support the government to expand public service programmes. Therefore, business trust has various advantages than other entities like unit trusts and companies. Therefore, this is an appropriate exposure to the developing countries to attain sustainability in their economy.

¹⁹Overview of Business Trust, Business Trust [2009], Retrieved from, <http://www.btrust.org.za/index.php?id=4>

²⁰Maruleng and Bushbuckridge Economic Development Initiative (MABEDI), Business Trust Report Card, [2010], Retrieved from http://mailgloo.com/webclients/Btrust/QR1_2011/maruleng.html on 03rd September 2011

²¹Ibid.

²²The Support Programme for Accelerated Infrastructure Development [2006 – 2010], Retrieved from, <http://www.btrust.org.za/index.php?id=204> on 03rd September 2011

²³Ibid.

²⁴The Tourism Enterprise Partnership (2000 – 2013), Retrieved from, <http://www.btrust.org.za/index.php?id=18> on 03rd September 2011

BUSINESS TRUSTS AND BUSINESS DEVELOPMENT

To achieve outstanding businesses there are more techniques to enhance than other traditional business methods used in the world. The differences between these traditional and world-class businesses are mentioned in the book titled 'Understanding Business' as follows;²⁵

	Traditional Businesses	World-Class Businesses
1.	Customer satisfaction	Delighting the customer
2.	Customer orientation	Customer and stake holder orientation
3.	Profit orientation	Profit and social orientation
4.	Reactive ethics	Proactive ethics
5.	Product orientation	Quality and service orientation
6.	Managerial focus	Customer focus

Table 1

Source of Table 01: Understanding Business, 6th edition, McGraw-Hill, (2002), Chapter 1, P.17

Business development as defined in the Company Crafters Entrepreneur's dictionary is,

*"Business function focused on strategy, creating strategic partnerships and long term relationships with suppliers and customers. The business development function within a business can be thought of as a jack-of-all-trades position focused on strategic deal-making with an eye toward increasing sales and expanding the company."*²⁶

Business development belongs in the field of commerce and its contents a number of techniques, which focuses researching new types of business with an emphasis on identifying gaps, attracting new customers and new ways to reach existing markets.²⁷ Towards business development, the countries should move in to new creations those did not do before.

In relation to this, the paper identifies the concept of trust, i.e. a legal concept, as a new stream of business to enhance business development through business trust than other legal entities as mentioned above.

In achieving business development there are certain levels, i.e. mentioned as the level of product, level of commercial and level of corporation, to be fulfilled.²⁸ It is important to elaborate whether the business trust can achieve these levels in its implementation. The product level of a business means developing a new product or business. In this section, the producer can think about a new structure or new techniques to introduce his business. The commercial level means hunting new customers in new segments or markets and in the corporate level, it aims financial and legal levels.²⁹ This deals with business portfolio analysis, corporate finance, fiscal law, contract law, anti-trust law and social law etc.

As mentioned in the earlier stages, the paper has focused on the advantages of business trusts than other entities in the business development process. However, business trusts and the parties of the business trusts should work within the legal environment of business. Since business trust is not a legal entity as a company, it should have to be bound with both statutory and common law requirements as other business entities.

For example, business trusts should comply with tort or delict law for the reason that it is the legal regime that covers all the wrongful acts, which cause injury to another person's body, property or reputation. In addition, business trusts should be in accordance with laws relating to patents, copyrights and trademarks. Furthermore, it should be comply with laws relating to business such as sale of goods, bills of exchange and contract law, tax laws, bankruptcy laws etc.

THE SRI LANKAN PERSPECTIVE

The concept of 'Trust' was introduced to Sri Lanka by an ordinance named 'The Trusts Ordinance' in 1917 during the British colonial period. The trusts law of Sri Lanka is still depended on this very ancient Trusts ordinance and the necessary steps yet to be taken to amend this ordinance. At the present time, the trust has developed and linked with many different areas such as commercial law, family law and law of property in all over the world. With the means of the traditional provisions of trusts ordinance of Sri Lanka, these recent developments cannot be achieved. Therefore, to become popular of this concept of trusts among the legal practitioners, academics and law students the trust ordinance should bring to relevant amendments.

²⁵Nickels W. G, McHugh J. M, McHugh S. M, Understanding Business, 6th edition, McGraw-Hill, (2002), Chapter 1, at p.17

²⁶Business Development Definition, Retrieved from, <http://www.gobignetwork.com/information/gobig-dictionary/business-development-definition>

²⁷ Business Development, Wet feet, Retrieved from, <http://www.wetfeet.com/careersindustries/careers/business-development> on 23rd September 2011

²⁸Business Development Definition, Retrieved from, <http://www.theunlimited.net/articles/BD/bddefinition.html> on 23rd September 2011

²⁹Ibid.

There are some provisions those should be amended in accordance with the current developments of the law of the country. Section 02³⁰ of the Trusts Ordinance 1917 describes the application of English trusts whenever *casus omnisus* arises. Nevertheless, there are some uncertainties on this section about the meaning of 'All matters', 'for the time being', 'Principles of Equity'. It is inappropriate to introduce English law directly for the lacunas of trusts law without getting consideration the above uncertainties. If it is done as so it will become great disputes not only in the trusts law, but also in others like law of property, law of succession those based on Roman Dutch Law. Therefore the section 02 should be abolished and new sections should be introduced in the case of *casus omnisus* by reviewing England legislation. For instance, it could be hosted new provisions for liability of trustees who are getting retirement after the breach of trust and liability for the breach of trust after the death of the trustee³¹. As well as it should be included the remedies when the assortment of trusts property and third parties property.

Section 03(a)³² of the trusts ordinance has mentioned the definition for the trust. Nonetheless, this definition has not enclosed charitable trusts and implied trusts. Therefore, this definition should be amended including as follows; 'The trust is a fiduciary relationship which force by the equity to the trustee who holds the legal or equitable ownership for the benefit of some persons called beneficiaries or to hold by himself for a purpose of the law and the real benefit can acquire by the beneficiaries or the other purposes of the trust, not for the trustee.

Section 04 of the trusts ordinance described the trust which formed for an unlawful purpose is void. Section 4(2) only illustrated where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void. But it has not expressed what happens to the trust property after the declaration of void. It is not rational to use Sections 86 and 87 for such a situation of trust properties. Section 86 describes about the general transfer of property for illegal purpose and section 87 demonstrates the transfer of property for an illegal purpose by a last will. If the section 85 applies for unlawful trusts it would not be just that the trusts property giving back to the settler.

Therefore, section 04 (2) should have an additional clause which describes the solution as follows; 'The property, of an express trust which revoke by the reason of unlawfulness, should be confiscation. With the attendant circumstances the trustee can hold the property on behalf of the settler or his legal representatives where the unlawful purpose has not fulfill or the implementation of such trust is not contradict with any other legal presumptions or the intention of the settlor can consider as the *bonafide* intention of another reasonable effort.'

The other proposal is to amend the illustration for section 06(a)³³. As it mentioned, some significant words are not sufficient to identify the intention of the settler when the formation of a trust. (Like 'having the fullest confidence...') Therefore, to hunt the intention of the settler, it should consider the whole trust instrument. One or two words which reflect the intention have not sufficient to identify the objective of the trust document. Hence, there should be introduced an illustration which described the above matter.

Furthermore, according to the section 10³⁴ of the Trust Ordinance, the trustee can be a person capable of holding property. But the trustee should have the competent to contract when the discretionary powers lie on him. Usually in every trust the trustee holds the power of discretionary. Therefore, this section should reform as 'every trustee has to possess the competent to contract on the functions of a trust'.

Besides section 20³⁵ of the trust ordinance which describes that the trustee has the ability to invest the trust money. But it should include the standard investment criteria as mentioned in the Trustee Act in 2000 in United Kingdom. In considering the provisions of Trusts ordinance of Sri Lanka, there is no direct or indirect section which can be considered the recent developments of trusts law such as business trusts, unit trusts and commercial trusts. According to the above mentioned legal aspects of the countries, in many times they have introduced these modern concepts by the amendments to their current trusts laws or by a special separate legal document. Therefore this is the time to make recommendations to reform the traditional trusts ordinance of Sri Lanka in accordance with the recent developments of the trusts law in the world.

METHODOLOGY

The purpose of this research paper is to identify and evaluate the modern use of trusts in commercial transactions with special reference to the nature of business trusts, its advantages and analyze the contribution of the business trust to the business development for developing countries. This research is a qualitative research based on secondary sources, which are library, and internet research of books, journal articles and relevant statutes and case law.

³⁰Section 02- 'All matters with reference to any trust, or with reference to any obligation in the nature of a trust arising or resulting by the implication or construction of law, for which no specific provision is made in this or any other enactment, shall be determined by the principles of equity for the time being in force in the High Court of Justice in England'.

³¹As mentioned in English Law there are specific provisions about the retirement of trustees in 'Trusts of Land and Appointment of Trustees Act 1996', chapter 47, part 02, Section 19

³²Section 03(a)- ' "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another person, or of another person and the owner, of such a character that, while the ownership is normally vested in the owner, the right to the beneficial enjoyment of the property is vested or to be vested in such other person, or in such other person concurrently with the owner;'

³³Section 6 (a) – A bequeaths certain property to B, "having the fullest confidence that he will dispose of it for the benefit of" C. this creates the trust so far as regards A and C.

³⁴Section 10 (1) – Every person capable of holding property may be a trustee. But where the trust involves the exercise of the discretion, he cannot execute it unless he is competent to contract.

³⁵ See Section 20 of the Trusts ordinance in Sri Lanka.

CONCLUSION

In considering the business trust to enhance the business development of a country it is a up-and-coming issue in these days to a developing country from the trusts concept. Business development in the field of commerce contains many techniques, which focus on researching new types of business with an emphasis on identifying gaps, attracting new customers and penetrating existing markets. However, this paper identifies the concept of trust, i.e. a legal concept, which makes an influence to the business development through business trust.

When considering the current usage of business trust in some significant countries, it has improved the business development by making substantial economy, employment growth, sustainable business and community development. To achieve business development, a new and different approach to policymaking and its implementation is an essential requirement.

The paper concludes by suggesting that all the other developing countries can effectively utilize the business trust as a proper format to achieve business development as Singapore and South Africa doing. However, these new entities should work within the legal environment of business to achieve *uberrima fidei* in the business. It means the business trusts should be in accordance with contract law, tort law, intellectual property law, tax laws, bankruptcy laws as well as the business law.

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