

PREFACE

1. The Accounting and Corporate Regulatory Authority (“ACRA”) is the national regulator and registration authority for businesses and public accountants. It administers, amongst other laws, the Business Registration Act, Cap. 32 (“BR Act”).

2. The BR Act was first enacted in 1974. Many provisions may now be out of date. ACRA has commenced a review of the BR Act with a view to modernise it and make it more relevant and current to the present day business environment.

3. ACRA is thus seeking feedback from interested parties for this purpose. We invite you to submit your responses, views and comments on the questions set forth in this paper. Electronic submission is encouraged. Written comments should be submitted to:

Business Registration Review Secretariat
Legal Services Division
Accounting and Corporate Regulatory Authority
10, Anson Road #05-01/15 International Plaza
Singapore 079903
Fax: (65) 62251676
Email: ACRA_BRConsult@acra.gov.sg

4. All feedback should reach ACRA by **30 November 2010**. Please note that the feedback received may be made public unless confidentiality is specifically requested for all or part of the submission.

Background

1. The BR Act requires registration of *persons* who want to carry on *business* in Singapore. “Person” includes individuals, firms, foreign firms and corporate entities (eg. companies, limited liability partnerships, foreign companies).
2. All persons (with some exceptions) must apply to ACRA¹ for registration under the BR Act before starting business. Under the BR Act, a person can register either a sole-proprietorship or a partnership under a business name.
3. More information on businesses can be found in ACRA’s website at www.acra.gov.sg under the tag “Sole-proprietorship and partnership”.

Questions for Feedback

4. We highlight the main BR Act provisions and feedback questions under different categories below.

What is a “Business”

5. Under the BR Act, “*business*” includes every form of trade, commerce, craftsmanship, calling, profession and any activity carried on for the purposes of gain. But it excludes:
 - a) any employment (ie. someone who works as an employee), occupation or office (ie. position of authority usually with public duties and functions), and
 - b) the exempted business in paragraph 8 below.

Questions for feedback:

- (1)(a) Should the above definition of “*business*” be changed?
- (b) If so, what changes do you suggest?
- (c) Do the words “*employment*”, “*occupation*” and “*office*” need further explanation?

Exemption from Registration

¹ Electronically through Bizfile.

6. 2 categories of persons need not register under the BR Act. The 1st category covers various types of *entities*. The 2nd category exempts individuals doing certain types of *businesses* from registering.

7. The 1st category (exempted *entities*) comprises:

- a) entities established by law (eg. statutory boards, MCSTs);
- b) certain clubs/institutions listed in the First Schedule to the Income Tax Act;²
- c) societies, co-operative societies and mutual benefit organisations (registered under their respective Acts);
- d) professionals whose registration is governed by other written laws (eg. doctors, architects etc);
- e) the Public Trustee or Official Assignee of a bankrupt's property; and
- f) registered companies, foreign companies and limited liability partnerships carrying on business in Singapore in their own names³.

Questions for feedback:

(2) Who else need NOT register under the BR Act to carry on business in Singapore)?

(3) Should persons carrying on business in their own names (eg. tuition and music teachers) be required to register under the Act?

8. The 2nd category (exempted individuals doing certain *businesses*) are:

- a) licensed hawkers;
- b) craftsmen working from home;⁴
- c) taxi drivers;

² These include: Catholic Young Men's Association, Kwong-Wai-Shiu Free Hospital, Lee Kuan Yew Exchange Fellowship, Metropolitan YMCA, National Crime Prevention Council of Singapore, SAFRA National Service Association, HomeTeamNS, Titular Anglican Bishop of Singapore, Titular Roman Catholic Archbishop of Singapore, YMCA and YWCA.

³ Limited Partnerships are also exempted by virtue of section 42 Limited Partnerships Act.

⁴ who (i) do not display their products in public, and (ii) do not employ outsiders.

- d) trishaw riders;
- e) sampan man plying his sampan for hire; and
- f) farmers and prawn/fish pond keepers.⁵

9. One area we wish to specially review is persons doing business exclusively in cyberspace, be it “online” through the internet or through telecommunications or other modes.

Questions for feedback:

(4)(a) The above list is outdated. Should the BR Act continue to have a list of “exempted businesses” (ie. persons doing these businesses need not register under the BR Act)?

(b) If so, what businesses?

(5) For individuals doing business exclusively “online” through the internet, which of the following separate categories (if any) should be exempt from registration?

(a) resides in Singapore and receives orders (for goods or services) online from Singapore only.

(b) resides in Singapore and receives orders online (for goods or services) from overseas only.

(c) resides in Singapore and receives orders online (for goods or services) from Singapore and overseas.

(d) resides overseas and receives some or all orders online (for goods or services) from Singapore (eg. Amazon.com, PayPal).

(e) resides overseas, places orders online (for goods or services) overseas to a Singapore vendor, and takes delivery in Singapore (by himself or his agent).

(f) what other situations, if any, should individuals doing business exclusively online be exempt from registration?

(6)(a) Apart from the *internet*, should “*online*” or cyberspace cover other communication mediums (eg. handphones etc.)?

⁵ who (i) do not employ outsiders, (ii) do not own the land, and (iii) do not charge admission fees.

(b) If so, which mediums?

(7) If a person need not register under the BR Act (ie exempted), should ACRA still allow him to register (if he wants to)?

Registration

10. Applicants must provide the following information:

- a) a business name (eg. Mayflower, Garden House);
- b) general nature of the business (eg. Maid Agency, General Trading and the SSIC Code⁶);
- c) place(s) of business (ie. business address);
- d) particulars of all persons managing the business (eg. name, NRIC no., residential address);
- e) particulars of the sole proprietor or all partners or corporation carrying on the business (eg. name, NRIC no. or UEN⁷/registration no., residential address/registered office); and
- f) date of commencing business (eg. 1 January 2010).

11. In addition to the information mentioned in paragraph 10, applicants carrying on business as:

- a) *nominee* or *trustee* of third parties must give particulars of all the third parties (eg. name and residential address of the third party),⁸ and
- b) *agent* of foreign entities must provide information of the foreign entities (eg. name and address of the foreign entity).⁹

⁶ Singapore Standard Industrial Classification

⁷ Unique Entity Number

⁸ The full list of additional information *nominees* and *trustees* must inform ACRA:

- (a) Name, nationality and usual place of residence of all persons on behalf of whom the nominee/trustee carries on business.
- (b) If such person is a corporation, its name, registered office and general nature of its business.
- (c) Where the beneficiaries are a class of children or other persons, a description of the class.

⁹ The full list of addition information *agents* of foreign entities must give ACRA:

- (a) Business name, address and the general nature of business of the foreign firm.

Questions for feedback:

(8) Which of the above information is NOT necessary for applicants to give ACRA?

(9)(a) What additional information should applicants give ACRA when registering?

(b) ACRA proposes applicants must provide us the additional following information when registering: (i) e-mail address, (ii) telephone no. (either handphone, home or office), (iii) date of birth. Are there any objections?

(c) Which information in question 9(b) should be made *available* to the public (eg. when public buys the business profile)?

(10)(a) Should the BR Act remove the requirements to provide the additional information relating to nominees, trustees and agents as stated in paragraph 11? (If yes, it means registrant X carrying on business on behalf of Y need not disclose existence of Y or Y's particulars to ACRA).

(b) Are you clear as to who are “trustees”, “nominees” or “agents”?

(11)(a) Should partnerships (apart from professional firms) with more than 20 partners be allowed to register under the BR Act?

(b) If yes, please give reasons.

12. Registration lasts for 1 year. Persons apply to renew their registration annually (if they want to continue the business thereafter).

Questions for feedback:

(12)(a) Should registration be longer than 1 year?

(b) If so, for what period(s)?

(b) If agent carries on business for 3 or more foreign firms, can just give name and country of firm, and no. of firms the agent carries on business for.

(13) Should the BR Act allow lifetime registration (ie. one-time registration until registrant dies or closes the business)?

(14) Should applicants have a choice how long to register for?

Business Names

13. A person cannot register a business name which:

- a) is undesirable (eg. obscene words);
- b) is identical to names of existing entities or names already reserved in ACRA's register; or
- c) the Minister has gazetted (eg. "Temasek").

ACRA can direct a person to change his business name at any time if he registers any such name.

14. In addition, another entity can also request ACRA to direct a subsequent applicant ("Target") to change the Target's business name:

- a) which so nearly resembles the entity's name as to be likely to be mistaken for the entity,¹⁰ or
- b) if the other entity has obtained an injunction under the Trade Marks Act forbidding the Target from using the business name.

Questions for feedback:

(15) What other situations (if any) should ACRA refuse to register a business name?

(16) What other situations (if any) should ACRA direct a subsequent applicant to change his business name?

Change of Particulars Upon Death

15. A registrant must notify ACRA if any information registered with ACRA

¹⁰ Under this head, applicants must apply to ACRA within 1 year from Target's registration date.

(eg. business address or activities) has changed. He must do so within 14 days (through Bizfile). For eg, a new partner joined on 1 Feb 2010. ACRA must be notified of this by 15 Feb 2010.

Question for feedback:

(17) When a registrant (Mr A) dies, on being notified, ACRA will just change registrant's name to "*Estate of Mr A, Deceased*" in our records – until we receive instructions from executors/administrators of Mr A's estate (if any). Is this acceptable?

PS. In law, ACRA can only act on instructions from executors/administrators of a deceased's estate.

Rectification of Register

16. Both ACRA and the court have powers to amend the register (of persons registered under the BR Act). ACRA's powers are limited to rectifying *mistakes* (ie. clerical or typographical errors). This usually happens when lodgers enter wrong information when filing transactions with ACRA.

17. The court can direct ACRA to amend the register if:

- a) any information in the register is incorrect, or
- b) a misleading business name has been registered, or
- c) the use of a business name should be prohibited.

Questions for feedback:

(18)(a) Should ACRA have wider powers to amend the register (ie. not only to rectify clerical or typographical errors)?

(b) If yes, please state other situations where ACRA should have power to amend the register.

(19)(a) Should the court have *exclusive* powers to amend any matters in the register?

(b) If yes, please state what matters.

Local Managers

18. If the sole proprietor or all partners reside outside Singapore, they must appoint a local manager. The local manager is personally responsible for all the sole proprietor's/partners' obligations under the BR Act.

Questions for feedback:

(20) Are there other situations where sole proprietors or partnerships should appoint a local manager?

(21) Should local managers have minimum qualifications?

(22) Should local managers be individuals or can they be corporations as well?

(23) Which responsibilities and liabilities of a local manager (if any) should be extended or reduced?

(24) Should the BR Act allow local managers themselves to notify ACRA they have resigned/no longer hold such office before a new local manager is appointed?

(25) Should ACRA cancel the sole proprietor's/partnership's registration if they do not appoint a new local manager within 14 days after the previous one has resigned?

Cessation of Business/Registration and Restoring Registration

19. A registrant must notify ACRA within 14 days after he has stopped doing business. He can also notify ACRA in advance if he wants to cease business.

20. If the registrant does not renew his registration before it expires, ACRA will send him one month's notice to renew (ACRA will issue the notice *after* the registration expires). If he still does not renew, ACRA will cancel his registration.¹¹

21. Should the registrant still not renew his registration despite ACRA's one-month notice, ACRA will cancel his registration. Currently, only the Minister can restore a person's registration (ie. the person can still retain his original

¹¹ In practice, ACRA also sends reminders to renew registrations 6 to 8 weeks before the registration expires.

UEN/business registration no.) upon appeal. However, there is a proposal that ACRA can restore a person's registration up to one year after the registration expires.

Questions for feedback:

(26)(a) Should we change any of the above procedures?

(b) If yes, what changes should be made?

(27) ACRA currently sends the one-month notice in paragraph 20 by registered post. Is it enough if ACRA sends it by ordinary post and/or e-mail instead?

(28) ACRA currently publishes the cancelled business name in the *Gazette*.

(a) Is it sufficient if ACRA just publishes the cancelled business name on its website?

(b) If so, how long should the cancelled business name remain on its website?

(29) Should ACRA have power to restore a cancelled/terminated registration (ie. let the registrant retain his UEN)?

(30)(a) If ACRA restores a cancelled/terminated registration, should ACRA reflect (i) the date of cancellation/termination, and (ii) date of restoration in the person's business profile?

(b) If no, why not?

22. Currently, as a matter of policy, no one can apply for a name identical to a terminated or cancelled business for 1 year other than the previous owner. For example, business name "*Mayflower Garden*" is cancelled wef 1 March 2010. A third party cannot apply for the name "*Mayflower Garden*" till at least 1 March 2011; even if he wants to register a different business vehicle (eg. company, LLP etc).

Questions for feedback:

(31)(a) Should we reduce the 1-year moratorium for third parties to apply for an identical defunct business name?

(b) Should the moratorium be shorter if the registrant himself notifies ACRA that he has/will cease business (as opposed to ACRA cancelling the registration)?

(c) If answer to (a) and/or (b) is “yes”, please recommend moratorium period(s).

Consequences of Carrying on Business Without (i) Registration or (ii) Updating Change of Particulars

23. Carrying on business without registration and the non-updating of any changes are offences under the BR Act. Offender can be fined up to \$5,000 or jailed up to 12 months or both.

24. An offender can only enforce contractual rights arising from his business if he gets the Court’s approval.

Questions for feedback:

(32)(a) Should we change the above consequences of carrying on business without registration?

(b) If so, what should be changed?

(33) Should an offender only be allowed to enforce contractual rights arising from his business (with court approval) if he carries on business:

(a) without renewing his expired registration?

(b) after the Registrar cancels his registration?

Appeals to the Minister

25. A person can appeal to the Minister against ACRA’s decision if ACRA:

- a) refuses to register him or renew his registration,
- b) cancels his registration, or
- c) directs him to change his business name.

Question for feedback:

(34) Should there be other situations where a person can appeal to the Minister against ACRA's decision?

Offences

26. The BR Act and BR Regulations prescribe the following offences:

S/No.	Offence	Maximum Penalty
1.	Carrying on business without registration or renewal	\$5,000 fine or 12 months jail or both
2.	Not submitting change of particulars within 14 days	
3.	Not complying with ACRA's summons	
4.	Not complying with ACRA's or inspector's request for information	
5.	Resisting/obstructing ACRA or inspector in performing his duty	
6.	Knowingly giving false information to ACRA	
7.	Not complying with any regulations made under the BR Act	
8.	An undischarged bankrupt managing a registrant's business	\$10,000 fine or 2 years jail or both
9.	Registrant carrying on business under a name not filed with ACRA	\$5,000 fine
10.	Not informing ACRA within 14 days after the registrant has ceased business	
11.	Foreign registrants not appointing a new local manager within 14 days after the previous local manager has left	\$1,000 fine
12.	Not printing business name and registration no. on business documents	

27. ACRA may compound offence under s/nos. 1 to 7, and 10 to 12. The maximum composition amount is (i) half the maximum fine for the offence, **or** (ii)

\$5,000 – whichever is *lower*.

Questions for feedback:

(35)(a) Should any of the above offences be removed?

(b) If yes, which offences?

(c) Why?

(36)(a) Should we add any new offences?

(b) If yes, what?

(c) Why?

(37)(a) Should any of the current penalties be changed?

(b) If yes, what should be the new penalties?

(c) Why?

(38)(a) Should any additional offences be compoundable?

(b) If so, which offences?

(c) Why?

Miscellaneous

28. Currently, a person cannot directly convert a registered business name to a company.¹² To do so, the registrant must take the following steps:

- a) reserve the same company name (with ACRA's approval),
- b) incorporate the new company, and
- c) terminate his registration under the BR Act.

Questions for feedback:

¹² By contrast, a partnership can convert directly to a limited liability partnership.

(39)(a) Should registrants of business names be allowed to directly convert a registered business name to a company (with a new company UEN issued)?

(b) If so, under what conditions?

Additional Feedback

29. If you have any additional feedback on areas not covered in the above questionnaire, you may also submit them for our consideration.

30. Thank you for your time.
