

PUBLIC CONSULTATION ON BUSINESS REGISTRATION (BR) ACT – SUMMARY OF KEY FEEDBACK AND MOF’S AND ACRA’S RESPONSES

1. Definition of “Business”

Feedback: While most respondents agreed to retain the current definition, there was a suggestion to remove “*craftsmanship*” and “*calling*” from the definition as these terms might capture activities not carried out for purposes of gain. In addition, the phrase in the existing definition i.e. “*any activity carried on for the purposes of gain*” would have encompassed “*craftsmanship*” and “*calling*” if these activities were carried out for purposes of gain. A majority of the respondents also agreed that the new Business Names Registration (BNR) Act should provide further explanation of the terms “*office*”, “*employment*” and “*occupation*”.

Response: We agree to delete the terms “*craftsmanship*” and “*calling*” from the definition of “*business*”. However, as the terms “*office*”, “*employment*” and “*occupation*” are generally understood in the business environment, there is no need to define them in the amended legislation. This is also consistent with other legislation that has used these terms without specifically defining them.

2. Registration Requirements

a) Whether individuals carrying on business in their own names should be required to register

- (i) Feedback: About half of the respondents said that individuals carrying on business in their own names should be required to register for accountability and completeness of information. The other half took the view that individuals carrying on business in their own names would already be identifiable to third parties, and therefore registration would confer no additional benefit to the public.

Response: We agree that individuals (sole proprietors or partners) carrying on business in their own names should not be required to register, as third parties will be able to identify the person(s) acting behind a business name. This will reduce regulatory burden on such individuals (e.g. music and tuition teachers). This is also consistent with legislation in Australia, Canada and the United Kingdom (UK).

b) Whether individuals doing online business exclusively through the Internet should register

- (ii) Feedback: A majority of the respondents felt that individuals residing in Singapore and doing online business should register (whether they receive orders online from Singapore or overseas). Most respondents also

suggested that apart from the Internet, the terms “online” or “cyberspace” should cover other communication mediums, including handphones. There were also suggestions that individuals have a business nexus in Singapore before they are required to register.

Response: On balance, we think that we should not enact legislation specifically to deal with online businesses at this point in time. It is difficult to apply such provisions to online businesses carried out by parties living outside of Singapore, and it would accordingly be hard to apply the law equally to all online businesses regardless of residency. Furthermore, the implications of enacting such legislation are unknown, as there is no other jurisdiction that has enacted legislation to specifically regulate online businesses. Notably, Australia’s new Business Names Registration Act 2011, which was effected in 2012, also does not have a specific provision governing online businesses.

Nevertheless, if there is a valid complaint and sufficient evidence exists to prove that an individual residing in Singapore is carrying on an online business with a business name, and that individual has failed to register with ACRA, ACRA will investigate and take enforcement action where appropriate.

c) Whether individuals not required to register should be allowed to voluntarily register

- (iii) Feedback: Most of the respondents supported voluntary registration for individuals not required to register.

Response: We agree to allow voluntary registration for certain groups of individuals who are not required to register. Individuals who voluntarily register must comply with all the requirements of the legislation.

d) Duration of registration

- (iv) Feedback: Some respondents supported annual renewal of registration, as this would improve the accuracy of ACRA’s register. A majority of respondents supported longer periods for registration to ease regulatory burden, with some suggesting that individuals be given a choice of their preferred registration duration. A majority of the respondents did not support lifetime registration, although those who supported this had suggested not making it available across the board.

Response: Allowing a three-year registration/renewal period may reduce the accuracy of ACRA’s register, as some business owners may not proactively file for termination of their registration when they cease business within the three-year period. On the other hand, there is merit in giving individuals a choice of their preferred registration duration as this would reduce regulatory burden on registrants. Furthermore, this is already practised in Australia and Hong Kong.

On balance, we agree that individuals should be given the option to register/renew their business names for a period of one year or three years. However, individuals opting for the three-year term registration must have fully paid their Medisave, or stay on a regular instalment plan with good Medisave contribution records. Applicants¹ who are starting a business for the first time will also be given the option to register their business names for one year or three years.

3. Information that registrants must provide to ACRA

Feedback: Most respondents suggested maintaining the current registration information requirements. Although the majority of respondents had no objections to ACRA's suggestion to require individuals to provide additional information (i.e. email address, telephone number or date of birth), most respondents objected to ACRA making the individual's date of birth public. On the other hand, most respondents had no objections to ACRA making the individuals' telephone numbers and email addresses available to the public (e.g. when the public buys the business profile).

Response: We will maintain the current requirements for registration information, but will not require individuals to provide information on "*any other place where business is carried on*", such as branch addresses. This is because the main reasons for providing a business address are to locate the registrant, and help third parties serve documents on the registrant. There is thus no need for information on the addresses of all branches. This proposal will reduce the regulatory burden on individuals carrying on business in several locations. We will also amend the Act to allow registrants (who are individuals) to provide an alternate address in addition to their residential address. This seeks to protect the registrant's privacy, and is consistent with similar provisions in the new Companies (Amendment) Bill.

With the announcement of the new Personal Data Protection legislation in 2012, we recommend not releasing the registrant's telephone number and email address to the public. We also agree with the feedback not to disclose the registrant's date of birth.

4. Change of particulars upon death of registrant

Feedback: Most respondents agreed that ACRA should only act upon the instructions from executors/administrators of a deceased registrant's estate who had obtained Grant of Probate (GP) or Letters of Administration (LA) to amend ACRA's records.

Response: Under the BR Act, the next-of-kin (NOK) of the deceased registrant would have to apply for GP/LA in order to amend ACRA's records relating to the deceased registrant. However, we recognise that many deceased registrants are small business owners with few assets, and their NOK may not apply for GP/LA. To cater to

¹ This group of applicants could have Medisave records from when they were employees. However, they would not have prior Medisave records as self-employed persons (SEP) if they are registering with ACRA to start a business for the first time.

practical realities, the legislation will be amended to allow the NOK of the deceased registrant to apply to the Registrar to change the deceased's particulars without the NOK first obtaining a GP/LA. The NOK of the deceased registrant must provide evidence that is acceptable to the Registrar. The right of personal representatives (to whom the Court has granted GP/LA) in law to update changes relating to a deceased registrant's business name remains unchanged.

5. Rectification of ACRA's register

Feedback: A majority of respondents supported giving ACRA wider powers to amend the register, beyond just rectifying clerical or typographical errors. Most respondents were not in favour of the Court having exclusive powers to amend any matters in the register.

Response: Under the BR Act, ACRA's powers to amend the register are limited to rectifying clerical or typographical errors. The Court can also direct ACRA to amend the register if any information in the register is incorrect, a misleading business name has been registered, or the use of a business name should be prohibited.

Following the same approach taken for companies in the new Companies (Amendment) Bill, we will amend the legislation to give the Registrar more flexibility and discretion to update the register for straightforward rectifications (e.g. where the building name of the registrant's residential or business address has changed). This will lower costs for businesses and ensure the accuracy of ACRA's register.

The Registrar will be allowed to:

- a) rectify errors in filing which, in the opinion of the Registrar, are not intended and do not cause prejudice to any person, upon receiving a notification from the registrant;
- b) rectify or update the register on his own initiative under certain circumstances i.e. if the Registrar is satisfied that:
 - (i) there is a defect or error in the particulars from any grammatical, typographical or similar mistakes; or
 - (ii) any particular of a person is inconsistent with other information on the register or information obtained from credible third-party sources such as government agencies.

For sub-paragraph (b), the Registrar must give the registrant at least thirty days to object to the Registrar's proposed rectification or update.

6. Appointment of a local manager

a) Whether (i) there are other situations where sole proprietors or partnership should appoint a local manager; (ii) local managers can be individuals as well as corporations; (iii) local managers should have minimum qualifications; (iv) responsibilities and liabilities of a local manager (if any) should be extended or reduced

- (i) Feedback: A majority of respondents agreed to retain the situations for which the appointment of a local manager² is required. A majority of respondents also had no issue with corporations being local managers. In addition, a majority of respondents felt local managers need not have minimum qualifications. No respondents raised objections to the current scope of a local manager's responsibilities and liabilities.

Response: We agree to retain the situations for which the appointment of an authorised representative is required. To facilitate enforcement, we will amend the legislation such that only natural persons (i.e. has attained the age of eighteen years and is otherwise of full legal capacity, and ordinarily resident in Singapore) can be authorised representatives. As the main purpose of having an authorised representative is for regulatory compliance (i.e. filing change of particulars), there is no need for authorised representatives to have minimum qualifications. We agree to keep to the status quo on the responsibilities and liabilities of an authorised representative.

b) Whether authorised representatives themselves can notify ACRA that they have resigned/no longer hold such office before a new authorised representative is appointed

- (ii) Feedback: Most respondents agreed that ACRA should allow authorised representatives themselves to notify ACRA that they had resigned or no longer held such office before a new authorised representative is appointed.

Response: As authorised representatives are also subject to responsibilities, liabilities and penalties, we agree that it would be fair to allow a sole authorised representative to notify ACRA that he has ceased to be the authorised representative even if a new authorised representative has not been appointed.

c) Whether ACRA should cancel the sole proprietor's/partnership's registration if it does not appoint a new authorised representative within fourteen days after the previous authorised representative had resigned

- (iii) Feedback: Most respondents agreed that ACRA should cancel the sole proprietor's/partnership's registration if it does not appoint a new authorised representative after the previous authorised representative had resigned. Majority of the respondents also suggested giving registrants more than fourteen days to appoint new authorised representatives.

² The local manager is an individual carrying the same responsibilities, liabilities and penalties as the actual person in whose name the local manager carries on business. The local manager is required to be within jurisdiction to facilitate ACRA's enforcement actions under the Act.

Response: From an enforcement and accountability perspective, it is important that there is at least one authorised representative appointed at all times. However, we acknowledge that some registrants may require a longer period of time to appoint an authorised representative, especially if the sole authorised representative suddenly resigns. We will amend the legislation to give registrants thirty days to appoint an authorised representative, so as to strike a good balance between the competing requirements.

We will also amend the legislation to give ACRA the powers to cancel the registration of a sole proprietorship/ partnership/foreign company (if the sole proprietor or all partners of a partnership or all the officers of a foreign company required to register under the BR Act reside outside Singapore) if they do not appoint a new authorised representative within thirty days after the previous sole authorised representative has ceased to be their authorised representative.

7. Cancelling business registration and restoring cancelled/expired registrations

a) Administrative issues

- (i) Feedback: Majority of the respondents supported the recommendation for ACRA to send the notice for renewal of registration by ordinary post and/or email.

Response: The registrant has the primary duty to confirm his registration. Therefore we agree that it will be sufficient for the notice for renewal of registration be sent by ordinary post or via other forms of notification (e.g. electronic mail), instead of registered post.

b) Restoring cancelled registrations

- (ii) Feedback: Most respondents supported ACRA having the power to restore a cancelled/terminated registration (i.e. allowing a registrant to retain his Unique Entity Number (UEN)). In the event that ACRA restored a cancelled/terminated registration, most respondents also favoured the business profile reflecting the date of (i) cancellation or termination, and (ii) restoration.

Response: We will amend the legislation to allow the registrants to apply to the Registrar within a reasonable time (i.e. twelve months) after cancellation of their registration to restore the cancelled registration (i.e. the registrant retains his UEN). The Registrar will still consider applications for restoration received after twelve months for cases involving cessation/cancellation of registration if there are valid reasons.

8. Moratorium for third parties to apply for identical defunct business name

Feedback: Majority of the respondents suggested keeping the one-year moratorium period for third parties to apply for an identical defunct business name. Majority of the respondents also suggested retaining the same moratorium period even if the registrant himself had terminated the registration (as opposed to ACRA cancelling the registration). Those in favour of a shorter moratorium period suggested a period of between three to six months.

Response: There is no imperative to reduce the one-year moratorium. Therefore we will retain the one-year moratorium period to minimise the chances of the public not realising that another person has registered an identical defunct business name. We agree that the same one-year moratorium period should apply irrespective of whether it is the registrant or ACRA that cancels the registration.

9. Consequences of carrying on business without registration or updating change of particulars

Feedback: Carrying on business without registration or not filing changes of particulars are criminal offences under the BR Act. The defaulter can only enforce any contractual rights arising from his business if he gets the court's approval. Majority of the respondents suggested keeping the current regime.

Response: We agree to maintain the current position. We will also amend the legislation to extend both the civil and criminal penalty regimes to those who carry on business (i) after ACRA has cancelled their registration, or (ii) after they have notified Registrar that they have ceased business. This improves the accuracy of ACRA's register as it will encourage persons carrying on business to register and renew their registration promptly.

10. Appeals to the Minister

Feedback: Under the BR Act, a person can appeal to the Minister against ACRA's decision if ACRA (i) refuses to register him or renew his registration, (ii) cancels his registration, or (iii) directs him to change his business name. Responses were evenly split as to whether there were other situations where a person could appeal to the Minister against ACRA's decision.

Response: We agree to retain the situations where a person can appeal to the Minister. Under the BR Act, a person ("complainant") can apply to the Registrar to direct another person ("respondent") to change his business name because the business names are similar. Currently, only the respondent has the right of appeal against the Registrar's decision, but not the complainant. The legislation will be amended to allow the complainant the right of appeal as well. This will ensure that both parties to a name complaint will have similar rights of appeal to the Minister. This is consistent with proposed revisions in the new Companies (Amendment) Bill.

11. Penalties and composition of offences

Feedback: A majority of respondents supported an increase in some penalties, although a few supported a reduction for some penalties. Most did not recommend that other offences (i.e. undischarged bankrupt managing a registrant's business; registrant carrying on business under a name not filed with ACRA) be compoundable.

Response: For consistency, we will amend the legislation to increase certain penalties so as to align them with penalties for similar offences in other ACRA-administered legislation. We agree to keep the status quo for compoundable offences.

12. Converting registered business to companies

Feedback: Most respondents supported direct conversion of a registered business to a company. Some respondents highlighted that such direct conversion should only be allowed if registrants continue as shareholders of the companies. It was suggested that the proposed conversion regime could model upon that of a partnership converting to a limited liability partnership under the Limited Liability Partnerships Act ("LLP Act").

Response: We will not allow direct conversion of registered businesses and their business names (whether for sole proprietors or partnerships) to companies given the legal implications of direct conversion.

Firstly, we note that the formalities of creating a company are more complex where there is a separation of ownership (shareholders) and control (directors) and that incorporating a company would require the following:

- a) the filing of a memorandum of association and the articles of association;
- b) a declaration by a prescribed person or a person named in the articles as a director or secretary of the company, amongst other things, that "*all the requirements of the Act relating to the formation of the company have been complied with*"; and
- c) a declaration by a prescribed person or a director that he has consented to act as director and that he is not disqualified from acting as director under the Companies Act.

Therefore, the proposal for direct conversion to a company in the manner applicable to the conversion from a partnership to an LLP would not be legally possible under the existing structure of the Companies Act.

Secondly, such a conversion would override general contract principles. For instance, it would have the effect of overriding a non-assignment clause which parties to a contract may have agreed upon. It may also override a number of statutory schemes

where rights are conferred by registration, such as through the Land Titles Act and Trade Marks Act.

Thirdly, the conversion would introduce uncertainty as to which property of the sole proprietor/partnership will be owned by the converted company. In particular, we note that for a sole proprietorship, there is no distinction between the sole proprietor's business and his personal assets. Direct conversion will mean the automatic transfer of the entire individual's property, assets, and liabilities to the company at the point of conversion.

Australia, Hong Kong, New Zealand and UK legislation do not appear to provide for such direct conversion. We note that in this regard, some US states (e.g. Delaware) do provide for conversion of a partnership (but not a sole proprietorship) to a corporation. However, adopting the US legislation piecemeal for partnerships will not be meaningful if we do not intend to allow sole-proprietorships to directly convert to companies.

The conversion may also have other unintended and unforeseen consequences for the persons converting as well as for the business community.