

INTRODUCTION

1. From June to October 2011, the Accounting and Corporate Regulatory Authority (ACRA) conducted a public consultation on 40 recommendations relating to the regulatory framework for foreign companies. The recommendations had been developed by ACRA with input from a working group that was appointed by the Steering Committee for Review of the Companies Act to study company administration issues, including the regulation of foreign companies in Singapore. At the close of the public consultation¹, comments were received from 24 respondents.

2. The Ministry of Finance (MOF) and ACRA have evaluated all relevant inputs for each of the 40 recommendations. We have decided to retain 32 recommendations, modify seven and drop one recommendation. This report sets out a summary of the feedback received during the public consultation and our response to the recommendations.

3. We are seeking public feedback on the proposed legislative amendments relating to foreign companies in the second part of the draft Companies (Amendment) Bill. The public can access the consultation documents on MOF's website (www.mof.gov.sg), ACRA's website (www.acra.gov.sg) and the REACH consultation portal (www.reach.gov.sg).

¹ The link to the public consultation can be found at <http://app.mof.gov.sg/data/cmsresource/public%20consultation/2011/Review%20of%20Companies%20Act%20and%20Foreign%20Entities%20Act/FE%20Consultation%20Document.pdf>

FOREIGN COMPANIES

PREAMBLE

1. In the *Consultation on the Regulatory Framework for Foreign Entities in Singapore*, the following issues relating to foreign companies were considered:

- scope of legislation;
- foreign companies' ability to hold immovable property;
- particulars required to be lodged upon registration;
- authentication of documents lodged with Registrar;
- reducing the minimum number of agents;
- simplifying filing requirements for appointment of authorised agents and others;
- filing obligations;
- financial disclosure;
- branch registers and provisions relating to certificate of shareholding;
- general accountability and personal liability of agents;
- removing the requirement to display names and place of origin outside registered office and every place of business;
- requiring a foreign company to include registration number in documents;
- service of documents on foreign company at registered address at place of incorporation;
- closure of foreign companies in Singapore;
- restriction on names of foreign companies; and
- transfer of incorporation.

SUMMARY OF FEEDBACK RECEIVED AND OUR RESPONSES

I. SCOPE OF LEGISLATION

Recommendation 1

The definition of "foreign entity" should follow the current definition of "foreign company" under the Companies Act and would cover the following types of entities:

- (a) a company, corporation, society, association or other body incorporated outside Singapore; or
- (b) an unincorporated society, association or other body which under the law of its place of origin may sue or be sued, or hold property in the name of the secretary or other officer of the body or association duly appointed for that purpose and which does not have its head office or principal place of business in Singapore.

Summary of Feedback Received

2. Most respondents agreed with the recommendation to retain the existing coverage of foreign entities. One respondent disagreed and suggested that foreign partnerships should be allowed to register as foreign partnerships in Singapore.

Our Response

3. **Retain Recommendation 1.** We agree that including foreign partnerships which cannot sue or be sued or cannot hold property might not sit well with the rest of the regulatory framework. As the provisions relating to foreign companies will be retained in the Act, the term “foreign company” will not be changed to “foreign entity” in the Act.

Recommendation 2

The ambit of ACRA’s registration and disclosure regime for foreign entities will cover all foreign entities that establish a place of business or commence to carry on business in Singapore, or intend to do so.

Summary of Feedback Received

4. All respondents agreed with this recommendation.

Our Response

5. **Retain Recommendation 2.** We agree that this recommendation will improve clarity on the scope of the legislation.

Recommendation 3

The definition of “carrying on business” should be retained with the following modifications:

- (a) The definition should be clarified to include coverage of non-profit making activities;
- (b) The Minister should have power by subsidiary legislation to exclude certain activities from being covered within the definition; and
- (c) The activities by representative offices should be excluded from the definition.

Summary of Feedback Received

6. Most respondents agreed with this recommendation. One respondent disagreed and said that the current lack of an exhaustive definition for ‘carrying on business’ created practical difficulties for businesses. Another respondent commented that only activities carried out by representative offices registered under International Enterprise Singapore (“IE Singapore”) should be excluded. Another respondent said that it might

not be necessary to explicitly exclude the activities by representative offices as representative offices were only permitted to carry out limited activities and these activities were already clearly stated in IE Singapore's website. One respondent said that the inclusion of non-profit making activities should be carefully worded to avoid any unintended effects.

Our Response

7. **Retain Recommendation 3 except for paragraph (c) (i.e. modify Recommendation 3).** We agree that representative offices typically do not and should not conduct activities that fall within the meaning of 'carrying on business'. However ACRA should have the flexibility to regulate them if their activities fall within the meaning of carrying on business.

8. Practitioners had expressed that they encountered difficulties due to the current inclusionary and non-exhaustive definition. However, we had noted the limitations of an exhaustive definition and that no major jurisdiction reviewed had adopted an exhaustive definition. We agree to retain the current principles-based approach.

Recommendation 4

ACRA can issue non-binding guidelines to facilitate the interpretation, clarification and understanding of the definition.

Summary of Feedback Received

9. All respondents agreed with this recommendation.

Our Response

10. **Retain Recommendation 4** as such guidelines will be useful for practitioners.

II. FOREIGN COMPANIES' ABILITY TO HOLD IMMOVABLE PROPERTY

Recommendation 5

The provision in section 367 of the Companies Act, which provides that a foreign company has the power to hold immovable property in Singapore, will be retained for all registered foreign entities.

Summary of Feedback Received

11. All respondents agreed with this recommendation.

Our Response

12. **Retain Recommendation 5.** We agree that the status quo will facilitate the distribution of the assets of the foreign companies in the event of insolvency.

III. PARTICULARS REQUIRED TO BE LODGED UPON REGISTRATION

Recommendation 6

The following will be required to be submitted upon registration of a foreign entity:

- (a) a certified copy of its certificate of incorporation or registration in its place of incorporation or origin;
- (b) the registration number indicated in the certificate of incorporation or registration in paragraph (a), or where none is indicated, the number issued upon registration or incorporation by the authority equivalent to the Registrar in its place of registration or incorporation;
- (c) a certified copy of its constitutional document;
- (d) a list of directors;
- (e) the name, address, nationality and identification particulars of the foreign company's agent;
- (f) notice of the situation of its registered office in Singapore, and information regarding the office's accessibility;
- (g) its legal form;
- (h) the nature of business carried on;
- (i) a list of members (if the members' names are required to be disclosed by the foreign company's original place of incorporation); and
- (j) the latest copy of its head office's financial statement if it is required by the law of the place of incorporation or origin to prepare such statements.

Summary of Feedback Received

13. All respondents agreed broadly with this recommendation. Some respondents commented that some foreign companies might not have constitutional documents or that such documents might be confidential. One respondent suggested that if the foreign company was a listed company with many members, a list of members should not be required. Another respondent commented that paragraph (j) would not result in equitable treatment as some foreign companies would not need to file the head office's financial statements if the head offices were not required by the law of the place of incorporation or origin to prepare financial statements. There was also a suggestion that there should be flexibility to exclude directors' particulars as the information might be sensitive.

Our Response

14. **Retain Recommendation 6, but require a certified copy of the constitutional document only if such documents are required to be registered or lodged in the place of incorporation; also, filing of the list of members will not be required upon registration (i.e. modify Recommendation 6).** We note the feedback regarding constitutional documents and that it may not be practical for foreign companies with many members to file a list of their members. None of the jurisdictions reviewed required foreign companies to file a list of members.

15. We are of the view that paragraph (j) should be maintained as it will be onerous for foreign companies to prepare and file the head office's financial statements for registration if such financial statements are not already required to be prepared by the law of the place of incorporate or origin. In relation to the suggestion to exclude filing of directors' particulars due to sensitivity, this concern will be alleviated with the planned introduction of the option for directors to provide an alternate address on the ACRA Register instead of the residential address.

16. In addition, we note that foreign companies are already required under the Act to notify ACRA if there are any changes in (a) the name of the foreign company; and (b) the address of the registered office of the foreign company in its place of incorporation or origin. However, this information is not mentioned in section 368 which lists the information a foreign company needs to lodge upon registration. Section 368 will be updated to require foreign companies to file such information upon registration.

IV. AUTHENTICATION OF DOCUMENTS LODGED WITH REGISTRAR

Recommendation 7

There should be no change to the current process under regulation 21(1) & (2)² of the Companies (Filing of Document) Regulations in respect of certification of certificates of incorporation or registration.

² Under Regulation 21(1) & (2) of the Companies (Filing of Documents) Regulations the certificate of incorporation must be certified to be a true copy by an official holding or purporting to hold an office corresponding to that of the Registrar in the place in which the foreign company concerned is formed or incorporated.

Recommendation 8

Where the registration of a foreign entity is handled by person who is not a prescribed person, the constitutional documents of the foreign entity lodged will need to be notarised or otherwise authenticated in accordance with the current procedures under regulation 21(3)³ of Companies (Filing of Documents) Regulations.

Recommendation 9

Where the registration of a foreign entity is handled by a person who is a prescribed person, the prescribed person has an option to verify any documents relating to the foreign entity and confirm the authenticity of the documents, instead of relying on the notarisation or authentication procedures currently under regulation 21(3) of Companies (Filing of Documents) Regulations.

Summary of Feedback Received

17. All respondents agreed with these three recommendations. One respondent suggested clarifying what constituted a prescribed person.

Our Response

18. **Retain Recommendations 7, 8 and 9.** We agree that the requirement for authentication of certificates of incorporation or registration should not be changed as ACRA relies on these documents submitted by the foreign companies to verify their existence. We are of the view that an option should be allowed for a prescribed person to verify and authenticate any documents relating to the foreign company instead of relying on the procedures under Companies (Filing of Documents) Regulations, if the registration of a foreign company is handled by a prescribed person. This will simplify the registration process and at the same time provide some assurance on the documents by putting the responsibility on the prescribed person. This will be prescribed in the subsidiary legislation. The terminology and scope of prescribed persons will be defined in legislation and is being considered as part of the review of the Accounting and Corporate Regulatory Authority Act.

³ Under Regulation 21(3) of the Companies (Filing of Documents) Regulations the memorandum and articles of association or other instrument constituting or defining the foreign company's constitution must be certified to be a true copy —

- a) by an official holding or purporting to hold an office corresponding to that of the Registrar in the place in which the foreign company concerned is formed or incorporated;
- b) by a notary public; or
- c) by a director, manager or secretary of the foreign company by affidavit or, in the case of a foreign company formed or incorporated within the Commonwealth, by statutory declaration made by a director, manager or secretary of the foreign company.

Recommendation 10

The time frame for certification of documents for foreign entities should be up to 4 months prior to submission of registration documents.

Summary of Feedback Received

19. All respondents agreed with this recommendation. One respondent suggested that ACRA be empowered to grant a longer time frame on a case-by-case basis.

Our Response

20. **Retain Recommendation 10.** The time frame will be prescribed in the subsidiary legislation. This will allow a longer period for the authentication process in respect of foreign companies without compromising the need for currency of documents. With the extension of the time frame from three months to four months, we are of the view that further extensions on a case-by-case basis should not be necessary.

V. REDUCING THE MINIMUM NUMBER OF AGENTS

Recommendation 11

The minimum number of agents required to be appointed by a foreign entity should be one.

Recommendation 12

There must be a replacement agent before the existing agent can resign to ensure accountability. The obligation to appoint a replacement agent should rest with the foreign entity.

Summary of Feedback Received

21. All respondents agreed with these two recommendations. Two respondents commented that the responsibility on a sole agent could be onerous and that there should be an exception to allow a sole agent to resign in limited onerous situations but added that Recommendation 38 which would allow the sole agent to exit was helpful in this regard. Another respondent said that it was not clear if the replacement agent must be appointed within a specified time period if there was more than one local agent.

Our Response

22. **Retain Recommendations 11 and 12, and also include a requirement for foreign companies to appoint a replacement agent within 21 days of the death of its sole agent (i.e. modify Recommendation 12).** Requiring only one agent will align the Singapore position with the requirements in other jurisdictions like the UK, Hong Kong, Australia and New Zealand. We are of the view that a sole agent should not be allowed to resign, unless a replacement agent is appointed, as he may be the only person in Singapore whom persons dealing with the foreign company can contact. Safeguards will be introduced under Recommendation 38 to deal with situations where a sole agent is unable to resign as the foreign company does not appoint a replacement agent. There is no need to provide for the time period for appointment of a replacement agent where there is more than one agent as there will no longer be a requirement to have more than one agent. In addition, we will modify the recommendations to require foreign companies to appoint a replacement agent within 21 days of the death of its sole agent as an additional safeguard. Registrar will be empowered to strike off the foreign company if it does not do so within 6 months of the death of the sole agent.

VI. SIMPLIFYING FILING REQUIREMENTS FOR APPOINTMENT OF AUTHORISED AGENTS AND OTHERS

Recommendation 13

Foreign entities need not lodge evidence of appointment of the agent, and only need to lodge the particulars of their appointed agents with ACRA.

Recommendation 14

Foreign entities should make available for inspection evidence of appointment of the agent at their registered offices in Singapore.

Recommendation 15

The consent of the local agent must be clearly indicated in the registration with the Registrar and documented by the foreign entity.

Summary of Feedback Received

23. All respondents agreed with these three recommendations. Two respondents queried about the form in which consent must be indicated.

Our Response

24. **Retain Recommendations 13, 14 and 15** as this will simplify the filing requirements for foreign companies. As agents' consents are straightforward, we do not think there is a need for prescribed template⁴. We agree that as a safeguard, foreign companies will need to make available for inspection, the evidence of appointment of their agents and the agents' consents to the appointments at their registered offices in Singapore.

VII. FILING OBLIGATIONS

Recommendation 16

The provision in section 372(1) of the Companies Act will be retained but clarified to require foreign entities to inform ACRA if there are any changes to the registered particulars of the directors and agents, and where a list of members has been provided at registration, any changes to the list of members.

Summary of Feedback Received

25. Respondents highlighted difficulties in updating changes to the list of members. One respondent added that it would be useful for agents of newly registered foreign entities to receive a letter from ACRA stating the obligations of the agent to notify the authorities of changes in information lodged, similar to the congratulatory letter sent to directors of newly incorporated companies.

Our Response

26. **Retain Recommendation 16 with modifications**, consequential to the decision to retain Recommendation 6 with modifications. Foreign companies will not be required to inform ACRA of changes to the list of members as a list of members will not be required to be lodged upon registration. Similarly, foreign companies will also no longer be required to update changes in the powers of any directors resident in Singapore who are members of the local board⁵. However, they must inform ACRA of any changes in the nature of the business and/or the legal form, as such information will be required to be lodged upon registration. As for the suggestion that agents of newly registered foreign entities should receive a congratulatory letter from ACRA stating their obligation to notify changes in information lodged, such a letter is already being sent to agents upon successful registration.

⁴ There are prescribed templates for directors and company secretaries to indicate their consents to the appointment as they are subject to certain requirements under the Act before they can act as directors and company secretaries. Such conditions are set out in the prescribed template.

⁵ Under section 372(1)(g), a foreign company is required to lodge with the Registrar, changes to the powers of any directors resident in Singapore who are members of the local board of directors of the foreign company within one month or such further period allowed by the Registrar in special circumstances.

Recommendation 17

A fee will be chargeable for the application in respect of a foreign entity for extension of time for notification of change or liquidation.

Summary of Feedback Received

27. Respondents asked about the quantum of the fee and the duration of the extension of time.

Our Response

28. **Retain Recommendation 17.** In light of the comprehensive review of the Act, ACRA is also taking the opportunity to review all the fees under the Act. ACRA will decide if a fee should be charged, and if so, the quantum of the fee after the review. The duration of the extension of time will depend on the circumstances of the case.

Recommendation 18

The reporting of any change in the authorised share capital of the foreign entity (outside of information reported in the financial statements) should be abolished.

Recommendation 19

The reporting of any changes in the number of members of the foreign entity should be abolished.

Summary of Feedback Received

29. Most respondents agreed with these two recommendations. One respondent disagreed and said that such information was essential for shareholders and must continue to be filed.

Our Response

30. **Retain Recommendations 18 and 19.** We had noted that Singapore and other jurisdictions reviewed like the UK, Australia and New Zealand had abolished the concept of authorised capital and that information regarding number of members was not required in the jurisdictions reviewed. We are of the view that shareholders should still be able to get such information directly from the foreign company even if it is not filed with ACRA.

Recommendation 20

The notification timelines for foreign entities will be standardised to 30 days, with the exception of –

- (a) the notice of cessation of business, which will be 7 days; and
- (b) the notice of liquidation by an agent, which will be shortened to 14 days after the commencement of liquidation.

Summary of Feedback Received

31. All respondents agreed with this recommendation. One respondent asked whether it would be possible to apply for extension of time.

Our Response

32. **Retain Recommendation 20** as standardisation of the notification period will ease administration. We agree that the notification timeline for the notice of cessation should remain as 7 days and that the notification timeline for liquidation should be shortened to 14 days to protect the interest of stakeholders. For consistency, the notification period for dissolution of foreign companies will similarly be shortened to 14 days from the date of dissolution. Applications for extension of time may be made under the existing section 372(1) which will be retained (see Recommendation 16).

VIII. FINANCIAL DISCLOSURE

Recommendation 21

Foreign entities should lodge similar components of their Head Office financial statements under section 373(1) of the Companies Act as those expected of locally-incorporated companies.

Summary of Feedback Received

33. Most respondents disagreed with this recommendation on the following grounds:

- a. foreign companies which have prepared audited financial statements for the head office should not be required to prepare a separate set of financial statements according to Singapore accounting standards;
- b. for insurance companies, there should be no change to the current practice of exempting insurance branches from filing financial statements and it should suffice to file the audited MAS Returns and their parent companies' audited financial statements with ACRA and MAS;
- c. many countries did not require their companies to prepare detailed financial statements and the new requirements would add to the costs of doing business in Singapore for these foreign companies;

- d. some foreign companies would be required to disclose information that their competitors which did not operate in Singapore could keep confidential; and
- e. the obligation for the head office to file head office accounts was very burdensome.

One respondent suggested that the requirements under Recommendation 6 and 21 be made consistent⁶.

Our Response

34. **Retain Recommendation 21, and also amend section 373(4) to require foreign companies to prepare full financial statements under section 373(4) similar to a Singapore public company (i.e. modify Recommendation 21).** We note that under section 373(4), a foreign company that is not required by the law of the place of its incorporation or origin to prepare a balance sheet is required to prepare and lodge with the Registrar a balance sheet prepared as if it is a Singapore public company. Keeping to the status quo for such foreign companies will result in inconsistency of financial disclosures across foreign companies. We therefore propose to amend section 373(4) to also require such foreign companies to prepare and lodge full financial statements instead of just the balance sheet.

35. We agree that it is preferable for stakeholders transacting with foreign companies to have access to a more comprehensive picture of the financial position of such companies, comparable with the knowledge that they would have of a Singapore incorporated company. This will narrow the gap in the information available for a foreign company, vis-à-vis a local company. Some of the respondents who disagreed with this recommendation appeared to have misinterpreted it to mean that foreign companies are to prepare a separate set of financial statements according to Singapore accounting standards, when the intention was to allow lodgement of the financial statements prepared according to the requirements of the place of incorporation⁷. As section 373(1) already requires a foreign company to lodge its balance sheet as prepared in the place of its incorporation, the incremental costs arising from this recommendation are not expected to be very significant. In exceptional cases where foreign companies are unable to prepare accounts based on the new requirements, they may apply to the Registrar for exemptions⁸.

⁶ Recommendation 6 proposed that a foreign company had to submit the latest copy of its head office financial statements upon its registration, if it was required by the law of the place of incorporation or origin to prepare such statements. On the other hand, under Recommendation 21, a foreign company would be required to lodge similar components of its head office financial statements as those expected of locally-incorporated companies subsequent to its carrying on business, regardless of the requirements in its place of origin.

⁷ This will be made clear in the draft Bill.

⁸ Under section 373(7), a foreign company may apply to the Registrar relieving the foreign company from any requirement relating to the form and content of accounts or reports.

36. On the suggestion that that the requirements under Recommendation 6 and 21 be made consistent, we note that Recommendation 6 deals with lodgements of information and documents upon registration while Recommendation 21 deals with continuing obligations. The requirements need not be entirely the same. Under Recommendation 6, companies will be required to lodge what financial information they have on hand upon registration. However, once registered as foreign companies they will be required to follow the Recommendation 21 requirements as part of the ongoing disclosure obligations.

Recommendation 22

The current requirements under section 373(5) of the Companies Act relating to the preparation and lodgment of Singapore branch accounts should be retained for foreign entities.

Summary of Feedback Received

37. All respondents agreed with this recommendation. One respondent commented that if the Singapore branch accounts had been consolidated into the head office accounts, only the head office financial statements should be required. Another respondent suggested that licensed insurers regulated by MAS should be exempted as similar disclosures were already made to MAS.

Our Response

38. **Retain Recommendation 22.** Separate Singapore branch accounts provide information on assets of the foreign company in Singapore, which is important in the event of insolvency as the assets in Singapore may be ring-fenced to protect the interests of creditors in Singapore.

39. For licensed insurers incorporated outside Singapore, we are of the view that the returns filed with MAS do not comply with the Singapore Financial Reporting Standards (SFRS) and have different disclosure requirements from the branch accounts. Such returns will also not be comparable with the information required to be filed for other foreign companies that are not regulated by MAS.

Recommendation 23

Dormant foreign entities should continue to file Singapore branch accounts with the Registrar, but these accounts need not be audited.

Summary of Feedback Received

40. Most respondents agreed with this recommendation. The respondent who disagreed said that dormant foreign companies should be exempted from filing Singapore branch accounts, similar to the requirements for dormant non-listed Singapore companies.

Our Response

41. **Retain Recommendation 23** as this will help to reduce compliance cost and still provide some accountability to interested persons in Singapore. This is similar to the approach in respect of dormant locally incorporated listed companies⁹.

Recommendation 24

Foreign entities should be allowed to apply, upon payment of a fee, for an extension of time to prepare and file their Singapore branch accounts.

Summary of Feedback Received

42. All respondents agreed with this recommendation. One respondent suggested that there should also be provision for extension of time for submission of audited accounts for foreign companies which are required to convene an Annual General Meeting (AGM).

Our Response

43. **Retain Recommendation 24.** In light of the comprehensive review of the Act, ACRA is also taking the opportunity to review all the fees under CA. ACRA will decide if a fee should be charged, and if so, the quantum of the fee after the review. The duration of any extension will be worked out subsequently. Foreign companies which are required to table financial statements at an AGM should already have their financial statements ready for lodgment within 2 months of the AGM and no extension of time should be required in such situations.

Recommendation 25

The current exemption power under section 373(7) of the Companies Act in respect of Head Office financial statements will not be widened, but section 373(5) of the Companies Act can be modified to allow a waiver of the requirements of the Singapore branch accounts, through a class order or on a case-by-case basis, where a foreign entity is exempted from disclosure of financial requirements in its home jurisdiction.

⁹ In the “Responses to the Report of the SC” published on 3 Oct 2012, MOF had accepted Recommendation 4.6 that dormant listed companies should continue to prepare accounts but be exempted from statutory audit requirements (status quo).

Summary of Feedback Received

44. All respondents agreed with this recommendation.

Our Response

45. **Retain Recommendation 25, and also amend section 373 to provide more clarity and allow for greater flexibility (i.e. modify Recommendation 25).** Specifically, 373(5)(b) will be amended to clarify that it relates to the exemption of the requirement for filing of branch accounts and does not include waiver of other requirements relating to the branch accounts. Section 373(7) and (8) will be amended to clarify that it relates to the form and content of both branch accounts and head office financial statements. Section 373 will also be amended to provide Minister with the power to grant an exemption from the requirement to file branch accounts through a class order, and to provide the Registrar with the power to waive the requirement for branch and head office accounts to be audited.

Recommendation 26

Every director or person of similar responsibility of a foreign entity who knowingly or wilfully permitted the default should be liable for failure to comply with the requirement to lodge Head Office financial statements, and the penalties imposed should be aligned with those for local companies.

Recommendation 27

An agent who knowingly and wilfully authorises or permits the default should also be liable for failure to comply with the requirements in relation to the Head Office financial statements under the Proposed Act.

Recommendation 28

Every director or person of similar responsibility of a foreign entity who knowingly or wilfully permitted the default should be liable for failure to comply with the requirement to file branch accounts (including compliance with the SFRS), and that the penalties imposed should be aligned with those for local companies.

Recommendation 29

A local agent who knowingly and wilfully authorises or permits the default should also be liable for failure to comply with the requirements in respect of the branch accounts (including compliance with the SFRS).

Summary of Feedback Received

46. All respondents agreed with these four recommendations. One respondent suggested that the difference in interpretation of ‘knowingly or wilfully permitted’ for directors as against ‘knowingly and wilfully authorises or permits’ for agents should be clarified.

Our Response

47. **Retain Recommendations 26 to 29.** Consistent use of “knowingly and wilfully authorises or permits” has been adopted in the draft Bill. The penalties imposed will be aligned with those for local companies.

IX. REMOVAL OF NEED FOR BRANCH REGISTERS AND RETENTION OF PROVISIONS RELATING TO CERTIFICATE OF SHAREHOLDING

Recommendation 30

There should be no requirement for a foreign entity to maintain a branch register in Singapore, unless it is required by another regulation to do so.

Summary of Feedback Received

48. All respondents agreed with this recommendation.

Our Response

49. **Drop Recommendation 30.** We note that the current position under section 379 is that a foreign company is required to maintain a branch register only if a Singapore resident member requests for it and its constitution allows invitation to the public to subscribe for shares in the foreign company. Since a branch register is not mandatory except in these limited circumstances, the current position is not unduly onerous. There are also no compelling reasons to remove the provision and deny a Singapore resident member the right to require the company to keep a branch register.

Recommendation 31

The provision in section 385 of the Companies Act relating to the certificate of shareholding should be retained for foreign entities.

Summary of Feedback Received

50. All respondents agreed with this recommendation.

Our Response

51. **Retain Recommendations 31.** We agree that the provisions relating to certificate of shareholding remain relevant for situations where a branch register is maintained.

X. GENERAL ACCOUNTABILITY AND PERSONAL LIABILITY OF AGENTS

Recommendation 32

Agents should be responsible for acts to be performed by the foreign entity and be personally liable for all penalties imposed on the foreign entity for breaches of the Proposed Act, unless the agents satisfy the courts otherwise.

Summary of Feedback Received

52. All respondents agreed with this recommendation.

Our Response

53. **Retain Recommendation 32** as this will ensure accountability of agents.

Recommendation 33

The designation “agent” should be changed to “authorised representative” in the Proposed Act to reflect the accountability and responsibility expected of the person.

Summary of Feedback Received

54. One respondent agreed with this recommendation. One other respondent suggested using ‘branch agent’ instead.

Our Response

55. **Retain Recommendation 33.** We agree that the use of the term ‘authorised representative’ instead of ‘agent’ better reflects the accountability and responsibility expected.

XI. REMOVING REQUIREMENT TO DISPLAY NAMES AND PLACE OF ORIGIN OUTSIDE REGISTERED OFFICE AND EVERY PLACE OF BUSINESS

Recommendation 34

There should be no need for a foreign entity to display the name and place of origin outside its registered office and every place of business.

Summary of Feedback Received

56. All respondents agreed with this recommendation.

Our Response

57. **Retain Recommendation 34** as this will align the requirement for foreign companies with that for local companies.

XII. REQUIRING A FOREIGN COMPANY TO INCLUDE REGISTRATION NUMBER IN DOCUMENTS

Recommendation 35

A foreign entity should be required to state its Unique Entity Number (namely the ACRA registration number) in its documents.

Summary of Feedback Received

58. All respondents agreed with this recommendation. One respondent suggested that other information such as country of origin should also be included in the documents. Another respondent suggested a 12-month transition period to allow for usage of existing stocks.

Our Response

59. **Retain Recommendation 35** as this will align the requirement for foreign companies with that for local companies. Other information can be obtained by conducting a search of ACRA's register on the registered foreign company. We agree with the suggestion for a transition period and this has been provided for in the draft Bill.

XIII. SERVICE OF DOCUMENTS ON FOREIGN COMPANY AT REGISTERED ADDRESS AT PLACE OF INCORPORATION

Recommendation 36

The existing provision which allows the service of a document on a foreign company at its registered address at the place of its incorporation, in a case of a foreign company which has ceased to maintain a place of business in Singapore under section 376(c) of the Companies Act should be retained for foreign entities.

Summary of Feedback Received

60. All respondents agreed with this recommendation.

Our Response

61. **Retain Recommendation 36** as this will protect the interests of stakeholders transacting with the foreign companies.

XIV. CLOSURE OF FOREIGN COMPANIES IN SINGAPORE

Recommendation 37

The time frame within which the Registrar indicates on the register the cessation of business of a foreign entity should be 3 months from the notification of cessation by the agent.

Summary of Feedback Received

62. All respondents agreed with this recommendation.

Our Response

63. **Retain Recommendation 37.** We agree that the current 12-month period is too long, and that the proposed time frame of 3 months is in line with that of other jurisdictions like the UK, Australia and Hong Kong.

Recommendation 38

In addition to the grounds already existing in section 377(6) & section 377(8) of the Companies Act, there should be provisions to empower the Registrar to strike-off a foreign entity from the register where –

- (a) an agent wishes to resign but is unable to do so because there is no replacement agent, and the agent can show that the foreign entity has failed to respond or act within a period of 12 months; or
- (b) the agent of a dormant foreign entity has received no instructions from that entity within a period of 12 months of a request being made by the agent regarding whether the foreign entity intends to continue its registration in Singapore.

Summary of Feedback Received

64. All respondents agreed with this recommendation. One respondent suggested that the 12-month period could be shortened to enhance the protection of an agent against an unresponsive or uncooperative foreign entity.

Our Response

65. **Retain Recommendation 38 with modifications. The Registrar will be empowered to strike off the foreign company if it does not appoint a new agent within 6 months of the death of the sole agent, consequential to the modification to Recommendation 12. Paragraph (b) will also be modified such that the Registrar will be empowered to strike off the foreign company if the agent receives no instructions from the company, regardless of whether the company is dormant or not.** This is because the agent is already required to file a notice of cessation under the existing section 377(1) if the foreign company is dormant. The 12-month period is proposed in view of the need to balance the duties and responsibilities of agents against the difficulties that an agent may face if the foreign company is unresponsive.

XV. RESTRICTION ON NAMES OF FOREIGN COMPANIES

Recommendation 39

There should be provisions to empower the Registrar to reject the registration of a name where the name of the foreign entity is identical to the name of any other business vehicle already registered in Singapore, or to direct a change of name in such a case, or where that name is identical to any other corporation or business name.

Summary of Feedback Received

66. All respondents agreed with this recommendation. One respondent suggested that the suffix ‘Singapore branch’ should be added to the registered name of all foreign companies.

Our Response

67. **Retain Recommendation 39** as this will more closely align the position for foreign companies with that for local companies. The new provisions empowering the Registrar to direct a change of name will apply not only to identical names but also to names which are undesirable or which are of a kind that the Minister has directed the Registrar not to accept for registration. As for the suggestion to mandate ‘Singapore branch’ as a suffix for all foreign companies, it may not be necessary since every foreign company is currently required to state its name, its place of formation or incorporation and notice of the fact if liability of its members is limited in its official documents. These would be sufficient to identify a foreign company. Furthermore, if such a suffix is taken to be adequate to distinguish from a name without such a suffix, mandating such a suffix for all foreign companies may result in local companies being able to adopt names which are the same as foreign companies apart from that suffix. We are of the view that this should not be encouraged.

XVI. TRANSFER OF INCORPORATION

Recommendation 40

A framework for transfer of incorporation of foreign entities will not be introduced at this time.

Summary of Feedback Received

68. Two respondents agreed with this recommendation and two disagreed. Respondents who disagreed were practitioners who said there was a demand for transfer of incorporation and that this would provide more options to companies to set up business in Singapore.

Our Response

69. **Retain Recommendation 40.** Transfer of incorporation involves complex cross-jurisdictional issues. For example, difficulties may arise if the type of business entity does not match exactly the legal structure of a Singapore company. Whilst the difficulties may not be insurmountable, in the absence of evidence of strong demand and the unavailability of feasible alternatives, such a framework will not be introduced for now.

CONCLUSION

70. The following table summarises our decisions on the recommendations in the *Consultation on the Regulatory Framework for Foreign Entities in Singapore*.

Classification	No. of Recommendations	Recommendation Reference
Retained	32	-
Modified	7	Recommendations 3, 6, 12, 16, 21, 25 and 38.
Dropped	1	Recommendation 30
Total	40	-