

Key Legislative Reforms - Business Names Registration Act



ACRA-SAICSA SEMINAR: KEY LEGISLATIVE REFORMS TO THE COMPANIES ACT AND BUSINESS REGISTRATION ACT, AND KEY FEATURES OF THE ENHANCED BIZFILE SYSTEM

Accounting and Corporate Regulatory Authority

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Current Business Registration (BR) Act – Introduction

- ❑ BR Act requires persons to register with Registrar of Businesses before carrying on business in Singapore (s5(1))
- ❑ Main purpose of registration: **enable public to identify the person(s) behind a business name**
- ❑ BR Act applies to:
 - Sole Proprietorships and Partnerships
 - Companies and LLPs carrying on business under a **different** name (eg. DBS Bank has registered “POSB” under BR Act)
- ❑ New Business Names Registration (BNR) Act enacted to replace BR Act. Underlying purpose of BNR Act is the same as BR Act.

Major Changes in new BNR Act

- ❑ **Individuals (sole proprietors or partners) carrying on business under only their full names* need not register under New Act**

** "names" means full name in the person's identity card. If person is not issued with an identity card, "names" means his full name in his passport or such other similar evidence of identity acceptable to Registrar.*

*Eg. Mr Tan Ah Kow **must** register if he does business under "Tan Ah Kow Trading" or "Tan Ah Kow Plumbers"*

Comments

- ❑ Does not affect underlying object of BNR Act – enable 3rd parties to identify person(s) behind a business name.
- ❑ Reduces regulatory burden on persons carrying on business in their own names (eg. tuition teachers).
- ❑ Follows UK, Canada, Australia.
- ❑ These individuals can opt to voluntarily register if they wish.

Major Changes in new BNR Act

- ❑ **No longer require applicants to state “*any other place where the business is carried on*” when applying to register**

Comments

- ❑ Current BR Act requires all applicants registering a new business to state:
“the principal place of business and any other place where the business is carried on”
- ❑ Underlined words **deleted** in new BNR Act
 - May not be feasible for registrants with many business locations to provide and update all business locations.
 - Main reason for providing a business address is for third parties to serve documents on registrant. Providing addresses of all branches does not necessarily help third parties serve documents.

Major Changes in new BNR Act

□ **Who can apply to register under the BNR Act?**

Answer:

- For Sole proprietor: **Individual** himself/herself
- For Company: **Director** or **secretary** of company
- For Limited Liability Partnership: **Manager** of LLP
- For Foreign Company registered under the Companies Act: **Authorised representative** of foreign company
- **Filing agent** registered under s28F of the ACRA Act (on behalf of above persons/entities)

Comments

1. Foreign companies must first register a branch under Companies Act before they can register under BNR Act.
2. Limited partnerships (LP) cannot register under BNR Act unless LP no longer has any limited partner.

Major Changes in new BNR Act

- **Give applicants (who are individuals) option to register and/or renew their registration for one year or 3 years**
 - Those opting for 3 years won't get refund if they cease business early.
 - 3-year option only available to persons who:
 - have fully paid up their Medisave to CPF Board, or
 - stay on a regular instalment plan (ie. monthly giro) and have good Medisave contribution records,* or
 - have never been registered with CPF Board as a self-employed person.

* Good Medisave contribution records means individual has paid his/her Medisave contribution promptly for at least past 12 months before applying to register or renew his/her registration with Registrar.

Major Changes in new BNR Act

- ❑ **Applicants can apply to:**
 - **reserve a business name for 60 days, and**
 - **extend the above reservation for another 60 days**

Comments

- ❑ Gives public an option to reserve a business name first while deciding if they wish to carry on business.
- ❑ Follows practice for companies.

Major Changes in new BNR Act

- **Person (A) cannot register or change to an identical:**
 - business name of person (B) for at least 1 year after (B)'s registration has been cancelled or ceased
 - company or limited liability partnership (LLP) name for:
 - at least 2 years after company/LLP has been dissolved after being wound-up
 - at least 6 years after company's/LLP's name has been struck off
 - foreign company name (registered as a Singapore branch) for:
 - at least 2 years after foreign company has been dissolved
 - at least 6 years after foreign company's name has been struck off
 - at least 3 months after foreign company has lodged notice ceasing to have a place of business or to carrying on business in Singapore
 - limited partnership (LP) name for at least 1 year after the LP has been dissolved, has had its registration cancelled, or has lodged a notice it has ceased business.

Comments

- Example. (B)'s registration "*Mayflower Garden*" is cancelled on 1 Aug 2015. (A) cannot register business name '*Mayflower Garden*' until at least **1 Aug 2016.**

Major Changes in new BNR Act

- ❑ **Registration does not confer ownership in**
 - **registered business name,**
 - **any word of the registered business name, or**
 - **any property held on account of or used for the business**

Comment

- ❑ To make it clear that registration \neq ownership of the business.
- ❑ Main purpose of registration is to enable public to identify person(s) behind a business name.

Major Changes in new BNR Act

- ❑ **Empower Registrar to cancel a person's registration if CPF Board (i) informs Registrar he has not paid up his Medisave Contributions, and (ii) requests Registrar to cancel his registration**

Comments

- ❑ Currently, registrant cannot renew his registration if he has outstanding Medisave contributions.
- ❑ Extending power to allow Registrar to cancel a subsisting registration.
- ❑ For self-employed persons, Medisave is the only source of CPF savings they have. Hence, having up-to-date Medisave contributions is all the more important.
- ❑ Most self-employed persons are regular with their Medisave contributions. They can enjoy new option to renew for 3 years (i.e. reward the compliant).
- ❑ Registrar must give registered person at least 30 days written notice and a chance to explain, before cancelling the registration.

Major Changes in new BNR Act

- ❑ **Permit Registrar to change particulars of deceased registrants in our register:**
 - (a) on application by person who in Registrar's opinion is entitled to apply to court for administration of deceased's estate (eg. NOK), and**
 - (b) subject to such evidence acceptable to the Registrar**

Comments

- ❑ In law, we can only act on executor's/administrator's instructions.
- ❑ In reality, most deceased's next-of-kin (NOK) will not apply for probate (many deceased are small businessmen with few assets).
- ❑ New Act permits Registrar to accept NOK's instructions to update our records without NOK obtaining probate.
- ❑ There will be safeguards. For example, NOK will be required to provide a statutory declaration he has obtained approval from remaining partners for the said change.

Major Changes in new BNR Act

- ❑ **Registrar can restore cancelled registration or registration which has ceased within 12 months of cancellation/cessation.**

Comments

- ❑ No express provision in the current BR Act empowering Registrar to restore a cancelled/terminated registration. Usual route is to appeal to Minister.
- ❑ Empowering Registrar to restore registrations will make it easier for everyone.

Major Changes in new BNR Act

- ❑ **Extend Registrar's powers to amend the register**

Comments

- ❑ Under BR Act, Registrar can only amend register if a person notifies us of an error.
- ❑ BNR Act empowers Registrar to take initiative to amend register if Registrar is satisfied there is:
 - (a) an error arising from any grammatical, typographical or similar mistake, or
 - (b) evidence of conflict between a registered person's particulars and other information relating to the person on the register or from information obtained from public agencies.
- ❑ Registrar must give person at least 30 days' notice to object to Registrar's proposed amendments.
- ❑ Follows amended Companies Act.

Major Changes in new BNR Act



- ❑ **Individuals can lodge a single alternate address (different from their residential address) with Registrar. Alternate address must be:**
 - **an address where individual can be located**
 - **not a PO Box number**
 - **an address in same jurisdiction as residential address**

Comments

- ❑ Individuals must still provide their residential address to Registrar.
- ❑ Registrar will not disclose their residential address to the public unless:
 - (a) the individuals do not respond to Registrar's correspondence sent to their alternate address which require a response, or
 - (b) there is evidence that documents served at alternate address are not effective in bringing them to the individuals' notice.
- ❑ Registrar will not disclose residential addresses **lodged under new BNR Act**. Residential addresses filed with Registrar under current BR Act will still be publicly available even if individual provides an alternate address.

Major Changes in new BNR Act

- ❑ **Extend both criminal and civil sanctions to a person who still carries on business after his registration (i) has been *cancelled* or (ii) has *ceased***

Comments

- ❑ Under BR Act, a person who carries on business without (1) registration (if required to register) or (2) updating change of particulars faces the following consequences:
 - (a) he commits an offence, and
 - (b) he cannot enforce his contractual rights unless court gives permission.
- ❑ BNR Act will extend these 2 consequences to situations (i) and (ii) as well.
- ❑ Aim is to help ensure people remain registered if they wish to carry on business and keep our register accurate.

Major Changes in new BNR Act

- ❑ **Remove concept of “*person responsible for the management of a business*”**

Comments

- ❑ Current Bizfile has 2 categories of “managers”:
 - (i) “*Persons responsible for the management of a business*” - at least one registrant resides in Singapore, and
 - (ii) “*local managers*” – all registrants reside overseas.
- ❑ Re-name category (ii) as “authorised representatives”. Amended Companies Act uses same term for current agents of foreign companies.
- ❑ We will **not** migrate persons in category (i) to enhanced Bizfile.
 - Main purpose of category (i) is to enable Registrar to enforce non-compliance with BR Act against additional person
 - In future, focus enforcement on person(s) carrying on business (“owner”)
- ❑ ACRA’s proposed actions/outreach:
 - ‘Tag’ all category (i) managers in business profiles bought after BNR Act to the following effect: “*Tan Ah Kow - Manager until [DD/MM/YYYY]*”, and
 - Write to inform all parties and related persons concerned.

Major Changes in new BNR Act

- ❑ **At least one authorised representative (AR) to be appointed if all persons (eg. partners) carrying on business do not reside in Singapore.**

Comments

- ❑ In brief:
 - (a) AR must be an individual at least 18 years old and ordinarily resident in Singapore,
 - (b) AR must be appointed within 30 days,
 - (c) Registrar must be notified within 14 days after AR's appointment or cessation.
 - (d) AR must endorse his consent to be appointed as AR.
- ❑ AR was previously known as local manager.

Major Changes in new BNR Act

- **Increase maximum penalties for following offences from \$5,000 fine or 12 months jail or both to \$10,000 fine or 2 years jail or both**

Offence	Equivalent Provision with Same Penalty
Carrying on business (i) without registration, (ii) under a different name from the registered business name, (iii) after Registrar has cancelled the registration, or (iv) after registrant has ceased to be registered	CA s405(1)
Not complying with Registrar's summons	ACRA Act s31(2)(c)
Not complying with Registrar's request for information	ACRA Act s31(2)(c)
Resisting/obstructing Registrar officer in performing his duty	ACRA Act s31(2)(a)
Knowingly giving false information to Registrar	ACRA Act s31(2)(b)


For More Information...

**More details on the
Legislative Amendments and Enhanced BizFile
will be uploaded by end Jan on**

www.acra.gov.sg

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The screenshot shows the ACRA website header. On the left is the ACRA logo. In the center is a blue button labeled "VISIT OUR WEBSITE". To the right is a search bar with a "GO" button. Below the header is a navigation menu with links: About ACRA, News & Events, Legislation, Notices, Publications, Statistics, Careers, Contact Us, Feedback, and Sitemap. Below the navigation menu is a secondary menu with icons and labels: HOME, How-To GUIDES, Online SERVICES, Ask ACRA FAQs, and More OPTIONS.

Featured News/Events

Step 2: Click Subscribe to News Alert

The screenshot shows the "Featured News/Events" section of the ACRA website. On the left is a search bar and a list of categories: Events, Speeches, News articles & publications, Newsletter, Press releases, Forum Letter Replies, and Subscribe to News Alert. The main content area displays three news items, each with a date stamp "OCT 08 2014" and a title starting with "SPEECHES, NEWS AND ANNOUNCEMENTS". The third item's title is "Second Reading (Response) Speech by Mrs Josephine Teo, Senior".

Step 3: Click on New Subscription

New Subscription

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The screenshot shows a "New Subscription" button in orange. Below it is a "Sign in" form with fields for "Email" and "Password", a "Sign in" button, and a "Forgot password?" link.

The End

