

SUMMARY OF KEY FEEDBACK ON THE DRAFT BUSINESS NAMES REGISTRATION BILL AND MOF'S AND ACRA'S RESPONSES

1. Definition of “business name”

Feedback: A respondent suggested defining “business name” more clearly. There were also questions on: (i) what constituted a business name; (ii) whether there were circumstances where trademarks and/or logos would not qualify as business names; and (iii) where companies had several recurring combinations of words in relation to their business names¹, whether such companies would be required to register each such combination as a separate business name.

Response: The draft Bill had defined “business name” as “a name or style under which a person carries on business”. We agree that the word “style” can possibly include a trademark and/or logo, which can be a word, a name, or a design. As a “business name” is not intended to include designs, we will delete the words “or style” from the definition of “business name” to avoid any ambiguity. In addition, the Bill will be amended to make it clear that if a person intends to carry on business in Singapore under more than one business name, he must register each business name.

2. Activities that constitute as carrying on business

Feedback: A respondent suggested including a provision similar to section 366(2) of the Companies Act by setting out a list of activities that would not be regarded as carrying on business in Singapore. Section 366(2) of the Companies Act sets out a list of activities by which a foreign company is not to be regarded as carrying on business in Singapore.

Response: We agree with the suggestion. This will make it clear that foreign companies carrying on these activities in Singapore are not regarded as carrying on business in Singapore under both the Companies Act and the Bill for consistency. However, we see no need to set out a similar list of activities that will not be regarded as carrying on business in Singapore for local businesses, since the Bill will expressly provide that a person who has a place of business in Singapore will be regarded as carrying on business in Singapore. In addition, persons carrying on one-off business activities (e.g. during festive seasons) are likely to be individuals acting under their full names and hence are already exempted from registering under the Bill.

¹ An example of a business name having several recurring combinations of words could be as follows: “Mayflower Garden”, “May Flower Garden House”, “Mayflower House Garden”.

3. Persons not required to be registered under the Bill

(a) Criteria for exemption

Feedback: A respondent asked if there was an intention to change the criteria for exemption from registration. The Business Registration (“BR”) Act exempts certain type of businesses from registration (e.g. licensed hawkers, craftsmen and taxi drivers). On the other hand, the draft Bill exempts an individual proprietor and/or a firm of 2 or more individuals from registration if they carry on business in Singapore under only the persons’ full names.

As the draft Bill proposed for ACRA to continue exempting individuals carrying on existing businesses under the First Schedule² of the BR Act from registering under the new regulatory framework, one respondent asked whether the grandfathering exemption for existing businesses under the First Schedule of the BR Act would apply to a deceased individual’s administrator or executor³ carrying on the business.

Response: The draft Bill had proposed changing the criteria for exemption from registration, such that exemption will apply only to individuals who carry on business in Singapore under only their full names. This is because the objective of the Bill is to allow other parties to identify the person carrying on business in Singapore. Hence, persons should register under the Bill if they carry on business in Singapore under a business name different from their full names. Accordingly, exemptions from registration under the Bill should not be based on the type of business activity. However, the exemption from registration presently accorded to persons carrying on businesses based on activity (e.g. licensed hawkers, craftsmen and taxi drivers) will still apply, until the individual concerned dies or ceases to carry on such businesses.

In addition, the Bill will make clear that the grandfathering exemption will only apply to an individual proprietor who: (i) carried on any business that was exempted from registration under the BR Act before the Bill comes into force; and (ii) is alive and continues to carry on the same business on and after the Bill takes effect.

(b) Individuals carrying on business in Singapore under only their full names

Feedback: The draft Bill used “*any firm of 2 or more individuals*” and “*firm of individuals*” in different sections. For consistency, one respondent suggested that the same phrase “*any firm of 2 or more individuals*” be used throughout the Bill. Notwithstanding the suggestion, the respondent also noted that there might be confusion in the application of the definition of “firm” when read together with the reference to “any firm of 2 or more individuals”, since a “firm” is defined to include corporations and individuals.

² The First Schedule of the BR Act lists out the class of individuals/entities that are exempted from registering under the BR Act. They are: a) licensed hawkers; b) craftsmen working from home; c) taxi drivers; d) trishaw riders; e) sampan man plying his sampan for hire; and f) farmers and prawn/fish pond keepers.

³ The definition of “*individual*” in the draft Bill includes an administrator and executor.

Response: We accept the suggestion to use the same phrase “*any firm of 2 or more individuals*” for consistency. For clarity, the phrase will refer to firms comprising only individuals and not corporations.

(c) Exemption for professional practices

Feedback: One respondent asked about the impact of the exemption provisions on Singapore law practices, in relation to the issuance of the Unique Entity Number for law practices.

Response: There will be no change to the current regime. Hence, there will be no impact on the issuance of the Unique Entity Number to Singapore law practices.

(d) Exemption for any body of 10 or more persons formed or run for any lawful purpose and not for the pecuniary benefit of its members

Feedback: One respondent sought clarity on the legal entities that would be classified as “*any body of 10 or more persons formed or run for any lawful purpose and not for the pecuniary benefits of its members*”. Another respondent suggested extending the exemption to “*any body of fewer than 10 persons formed or run for any lawful purpose and not for the pecuniary benefit of their members*”.

Response: Currently, any society registered under the Societies Act is exempted from registration under the BR Act. The draft Bill had proposed replacing “*any society registered under the Societies Act (Cap. 311)*” with “*any body of 10 or more persons formed or run for any lawful purpose and not for the pecuniary benefits of its members*” for clarity. The amendment was not intended to change the policy intent. To avoid confusion, we will drop the proposed amendment. The Bill will revert to exempting a society registered under the Societies Act from registering under the Bill.

(e) Registration of foreign partnerships

Feedback: One respondent asked whether a foreign partnership established outside Singapore and with all of its partners outside Singapore may be registered under the Bill to carry on business in Singapore, whether under its name or otherwise.

Response: Foreign partnerships must first register under Division 2 of Part XI of the Companies Act. In addition, such foreign partnerships may, if they so wish, register under the Bill, albeit under a different business name.

4. Registration by nominee or trustee

Feedback: One respondent asked whether a foreign company would be prohibited from carrying on business through a nominee or trustee even if the foreign company was registered under Division 2 of Part XI of the Companies Act.

Response: We confirm that a foreign company will be prohibited from carrying on business through a nominee or trustee even if the foreign company is registered under Division 2 of Part XI of the Companies Act.

5. Imposition of a moratorium period before allowing applications for a business name identical to a business name which has been changed

Feedback: One respondent suggested preventing a third party from registering a business name that is identical to another person's former business name (which has been changed by the person) unless a period of time has elapsed.

Response: We think there is no need to impose a moratorium period in such a case. As a person has changed his business name in the first place, a third party should not be prevented from applying to register a business name that is identical to a person's former business name.

6. Restoration of registration

(a) Operational matters

Feedback: Respondents asked: (i) whether ACRA would publish restored business names, which were previously cancelled or had ceased to be registered, in the Gazette; and (ii) whether there would be differences in the notice of renewal between a business registration which had been routinely renewed upon its expiration and a business registration which had been restored after it was cancelled or had ceased.

Response: ACRA will not publish restored business names in the Gazette. ACRA is still finalising the information to be included in the notices of renewal of registration and restoration of registration.

(b) Clarification on the proposed restoration policy

Feedback: One respondent asked whether there was any inconsistency in the following positions set out in the draft Bill: (a) if the registration of a person and the person's business name had been cancelled, any certificate or notice pertaining to the registration of the person and the person's business name would be cancelled; and (b) if the person successfully applied for restoration of the registration, the person's registration and registered business name would be treated as if it had not been cancelled or had not ceased.

Response: There is no inconsistency as restoration of registration of a person and the person's business name is retrospective. A person whose registration has been successfully restored will be treated as though the person's registration and registered business name was not cancelled or had not ceased in the first instance.

(c) Prospective or retrospective cancellation

Feedback: One respondent asked whether successful applications to restore registrations would be retrospective or prospective under the following scenarios: (i) cancellation for failure to renew registration; (ii) cancellation after a person replies to the Registrar that the person is not carrying on business in Singapore or the person's failure to object to the Registrar's proposed cancellation; or (iii) cessation of business.

Response: Restoration of registrations will be retrospective in the above scenarios. The Bill will provide that if the Registrar grants an application to restore a registration⁴, the registration of the person and the person's business name is to be treated as if it had not been cancelled or had not ceased.

7. Rectification of ACRA's register

Feedback: The draft Bill proposed that the Registrar be allowed to rectify the register, if notified by any registered persons, errors that are "*typographical or clerical*" in nature, or unintended and does not prejudice any person. It also proposed that the Registrar would be allowed to rectify or update the register on the Registrar's own initiative if the Registrar is satisfied that there is a defect or error in the particulars arising from any "*grammatical, typographical or similar mistake*", or any particular of a person is inconsistent with other information on the register or information from credible third party sources.

One respondent suggested using the phrase "*grammatical, typographical, clerical or similar mistake*" for the proposed powers to be granted to the Registrar to rectify the register on notification: (i) by a registered person; or (ii) on the Registrar's own initiative.

Response: We will retain the original position in the draft Bill. For rectification of the register by the Registrar on notification by a registered person, the Registrar's power to rectify the register will be confined to errors that are "*typographical or clerical*" in nature. On the other hand, for rectification of the register on the Registrar's own initiative, the Registrar's power to rectify the register will be confined to errors arising from "*any grammatical, typographical or similar mistake*". This is consistent with the approach for the Companies (Amendment) Bill.

8. Request for copy of notice of registration, etc.

Feedback: One respondent suggested allowing persons to request for a copy of the "*certificate of confirmation of registration*"⁵.

⁴ The application to restore a registration that was cancelled or had ceased must be made within 12 months after the date on which the registration was cancelled or had ceased, or within such longer time as the Registrar may in special circumstances allow.

⁵ The draft Bill provides that the Registrar may, upon receiving an application for registration and the prescribed fee, issue a "*certificate of confirmation of the person's registration and registration of business name*".

Response: To minimise the occurrence of fraud, only a registered person can obtain a certificate of confirmation of registration. Third parties will not be able to apply for a copy of certificate of confirmation of registration.

9. Provision of alternate address

Feedback: One respondent suggested that ACRA's business profiles provide a person's residential address and alternate address. This would ensure that business owners take responsibility for all their actions and deter them from engaging in unethical business practices or reckless behaviour.

Response: Given the increasing security concerns on disclosing residential address in public records, we will not include a person's residential addresses in ACRA's business profile if he has provided an alternate address. Safeguards will be put in place to prevent abuse and fraudulent reporting. For instance, if a person cannot be located at the alternate address, he will be guilty of a criminal offence and will be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding two years or to both. The Registrar can also make a person's residential address publicly available in certain situations (e.g. where serving a document at the alternate address is not effective to bring it to the notice of the individual).

10. Authorised representative

Feedback: One respondent suggested allowing all authorised representatives (not just the sole authorised representative) to notify the Registrar that he had ceased to be an authorised representative for a registered person.

Response: We agree with the suggestion and will amend the Bill accordingly.

11. Provision on civil penalties

Feedback: There was general support for the provision on civil penalties in the draft Bill⁶. Although the provision in the draft Bill was based on an existing section in the BR Act, one respondent suggested removing it as it was too severe compared to the \$1,000 penalty for a default under section 386 of the Companies Act.

Response: The existing provision in the BR Act serves to protect the public who contract with defaulters⁷. Hence, we will retain the provision in the Bill. To calibrate the sanction against defaulters, the Bill will expressly provide that the defaulter is not prevented from enforcing any contractual right if his registration is subsequently

⁶ Under the draft Bill, if a person who is required to be registered: (i) carries on business without being registered in respect of a business name; (ii) carries on business under a business name after the registration is cancelled or has ceased, and has not been restored; or (iii) fails to lodge any change of particulars within 14 days, the person cannot enforce any rights arising out of any contract in relation to the business unless the court grants relief.

⁷ Defaulters are persons who are required to register under the BR Act but: (i) have either failed to do so, (ii) do not update their registered particulars with ACRA; or (iii) carry on business after their registration has been cancelled or has ceased without being restored.

restored. We will also retain the position in the draft Bill that allows the defaulter to apply to court for relief against the disability imposed. Moreover, if the other party sues the defaulter under a contract, the defaulter is not prevented from enforcing his own contractual rights against the other party.

12. Offences by bodies corporate, etc., attributable to an officer's neglect

Feedback: There was general support for the provision⁸. However, a respondent commented that this could impose excessive regulatory burden on officers (e.g. directors).

Response: We will retain the position in the Bill, which is based on an existing provision in the BR Act which imposes liability on an officer if an offence by the corporation is proven to have been facilitated by any neglect on the part of the officer.

13. Meaning of “other similar officer” and “other like officer”

Feedback: One respondent sought clarification on the scope of “*other similar officer*” and “*other like officer*” used in the draft Bill.

Response: We will remove references to “other similar officer of the body corporate” in the Bill. However, we will retain references to “other like officer” in the Bill given the context in which these are used.

14. Service of documents, etc.

(a) Meaning of “adult person”

Feedback: One respondent sought clarification on the term “adult person” used in the draft Bill. The respondent also asked how it would be determined if the person accepting service of a document is an adult, as well as being apparently resident or employed at the relevant place”.

Response: We will retain the term “*adult person*”, as it is used in many service provisions of other legislation, and has been established by case law to generally refer to persons of 21 years and above. We take the view that it is difficult to legislatively prescribe the manner in which one should determine that a person accepting service is an adult, and apparently resident or employed at the relevant place.

⁸ The draft Bill sets out the liability of any officer of offences committed by bodies corporate, partnerships and unincorporated associations, if the offences is proved (i) to have been committed with the consent and connivance of the officer or (ii) to be attributable to any neglect on his part.

(b) Electronic communications

Feedback: One respondent suggested including an express provision on providing email addresses to the Registrar, so that documents could be served on registered persons via email.

Response: The Bill provides the flexibility for subsidiary legislation to specify additional information concerning the registered person that may be collected by the Registrar. This includes the collection of electronic-mail (e-mail), which is already one of the permitted methods of service of documents on registered persons under the Bill. It is therefore not necessary to have an express provision regarding the collection of e-mail addresses in the Bill.

15. Other issues

(a) Mode of sending notifications

Feedback: One respondent highlighted that there was no provision for ACRA to send a notice of renewal of registration by ordinary post or through other forms of notification (e.g. electronic mail). On the terms “*pre-paid registered post*” and “*registered post*” used in the draft Bill, one respondent suggested adopting a single term for consistency.

Response: The draft Bill already requires the Registrar to give written notice to the affected person, which is wide enough to encompass communications by ordinary post or other forms of notification. We agree to replace all references to “*registered post*” with “*pre-paid registered post*” for consistency.

(b) Status of partnership upon death of a partner

Feedback: One respondent suggested that ACRA’s form for notification of death include (a) a notification of the death of a partner; and (b) a declaration by the remaining partner(s) on whether there is any agreement amongst the partners regarding the dissolution of the partnership upon the death of a partner.

Response: There is no need for such a declaration from the remaining partners. ACRA requires remaining partners to report any cessation of partners and business and this should be sufficient confirmation.