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25 June 2014

Ms Karen Lee
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BY EMAIL (Karen LEE@acra.gov.sg)
& POST

Dear Ms Lee

PUBLIC CONSULTATION ON THE BUSINESS NAMES REGISTRATION (BNR) BILL 2014

We refer to your email of 2 June 2014 inviting the Law Society to provide feedback on the above consultation.

2 The consultation was referred to the Corporate Practice Committee (the "Committee") and the views of the Committee are set out below. The Council of the Law Society ("Council") has considered and shares the views put forth and would be grateful for ACRA's clarification on certain aspects of the proposed amendments, as raised below.

I) Persons not required to be registered under this Act

Part I/ Preliminary

This clause sets out the classes of individuals/entities exempted from registration under the Act, by amending Section 4 of the BR Act to introduce new classes of individuals/entities exempted from registration, such as, (i) any individual proprietor/firm of individuals carrying on business under their full names; (ii) any body of 10 or more persons formed or run for any lawful purpose and not for the pecuniary benefit of its members; (iii) any registered trade union; (iv) any limited partnership (LP) registered under the LP Act, but subject to section 42(3) of that Act; (v) persons exempted from registration by the Minister under regulations made under Clause 40; and (vi) existing businesses exempted under the First Schedule of the BR Act.

3 Council notes that under Clause 4 of the BNR Bill, Singapore law practices which are sole proprietorships, carrying on a business under their full names, limited liability partnerships and limited liability corporations, and foreign

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law practices are exempt from registering under the BNR Bill. Clarification is sought on the implications arising from this exemption in relation to the issuance of UEN for law practices.

II) Requirement to register

Part II / Clause 5

The Clause sets out that every person should register their business name before carrying on business in Singapore, regardless of whether they are carrying on business in Singapore through a nominee or trustee. Further, if a person intends to carry on business in Singapore under more than one business name, the person has to file separate registrations for each of those business names.

4 The Committee notes that Clause 5 of the BNR Bill requires registration of both the person carrying on business and the business name(s) itself. Where a person intends to carry on their business in Singapore under more than one business name, the BNR Bill requires that separate registrations be made in respect of the person and each of those business names.

5 Clause 2(1) of the BNR Bill defines the term “business name” to mean the name or style under which a person carries on business. The Committee notes that this definition is analogous to the definition under the existing Business Registration Act. However, in view of the significant change proposed by way of the operative Clause 5, the term should be more clearly defined by clarifying the following.

- a) What constitutes a “business name”;
- b) Whether there are circumstances where a trademark and/or logo may not qualify as a business name; and
- c) Where companies have several recurring combinations of words in relation to their business names, whether such companies are required to register each such combination as a separate business name.

III) Disability of persons in default

Part II / Clause 27

The Clause provides that if a person, who is required to be registered under the Act, (i) carries on business without being registered under the Act in respect of the business name; (ii) carries on business under a business name (a) after the registration has been cancelled or has ceased, and has not been restored under Clause 21; or b) fails to comply with the requirements under Clause 18, he cannot enforce any rights arising out of any contract in relation to the business unless he gets the Court’s approval.

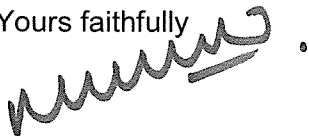
6 Under Clause 27 of the BNR Bill, if a person fails to update any particulars under Clause 18, or carries on business without registration, he cannot enforce any rights arising out of any contract in relation to the business all contracts, unless relief is granted by the Court. The Committee is of the view that while the Court may grant relief, the proposed sanction is too severe and should be removed or at least reconsidered. The Committee notes that comparatively, failure to register as a foreign company only carries a penalty of S\$1000 under section 386 of the Companies Act.

7 The Committee also notes that a foreign company may infringe the BNR Act because the exception in Clause 4(1)(k) of the BNR Bill applies only if a foreign company is carrying on business in its corporate name and is registered as a foreign company under the Companies Act. Thus, if a foreign company’s activities in Singapore cross the threshold of

“carrying on business” and fails to register under the Companies Act, the potential sanction will be – further to a penalty of S\$1000 under the Company’s Act – the invalidity of contracts under section 27 of the BNR Bill. While the Committee notes that the current Business Registration Act also provides for the same provisions, the Committee takes the view that the calibration of penalties under the existing Business Registration Act and its extension under the BNR Bill appear to be misplaced in principle.

8 We thank you for inviting the Law Society to participate in this consultation and look forward to an update in due course.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Michelle Woodworth', with a small dot at the end.

Michelle Woodworth
Director (HoD), Representation and Law Reform Department