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# **CONSULTATIVE DOCUMENT ON THE REVIEW OF THE REGISTRATION OF BUSINESSES ACT 1956**

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## **CONSULTATION DOCUMENT ON THE REVIEW OF THE REGISTRATION OF BUSINESSES ACT 1956**

The Companies Commission of Malaysia (SSM) invites comments on the Review of the Registration of Businesses Act 1956 as set out in Section B of this consultation document by **30 June 2017**. Please provide your name and the organisation you represent (where applicable) and to provide reference on the question(s) you are commenting.

Comments must be forwarded by email to: [lrpia@ssm.com.my](mailto:lrpia@ssm.com.my)

**Confidentiality:** Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been requested.

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## **SECTION A**

### **REVIEW OF THE REGISTRATION OF BUSINESSES ACT 1956**

#### **EXECUTIVE SUMMARY**

1. Taking cognisance of the importance of the role played by small businesses towards domestic growth, SSM is taking the initiative to modernise the Registration of Businesses Act 1956 (ROBA) towards providing a conducive and dynamic environment for businesses to flourish.
2. The following policy statements are proposed to be considered as the basis of formulating a more efficient business registration process and procedures:
  - (a) The retention of current framework to govern the registration of businesses as sole proprietors or partnerships based on the existing categories of business activities.
  - (b) That the concept for voluntary registration for certain business activities be introduced.
  - (c) That the power to revoke, vary or exclude any activities from being subject to the law is vested with the Minister.
  - (d) That the phrase "person responsible for the management of a business" be adopted and the retention of the present definition of "person responsible". It is also recommended that there should be express provision of

the liability of the “person responsible for the management of a business”.

- (e) That the concept of “prescribed persons” who can be authorised to register the business on behalf of the owners be introduced.
- (f) That a clear provision be provided to allow a body corporate to be a partner in a business registered under ROBA.
- (g) The retention of the policy regarding the restriction on foreigners from registering their business under ROBA.
- (h) That mandatory registration of business is required before a person can carry on business.
- (i) That the application for name search and reservation of name should be clearly provided.
- (j) That the reservation process should not be made mandatory and that there should be a maximum reservation period to avoid potential abuse.
- (k) That a comprehensive name approval process be introduced to harmonise with the Companies Act 2016 and the Limited Liability Partnerships Act 2012
- (l) That the legislation should allow a change of name of registered business.
- (m) That a comprehensive framework be provided to address issues relating to online businesses or business without a specific physical premise.

- (n) That clearer provision be provided for to manage the registration of registered particulars with the Registrar whilst ensuring that partners to businesses are adequately protected.
- (o) That the present mandatory requirement to terminate the business in the event a partner cannot be located or found should be amended as it is not facilitative to business. The remaining partner(s) in a business should be provided with an option to continue with the business if the business is still viable.
- (p) That the procedures relating to revoking or cancelling the registration of a business on the ground that the business is used or intended to be used for unlawful purposes be revised to incorporate the issuance of notice by the Registrar to the person carrying on the business or the person responsible for the business. The issuance of such notice will not require the business to provide a reply showing cause to the contrary. It is also recommended that any aggrieved person should be given an opportunity to be heard by an appeal application to the Minister.
- (q) That the law should allow the Registrar to revoke the registration if there is a direction from the Minister charged with the responsibility of internal security that the business is used for purposes which are incompatible with the national interests or security. In such cases, the issuance of notice will not be necessary.

- (r) The retention of the present practice of filing Form C only in the event of a termination of business and as a result of the death of an associate or a partner in which there is no surviving partner.
- (s) That a procedure for an application to restore a business registration can be made within 12 months after the registration of business has ceased.
- (t) That the same framework for rectification of register or mistakes which is in line with the amendments made in the Companies Act 2016 be adopted.
- (u) That the same framework relating electronic filing under the Companies Act 2016 be adopted.

## **SECTION B**

### **REVIEW OF THE REGISTRATION OF BUSINESSES ACT 1956**

#### **INTRODUCTION**

1. The Registration of Businesses Act 1956 (ROBA) was formally enacted as the Registration of Businesses Ordinance 1956. It came into force on 1 January 1957. It was revised and published on 26 January 1978 as Laws of Malaysia Act 197 and assumed its present name.

2. ROBA provides for the registration of businesses and is applicable to West Malaysia only. In 1996, the application of ROBA has been extended to the Federal Territory of Labuan.

3. ROBA is not applicable to the following activities by virtue of section 4:

- (a) any business which is exclusively owned and carried on by any company registered under the Companies Act 2016;
- (b) any business owned or conducted by the Government or by any public body incorporated by or constituted by or under any written law;
- (c) any society registered or exempted under any written law for the time being in force relating to the registration of societies or co-operatives societies;
- (d) any business consisting solely of the exercise of any profession which the provisions of any written law can be exercised only by those who possess certain



qualifications prescribed by such written law and whose names are registered or otherwise recorded in manner prescribed by any written law.

4. Since its enactment, ROBA has been amended four times but the principles and substantive provisions of ROBA remain the same.

5. As at 31 March 2017, a total of 6,492,032 businesses have been registered under ROBA. These figures represent a healthy growth of domestic business activities.

6. Taking cognisance of the importance of the role played by small businesses towards domestic growth, SSM is taking the initiative to review the provisions under ROBA to ensure that the business community is provided with conducive and dynamic environment to flourish.

## **AREAS FOR REVIEW AND COMPARATIVE BENCHMARKING**

7. The importance to provide a conducive and dynamic environment for business community to grow and flourish is the main consideration of the review. Many of the principles currently found in ROBA are still relevant. However, there are quite a number of provisions which are out-dated and archaic which requires a review to be conducted to ensure that the law remains dynamic and forward looking in tandem with the evolution of business trends.

8. This document will discuss specific issues with the objective of promoting simplification and ease of doing business in

Malaysia. The areas of review are divided into three parts as follows:

- (i) Part A - Dynamics of the law
- (ii) Part B - Parameters of activities which are to be registered under ROBA;
- (iii) Part C - Registration, renewal, revocation and restoration of businesses; and
- (iv) Part D - Miscellaneous

## **PART A – DYNAMICS OF THE LAW**

9. In many Commonwealth and non-Commonwealth countries, the administration of business activities is carried out through the registration of business names<sup>1</sup>.

10. In some jurisdictions, instead of requiring certain activities to be registered, a wider approach is adopted where the law requires any person carrying on a business<sup>2</sup> under a business

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<sup>1</sup>Examples of such statutes are the Ireland Registration of Business Names Act 1963, the Australian Capital Territory Business names Act 1963, the Norwegian Business Enterprise Registration Act.

<sup>2</sup>The Business Name Registration Act of the Australian Capital Territory defines carrying on a business to include establishing a place of business and soliciting orders for goods and services, but does not include—

- (a) taking or defending a legal proceeding; or
- (b) establishing or keeping an account with an authorized deposit-taking institution; or
- (c) making a purchase or sale through an independent contractor; or
- (d) creating and evidence of a debt or a charge on property; or
- (e) collecting a debt, securing a debt or enforcing a security in relation to a debt; or
- (f) Conducting an isolated transaction over not longer than 31 days; or
- (g) investing funds or holding property.

name<sup>3</sup> to be registered. The requirement to register business names is a blanket application covering any person (both unincorporated or incorporated) intending to carry on a business under a business name. If a company or an individual is carrying on a business under its or his actual name<sup>4</sup>, the law will not be applicable to them.

11. In contrast, the objective of ROBA is to make available provisions relating to the registration of business in the form of sole proprietor or partnerships based on certain type of “business” activities irrespective of whether or not they are carried on under a business name or actual name.

12. The Singapore Business Registration Names Act 2014 (BNRA) has evolved in that the requirement to register under the BNRA has been extended to corporations if they carried on a business under a business name. Mauritius on the other hand took a slightly different approach where a company or commercial partnership is automatically deemed to have been registered under the Mauritius Business Registration Act 2012.

13. To a certain extent, the extension of the requirement to register a company which is carrying on a business under a business name will reduce confusion as all business names will be registered with the Registrar. Public search will be able to be carried out to ascertain who the actual owners of a business are. On the other hand, such requirement will create a dual

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<sup>3</sup>Business name means a name, style, title or designation under which a business is carried on.

<sup>4</sup>As opposed to business name, an actual name is a name of a company or an individual without any other addition.

registration system and may not be advantageous in terms of costs and efficiency.

14. SSM recommends that the current framework to govern the registration of sole proprietor or partnerships based on the definition of "business" be retained. Further, SSM is of the view that section 4 of ROBA which exclude the application of ROBA to certain activities also be retained.

**Questions for consultation:**

- (1) Do you agree that the principle to govern the registration under ROBA should be based on the principle of registration of business vehicle in the form of sole proprietor or partnerships for certain business activities?**
  
- (2) Do you agree that the requirement to register under ROBA be extended to any person carrying on businesses including company or limited liability partnership?**

**PART B - PARAMETERS OF ACTIVITIES WHICH ARE TO BE REGISTERED UNDER ROBA**

**Definition of "Business"**

15. At present, any business which is defined under section 2 of ROBA must be registered. Section 2 defines "business" to include

every form of trade, commerce, craftsmanship, calling, profession or other activity carried on for the purposes of gain, but does not include any office or employment or any charitable undertaking or any occupation specified in the Schedule.

16. The definition of business is very wide and all-encompassing covering all activities which are carried out for the purposes of gain. However, the definition does not include the holding of office or employment; any charitable undertaking and any occupation specified in the Schedule of ROBA even though such activities are carried on for the purposes of gain.

17. One of the problems faced by the definition is the reference to "occupation specified in the Schedule" whereby although the Schedule serves to exclude activities which are personally and actively engaged for the purposes of livelihood, the conditions stipulated to the excluded activities may pose confusion as it sometimes necessitate them to be registered under ROBA.

18. The present definition of "business" in ROBA is comparable with the definition found under the Singapore BNRA and Mauritius BRA.

19. The Singapore BNRA defines "business" as follows:

*"Business" includes every form of trade, commerce and profession, and any other activity carried, that is carried on for the purposes of gain, but does not include any office, employment or occupation<sup>5</sup>.*

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<sup>5</sup>Section 2(1) of Singapore BRA

20. In Singapore, the Business Registration Act (Chapter 32 of 2004) was repealed and replaced with the Business Names Registration Act 2014 which refer to charitable undertaking or excluded business activities. The reference to “charitable undertaking” has been removed from the definition and now categorised as one of the exempted categories for which the provisions of Singapore BNRA are not applicable. Instead of referring the excluded activities as “occupation”, these are referred to as excluded business.

21. In Mauritius, whilst “occupation” forms part of the definition of business which necessitates a registration if it is carried on for the purpose of gain, the reference to “charitable undertaking” has been removed and categorised as one of the excluded activities under the Schedule of the Mauritius BRA.

22. The Mauritius BRA defines “business” as follows:

*“Business”*

- (a) includes every form of trade, commerce or manufacture, craftsmanship, calling, profession, vocation or occupation or any other activity carried on by a person for the purposes of gain or profit; but*
- (b) does not include—*
  - (i) any office or employment;*
  - (ii) any of the business or activities specified in part I of the First Schedule; or*

*(iii) any business activity carried on by a person, or class of persons, specified in Part II of the First Schedule.”<sup>6</sup>*

23. Based on the above, SSM is of the view that there is a need to refine the definition of “business” to avoid ambiguity. It is proposed that the reference to “occupation specified in the Schedule” be amended to “activities specified in the Schedule”. Such activities are excluded activities which would be determined through a list of relevant principles and elements. It is also recommended that the reference to “charitable undertaking” should be referred to as one of the excluded activities under ROBA.

24. Therefore, it is recommended that the definition of business is as follows:

*“Business” includes every form of trade, commerce, craftsmanship, calling, profession and any activity carried on for the purposes of gain, but does not include any office, employment or occupation, or any activity specified in the Schedule”.*

### **Excluded activities**

25. It is noted that the exclusion provided in the Schedule of ROBA is intended to exclude activities which are carried out for the purposes of gaining livelihood and that the activities must be personally and actively engaged by the person carrying out the

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<sup>6</sup>Section 2(1) of the Mauritius BRA

activities. The exclusion is also based on specific criteria and conditions as follows:

- (a) In the case of selling or exposing for sale of goods and services, such activity will be excluded if it is—
  - (i) itinerant in nature;
  - (ii) not carried on from any building or structure; or
  - (iii) not carried on from a mechanically propelled vehicle having more than three wheels;
  - (iv) not carried on from a stall required to be licensed under any written law.
  
- (b) In the case of selling or exposing for sale any goods or merchandise at a weekly fair on not more than two consecutive days in any week or at any Malay fair or fair of a similar type established, promoted or aided by a cooperative society, such activity will be excluded if the goods are grown, prepared, manufactured or processed solely in the Federation.
  
- (c) In the case of agricultural activities, such activities will be excluded if—
  - (i) the activities are actively and personally engaged for their own account by any person for the purposes of gaining livelihood;
  - (ii) the area held, occupied or used is not more than 25 acres; and
  - (iii) the person carrying on the activity employs not more than 5 workers.



- (d) In the case of craftsmanship activities, such activities will be excluded if —
  - (i) the activities are carried on in domestic premises;
  - (ii) the product of the craftsmanship is not displayed for sale in public;
  - (iii) no other person except members of the household is employed for the purposes of making or producing the craft.
  
- (e) In the case of fishermen, breeders of fish in ponds, charcoal burners, wood cutters, they are exempted from having to register under ROBA if they are personally and actively engaged for the account of earning livelihood.

26. It is noted that the criteria and conditions attached to the excluded activities have created uncertainties and ambiguity. Failure to meet the stipulated criteria and conditions will render the person carrying on the activity to be registered under ROBA.

27. The problem is further compounded when the stipulated criteria and conditions cannot be applied uniformly. For example, an excluded activity is required to be registered under ROBA if it required to be licensed by some other written laws including the bylaws of the local councils. However, there is no uniformity in applying this as local councils may have different laws relating to the same activity.

28. SSM is of the view that there is need to propose types of business activities which should be exempted to register under

ROBA for instance, certain business activities which are temporary in nature or for the purpose of livelihood based on certain economic criteria. Therefore, the parameters used for the exclusion must be reviewed to ensure that they reflect the present business trends, elements and environment. The balance between the purposes of activities carried out solely for gaining livelihood must be clearly distinguished or spelt out from that which is carried out for the purpose of gaining profit. Similarly, the conditions and criteria used must be able to have a uniform application.

Section 4 of the Singapore BNRA lists the types of person who are not required to register:

- (a) any business of a licensed hawker, whether itinerant or otherwise, who sells or exposes for sale any food, drink, goods, wares or merchandise or any kind, or who offers for hire his skill in handicraft or craftsmanship;
- (b) any business of a craftsman who—
  - (i) exercised his craft on his own domestic premises;
  - (ii) does not display the products of his craftsmanship for sale in public; and
  - (iii) does not employ any person other than members of his immediate family for the purpose of his business.
- (c) Any business of—
  - (i) a taxi driver;

- (ii) a trishaw rider;
- (iii) a sampan man plying his sampan for hire; or
- (iv) a farmer, a fish pond keeper or a prawn keeper who—
  - (A) does not employ any person other than members of his immediate family;
  - (B) does not own the land on which his farm or pond stands; and
  - (C) does not charge members of the public any fee for admission.

Section 4 also allows the following categories of persons to register voluntarily:

- (a) any individual proprietor carrying on business under the 20 individual proprietor's full name;
- (b) any firm of 2 or more individuals carrying on business under the full names of all the individuals;
- (c) subject to subsection (2), any individual or firm of individuals carrying on any business consisting solely of the 25 exercise of any profession which under the provisions of any written law can be exercised only by those who possess certain qualifications prescribed by the written law and whose names are registered or otherwise recorded in the manner prescribed by any written law;
- (d) a person (A) in respect of or for whom another person (B) carries on business wholly or mainly as nominee or trustee if B has provided the particulars required under section 7(1);

...

- (p) any other person for the time being exempted by the Minister under regulations made under section 40; and
- (q) any individual who, immediately before the date of commencement of the Business Names Registration Act 2014, carried on any business specified in the First Schedule to the Business Registration Act (Cap. 32) in force immediately before that date, and who continues to carry on the same business, on and after that date.

29. In Mauritius, the excluded activities have been simplified as follows:

- (a) the business of a craftsman who—
  - (i) exercises his craft from his own domestic premises; and
  - (ii) does not have any business premise.
- (b) any religious charitable or educational organisation; and any person engaged in the cultivation of land of an extent not exceeding 4.2208 hectares (10 arpents).

30. SSM is of the view that the parameters used in Singapore and Mauritius are simpler and clearer and can be applied consistently. In the case of Singapore, certain business activities although not required to register under the Act, may voluntarily do so.

31. In Mauritius, the excluded activities are confined to craftsmanship carried out only from the domestic premise of the craftsman. Apart from that other consideration include whether or not the activities are carried on for charitable, religious or educational purposes and specifies the threshold of cultivation of land.

32. In the case of Malaysia, it is felt that the parameters should be re-examined to ensure they can be applied consistently as follows:

- (a) commercial elements vs. a high degree of personal engagement. For example, employing people outside the immediate family circle, charging of fees, etc; and
- (b) continuous existence vs. temporary existence.

33. Whilst the above parameters can be easily applied to activities relating to selling or exposing for sale of goods and services, it is felt that the above parameters can still be applied to fishing and agricultural activities such as fishermen, breeders of fish, rearers of poultry and livestock or cultivation of crops.

34. With regard to the land area occupied or cultivated for the purposes of agricultural activities, SSM is of the view that the present acreage of 25 acres is still relevant as Malaysia is still regarded to be agriculture-based economy and as such initiatives to support smallholdings should be intensified<sup>7</sup>. However, this should be complemented with a condition stating that the number

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<sup>7</sup>The definition of smallholding under the RISDA is 100 acres or less. This allows the smallholder to be eligible for the grants under the RISDA Act.

of employees other than his immediate family members does not exceed five.

35. In Singapore, if a farmer owns the land on which the farm or pond stands; he is required to register the activity. In Mauritius, any cultivation of land need not be registered if the acreage is not more than 10 arpents (4.2208 hectares).

36. It is also recommended that the types of crops should not be limited only to rubber, rice (paddy), coconut or oil palms and fruits, flowers and vegetables and be extended to all kind of crops.

37. With regard to the excluded activities, SSM recommends that the Singapore approach is adopted where some activities although not required to be registered, may do so voluntarily. However, once registered, the business must fully comply with the provisions of the ROBA.

38. With regard to the power of the House of Representatives under section 20 of ROBA to add, vary or revoke the excluded activities under the Schedule of ROBA, SSM is of the view that the requirement is cumbersome and not facilitative.

39. Currently, the Registrar is already accorded with the power under item 3(4)(ii) of the Schedule to approve certain occupation in agricultural, forestal or rural occupation.

40. It is recommended that the power to revoke, vary or exclude the excluded activities should be vested with the Minister with the recommendations of the Commission. This provision will

be facilitative particularly when urgent changes are required relating to the excluded activities.

**Questions for Consultation:**

- (3) Do you agree that the definition of “business” should be refined to reflect the present business trends, elements and environment?**
- (4) Do you agree that the parameters of the excluded activities under the First Schedule to be re-examined to include elements of commercialism and continuity of existence?**
- (5) Do you agree that reference to “charitable undertaking” in the definition of “business” be referred to as one of the excluded activities?**
- (6) Do you agree that there should be express provision that excluded activities be exempted from the application of ROBA?**
- (7) Do you agree that the present acreage of 25 acres should be retained?**
- (8) Do you agree that the present exclusion of cultivation of certain crops be extended to cover all types of crops?**

**(9) Do you agree that the power to revoke, vary or exclude the excluded activities should be vested with the Minister with the recommendations of the Commission?**

**(10) Do you agree that although certain activities are excluded from the definition of business, they may want to register the business activity on voluntary basis?**

## **PART C - REGISTRATION, RENEWAL, REVOCATION, AND RESTORATION OF BUSINESSES**

41. Section 2 of ROBA defines “person responsible” for the business to include every director, manager, partner, officer, agent, servant at any time charged either solely or to a substantial extent with the management of a business.

42. The test whether a person is responsible for the business lies on whether or not he is charged either solely or to a substantial extent with the management of a business. This definition reflects the requirement for the accountability of a business in that there should be a specific person who should be answerable or responsible relating to complying with the provisions of ROBA<sup>8</sup>. The definition also implies that there is a distinction between the person carrying on a business (the owner) and the person managing the business.

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<sup>8</sup>For example, the requirements under sections 5, 5B, 5D, 10 and 12(2) of ROBA.



43. Under the Mauritius BRA, the phrase “person responsible for the management of a business” is used instead of the phrase “person responsible” although the definition is similar with that of section 2 of ROBA.

44. To a certain extent, the phrase adopted by Mauritius reflects the role played by such persons in ensuring that the provisions of the laws are adhered to. Although they are not necessarily the owner, they are entrusted with the management of the business including the compliance aspect.

45. In Singapore, the concept of “person responsible” has been deleted under the BNRA 2014. Instead, section 6(3) of the BNRA 2014 has introduced a concept of “appropriate person” for the purposes of registration and compliance with the law.

46. As the scheme of the provisions under ROBA also distinguishes the “owner” and “person responsible for the business”, SSM recommends that the phrase “person responsible for the management of a business” be adopted and the retention of the present definition of “person responsible”.

47. It is also recommended that there should be express provision of the liability of the “person responsible for the management of a business” as follows:

*“Where a person carrying on a business is required under this Act to do any act or thing, the person responsible for the management of the business for or on behalf of the first-mentioned person shall also be answerable for the doing of or omission to do that act or thing”.*

**Questions for consultation:**

**(11) Do you agree that the phrase “person responsible for the management of a business” be adopted to provide a clearer role played by such persons?**

**(12) Do you agree that there should be express provision of the liability of the “person responsible for the management of a business” as follows:**

**“Where a person carrying on a business is required under this Act to do any act or thing, the person responsible for the management of the business for or on behalf of the first-mentioned person shall also be answerable for the doing of or omission to do that act or thing”?**

**Registration by a “person responsible”**

48. At present, a business must be registered by the “person responsible for the business” within 30 days of its commencement.

49. As a person responsible for the business is not necessarily the owner of a business, there have been concerns that elements

of fraud may creep in when a person who is not the actual owner of a business is allowed to register a business and be held responsible for the breach of the provisions under ROBA. This is compounded by the abuse of the definition by middlemen or “ulat” in offering services to register a business on behalf of business owners under the guise of acting as “agents” whereas they are not “charged either solely or to a substantial extent with the management of a business”.

50. In comparison, for the purposes of registration, the Singapore BNRA 2014 expressly requires the “appropriate person”<sup>9</sup> to lodge the application. In essence, “appropriate persons” refers to the actual owner or partners of a business and

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<sup>9</sup>Section 6(3) Singapore BNRA 2014 state:

In subsection (1) —

“appropriate person” means —

- (a) where the registration to be effected is that of an individual proprietor, that individual;
- (b) where the registration to be effected is that of a 10 company incorporated under the Companies Act (Cap. 50) or any written law relating to companies which has been at any time in force in Singapore, a director or a secretary of the company;
- (c) where the registration to be effected is that of a limited 15 liability partnership within the meaning of section 2 of the Limited Liability Partnerships Act (Cap 163A), a manager of the limited liability partnership;
- (d) where the registration to be effected is that of a foreign company registered under Division 2 of Part XI of the 20 Companies Act, an authorised representative of the foreign company; or
- (e) where the registration to be effected is that of a firm, an individual who is either —
  - (i) a partner of the firm; or 25
  - (ii) an appropriate person specified in paragraphs (b), (c) or (d) (as the case may be) in respect of any company, limited liability partnership or foreign company that is a partner of the firm; or
- (f) a registered filing agent registered under section 28F of 30 the Accounting and Corporate Regulatory Authority Act (Cap. 2A) who is authorised by, and is acting for, the person seeking to be registered under this Act; ...”

also includes a prescribed person<sup>10</sup> authorised by such appropriate persons. Therefore, in Singapore, although the definition of “appropriate person” requires the owners to register their business, it also provides flexibility where a prescribed person can also register the business on behalf of the owners if authorised to do so.

51. In Mauritius, the duty to register a business lies only with the person carrying on the business and not the person responsible for the management of a business<sup>11</sup>.

52. To provide clarity on whom the responsibility to register a business should rest, SSM recommends that there should be an express provision that the application to register a business must be effected by any person carrying on a business which is the owner and not the person responsible for the management of a business.

53. In the interest of facilitating businesses, at this juncture we would like to seek the views from the public whether the law should provide “such other prescribed persons” who can be authorised to register the business on behalf of the owners.

54. The prescribed person may follow the concept of “appropriate person” under the Singapore BNRA 2014<sup>12</sup>.

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<sup>10</sup> A prescribed person means a person, or a person within a class of persons, prescribed by the Minister i.e. a lawyer, accountant, company secretary, a corporate secretarial agent, an employee of a service bureau.

<sup>11</sup>Section 6 of Mauritius BRA 2002.

<sup>12</sup>Section 6 Singapore BNRA 2014.

**Question for consultation:**

**(13) Do you agree that the law should expressly require the registration of a business to be effected by any person carrying on a business?**

**(14) Do you agree that the law should prescribed persons other than the owners to register a business a behalf of the owners?**

**Body Corporate as a Partner**

55. The provisions of ROBA do not expressly provide for the registration of body corporate as a partner in a business. As a result, the provisions of ROBA relating to the requirement to register a business have been interpreted strictly to individuals and partnership consisting of individuals only.

56. It is presumed that the strict interpretation is as a result of the practices by some companies registering their business on the basis that the business is carried on under a trade name.

57. By virtue of section 4(a), the provision of ROBA is not applicable in so far as registering a business which is exclusively owned and carried on by any company registered under the Companies Act 2016. However, the provision does not expressly disapply the provisions of ROBA in cases when a company becomes a partner in a business venture, thus rendering the business as being not exclusively owned by the company.

58. Further, the provision of section 17(1) of ROBA states that “Whenever an offence against this Act or against any rule thereunder is committed by a body corporate any director, manager, secretary or other officer of the body corporate shall also be deemed to be guilty of that offence unless he shall prove that such offence was committed without his knowledge or consent and was not attributable to any neglect on his part”.

59. From the reading of the provisions of sections 4(a) and 17(1), it can be deduced that a body corporate can be a partner in a business.

60. In adopting a facilitative approach, SSM is of the view that there should be clear provision allowing a body corporate which have entered into a partnership either with an individual or body corporate to be allowed to register that partnership under ROBA. This business venture must be distinguished with the exemptions on businesses which is owned and carried on exclusively by the body corporate under section 4 of ROBA.

61. In Singapore, corporations are allowed to be a partner in a business partnership through the definition of ‘firm’ which means unincorporated body of two or more individuals, or one or more individuals and one or more corporations, or two or more corporations, who have entered into a partnership with one another with a view to carrying on business for profit. Further, the word ‘person’ is defined to include a corporation, firm, foreign firm and individual.

62. Equally, Mauritius BRA also allows corporations to be a partner in a business through the definition of ‘firm’ which

includes an unincorporated body consisting of one or more individuals, or of one or more corporations, having constituted a partnership with a view to carrying on business.

63. The approach adopted by Singapore and Mauritius are consistent with the definition of partnership as provided under section 3(1) of the Partnership Act 1961 as "the relation which subsists between persons<sup>13</sup> carrying on business in common with a view of profit".

64. To clarify this issue and be consistent with the definition of partnership, SSM is of the view that a body corporate should be allowed to be a partner in a business registered under ROBA. It is recommended that the definition of "firms" as found in the Singapore BNRA is adopted.

**Questions for consultation:**

**(15) Do you agree that there should be a clear provision allowing a body corporate to be a partner in a business?**

**(16) Do you agree that the definition of "firms" as in the Singapore BRA be adopted?**

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<sup>13</sup>Section 66 of the Interpretations Act defines "persons" to include any body of persons, corporate or unincorporate.

## **Registration of Businesses by Foreigners**

65. Currently, there is no express provision in ROBA to disallow foreigners from registering business in Malaysia. However, as a matter of administrative policy, foreigners are not allowed to register their businesses in Malaysia. This is supported by a directive from the Minister of Trade and Industry (which is now known as the Minister of Domestic Trade and Consumer Affairs) in 1988 to disallow any foreigner from registering business in Malaysia unless they hold a permanent resident status. This can be evidenced through the prescribed form (Form A) where only Malaysians or permanent residents are allowed to register business.

66. Apart from that, there are also concerns that allowing foreigners to register business in Malaysia may encourage the abuse of the registration system as it would be difficult and impractical to determine the genuine businessmen from those who are intending to reap profit on short term basis. In addition, the permission to enter Malaysia given to foreigners differs depending on their purpose of visit. It is feared that allowing foreigners to register business will tantamount to giving them legal recognition to indulge in business activities when in actual fact, they are not allowed to do so. There is also the concern that enforcement of the provisions of ROBA cannot be fully effected.

67. At the same time, there is also concern that the interests of local petty traders would be affected with the influx of foreign businessmen.



68. In the Singapore BNRA 2014, the definition of “person” in the repealed Singapore BNR has been removed as the BNRA 2014 will rely on the existing definition of the Singapore Interpretation Act which include any company or association or body of persons, corporate or unincorporate. Thus, the existing terms of corporation<sup>14</sup>, firm, foreign firm and individual has been included in the definition section of the BNRA 2014 for clarity on who is allowed to register a business. Further, section 6 of the BNRA 2014 requires individuals or every partner of a firm to state their nationality in the registration form.

69. In Mauritius, the definition of “person” who is allowed to register a business includes a consortium, société<sup>15</sup>, partnership, joint venture, trust or firm. The extent of participation of foreigners in the registration of business in Mauritius is only limited to foreign société, partnership or similar business entity.

70. The position under the Singapore BNRA has replaced the term “foreign firm” with “foreign company” which has the same

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<sup>14</sup>Singapore BNRA 2014 defines “corporation” as meaning “any body corporate formed or incorporated or existing in Singapore or outside Singapore and includes —

- (a) any company registered or incorporated under the Companies Act (Cap. 50) or any written law relating to companies which has been at any time in force in Singapore;
- (b) any limited liability partnership registered under the Limited Liability Partnerships Act (Cap. 163A); and
- (c) any foreign company;”.

<sup>15</sup> Société—

- (a) means a société formed under any enactment in Mauritius ; and
- (b) includes—
  - (i) a société de fait ;
  - (ii) a société en participation;
  - (iii) a joint venture;
  - (iv) a consortium; or
  - (v) a société, partnership or similar business entity formed under the law of a foreign country.

meaning as in section 4(1) of the Singapore Companies Act. Further, the BNRA 2014 has replaced the term “local manager” with “authorised representative”<sup>16</sup>, where at least one authorised representative has to be appointed, and the authorised representative will be personally responsible for all the individual proprietor’s or foreign firm’s or company’s obligations.

71. In the Malaysian context, the participation of foreigners can still be realised through various ways including the incorporation of companies under the Companies Act 2016 or through shareholding in local companies. The provisions of the Companies Act 2016 contain sufficient safeguards to protect the interest of the public in dealing with existing foreign businessmen. In addition, foreigners may also set up businesses through the Limited Liability Partnerships Act 2012.

72. Furthermore, with the enforcement of the new Companies Act 2016, the concept of a sole director in a company may facilitate and accommodate a sole proprietor foreigner intending to start a business in Malaysia by virtue of the two business vehicles mentioned above. Therefore, the relevant laws in Malaysia is not limited nor exhaustive for a foreign sole proprietor of a business entity to expand their business and foreign investments in Malaysia.

73. Hence, SSM recommends that the policy regarding the restriction on foreigners from registering their business under ROBA be retained.

### **Question for consultation:**

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<sup>16</sup>Section 11 Singapore BNRA 2014.

**(17) Do you agree that the policy relating to registration of business by foreign individuals or companies should be retained?**

**Commencement date of business**

74. At present, a business is only required to be registered under ROBA within thirty days of its commencement. The rationale for such requirement was presumably to allow entrepreneurs to gauge the viability of the business venture before taking a step further by officially registering the business. Although the rationale may have been relevant when ROBA was first introduced in 1956, this requirement may not necessarily reflect the present business environment.

75. SSM is of the view that the requirement to register a business only after it commenced its operations is open to a number of possible abuses. Although the failure to register the business within thirty days is an offence under ROBA, there have been instances where businesses backdate the date of its commencement in their registration form to justify an earlier existence to serve the purposes of obtaining permits, licences or participating in tenders with other government agencies, etc.

76. SSM is also equally concern with the possibility of “fly-by-night” operators who will not eventually register the business but have had businesses with the public within the thirty days of the commencement of business.

77. In Singapore and Mauritius, the law requires a person and the person's business name must be registered before he carries on a business<sup>17</sup>. Whilst the Singapore is silent with regard to the timeframe for the application for registration, the Mauritius BRA specifically requires such application to be made at least fourteen days before such person commences the business operations.

78. SSM is of the view that the law should require an application to register a business should be made before a person can carry on business. SSM would like to seek the views from the public whether a specific timeframe is required for the application for registration to be made.

**Questions for consultation:**

**(18) Do you agree that the law should require a person to register under ROBA before the person can carry on a business?**

**(19) Do you agree that there should be a specific timeframe to a for the application for registration? If yes, what would be the appropriate timeframe:**

- (a) 7 days;**
- (b) 14 days; or**
- (b) 30 days?**

**Requirement relating to business name**

*Use of business name*

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<sup>17</sup>Section 5 of the Singapore BRA, section 6(2) of the Mauritius BRA.

79. At present, a person responsible for the business is required to register a business within thirty days of its commencement. Thus, a business may be carried on under a name which has yet to be registered. This may bring about adverse implications as the name may be one which is restricted, prohibited or deemed undesirable by the Registrar.

80. To avoid such problem, SSM is of the view that the law should prohibit the use of any business name which has not been registered with the Registrar. There is also the need to exonerate the Registrar from liability that the registration of name shall not be construed as authorising the use of that name, if the use of that name is prohibited under any other written law.

81. Both Singapore and Mauritius have provisions relating to the prohibition of the use of name unless the name has been duly registered. At the same time, both jurisdictions also expressly provide that the registration of name by the Registrar does not tantamount to authorising the use if they are prohibited by other law.

82. SSM recommends the approach taken by Singapore and Mauritius be adopted.

**Questions for consultation:**

**(20) Do you agree that the law should prohibit the use of any business name which has not been filed or registered with the Registrar?**

**(21) Do you agree that there should be express provision stating that the registration of name shall not be construed as authorising the use of that name, if the use of that name is prohibited under any other written law?**

*Name search and reservation*

83. A business can be registered under the owner's personal name or under a trade name. Under a personal name, the business name shall appear as per the identity card of the owner.

84. A trade name is the name or style under which a business is carried on or a firm operates. Ideally, a proposed trade name should reflect the nature, scope or importance of the business operations. A trade name can only be registered upon the approval of the Registrar.

85. Although ROBA 1956 does not provide a requirement for a name search, as a matter of administrative policy, the application for a name search is done through Form PNA.42 to ensure that a business name fulfils the requirement of Rule 15(1) and (2) of the Registration of Businesses Rules 1957 (RBR). If approved, such name will be reserved for thirty days. The name search application is only applicable for businesses intended to be registered under a trade name.

86. SSM is of the view that the provision regarding the application for name search and reservation of name should be clearly provided for under the law for purposes of clarity.

87. Under the Singapore BNRA 2014, a person may apply to the Registrar for the reservation of name as the proposed registered business name and the Registrar may approve or refuse to approve an application under certain circumstances<sup>18</sup>. If the Registrar is satisfied that the name is not one which is prohibited or restricted, the Registrar may reserve the proposed business name for a period of 60 days after the date the Registrar has notified the applicant that application has been approved by the or such further period of 60 days<sup>19</sup>.

88. The Mauritius BRA does not contain any provision relating to name search and name reservation procedures.

89. Having considered the position in Singapore and Mauritius, SSM is of the view that there is a need to have a provision with regard to the name search and reservation as it will enhance conformity to the requirements under Rule 15 of the Registration of Businesses Rules 1957 (RBR) and minimise duplication of names. SSM is of the view that a similar provision as provided under section 27 of the Companies Act 2016 should be made available.

90. Further, SSM is of the view that although the name reservation procedure would be able to minimise duplication of

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<sup>18</sup>Section 16(1), (2) and (3) of Singapore BNRA 2014. This provision is also similar to the provision under section 22(6) of the Companies Act 1965 or section 27(4) of the Companies Act 2016.

<sup>19</sup>Section 16(4) of Singapore BNRA 2014.

names, the reservation process should not be made mandatory and that there should be a maximum reservation period to avoid this facilitative framework from being abused.

**Questions for consultation:**

**(22) Do you agree that the law should provide for the application for name search and reservation of name?**

**(23) Do you agree that the name reservation procedure should not be made mandatory?**

**(24) Do you agree that the period of reservation of name should be one month or longer as the Registrar thinks fit?**

*Restriction on registration of certain names*

91. Rule 15(1) of RBR provides a general rule that certain words are prohibited to be used as a business name or part of the name except when the Minister has given his prior consent for such usage<sup>20</sup>. The Registrar is also empowered to restrict the usage of certain names if found **undesirable**. The restriction must be approved by the Minister and published in the Gazette.

92. In Singapore, similar provision relating to restriction of registration of business names is found under section 17 of the

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<sup>20</sup>Rule 15 of RBR provides that except with the consent from the Minister, names containing certain words, or words suggesting connection with royalties, government, government bodies or agencies, foreign governments or international bodies or any society or body incorporated by Royal Charter.



Singapore BNRA 2014. In Singapore, except with the consent of the Minister, the Registrar shall refuse to register a business under a name which in the opinion of the Registrar is undesirable, identical of that of any corporation or to a business name, identical to a name reserved under the Companies Act (Cap 50) or the BNRA or is a name of a kind that the Minister has directed the Registrar by notification in the *Gazette*, not to accept for registration.

93. In Mauritius, similar provision to Rule 15 of RBR is found under section 10(3) of the Mauritius BRA. In addition, the Registrar has the power to cancel or refuse the registration of a business if its name is identical or resembling the name of any other person carrying on business or the business name under which another person carries on business or if in the opinion of the Registrar is **undesirable** or misleading.

94. In Malaysia, there is no provision in the ROBA and RBR that prohibits the registration of business names which are identical or similar with an existing registered business. However, as a matter of policy, similar or identical name is only allowed for businesses registered under a personal name but not under a **trade name**.

95. Following this, SSM is of the view that in addition to the present scheme of restriction of names under Rule 15 of the RBR, no business shall be registered under a trade name if they are identical or similar with an existing registered business or a company deemed registered or incorporated under the Companies Act 2016 or registered under the Limited Liability Partnerships Act 2012 to avoid confusion amongst the public.

**Question for consultation:**

**(25) Do you agree that in addition to restriction of names under rule 15 of the RBR 1957, no business shall be registered under a trade name if they are identical or similar with an existing registered business or a company deemed registered or incorporated under the Companies Act 2016 or the Limited Liability Partnerships Act 2012?**

*Change of business name*

96. Unlike in the Companies Act 2016, there is no provision in ROBA allowing a business to change its name or empowering the Registrar to direct a change of name for businesses.

97. SSM noted that there are requests from the industry to allow businesses to change their name. Among the reasons cited for such request include a change in the nature of business and a change of partners in the business which may necessitate a business to reflect such changes.

98. At present, when a business wishes to change its name, it has to terminate its business and re-register the business under a new name. This approach is not facilitative and not cost effective. At the same time, the lack of provision that allows the Registrar to direct a name change could also pose a hindrance to the Registrar in carrying out his duties to ensure that names of businesses comply with the requirements as set out in ROBA. This

is particularly true if a business has been registered to carry on a business under a name which is restricted or undesirable.

99. In Singapore, provisions allowing a business to change its name and empowering the Registrar to direct a name change are encapsulated under sections 18 of the Singapore BNRA 2014. These provisions are similar to the new provisions under sections 28 and 29 of the Companies Act 2016.

100. Similar to ROBA, the Mauritius BRA does not have any provision relating to change of name and the power of the Registrar to direct a change in business name.

101. To provide a facilitative, cost effective and dynamic business environment, SSM recommends that provisions relating to change of name should be provided for under the law. At the same time, it is also recommended that the Registrar is empowered to direct a name change for business on certain grounds such as a name which has been registered, inadvertently or otherwise, as one which is restricted, prohibited or undesirable.

**Questions for consultation:**

**(26) Do you agree that provisions relating to change of name should be provided for under the law?**

**(27) Do you agree the Registrar should be empowered to direct a name change for business on certain grounds?**

## **Deeming provision for businesses without a place of business or permanent/fixed place of business**

102. One of the information required when registering a business is the address of the place of business, and if the business has more than one place of business, the addresses of its branches<sup>21</sup>.

103. This requirement implies that all businesses must have a place of business. While this may be true in most circumstances, some types of businesses do not have a place of business or a fixed place of business. Although such activity is one which falls within the definition of business, the person carrying on the business may have difficulty to comply with the requirements of ROBA.

104. Therefore, one of the main agenda for the review exercise is to appraise the sufficiency of the law in governing businesses which do not have a place of business or a fixed or permanent place of business. SSM acknowledges that clear boundaries should be established to enable businesses without a place of business or a fixed place of business can comply with the law.

105. To address business activities which do not have a place of business or a permanent or fixed place of business, SSM recommends that the law should provide a deeming provision that as long as a person has a place of business in Malaysia; the person is deemed to carry on a business in Malaysia for the purposes of ROBA.

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<sup>21</sup>Section 5(2)(d) of ROBA.

106. Whilst this recommendation can be easily applied to businesses which do not have a fixed place of business, the same cannot be said for businesses which do not have a place of business.

107. In the case of *pasar malam* or *pasar tani* traders, it will be easy to establish their place of business as there is physical evidence of a place where the business is carried on from. The proposed deeming provision can be easily applied and complied with.

108. In the case of a business activities which is conducted via the internet (online businesses), to establish a place of business will be more difficult. An internet based business does not have to rely on a physical place to conduct a business as the activity is carried online and can be carried on anywhere in the world. Therefore, it also means that the business does not necessarily occur in Malaysia as the transaction may be completed outside the country.

109. Hence, it is important to determine whether or not the activity is carried on in Malaysia to enable the registration of such activity under ROBA.

110. In Malaysia, the Electronic Commerce Act 2006 (ECA 2006) provides for legal recognition of electronic messages in commercial transactions, the use of the electronic messages to fulfil legal requirements and to enable and facilitate commercial transactions through the use of electronic means.

111. Section 5 of the ECA 2006 defines commercial transactions as a single communication or multiple communications of a commercial nature, whether contractual or not, which includes any matters relating to the supply or exchange of goods or services, agency, investments, financing, banking and insurance.

112. As it would be impossible to determine the place of business where electronic commercial transactions are concerned, an alternative indicator must be used to enable such activity to comply with the requirements of ROBA.

113. Sections 22 and 23 of ECA 2006 provides a clear method to indicate the place of dispatch and place of receipt of an electronic message as follows:

*"22. Unless otherwise agreed between the originator<sup>22</sup> and the addressee, an electronic message is deemed to be sent from the originator's place of business, and—*

- (a) where the originator has more than one place of business, from the place of business that has the closest relationship with the transaction or where there is no place of business that has the closest relationship with the transaction, from the originator's principal of business; or*
- (b) where the originator does not have a place of business, from the originator's ordinary place of residence.*

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<sup>22</sup> "originator" is defined as person by whom or on whose behalf, the electronic message is generated or sent under section 5 of ECA 2006.

23. *Unless otherwise agreed between the originator<sup>23</sup> and the addressee, an electronic message is deemed received at the addressee's place of business, and—*

- (a) where the addressee has more than one place of business, at the place of business that has the closest relationship with the transaction or where there is no place of business that has the closest relationship with the underlying transaction, at the addressee's principal place of business;*
- (b) where the addressee does not have a place of business, at the addressee's ordinary place of residence."*

114. Sections 22 and 23 of ECA 2006 provide deeming provisions that an electronic message is deemed to be sent or received from the place of business. Additionally, in situations where a person carries on a commercial transaction through electronic means and has no place of business, the electronic message is deemed to be sent or received from or at his ordinary place of residence. Further, where a person does not have a place of business or a fixed place of business, his ordinary place of residence shall be deemed as the place of business.

115. The ECA 2006 places great importance in establishing the concept of a place of business to ensure that commercial transactions carried on are governed by its provisions.

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<sup>23</sup> "addressee" means a person who is intended by the originator to receive the electronic message under section 5 of ECA 2006.

116. SSM is of the view that the same principle used in establishing a place of business in the ECA 2006 should be adopted for the purposes of establishing a place of business for businesses which do not have a place of business or a fixed place of business. Hence, SSM recommends that the definition of “business” under section 2 of ROBA be amended as follows:

*“Business” includes every form of trade, commerce, craftsmanship, calling, profession and any activity carried on for the purposes of gain, electronic or otherwise, but does not include any office, employment or occupation, or any activity specified in the Schedule.’*

117. The above recommendations are also reflected in Singapore and Mauritius where a person who has a place of business in these countries shall be deemed to be carrying on a business in these countries<sup>24</sup>. In Singapore, where a person has no fixed or permanent place of carrying on business, the place at which the person can usually be contacted shall be deemed to be the place of business.

**Questions for consultation:**

**(28) Do you agree that the law should provide a deeming provision that where a person has a place of business in Malaysia, the person shall be deemed to be carrying on a business in Malaysia for the purposes of ROBA?**

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<sup>24</sup>Section 2(2) of the Singapore BNRA 2014 and section 2(2) of the Mauritius BRA 2002.



**(29) Do you agree that where the person has no place of business, or where there is no fixed place of business, his ordinary place of residence shall be deemed to be his place of business?**

**Changes in registered particular in the event a partner ceases to be partner or cannot be located or found**

118. The present requirements under ROBA with regard to lodgement of changes in registered particulars of a business is that such changes may be lodged by the person responsible for the business within thirty days of such changes. In addition, all partners are required to verify any changes of registered particulars before such changes could be lodged with the Registrar<sup>25</sup>. However, in the case of any changes with regard to a registered particular of an associate, only the associate can lodge the changes.

119. Whilst these provisions promote transparency and accountability, the provision proves to be a hindrance when one of the partners cannot be located or found.

120. Presently, in the event a partner cannot be located or found, the only cause of action available to the existing partners is to terminate the business<sup>26</sup> by filing Form C together with a statutory declaration stating that he had made all efforts to locate his partners but failed in his efforts.

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<sup>25</sup> Rule 8 of RBR.

<sup>26</sup>Rule 7(3) of RBR.

121. Such requirement is deemed as not facilitative to businesses as the remaining partners may still want to continue with the business as the business is still viable.

122. In Singapore, the law provides that where any change is made or occurs in respect of any person, the person shall lodge the changes within 14 days<sup>27</sup>. Further, where a person ceases to be a partner, that person and the persons who continue to be registered as partners of the firm shall notify the Registrar within 14 days of the cessation. Where any person required notifying the Registrar with regard to the cessation cannot be located or found, the Registrar may allow the other persons to lodge the notice<sup>28</sup>.

123. The Singapore BNRA adopted a facilitative approach whereby any changes with regard to a registered particular of a person carrying on a business or a registered particular of a business can be lodged in by the person carrying on the business or by the person responsible for the management of the business. There is no specific provision limiting the registration of change with respect to registered particulars of an associate to be made only by such associate. There is also no requirement for verification by all partners when lodging any change of registered particulars.

124. The Singapore BNRA also allows the remaining partners in a firm to notify the cessation of a partner, if the partner cannot be located or found.

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<sup>27</sup>Section 20 of the Singapore BNRA 2014.

<sup>28</sup>Section 22 the Singapore BNRA 2014.

125. The Mauritius BRA contains only general provision relating to the requirement to lodge any changes relating to registered particulars of a partner or of a business.

126. SSM is of the view that the law should be able to provide for an alternative that any change to the registered particulars can still be made in the event a partner cannot be found or located. Such registration of change will cover both registered particulars of a partner and that of a business.

127. SSM is of the view that the verification process by all partners in case of any change in the registered particulars of a business promotes transparency and accountability and therefore should be retained. Notwithstanding, the law should provide an exception to the situations where a partner cannot be located, any changes can still be registered with appropriate declaration to the effect that all efforts have been made to locate the missing partner but to no avail. SSM believes that there are already sufficient safeguards against providing misleading or false information in ROBA.

128. SSM is of the view that the present mandatory requirement to terminate the business in the event a partner cannot be located or found should be amended as it is not facilitative to business. The remaining partner(s) in a business should be provided with an option to continue with the business if the business is still viable and if such term is provided in their partnership agreement.

**Questions for consultation:**

**(30) Do you agree that the law should provide for an alternative that any change to the registered particulars can still be made in the event a partner cannot be found or located?**

**(31) Do you agree that the verification process by all partners before any change in the registered particulars of a business can be registered be retained subject to the exception to the general rule in the event a partner cannot be located or found?**

**(32) Do you agree that the present mandatory requirement to terminate the business in the event a partner cannot be located or found should be amended to allow the existing partner(s) to continue with the business, if such term is provided in their partnership agreement?**

**Renewal (annually or for a certain fixed period, allowing renewal of business within 12 months of the expiry period)**

129. Presently, businesses are required to renew their registration within 30 days of their expiration<sup>29</sup>. A business can renew the registration for a period not exceeding five years. This means that a business can renew the registration for one, two, three, four or five years.

130. The longer period of registration means that business owners are given the option to renew the registration to suit their

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<sup>29</sup> Section 5A(1) of ROBA.

circumstances but no longer than 5 years. However, the flexibility has its drawback as SSM will not know whether the business is still being carried on until the lapse of the registration period.

131. SSM is of the view that the renewal is to be fixed for a shorter period ranging from one year to three years so that the database relating to active business entities would be more accurate.

132. In Singapore, the renewal period is not statutorily prescribed as it is subject to the Registrar's approval. In Mauritius, the registration of a business shall be valid for three years and can be renewed for further periods of three years.

133. At this juncture, we would like to seek the public opinion whether the renewal period of up to five years need to be shortened or that businesses can renew its registration for a fixed period.

**Questions for consultation:**

**(33) Do you agree that businesses can renew their registration for up to five years?**

**(34) Do you agree that the renewal period should be based on fixed periods as follows:**

**(a) annually**

**(b) every two years; or**

**(c) every three years?**

## **Revocation (whether Registrar must issue a notice)**

134. At present, the Registrar is empowered to revoke the registration of a business in the following situations:

- (a) in circumstances where the Registrar is satisfied that a business is being used for unlawful purposes or for purposes prejudicial or incompatible with the security of the Federation, public order or morality<sup>30</sup>; or
- (b) where the Registrar has a reasonable cause to believe that the business is no longer being carried on<sup>31</sup>.

135. In the case where the Registrar believes that a business is no longer carried on, the Registrar will issue a notice of his intention to revoke the registration of the business and the persons on whom he has given the notice will have the opportunity to make written representation on the intended revocation within 30 days of the date of the service<sup>32</sup>.

136. However, in the case where the business is likely to be used for unlawful purposes or for purposes which are not compatible with the security of the country, upon the satisfaction of the Registrar of such fact, the Registrar shall revoke the registration of the business<sup>33</sup>. There have been concerns that the present procedures relating to revocation of business on the grounds of being used for unlawful purpose or any purpose prejudicial to the security of the nation, public order or morality is not strong enough to ensure there is no abuse of process.

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<sup>30</sup>Section 5C(2) of ROBA.

<sup>31</sup>Section 5E(1) of ROBA.

<sup>32</sup>Section 5E(2) of ROBA.

<sup>33</sup>Section 5C(2) of ROBA.

137. In Singapore, the Registrar has the power to cancel the registration of a person and the person's business name in the following circumstances:

- (a) if the Registrar is satisfied that—
  - (ii) the business of the person is being used or is intended to be used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order in Singapore;
  - (iii) it would be contrary to the national security or interest for the person to continue to be registered;
- (b) in connection with his business, he or the person responsible for the management of the business has been convicted of an offence under Charities Act (Cap 37)<sup>34</sup>.

138. Before cancelling the registration of business on the above grounds, the Registrar shall give a notice of his intention to cancel the registration. The notice is for a period of not less than 30 days. If a person is aggrieved by the decision of the Registrar, the person may appeal to the Minister within 30 days and the decision of the Minister shall be final.

139. A certificate issued by the Minister responsible for internal security issues a certificate stating that he is satisfied that it would be contrary to the national security or interest for the person named in the certificate to be registered or continue to be registered shall be conclusive evidence of matters stated in the

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<sup>34</sup>Section 12(1) of the Singapore BNRA.

certificate<sup>35</sup>. If the Registrar refuses the registration pursuant to the certificate issued, the Registrar will not give a notice of his intention to revoke the registration of the business<sup>36</sup>.

140. The position in Singapore suggests that there is an absolute power to cancel the registration of a business if the Minister in charge of internal security issued a certificate stating that the business is used or intended to be used for purposes incompatible with national security and interests.

141. It is to be noted that similar to Malaysia, the Singapore BNRA allows the Registrar to cancel the registration of a business on the ground that the business no longer carries on its business<sup>37</sup>.

142. In Mauritius, there is no provision relating to the power of the Registrar to cancel or revoke a registration of business.

143. SSM is of the view that the procedures relating to revoking or cancelling the registration of a business on the ground that the business is used or intended to be used for unlawful purposes should be revised to incorporate the issuance of notice by the Registrar to the person carrying on the business or the person responsible for the business. The issuance of such notice will not require the business to provide a reply showing cause to the contrary. It is also recommended that any aggrieved person should be given an opportunity to be heard by an appeal application to the Minister.

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<sup>35</sup>Section 13(1) of the Singapore BNRA.

<sup>36</sup>Section 13(2) of the Singapore BNRA.

<sup>37</sup>Sections 22 and 23 of the Singapore BNRA.



144. It is also recommended that the law should allow the Registrar to revoke the registration if there is a direction from the Minister in charge of internal security that the business is used for purposes which are incompatible with the national interests or security. In such cases, the issuance of notice will not be necessary.

**Questions for consultation:**

**(35) Do you agree that the procedures relating to revoking or cancelling the registration of a business on the grounds that the business is used or intended to be used for unlawful purposes should be revised to incorporate the issuance of notice by the Registrar to the person carrying on the business or the person responsible for the business?**

**(36) Do you agree that the person whom a notice has been issued should not be allowed to make a written representation but be allowed to appeal against the decision of the Registrar to the Minister?**

**(37) Do you agree that the law should allow the Registrar to revoke the registration if there is a direction from the Minister in charge with the responsibility of internal security that the business is used for purposes which are incompatible with the national interests or security?**

## **Termination of business**

145. At present, if a registered business has been terminated; the person responsible for the business is required to notify the Registrar within 30 days of the termination. The notification is done through the lodgement of Form C.

146. Form C is also required to be lodged upon the death of an associate or a partner and when there are no surviving partners or when an associate cannot be found or located.

147. However, in cases of non-renewal of business registration, Form C is not required to be filed.

148. As a result of this, the true status of the number of active businesses at any given time is not accurate. As such, there has been suggestion that the practice requiring the filing of Form C need to be streamlined in cases of a termination of a business and cessation of business as a result of failure to renew the business registration.

149. In Singapore, if a registered person ceases to carry on business, he must notify the Registrar of the fact within 14 days of the cessation. Further, the Singapore BNRA also allows a person to give the Registrar advanced notice of his intention to cease to carry on business. There is no provision requiring a person to notify the Registrar of the cessation of a business following the non-renewal of the registration.

150. In Mauritius, a registered person is required to notify the Registrar within 15 days of the day he ceases to carry on business<sup>38</sup>.

151. SSM is of the view that the present practice of filing Form C only in the event of a termination of business and as a result of the death of an associate or a partner in which there is no surviving partner should be retained. The proposal to require the present practice to be extended to cases of non-renewal of registration is not practical. As the nature of the registration of businesses under ROBA is valid through the registration period, non-renewal of the registration will automatically tantamount as a cessation of business by reason of the application of the law.

152. It is noted that as a matter of administrative policy, a business can still renew its registration within 12 month of the lapse of its registration. The business can still retain its name and business registration number. However, the 12 months grace period is deemed to be very long and may deprive others from otherwise using the name of the business. It is recommended that this policy be reviewed and that the renewal of business registration can only be made before its expiry.

**Questions for consultation:**

**(38) Do you agree that the present practice of filing Form C only in the event of a termination of business and**

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<sup>38</sup>Section 12(1) of the Mauritius BRA.

**as a result of the death of an associate or a partner in which there is no surviving partner should be retained?**

### **Restoration of a business**

153. It is noted that currently, there is no express provisions in ROBA that allow an application to restore a registration of business once it has been ceased or lapsed.

154. In Singapore, a person whose registration and registered business name has been cancelled or ceased is allow to make an application with the Registrar to restore the registration. The provision which allow the restoration is found under section 24(1) of the Singapore BNRA 2014 which states that:

*"24(1) A person whose registration and registered business name has been cancelled under section 14, or 23, or whose registration and registered business name has ceased under section 22, may lodge an application with the Registrar to restore the Registration."*

155. Therefore SSM recommends that the law under section 24(1) of the Singapore BNRA 2014 be adopted.

156. Again, in Singapore, the application to restore a registration must be made within the time stipulated in section 24(2) where it states that:

*“24(2) An application to restore a registration under subsection (1) must be made-*

- (a) within 12 months after the date on which the registration was cancelled or had ceased; or*
- (b) within such longer time as the Registrar may in Special circumstances allow.”*

157. Therefore, adopting the law under BNRA, it is proposed an application to restore a registration of business once it has been ceased or lapsed must be made within 12 months from the date the registration has been cancelled or ceased, or at a longer period as the Registrar may allow. The restoration has the effect as though the business has never been cancelled or has not ceased. But the restoration does not mean that the business is exonerated from offences that it committed under the BNRA.

**Questions for consultation:**

**(39) Do you agree that an application to restore a registration of business once it has lapsed or ceased be allowed?**

**(40) What would be the appropriate timeframe for an application for restoration?**

- (a) 12 months; or**
- (b) 24 months.**

**PART D – MISCELLANEOUS**

**Rectification of Register or Mistakes**

158. The current provision of section 7 of ROBA 1956 only allows the Registrar to rectify mistakes in the register upon receiving an order from the Court. SSM acknowledges that the present provision poses an impediment as a Court order must first be obtained before any mistakes or errors found in the register could be rectified.

159. In line with the amendments made in the Companies Act 2016, SSM proposes that the same framework for rectification of register or mistakes be adopted.

160. The provisions clearly spell out as to who may apply to rectify the register, provide the Registrar with the powers to rectify on its own accord and also provide an avenue for appeal in instances where the application by a person to the Registrar is refused.

161. Based on the preceding paragraphs, it is recommended that the Registrar be empowered to correct errors or mistakes in the Register based on sufficient evidence that an entry in a register has been omitted, is incorrect or has been included in error.

162. It is also recommended that any aggrieved party can apply to the Court to obtain an order for the register to be rectified in certain circumstances.

**Question for consultation:**

**(41) Do you agree that the Registrar be allowed to correct errors or mistakes in the Register based on sufficient**

**evidence that an entry in a register has been omitted, is incorrect or has been included in error?**

**(42) Do you agree that any aggrieved party can apply to the Court to obtain an order for the register to be rectified in certain circumstances?**

### **Facilitating Electronic Filing of Documents**

163. Following the power accorded to provide a service for the electronic filing under section 22A of ROBA, in early 2008 SSM launched the e-Lodgement Service for Business and Companies.

164. To enhance the provisions relating to the e-Lodgement service, there is a need to augment the present framework to take into considerations the following issues:

#### *Requirement relating to statutory declaration and attestation*

165. To facilitate the lodgement of documents, it is proposed that where a document is to be filed or lodged electronically, and if there is a requirement for a statutory declaration, the statutory declaration shall be electronically filed or lodged with the Registrar in a prescribed manner and the Registrar will accept such statements as sufficient evidence of compliance.

166. This provision is reflective of the requirements under section 604 of the Companies Act 2016.

167. As a safeguard, the law should provide for an offence against making false statement in statutory declarations made electronically.

168. By virtue of the Statutory Declaration Act 1960, false statements made in statutory declarations constitute giving false evidence under the Penal Code, where the punishment is specified under the Penal Code. The Penal Code uses the term "declaration ". Since an electronic filing environment does not and cannot accommodate a statutory declaration as specified under the Statutory Declaration Act 1960, it is recommended that a direct reference to the Penal Code to ensure that the punishment shall be made.

169. Similarly, the law should provide that where a document that is required to be signed and attested is to be filed or lodged electronically, the requirement for signature and attestation thereof does not apply. This is reflective of the present provision of section 604 of the Companies Act 2016.

**Questions for consultation:**

**(43) Do you agree that where a document is to be filed or lodged electronically, and if there is a requirement for a statutory declaration, the statutory declaration shall be electronically filed or lodged with the Registrar in a prescribed manner and the Registrar will accept such statements as sufficient evidence of compliance?**



**(44) Do you agree that the law should provide for an offence against making false statement in statutory declarations made electronically?**

**(45) Do you agree that the law should provide that where a document that is required to be signed and attested is to be filed or lodged electronically, the requirement for signature and attestation thereof does not apply?**

***Registrar to utilise electronic services***

170. Although section 22A allows the Registrar to provide for electronic services, it is not clearly stated that the Registrar can utilise such electronic services to facilitate communication with the users.

171. It is recommended that section 22A be amended to allow the Registrar to utilise such electronic services including the issuance of orders, notices, certificates and others to businesses, partners or person responsible for the business.

172. Since ROBA does not have a definition of "document", it is also recommended that the law should provide for such the definition. It is proposed that the definition of document in the Singapore Companies Act (Cap 50) as follows be adopted:

"Documents include any application, form, report, certification, notice, confirmation, declaration, or other document to be filed or lodged with or submitted to the Registrar, or as the case may be, any certificate, notice or other document to be issued by the Registrar".

**Questions for consultation:**

**(46) Do you agree that the Registrar be allowed to utilise such electronic services including the issuance of orders, notices, certificates and others to businesses, partners or person responsible for the business?**

**(47) Do you agree that the law should provide for a definition of "document"?**

**(48) Do you agree that the definition of "document" as found in the Singapore Companies Act (Cap 50) be adopted?**

*Admissibility of information certified by the Registrar electronically*

173. It is noted that the law should also provide for evidentiary value of documents supplied or certified by the Registrar electronically.

174. The present environment is that although the law allows lodgement of document to be made electronically, for the purposes of evidentiary value, the document must still be certified as true copy under the hand seal of the Registrar and this is still carried out in a non-electronic environment. Such practice is seen as less facilitative to businesses.

175. As such it is recommended that the law should empower the Registrar to certify document electronically and that the Registrar shall prescribe the manner to certify a true copy of documents electronically.

**Questions for consultation:**

**(49) Do you agree that the law should also provide for evidentiary value of documents supplied or certified by the Registrar electronically?**

**(50) Do you agree that the manner to electronically certify a true copy of documents shall be prescribed?**