ACCOUNTING & CORPORATE REGULATORY AUTHORITY

REVIEW OF THE REGISTRATION AND REGULATORY REGIME FOR FOREIGN COMPANIES UNDER THE COMPANIES ACT (CAP. 50)

ACRA Consultation Paper

October 2007

The Accounting and Corporate Regulatory Authority (ACRA) is Singapore's regulator of business entities and public accountants. It was formed on 1st April 2004 from the merger of the Registry of Companies and Businesses (RCB) and the Public Accountants Board (PAB).

ACRA's mission is to provide a responsive and trusted regulatory environment for businesses and public accountants. To achieve its mission, ACRA plays a fundamental role in the registration and regulation of business entities and public accountants in Singapore, as well as an important secondary role of facilitating a pro-enterprise business environment. ACRA is committed to continually reviewing and refining its legislation and reducing the regulatory burden to be in tune with business needs and international developments. Through such reviews, ACRA also contributes to facilitating a hassle-free environment to do business for the promotion of entrepreneurship and enterprise. To this end, ACRA sees confidence in corporate reporting and governance as vital to the healthy functioning of businesses and the market, as well as making a significant contribution to the overall economy and Singapore's competitiveness in international markets.

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1 INTRODUCTION

1.1 As part of its constant effort to review and refine its legislation to develop a responsive and trusted regulatory environment for businesses, the Accounting and Corporate Regulatory Authority (ACRA) is reviewing the registration and regulatory regime for foreign companies under the Companies Act (Cap. 50).

1.2 We would like to invite your organisation and all interested persons to comment on the issues highlighted in this consultation paper. Respondents are also welcome to surface other related issues pertaining to the matter.

1.3 All comments and feedback may be sent to:

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We would appreciate if all responses could be received before 15 January 2008.

2 OBJECTIVES OF REVIEW

2.1 A key objective for ACRA's review of Singapore's registration and regulatory regime for foreign companies is to ensure that our legislation in this area is progressive and able to contribute to achieve a trusted and pro-enterprise business environment. In addition, our registration and regulatory regime for foreign companies should also be comparable to those in other major jurisdictions, in view of international trends and developments. Through this review, we also

seek to look into the relevance of the provisions relating to foreign companies in the Companies Act to the current business environment.

2.2 As we review these requirements, we have also considered streamlining the registration and regulatory requirements imposed on foreign companies to those imposed on locally incorporated companies, so as to give similar treatment to both foreign and Singapore-incorporated local companies when they are in comparable situations, when there are valid reasons to do so.

3 BACKGROUND

3.1 A foreign company is defined in the Companies Act as:

(i) a body incorporated outside Singapore; or

(ii) an unincorporated body which under the law of its place of origin may sue or be sued, or hold property in the name of its officer duly appointed for the purpose, and which does not have its head office or principal place of business in Singapore[1].

3.2 Every foreign company, before it establishes a place of business or commences to carry on business in Singapore through the establishment of a branch in Singapore, shall lodge with ACRA the documents as prescribed in the Companies Act[2] for registration. A branch of the foreign company, for all intents and purpose, is the same legal person as the parent company formed outside Singapore. It is therefore not a subsidiary company which is owned by the foreign parent company.

3.3 Such foreign companies carrying on business in Singapore are presently regulated under Part XI Division 2 of the Companies Act, which inter alia

[1] See section 4 of the Companies Act.
[2] See section 368 of the Companies Act.

provides for the registration and requirements for financial reporting of these entities.

3.4 A foreign company is required to have a registered office in Singapore that is accessible to the public and to which all communications and notices may be addressed. It is also required to identify itself clearly at its places of business and in its official correspondences and publications. Each foreign company is also to appoint two locally resident agents to be answerable for the doing of all such acts, matters and things, as are required to be done by the company under the Companies Act.

3.5 For financial reporting, a foreign company shall lodge with ACRA a copy of its balance-sheet and other documents prepared as so required in the place of its incorporation. It also has to lodge a duly audited statement of its assets and liabilities, as well as a duly audited profit and loss account, arising out of its operations in Singapore.

4 REVIEW OF REGISTRATION REGIME OF FOREIGN COMPANIES

4.1 As ACRA contributes to the creation of a hassle-free environment for business, we seek to facilitate the ease of starting and doing business in Singapore. ACRA has reviewed the existing provisions in the Companies Act on the registration of foreign companies and other related issues in order to simplify the registration process where possible, so as to achieve an efficient registration regime. In the process of our review, we have also compared our foreign company registration regime to those of major overseas jurisdiction to ensure that we are not out-of-sync with international practices.

Issue 1: Retaining the definition of a foreign company

4.2 Currently, the Companies Act defines "foreign company" to include foreign unincorporated society, foreign association or other types of body corporate such as foreign limited liability partnership (LLPs)[3]. This definition is wider than those in United Kingdom (UK), Hong Kong and New Zealand[4].

4.3 However, ACRA is of the view that there is no pressing need to change the existing definition for the following reasons:-

(i) The current definition has served us well;

(ii) If a foreign unincorporated society, foreign association or other types of body corporate are excluded from the ambit of the Companies Act, such entities will have to be regulated under other respective Acts and by the respective regulatory agencies. This requires coordination among the agencies to ensure consistency in policies and requirements imposed on different business entities. Duplicate regimes under different sets of legislation could create a more complex environment for foreign entities to start and conduct a business in Singapore, which is contrary to ACRA's desired outcome of a hassle-free business environment; and

(iii) Australia too has a similar definition of foreign companies.

4.4 ACRA thus proposes to retain the existing definition of a foreign company in the Companies Act.

Question 1
Do you agree to retain the existing definition of a foreign company in the Companies Act? If not, what are the issues and concerns that call for a review of the definition?

[3] See section 4 of the Companies Act and para 3.1 of this consultation paper.

[4] The UK Companies Act 2006 defines an overseas company to be a company incorporated outside UK, and Hong Kong also adopt the same definition. New Zealand defines an oveaseas company as a body corporate incorporated outside New Zealand.

Issue 2: Drivers to establishing a foreign company branch as opposed to incorporating a subsidiary

4.5 To carry on business in Singapore, a foreign company has an option to register as a branch of its head office, regulated under Part XI Division 2 of the Companies Act, or alternatively, to incorporate a subsidiary in Singapore, Subsidiaries incorporated in Singapore by foreign parent companies are regulated as a local company under the Companies Act.

4.6 ACRA would like to seek views on the factors which drive a foreign company to register as a branch, as opposed to incorporating a subsidiary, to carry on business in Singapore.

Question 2
In your view, what are the considerations and factors that contribute to a foreign company registering as a branch to carry on business in Singapore, instead of incorporating a subsidiary company?

Issue 3: Simplifying the filing requirement for appointment of authorised agents and others

4.7 Currently, for its registration with ACRA, a foreign company is required to lodge evidence of the appointment of its authorised agents resident in Singapore[5]. Authorised agents are representatives of the foreign company who are authorised to receive notices served on the company and are responsible for ensuring compliance with the requirements of the Companies Act.

4.8 As prescribed by the Act, a memorandum of appointment or power of attorney under the seal of the company or executed on its behalf in a binding manner is to be lodged with ACRA to state the names and addresses of the

[5] See section 368 of the Companies Act.

appointed authorised agents in Singapore. We have compared our practice to that of other foreign jurisdictions and found that in contrast, the State of Delaware (United State of America), UK, Hong Kong and New Zealand only require the lodgment of the particulars of the authorised agents.

4.9 ACRA is of the view that the verification of the appointment of local authorised agents can be left to the professional firms (e.g. lawyers, professionally qualified company secretaries) that register on behalf of these foreign companies. It suffices for particulars of authorised agents to be lodged with ACRA.

4.10 We recommend simplifying the filing requirement for the appointment of local authorised agents by removing the need for foreign companies to lodge evidence of such appointments. Instead, foreign companies would only need to lodge the particulars of the appointed agents with ACRA.

4.11 However, as an authorised agent is responsible for ensuring compliance with the requirements of the Companies Act, we are of the view that it would be prudent to require foreign companies to make accessible for inspection the memorandum of appointment or power of attorney under the seal of the company or executed on its behalf in a binding manner of such an appointment at the registered office of its branch in Singapore.

4.12 We have also received a suggestion to allow other qualified persons, other than the issuing authority, to certify the primary document (such as a certificate of incorporation or registration) confirming the formation of the foreign company. We are not inclined to do so because the integrity of such information cannot be compromised as it confirms the existence of the foreign company. We note that presently, secondary documents (such as the company's charter, statue or memorandum and articles or other instruments constituting or defining its constitution) may be certified by a list of qualified persons.

Question 3

Do you agree that a foreign company should only be required to lodge with ACRA the particulars of its appointed authorised agents, and not evidence of appointment?

Question 4

Do you agree that it would be a good practice for foreign companies to make accessible for inspection the evidence of appointment of its authorised agents?

Issue 4: Reducing the minimum number of authorised agents

4.12 The existing section 368(1)(e) of the Companies Act requires a foreign company to appoint at least two authorised agents. ACRA is of the view that the minimum number of authorised agents can be reduced to one. This will align our requirement with that of UK, Hong Kong, Australia and New Zealand.

4.13 The proposed reduction is also in line with the allowing of one director/one shareholder local companies in Singapore, as introduced in the Companies (Amendment) Act 2004.

Question 5

Do you agree that the minimum number of authorised agents to be appointed by a foreign company can be reduced to one?

Issue 5: Requiring each foreign company to include its registration number in documents of its local operations

4.14 Existing legislation requires a foreign company to state its name and place of incorporation in legible romanised letters on all its bill-heads and letter paper and in all its notices, prospectuses and other official publications. However, in

comparison, every locally incorporated company is required to include the registration number, in addition to its registered name, on all business letters, statements of accounts, invoices, official notices and publications of the company with effect from 1 October 2004. UK and Australia also require both local and foreign companies to include their company numbers in company documents, while Hong Kong and New Zealand do not impose such a requirement.

4.15 ACRA is of the view that the rationale of a company's registration number issued by ACRA serving as its unique identifier also applies to foreign companies. The local operations of foreign companies should also be required to include its registration number, which has a differentiated numbering system from local companies, in its documents. ACRA proposes that the local branch of a foreign company shall state its name and place of incorporation in legible romanised letters, as well as its ACRA registration number, on the same set of documents as that of locally incorporated companies, i.e. business letters, statements of accounts, invoices, official notices and publications. To allow the companies time to use up their existing stock of stationery and to modify their internal processes to comply with the new requirement, ACRA proposes giving foreign companies a grace period of six months after the amendment comes into force. Similar treatment was given to Singapore companies when the requirement was made of them in 2004.

Question 6
Do you agree that a foreign company shall state its name, place of incorporation and ACRA registration number in the business letters, statements of accounts, invoices, official notices and publications of their local operations? What are the concerns and likely impacts for requiring them to do so?

Issue 6: Removing the need to display names and place of origin outside registered office and every place of business

4.16 Section 375 of the Companies Act requires a foreign company to conspicuously exhibit outside its registered office and every place of business established in Singapore in romanised letters its name and place where it is formed or incorporated. ACRA has reviewed this statutory requirement and proposes to remove it.

4.17 Presently, one can find out if a foreign company is registered with ACRA from the directory search on our homepage, at no charge. The registered address of the foreign company is also available online from ACRA or alternate information provider, for a nominal fee. In addition, all other information reported to ACRA is publicly available for a fee. As the registered office address is easily available and our infrastructure is well developed, we are of the view that locating an address is not a problem. In view of this, we opine that there is no need to mandate that a foreign company displays its name and place of origin outside its registered office and every place of business. A similar requirement for a local company to display its name outside its every office or place in which its business is carried on was abolished in 2004.

Question 7

Do you agree that a foreign company need not display its name and place of incorporation outside its office and every place of business? If not, what are your concerns?

Question 8

If you have previously purchased information on a foreign company from BizFile, is the available information for purchase adequate? If not, how would you suggest that ACRA improves on the information made available?

5 REVIEW OF FINANCIAL REPORTING REGIME OF FOREIGN COMPANIES

5.1 A foreign company registered with ACRA to carry on business in Singapore is subject to the financial reporting requirements in Part XI Division 2 of the Companies Act. Under the existing requirements, a foreign company has to lodge with ACRA a copy of its balance-sheet and other documents as required to be prepared in the place of its incorporation/origin. It is also required to lodge a duly audited statement of its assets and liabilities and a duly audited profit and loss account, in relation to its operations in Singapore.

5.2 ACRA has reviewed the financial reporting requirements of such foreign companies with the aim to achieve more transparency and improved disclosure of their financial situation for the market and local stakeholders. In addition, as a registered foreign company is not limited in its extent of activities in Singapore as compared to locally incorporated companies, our general position in this review is that they should be treated similarly to local companies in comparable situations.

5.3 We considered whether a balance-sheet of the head office of the foreign company is sufficient to give a good portrayal of the company's financial status, and recommend that a foreign company should lodge similar components of the financial statements as required of a local company to ACRA. We are also of the view that the financial reporting requirements for the local operations of the foreign company should be retained to ensure adequate disclosure of financial information of the company. With the review of the financial reporting requirements, we are also providing greater clarity on the criminal liabilities for non-compliance with such requirements by foreign companies and their officers or agents.

Issue 7: Requiring foreign companies to lodge similar components of the financial statements and other reports as locally incorporated companies

5.4 The Companies Act requires a foreign company to file with ACRA its head office accounts comprising the balance-sheet and such accompanying documents required by the law of the foreign company's place of incorporation[6]. Where the foreign company is not required by the law of its place of incorporation to prepare a balance-sheet, it must file its balance-sheet prepared as if it is a Singapore-incorporated public company[7]. ACRA has reviewed if filing only the balance-sheet provides sufficient financial information of the company.

5.5 In other leading jurisdictions, the components of head office financial statements to be prepared and filed by foreign companies include more than the balance-sheet. In Australia, the components of the head office financial statements that a foreign company is required to be lodged with the authorities include the balance-sheet, profit and loss account and the statement of cashflows. In New Zealand, a foreign company is required to lodge its head office's balance-sheet, profit and loss account and the statement of cashflows[8] (together with any notes or documents giving information relating to the statements), as well as an auditors' report on these financial statements.

5.6 The UK Companies Act 2006 provides that the Secretary of State may make provision by regulations requiring an overseas company to prepare accounts and directors' report; and cause to be prepared such an auditor's report, as would be required of a local company. The Act provides that a local company is required to prepare and file a balance-sheet and profit and loss account. The Secretary of State may also, by regulation, require an overseas company to deliver to the registrar the accounts and reports prepared in accordance with the regulations; or

[6] See section 373(1) of the Companies Act.
[7] See section 373(4) of the Companies Act.
[8] In New Zealand, a statement of cashflow is not required if the foreign company qualifies for an accounting standard similar to differential reporting under the overseas GAAP (Generally Accepted Accounting Principles). This should be detailed in the notes to the financial statements or in a covering letter.

accounts and reports that is required by the parent law of the company to prepare and be audited. The regulations have yet to be announced by the UK Ministry of Trade and Industry.

5.7 ACRA is of the view that a more comprehensive disclosure of a foreign company's financial situation is desirable, and thus foreign companies should file other components of its financial accounts. Taking into consideration the practices of these major jurisdictions and the reporting requirement of our locally incorporated companies, we propose that the components of its head office financial statements and other reports to be lodged with ACRA by a foreign company should be the same as those required of local companies, which consist of: (a) Balance Sheet; (b) Income (or Profit and Loss) Statement; (c) Notes to Accounts; (d) Director's Report (if applicable); and (e) Auditor's Report.

Question 9

Do you agree that the components of its head office financial statements and other reports to be lodged with ACRA by a foreign company should be the same as those required of a local company? Are there any concerns for requiring them to do so?

Issue 8: Retaining requirement for foreign companies to lodge financial statements for Singapore operations

5.8 Foreign companies are also required to lodge with ACRA their Singapore branch office accounts reflecting the operations in Singapore. Such branch accounts consist of a duly audited statement showing its assets used in and liabilities arising out of its operations in Singapore and a duly audited profit and loss account[9].

[9] See section 373(5) of Companies Act.

5.9 Our research showed that the filing of financial accounts of local operations is not required in UK, Australia and Hong Kong. However, a similar requirement for foreign companies to lodge local branch accounts exists in New Zealand. The rationale for the dual reporting in New Zealand is for the protection of its local stakeholders. Learning from New Zealand's position, it shows that although the financial reports of a foreign company as a whole may disclose that it is in a sound position, it is not possible to determine the financial position of its local operations without local branch-specific disclosures[10].

5.10 On the other hand, overall financial reports of a foreign company are also important to reflect the financial position of the company as a branch operation has no separate legal personality[11].

5.11 In view of the above, and as there is no limitation on the extent of activities a Singapore branch of a foreign company can undertake when compared to a locally incorporated company, there should be disclosure of the local branch's financial position, just as that is required of a local company. ACRA proposes to retain the existing requirement for foreign companies to file the financial accounts for its Singapore branch operations.

Question 10

Do you agree that the existing requirement for foreign companies to file financial accounts for its Singapore branch operations should be retained? Are there any concerns for requiring the filing of local branch accounts?

[10] For example, a local creditor would be concerned with the adequacy of the assets of a foreign company's local branch operations to cover its debts should they go into default, rather than its overall assets as these could be in jurisdictions that are beyond the reach of the courts of the jurisdiction where the branch is in (e.g. assets based in a nation without an agreement with the local jurisdiction for the cross-border enforcement of judgements).

[11] Although a local branch operations may do well and have assets based within the local jurisdiction, they are still property vested in the single legal entity operating in another jurisdiction. If the foreign jurisdiction does not have cross-border enforcement arrangements with the local jurisdiction, the title to these assets may pass at the expense of the local stakeholders. It is therefore also important to know the financial position of the company as a whole.

Issue 9: Specifying liability and penalty for foreign companies that fail to lodge financial statements and other reports with ACRA

5.12 After reviewing the financial reporting requirements of foreign companies, we also looked into the provisions relating to failure to comply with such reporting requirements. Currently, the Companies Act does not specifically impose the liability and penalty when foreign companies fail to lodge financial accounts with ACRA. There is a general criminal sanction which is imposed on companies, officers and authorised agents for non-compliance with any provisions relating to foreign companies. The punishment prescribed is a fine of up to $1,000 and liability to a default penalty. In contrast, the criminal sanction imposed on a local company and its every officer for non-compliance with financial reporting is specified to be a fine not exceeding $5,000 and a default penalty.

5.13 In New Zealand, specific liability and penalty are imposed on every company director for the failure to file financial statements. The penalty threshold imposed on foreign companies is identical to that imposed on its local companies for similar offences. The existing regime in UK[12] provides that an overseas company and every director are guilty of an offence if financial accounts are not delivered to the registrar. The penalty imposed is also similar for foreign companies and UK companies.

5.14 We propose to impose specific liability and penalty on foreign companies that fail to lodge financial statements and other required reports with ACRA, to achieve consistency with the treatment of local companies in the event of such defaults. The foreign company in default and every director will be liable for failure to lodge financial statements and other reports with ACRA, and the penalty would be the same as that for local companies.

[12] The UK Companies Act 2006, which has yet to fully come into effect, provides for regulations to be made with respect to offenses, liability and penalties relating to foreign companies. These regulations have yet to be announced.

5.15 Also, the Companies Act provides that authorised agents shall be answerable for the doing of all such acts, matters and things as are required to be done by the company under the Act and they shall also be personally liable to all penalties imposed on the company for breaches of the Act, unless the said agents satisfies the court that they should not be liable. We propose to retain the personal liability of the local agent for all penalties imposed on the company for breaches of the Act, unless the said agents satisfy the court otherwise. The regime in Australia also holds local agents personally liable for all penalties imposed on the companies for breaches of the Corporations Act, unless the agents can justify otherwise.

Question 11

Do you agree that the foreign company in default and every of its directors will be liable for failure to lodge financial statements and other required reports?

Question 12

Do you agree that the penalty imposed on a foreign company and its directors for the failure to lodge financial statements and other required reports should be the same as that for local companies?

Question 13

Do you agree with retaining the personal liability of the local agent for all penalties imposed on the foreign company for breaches of the Companies Act, unless the said agents satisfy the court otherwise?

Issue 10: Specifying liability and penalty for foreign companies whose financial statements do not comply with accounting standards

5.16 As a general rule, the Companies Act does not require head office accounts of foreign companies to comply with our Financial Reporting Standards (FRS). However, in the exceptional case where a foreign company is not required by the

law of its place of incorporation to hold an annual general meeting and prepare a balance-sheet, the law requires it to prepare and lodge a balance-sheet, and such relevant documents to be annexed thereto, as if it were a public company incorporated under the Companies Act. This would imply that such balance-sheet is to comply with the Financial Reporting Standards (FRS). As it is not realistic to expect foreign companies to prepare their head office balance-sheet in accordance with FRS, section 373(7) allows these companies to apply to the Registrar for an order relieving them from requirements relating to form and content of the accounts or reports to be filed with the Registrar.

5.17 For the financial statements of a foreign company's local branch operation, they are to be audited and comply with FRS. Foreign companies which cannot comply with this requirement can seek waiver from the Registrar[13]. There is no specific criminal sanction imposed for non-compliance of these local branch accounts with FRS and as such the general penalty provision in section 386 which prescribed a fine not exceeding $1,000 and a default penalty would apply. This is inconsistent with the approach for our local companies. NZ impose criminal sanctions on the directors of foreign and local companies for non compliance with the relevant financial reporting standards[14].

5.18 In view of the above, ACRA is of the view that in addition to the foreign company, every director of the foreign company be held liable for non-compliance with FRS and the penalties for such breaches should be aligned with those for local companies[15]. However, we recognise that there exist legal and practical difficulties in prosecuting foreign directors who are not ordinarily resident in Singapore for such non-compliance.

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[13] See section 373(5). Section 373(5)(b) provides that the Registrar may waive compliance with subsection (5) if he is satisfied that (i) it is impractical to comply with this subsection having regard to the nature of the company's operations in Singapore; (ii) it would be of no real value having regard to the amount involved; (iii) it would involve expense unduly out of proportion to its value; or (iv) it would be misleading or harmful to the business of the company or to any company which is deemed by virtue of section 6 of the Companies Act to be related to the company.

[14] Both UK and Aus do not require preparation nor lodgement of branch accounts. There is no requirement to comply with accounting standards in HK.

[15] The penalty for local companies that fail to comply with FRSs: (i) $50,000 for company and directors; and (ii) Fine not exceeding $100,000 or imprisonment for a term no exceeding 3 years or both, for persons with intention to defraud creditors

Question 14

Do you agree that every director of the foreign company in default will be liable for failure to comply with FRS?

Question 15

Do you agree that the penalties imposed on the directors of a foreign company for non compliance with FRS should be aligned with those for local companies?

Issue 11: Empowering the Registrar to issue class orders for exemptions from financial reporting requirements for qualifying foreign companies

5.19 As ACRA seek to give similar treatment to foreign companies and locally incorporated companies in comparable situations, we looked into allowing exemptions from financial reporting requirements for foreign companies that qualify under similar criteria as those for local companies. Currently, foreign companies are required to file financial accounts, for the company and for its local operations[16]. Whilst the Companies Act (Sec 202(2)) allows the Registrar to make a Class Order for local companies for relief from compliance with specific requirements relating to form and content of the accounts and reports (other than requirements of a Financial Reporting Standard), there is no provision for such class exemption in relation to foreign companies.

5.20 Australia's ASIC is empowered to exempt specified foreign companies from the requirement to lodge financial statements. ASIC has issued a class order[17] that exempts a small registered foreign company, which is subject to similar restrictions to an Australian proprietary company and which is not required to prepare financial statements in its place of origin, from the requirement to lodge financial statements provided that:

(a) It is not part of a large group; or

[16] See sections 373(1) to 373(4) of the Companies Act.
[17] Class Order 02/1432

(b) It is controlled by a parent which consolidates the registered foreign company for the entire financial year and lodges its financial statements with ASIC.

Such a foreign company instead lodges with ASIC an annual return with a declaration that it is exempted from filing annual accounts.

5.21 ACRA receives applications from foreign companies for relief from, or waiver from compliance with, financial reporting requirements. These applications are usually for relief from requirement as to form and content of accounts and reports submitted by foreign companies that are not required to hold an AGM or prepare audited accounts in their place of incorporation[18]. Foreign companies can also seek waiver from the Registrar from compliance from filing, or other requirements, in relation to the accounts of their operations in Singapore[19]. In short, the existing minimum requirement for foreign companies is to file the balance-sheet, and such relevant reports, of their head office[20].

5.22 ACRA is of the view that the financial reporting requirements for the local branch accounts of eligible foreign companies can be simplified and granted more comparable treatment as Singapore companies. Currently, local exempt private companies (EPCs) are granted exemptions from filing their accounts if the company is solvent. EPCs also need not audit their accounts if the turnover is below a certain threshold (i.e. S$5 million). Local dormant companies also need not have their accounts audited. ACRA proposes amending the Companies Act to grant the Registrar the power to issue class orders to exempt qualifying foreign companies from filing their local branch accounts, or having the accounts audited.

[18] Such relief is provided for under section 373(7), whereby the Registrar can make a relief order if he is of the opinion that compliance with requirements relating to form and contents of accounts or report would render the accounts or reports misleading or inappropriate to the circumstances of the foreign company or would impose unreasonable burdens on the foreign company. However, the Registrar is not empowered to waive compliance from the filing of balance-sheet and other relevant reports for a foreign company.

[19] Such waiver is provided for under section 373(5)(b).

[20] We are proposing that more components of the head office financial statements are to be lodged with ACRA by a foreign company. See paras 5.4 to 5.7 of this paper.

Question 16

Do you agree that the Registrar should be empowered to issue class orders to exempt qualifying foreign companies from filing their Singapore branch financial accounts, or having them audited?

Question 17

Do you agree to apply the qualifying criteria for local EPCs and dormant companies when granting such exemptions?

6 OTHER FOREIGN COMPANY REGISTRATION REGIMES AVAILABLE OVERSEAS

Issue 12: Cross registration system for foreign companies

6.1 In the process of our review of the registration regime of foreign companies in Singapore, we came across two different approaches to foreign company registration that are absent in Singapore. The cross-registration system in the State of Delaware, USA, allows a non-US corporation to have a second incorporation in Delaware[21], by filing the relevant documents with the Secretary of State[22]. Once the non-US corporation becomes a domesticated corporation in Delaware, it is subject to all the provisions under the Corporations title of the Delaware Code. The existence of the new Delaware domesticated corporation is deemed to have commenced on the date when the non-US corporation was first incorporated in its original jurisdiction[23]. The non-US corporation is also allowed to continue its incorporated existence in the foreign jurisdiction[24], unless its dissolution or de-registration is otherwise agreed or required under the applicable non-Delaware foreign law. The domesticated corporation in Delaware and the original non-US

[21] The cross-registration system also applies to non-Delaware corporations. For the purpose of this consultation, we are focusing on the non-US corporations.
[22] The process of second incorporation is known as corporate domestication. The process is similar to that of any entity seeking incorporation, with the additional filing of the certificate of domestication containing basic information of the original foreign corporation.
[23] Section 388(d), Chapter 1-General Corporation Law of Title 8-Corporations of the Delaware Code.
[24] Ibid, section 388(j).

corporation constitute a single legal personality existing under both the laws of Delaware and the foreign jurisdiction. The rights, privileges, powers, and interests in property, as well as debts, liabilities and duties, of the non-US corporation remain vested in and attached to the domesticated Delaware corporation, and also to the non-US entity for so long as it continues its existence in the foreign jurisdiction[25]. A domesticated Delaware corporation is subject to no more stringent filing and financial reporting requirements than a registered foreign corporation. Both are not required to file annual financial accounts[26].

6.2 Other than Delaware, we have not found any other major jurisdiction that allows the cross registration of companies. We would like to seek views on whether a cross registration system is workable in Singapore.

Question 18
In your view, do you think the cross registration system for foreign companies would be workable in Singapore?

Issue 13: Transfer of incorporation system for foreign companies

6.3 Another registration regime present overseas is the transfer of incorporation system. In New Zealand (NZ) and Canada, a foreign company can transfer its incorporation into NZ under its Companies Act (CA) 1993 or into Canada at the federal level under its Canada Business Corporation Act (CBCA)[27], without losing its original legal personality.[28]However once the registration is transferred, the overseas company will cease to exist in its original land of formation.

[25] Ibid, section 388(i).
[26] Ibid, section 374.
[27] It is of interest to note that the NZ Law Commission consulted the Canadian Dickerson report, which preceded the Canada Business Corporation Act, in its company law reform process that gave rise to the NZ Companies Act 1993.
[28] The Australian Corporations Act 2001 also allows the changing of place of registration of a company. However, this only applies to companies registered in the States or Territories of Australia.

6.4 In NZ, an overseas company may transfer its incorporation into the NZ Companies Office Register if it is authorised to do so under the law of its original country of incorporation. It also has to comply with all relevant requirements under that foreign law, as well as fulfils the conditions as set out in the NZ CA 1993[29]. After its transfer of incorporation into NZ, the company retains its original legal personality formed in its original country of incorporation[30]. The NZ law confirms that the transfer does not create a new legal entity nor affect the rights or obligations of the company[31]. The transferred company will henceforth become a NZ company regulated under the CA 1993 and Financial Reporting Act 1993. It is required to file its annual return and audited financial accounts[32] with the Company Registrar.[33]

6.5 Similarly, an overseas-incorporated company can become a Canadian federal corporation by transferring its incorporation to Canada under CBCA[34]. It continues with the same legal personality as originally formed in its originating country of incorporation, provided such continuance is permitted by the corporate law of that country. CBCA provides that when a body corporate is continued as a

[29] At least 75% of the company's shareholders, or by the percentage required in its country of incorporation, must consent to the transfer. In addition, the company cannot be in liquidation or have a receiver appointed for it. It also cannot have entered into a compromise or an agreement with its creditors. The company must also satisfy the solvency test immediately after being registered under the NZ Companies Act 1993. Section 346 to 347, NZ Companies Act 1993. Procedurally, an application for transfer must be accompanied by a certified copy of the company's original certificate of incorporation, a certified copy of its constitution and other documents proving that it has fulfilled the conditions for transfer.

[30] Such transfer of incorporation can be likened to a natural person taking up a new citizenship and renouncing his original citizenship. The change in citizenship does not affect the person's heritage and identity.

[31] Section 349 of the NZ CA 1993 provides that such transfer "does not: (a) create a new legal entity; or (b) prejudice or affect the identity of the body corporate constituted by the company or its continuity as a legal entity; or (c) affect the property, rights or obligations of the company; or (d) affect proceedings by or against the company."

[32] Such financial accounts include balance-sheet and profit and loss account.

[33] The filing requirements for a New Zealand company and a branch of a foreign company in New Zealand are similar, with the latter having to file the accounts of its local branch in addition to that of its HQ.

[34] To apply for a certificate of continuance in Canada, the applicant corporation has to submit the relevant forms and an authorisation from the exporting jurisdiction. It is also necessary to submit a legal opinion from a counsel qualified to provide opinions on the foreign law stating that such law permits the transfer of incorporation and continuance of legal personality. It should also state that once the transfer is completed, the foreign law will cease to apply to the transferred corporation. Corporations under the CBCA are required to keep corporate records and file financial statements and auditors report with Corporations Canada.

corporation under this Act, the property and obligations of the body corporate continues to be vested in the continued corporation[35].

6.6 We would like to seek views on whether it is workable to introduce a similar transfer of registration concept in Singapore and if so, what are the practical considerations in the operationalisation of such a transfer of incorporation system for foreign companies.

Question 19
In your view, is it workable to introduce the transfer of registration concept in Singapore and what are the practical considerations in the operationalisation of such a system for foreign companies?

7 HOW TO RESPOND

7.1 ACRA invites comments and feedback on the issues and questions raised in this consultation paper, as well as views on other issues related to the registration and regulatory requirements for foreign companies. To assist us in giving due consideration to your feedback, we would appreciate that you provide the reasons and basis for your opinions. All submissions received will be regarded as public documents unless otherwise indicated.

7.2 The issues and questions for views and comments are tabulated below:-

Qn 1	Do you agree to retain the existing definition of a foreign company in the Companies Act? If not, what are the issues and concerns that call for a review of the definition?
Qn 2	In your view, what are the considerations and factors that contribute to a foreign company registering as a branch to carry on business in Singapore, instead of incorporating a subsidiary company?

[35] Section 187(7) of CBCA.

Qn 3	Do you agree that a foreign company should only be required to lodge with ACRA the particulars of its appointed authorised agents, and not evidence of appointment?
Qn 4	Do you agree that it would be a good practice for foreign companies to make accessible for inspection the evidence of appointment of its authorised agents?
Qn 5	Do you agree that the minimum number of authorised agents to be appointed by a foreign company can be reduced to one?
Qn 6	Do you agree that a foreign company shall state its name, place of incorporation and ACRA registration number in the business letters, statements of accounts, invoices, official notices and publications of their local operations? What are the concerns and likely impacts for requiring them to do so?
Qn 7	Do you agree that a foreign company need not display its name and place of incorporation outside its office and every place of business? If not, what are your concerns?
Qn 8	If you have previously purchased information on a foreign company from BizFile, is the available information for purchase adequate? If not, how would you suggest that ACRA improves on the information made available?
Qn 9	Do you agree that the components of its head office financial statements and other reports to be lodged with ACRA by a foreign company should be the same as those required of a local company? Are there any concerns for requiring them to do so?
Qn 10	Do you agree that the existing requirement for foreign companies to file financial accounts for its Singapore branch operations should be retained? Are there any concerns for requiring the filing of local branch accounts?
Qn 11	Do you agree that the foreign company in default and every of its directors will be liable for failure to lodge financial statements and other required reports?
Qn 12	Do you agree that the penalty imposed on a foreign company and its

	directors for the failure to lodge financial statements and other required reports should be the same as that for local companies?
Qn 13	Do you agree with retaining the personal liability of the local agent for all penalties imposed on the foreign company for breaches of the Companies Act, unless the said agents satisfy the court otherwise?
Qn 14	Do you agree that every director of the foreign company in default will be liable for failure to comply with FRS?
Qn 15	Do you agree that the penalties imposed on the directors of a foreign company for non compliance with FRS should be aligned with those for local companies?
Qn 16	Do you agree that the Registrar should be empowered to issue class orders to exempt qualifying foreign companies from filing their Singapore branch financial accounts, or having them audited?
Qn 17	Do you agree to apply the qualifying criteria for local EPCs and dormant companies when granting such exemptions?
Qn 18	In your view, do you think the cross registration system for foreign companies would be workable in Singapore?
Qn 19	In your view, is it workable to introduce the transfer of registration concept in Singapore and what are the practical considerations in the operationalisation of such a system for foreign companies?

7.3 Comments and feedback may be sent, **by 15 January 2008**, to:

Accounting and Corporate Regulatory Authority
Legal Services Division
10 Anson Road
#05-01/15 International Plaza
Singapore 079903
Email: acra_consultation@acra.gov.sg
Fax: 6225-1676

7.4 For general information about ACRA, please see our website at www.acra.gov.sg.

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