CNPLAW BUSINESS GUIDE SERIES: THE SOLO BUSINESS OWNER

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Introduction

The solo business owner ("**SBO**") is a solopreneur, a freelancer, a side hustler – an individual who wishes to start a business on his or her own. This has become a growing trend post the COVID-19 pandemic where gig culture is no longer seen as a last resort to gain work but rather a preferred choice for many who wish to have multiple sources of income, fuelled by the flexibility of remote working in this new digital landscape.

Typically, the SBO would want to see if the business takes off before investing more time, effort and money to set up a company to carry on the business. The cost of incorporation and upkeep of a company alone can be deterring for the SBO who has yet to see assuring returns on the business to justify such cost. For some SBOs, operating through a company may not even be relevant at all if there is no intention to scale up, especially if the end goal is to have the freedom to hop between multiple side gigs or simply to supplement existing income.

The alternatives for going solo without setting up a company in Singapore are relatively limited. The SBO could choose to carry on the business under his or her full name (if the SBO is a Singapore citizen or permanent resident ("**Local Resident**")) or register a sole proprietorship in Singapore. This article explores the suitability of these alternatives as well as other legal considerations for starting a small-scale business in Singapore on your own.

Carrying on business in Singapore

ACRA registration

Pursuant to the Business Names Registration Act 2014 of Singapore ("**BNRA**"), a person carrying on business in Singapore must register with the Accounting and Corporate Regulatory Authority of Singapore ("**ACRA**") unless the person is exempted under the BNRA.

Carrying on business in Singapore includes every form of trade, commerce and profession, and any other activity, that is carried on for the purposes of gain, even on a part-time or casual basis (but does not include any office, employment or occupation). For example, an individual who makes money on the side from selling homemade goods (such as home-baked foods or handmade crafts) or freelance services (such as consulting as an independent contractor or creating online content for paid advertising as an influencer) may be treated as carrying on business in Singapore and hence subject to the above requirement under the BNRA.

Licences and regulatory compliance

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The SBO may need to obtain relevant business licences if the business falls within any regulated industry in Singapore, such as the financial, accounting or trading sectors. The business may also be subject to industry-specific guidelines or practices. For example, a home-based food business may need to comply with food safety and hygiene requirements under the Sale of Food Act 1973 of Singapore and the Environmental Public Health Act 1987 of Singapore, while an influencer who is paid for online advertising may need to comply with advertising guidelines published by the Advertising Standards Authority of Singapore.

Home-based business

The SBO can carry on business in Singapore from the ease of his or her home under the Home-Based Business Scheme of the Housing & Development Board of Singapore ("**HDB**") (for public housing) or the Urban Redevelopment Authority of Singapore ("**URA**") (for private housing) without HDB's or URA's approval, subject to meeting the conditions of such scheme. For example, the business must be operated only by the property owner, registered occupant or tenant of the property (with consent from the property owner), the property must remain a residential dwelling with no advertisements, signages or posters displayed, and the business activities must not cause disamenities to the neighbours.

If the SBO wishes to operate a home office supported by non-residents of the property, the SBO would need to register with HDB or URA for a home office licence under HDB's or URA's Home Office Scheme (as the case may be), subject to meeting the conditions of such scheme. For example, the type of business operated must fall within HDB's or URA's prescribed list of permitted businesses, the home office must be used for administrative functions only (and not for other business activities such as receiving customers), and only up to two non-residents of the property can be hired to support the home office.

Work approvals

If the SBO is a Local Resident who is an employee working for an employer, the SBO should check that the provisions of the employment contract between the SBO and the employer (particularly any non-compete, conflict of interest or exclusivity provisions) do not restrict the SBO in any way from carrying on the business, whether during or after such employment. Otherwise, the SBO should obtain a waiver of such restriction from the employer.

If the SBO is a Singapore Dependant's Pass holder, the SBO will need to obtain a Letter of Consent ("**LOC**") from the Ministry of Manpower of Singapore to operate the business in Singapore through an ACRA-registered business such as a sole proprietorship.

Singapore work pass holders (such as Singapore Employment Pass, S Pass or Work Permit holders) do not have the flexibility to be an SBO as they must only work for their designated employer and cannot concurrently start a side business or engage in other activities to earn additional income in Singapore.

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Carrying on business under full name

An SBO who is a Local Resident carrying on business in Singapore is exempted from registering with ACRA if the business is carried on under only the SBO's full name as stated in his or her Singapore National Registration Identity Card ("**NRIC**").

For example, if the SBO's full name is "Jane J. Doe" under her NRIC, she can only enter into business contracts and have business marketing collaterals under the name "Jane J. Doe" and not any variation thereof (such as "Jane Doe", "Goods by Jane J. Doe" or "Jane J. Doe Services").

As the SBO will be using his or her own personal name, the SBO will be personally liable for all debts and losses incurred by the business. The SBO should consider whether he or she is willing to accept this risk in light of the potential liability which may flow from the business activities.

Carrying on business under sole proprietorship

If an SBO who is a Local Resident prefers to use a business name that is different from the SBO's full name as stated in his or her NRIC (whether for branding purposes or otherwise) or if the SBO is not a Local Resident (such as a Singapore Dependant's Pass holder), the SBO can consider setting up a sole proprietorship. A sole proprietorship is a business with one owner (in this case, the SBO) which must be registered with ACRA. Such registration will be for one year or three years, renewable for either of these periods. The sole proprietorship will need to maintain a registered address with ACRA which can be the SBO's home address under HDB's or URA's Home-Based Business Scheme or Home Office Scheme referred to above.

While registration with ACRA will result in the registered details of the sole proprietorship being accessible to members of the public (like in the case of a company), such transparency may serve to give the SBO's business added legitimacy to facilitate transactions with customers. Registration with ACRA may also be necessary for government-related applications available to ACRA-registered businesses only (such as applications for relevant business licences, LOCs and Singapore work passes).

As the sole proprietorship is not a separate legal entity from the SBO, the SBO will be personally liable for all debts and losses incurred by the sole proprietorship, as if the SBO was operating under his or her own personal name notwithstanding that the sole proprietorship goes by a different name. This drawback is usually an impetus for setting up a company which is a separate legal entity that can afford the SBO the protection of limited liability for the business. As a sole proprietorship cannot be converted into a company, the SBO would need to first set up a company and then transfer the business of the sole proprietorship to the company before closing the sole proprietorship. In light of this, the SBO who is in the business for the long game may prefer to start the business through a company from the outset to avoid the hassle of dealing with an internal transfer of the business at a later stage.

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Hiring staff for the business

An SBO who is a Local Resident carrying on business under the SBO's full name as stated in his or her NRIC can hire only Local Residents as employees in Singapore, whereas an SBO carrying on business under a sole proprietorship can hire both Local Residents and foreigners as employees in Singapore, as only ACRA-registered businesses can apply for Singapore work passes for foreigners to work in Singapore. This should be taken into account when hiring under HDB's or URA's Home Office Scheme referred to above.

For employees who are Local Residents earning a total salary of more than S$50 per month, the SBO will need to pay employer contributions under the Central Provident Fund ("**CPF**") Act 1953 of Singapore. Similarly, such employees will need to pay employee CPF contributions unless their total salary earned is not more than S$500 per month.

Paying business income tax

IRAS declaration

If the SBO is carrying on business under his or her full name or a sole proprietorship and (a) the net trade income of the business (i.e. gross receipts minus all allowable business expenses, capital allowances and trade losses) ("**NTI**") is more than S$6,000 per year, or (b) the SBO's total income including from the NTI and other sources of income (such as any salary earned by the SBO as an employee outside the business) is more than S$22,000, the SBO as a self-employed person must declare the NTI for each accounting period chosen by the SBO (typically a 12-month period ending every 31 December) to the Inland Revenue Authority of Singapore ("**IRAS**") as part of the SBO's personal income.

Tax rate

The NTI will be taxed at individual income tax rates, and not the corporate income tax rate of 17%. If the SBO is a Singapore tax resident, the individual income tax rates will range between 0% and 24% for year of assessment 2024 onwards, depending on the amount of personal income earned.

In deciding between carrying on business as a self-employed person or through a company, the SBO should work out whether the applicable individual income tax rates or the corporate income tax rate would be more favourable to the SBO based on the projected income of the business, taking into account any tax reliefs and exemptions applicable to personal or corporate income.

Record keeping

The SBO should keep full and accurate records and accounts of all business transactions so that the NTI can be readily determined in the event that IRAS requests supporting documents for verification, as well as to avoid errors in tax returns for which IRAS may impose penalties. Such supporting documents may include original invoices, receipts, vouchers, and logs of business engagements undertaken and business expenses incurred.

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The SBO should also prepare a statement of accounts for the business (comprising the profit and loss accounts and balance sheet) for each accounting year, which must be submitted to IRAS if the business revenue is S$500,000 or more.

MediSave CPF contributions

If the SBO is a Local Resident with an NTI of more than S$6,000 per year, the SBO must pay mandatory MediSave CPF contributions as a self-employed person, notwithstanding that the SBO may also be paying employee CPF contributions as an employee outside the business. Such mandatory MediSave CPF contributions will generally be a percentage of the annual NTI, subject to a cap ranging from S$5,760 to S$7,560 depending on the SBO's age.

The SBO may also make voluntary MediSave CPF contributions as a self-employed person in order to claim tax relief to lower the individual income tax payable by the SBO.

Partnerships

As the business expands, the SBO may consider partnering up with other individuals to operate the business. In such case, it is worth noting that the SBO and his or her partners will similarly be exempted from registering with ACRA if all of them are Local Residents and the business is carried on under only their full names as stated in their NRICs. Otherwise, they could consider registering a general partnership with ACRA which is a business owned by at least 2 partners, up to 20 partners. Like a sole proprietorship, while there are benefits that come with ACRA registration (such as added legitimacy and the ability to make government-related applications), a general partnership is not a separate legal entity from its partners and each partner will be personally liable for all debts and losses incurred by the business and will have to pay personal income tax on the NTI of the business. That said, there are other partnership structures available for registration with ACRA, such as a limited partnership and a limited liability partnership, which may also be suitable as an alternative to setting up a company in Singapore, depending on the business arrangement of the partners.

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