

PRACTICE DIRECTION NO. 1 OF 2012
APPLICATIONS FOR EXEMPTIONS UNDER SECTIONS 373(5) AND
373(7) OF THE COMPANIES ACT, CAP. 50

Aim

1. This Practice Direction serves to identify:

- a) the legal requirements relating to financial reporting imposed on foreign companies,
- b) the policies supporting these requirements, and
- c) the criterion and conditions imposed by ACRA for applications under Section 373(5) of the Companies Act, Cap. 50 (the “Act”) for waiver from filing of local branch accounts, and Section 373(7) of the Act for relief from the requirements relating to the form and content of accounts or reports lodged.

Annual Filing for a Foreign Company – Legal Requirements

Head Office Accounts

2. Section 373(1) of the Act requires a foreign company which is required to hold an annual general meeting (“AGM”) and to prepare a balance sheet and the requisite documents by the laws of the place of its incorporation or origin, to file its balance sheet and the requisite documents (hereafter termed as “Head Office Accounts”) within 2 months after its AGM.

3. For a foreign company which is not required to hold an AGM and to prepare a balance sheet and the requisite documents in its place of incorporation or origin, Section 373(4) of the Act allows the foreign company to file a balance sheet and such requisite documents as if the foreign company is a public company incorporated under the Act (i.e. a set of audited accounts which complies with the Singapore Financial Reporting Standards (“SFRS”)), within 7 months from the end of its financial year. A declaration verifying that the accounts are true copies is also required to be lodged with the accounts.

Branch Accounts

4. In addition to filing of Head Office Accounts under either Section 373(1) or Section 373(4) of the Act, a foreign company is also required under Section 373(5) of the Act to lodge the audited accounts of its Singapore branch that, in so far as is practicable, complies with the SFRS and which gives a true and fair view of the branch’s operations in Singapore for the last preceding financial year of the foreign company (hereafter termed as “Branch Accounts”).

Relief for a Foreign Company under Section 373(5) and Section 373(7)

5. A foreign company which is unable to comply with the above requirements may apply to the Registrar under Section 373(5) of the Act for waiver to file its Branch Accounts. However, there is no provision under the Act to waive the filing of the Head Office Accounts.

6. The foreign company may also apply to the Registrar under Section 373(7) of the Act for relief from requirements relating to the form and content of accounts or reports lodged. This is applicable to both the Head Office Accounts and the Branch Accounts.

Time frame to apply for such a relief under Section 373

7. A foreign company which is required to hold an AGM and to prepare a balance sheet and the requisite documents by the laws of the place of its incorporation or origin, should apply to the Registrar under Section 373(5) of the Act for waiver to file its Branch Accounts or under Section 373(7) of the Act for relief from requirements relating to the form and content of accounts or reports lodged ***before the due date of its filing of accounts*** for ACRA's consideration (please refer to our processing time in Paragraph 11).

8. A foreign company which is not required to hold an AGM and to prepare a balance sheet and the requisite documents by the laws of the place of its incorporation or origin, should apply to the Registrar under Section 373(5) of the Act for waiver to file its Branch Accounts or under Section 373(7) for relief from requirements relating to the form and content of accounts or reports lodged ***within 7 months from the end of the foreign company's last financial year*** for ACRA's consideration (please refer to our processing time in Paragraph 11).

9. A foreign company which is not required to hold an AGM and to prepare a balance sheet and the requisite documents by the laws of the place of its incorporation or origin, can file for extension of time of up to a maximum of 2 months, for the filing of Head Office Accounts and Branch Accounts, provided that the application is made within the 7 months from the financial year end of the foreign company.

10. Applications that do not adhere to the time frame stated in Paragraphs 7, 8 and 9 above will be rejected.

11. Applications should be lodged with ACRA online in Bizfile under either "Apply for Waiver to file Local Branch Accounts under section 373(5)" or "Apply for Relief from Requirements as to Form and Contents of Accounts and Reports under section 373". Applications must be made ***at least one month before the filing deadline***, to give ACRA adequate time to assess the applications.

Application fee

12. An application fee of \$30 is payable under item 87 and 88 of the Second Schedule to the Act for applications under Section 373(7) and Section 373(5) respectively.

13. An application fee of \$30 is payable under item 86 of the Second Schedule to the Act for applications for the extension of time under Sections 201(2) and Section 373(4) of the Act.

Requirements imposed by ACRA for applications under section 373

14. To accord to the principles of disclosure, transparency and comparability as well as equality of treatment for foreign companies, ACRA will not, as a general rule, grant exemptions from waiver to file Branch Accounts or relief from requirements as to form and contents of accounts or reports under Section 373. However, it is recognised that there may be limited or exceptional circumstances where exemptions under Section 373(5) or Section 373(7) of the Act may be necessary. ACRA will only consider granting exemption if it can be proved to the Registrar's satisfaction that the conditions set out in Section 373(5) – for a Section 373(5) application and Section 373(8) – for a Section 373(7) application, are met. Cost of compliance on its own is insufficient to justify an exemption.

Waiver from Filing Branch Accounts under Section 373(5)

15. For an application for waiver from filing Branch Accounts, it will only be approved if the Registrar is satisfied that the following conditions are met:

- It is impractical to comply with Section 373(5) having regard to the nature of the foreign company's operations in Singapore;
- It would be of no real value having regard to the amount involved;
- It would involve expense unduly out of proportion to its value; or
- It would be misleading or harmful to the business of the foreign company or to any company which is deemed by virtue of Section 6 to be related to the foreign company.

16. An application under Section 373(5) must be accompanied by a statutory declaration (made by either a local agent or director of the foreign company) which contains the following information:

- The specific criteria (i.e. i to iv) under Section 373(5)(b) which the foreign company seeks to rely on;
- Facts to support the claim that the foreign company satisfies the particular criteria;
- The financial year in respect of which the application is being made;

- The date of the foreign company's AGM or impending AGM (if any); and
- The unaudited income statement and balance sheet of the branch, which represents the foreign company's operations in Singapore, regardless of whether the transactions (income or expenses) are recorded or borne by the Singapore branch or the foreign company.

17. Applications under Section 373(5) should be lodged with ACRA *at least one month before the filing deadline* to give ACRA adequate time to assess the applications.

Relief from requirements as to Form and Contents of Accounts or Report under Section 373(7)

18. The application for relief from the requirements relating to the form and content of accounts or reports lodged will only be approved if it meets the following criteria:

- Compliance with the requirements would render the accounts or reports misleading;
- Compliance with the requirements is inappropriate to the circumstances of the foreign company; or
- Compliance with the requirements would impose unreasonable burden on the foreign company.

19. An application under Section 373(7) must be accompanied by a statutory declaration (made by either a local agent or director of the foreign company) which contains the following information:

- Schedule of Compliance setting out the requirements under Section 201 of the Act which the foreign company is able to comply with and those that it is unable to comply with;
- The specific requirements under Section 201 from which the foreign company is seeking relief;
- The specific criteria under Section 373(8) which the foreign company is able to satisfy;
- Facts to support that the foreign company satisfies the condition; and
- The financial year in respect of which the application is being made.

20. Applications under Section 373(7) should be lodged with ACRA *at least one month before the filing deadline* to give ACRA adequate time to assess the applications.

21. Under Section 373(7) of the Act, ACRA is only empowered to waive the requirements relating to the form and content of accounts or reports lodged. However, there is no provision under the Act which provides for waiver from filing of the Head Office Accounts required under Section 373(1) and Section 373(4) of the Act.

22. ACRA has also recently reviewed its policy for annual filing requirements of foreign companies under Section 373(7) of the Act. Consequently, please be informed that with effect from financial periods commencing 1 January 2012, ACRA will *no longer accept the lodgement of a foreign company's immediate or intermediate or ultimate holding company's accounts* in lieu of its Head Office Accounts.

Legal Provisions

23. The legal provisions relevant to and referred to in this Practice Direction are:

- (a) Section 373 of the Act; and
- (b) Items 86, 87 and 88 of the Second Schedule to the Act.

Related Practice Directions

24. Nil.

Website Information

25. "Bizfile" link under www.acra.gov.sg or www.bizfile.gov.sg.

Further Clarification

26. This Practice Direction supersedes the Revised Guidelines for Application under Section 373 of the Companies Act issued by the former Registry of Companies and Businesses dated 21 December 1997.

27. Further enquiries can be sent through http://appiqs.acra.gov.sg/iqs/ask_acra.asp.

Issued on 5 January 2012

Juthika Ramanathan (Ms)

Chief Executive and Registrar of Companies

Accounting and Corporate Regulatory Authority