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## **Precautions to be taken for selection of Name of the Company**

Name of the company is an important part of its identity just like in case of Individuals. Selection of Name of the Company is one of the first steps towards incorporation of a Company under Companies Act, 2013. Various new provisions have been introduced w.r.t. name of the Company. Number of requirements is to be taken care of before selection of name for a company proposed to be incorporated. Through this article we shall discuss the provisions and restrictions put by Companies Act, 2013 w.r.t. the name of the Company.

### **Basic Statutory Provisions under Companies Act, 2013**

As per section 4(1), the memorandum of a company shall state the name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company. However section 8 Companies does not require to add the word "Limited" or "Private Limited" to their name.

### **Name should not be prohibited, undesirable, identical**

The promoters may select any suitable name provided it is not prohibited, undesirable, and identical with or resemble too nearly to the name of an existing company as per the rules and circulars under the Companies Act, 2013. As per provisions of section 4(2) of the Act, no company shall be registered by a name, which is considered undesirable by the Central Government.

As per section 4(2), the name stated in the memorandum shall not—

- a. be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or
- b. be such that its use by the company—
  - i. will constitute an offence under any law for the time being in force; or
  - ii. is undesirable in the opinion of the Central Government.

### **Name should not be connected with Government**

As per section 4(3) without prejudice to the provisions of section 4(2), a company shall not be registered with a name which contains—

- a. any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force; or
- b. such word or expression, as may be prescribed.

In case previous approval of the Central Government has been obtained for the use of any such word or expression, then such name may be used.

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### **Name availability for proposed company**

As per section 4(4) read with **Rule-9** of Companies (Incorporation) Rules, 2014, application for the reservation/availability of name shall be in Form no. **INC.1** along with prescribed fee of Rs. 1,000/-. Selection of Company name should be in accordance with name guidelines prescribed in **Rule-8** of Companies (Incorporation) Rules, 2014.

**Note:** MCA has prescribed certain rules for name availability so it is advisable to check guidelines for the same before applying for name. Refer **Rule-8** of Companies (Incorporation) Rules, 2014. After approval of name ROC will issue a Name availability letter w.r.t. approval for availability of name for a proposed company.

### **Validity of Name approved by ROC:**

As per section 4(5) of the Companies Act, 2013, maximum time for which name will be available has been prescribed in the law itself under section 4(5). The name will be valid for a period of 60 Days from the date on which the application for Reservation was made.

**Note:** The applicant cannot start business or enter into any agreement, contract, etc. in the name of the proposed company until and unless a certificate of registration is issued by the registrar of companies as per the provisions of the Companies Act, 2013 and the rules made there under.

### **Few Guidelines regarding selection of Name**

The following points should be kept in mind while deciding name of a company read with **Rule-8** of Companies (Incorporation) Rules, 2014:

#### **1. Proposed Name should not be Identical with name of an existing Company**

As per old ROC Guidelines the name of an existing company, which is already registered, with the proposed name will not be available for approval. However in determining whether a proposed name is identical with another, the differences on account of the following shall not be considered and name will be regarded as identical:

- a. the words like Private, Pvt, Pvt., (P), Limited, Ltd, Ltd., LLP, Limited Liability Partnership;
- b. words appearing at the end of the names – company, and company, co., co, corporation, corp, corpn, corp.;
- c. plural version of any of the words appearing in the name;
- d. type and case of letters, spacing between letters and punctuation marks;
- e. joining words together or separating the words does not make a name distinguishable from a name that uses the similar, separated or joined words;
- f. use of a different tense or number of the same word does not distinguish one name from another;
- g. using different phonetic spellings or spelling variations shall not be considered as distinguishing one name from another.

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**Illustration** (For example, J.K. Industries limited is existing then J and K Industries or Jaa Kaa Industries or J n K Industries or J & K Industries shall not be allowed and similarly if a name contains numeric character like 3, resemblance shall be checked with 'Three' also;)

- h. misspelled words, whether intentionally misspelled or not, do not conflict with the similar, properly spelled words;
- i. the addition of an internet related designation, such as .com, .net, .edu, .gov, .org, .in does not make a name distinguishable from another, even where (.) is written as 'dot';
- j. the addition of words like New, Modern, Nav, Shri, Sri, Shree, Sree, Om, Jai, Sai, The, etc. does not make a name distinguishable from an existing name and similarly, if it is different from the name of the existing company only to the extent of adding the name of the place, the same shall not be allowed;

Such names may be allowed only if no objection from the existing company by way of Board resolution is submitted;

- k. different combination of the same words does not make a name distinguishable from an existing name, e.g., if there is a company in existence by the name of "Builders and Contractors Limited", the name "Contractors and Builders Limited" shall not be allowed unless it is change of name of existing company;
- l. if the proposed name is the Hindi or English translation or transliteration of the name of an existing company or limited liability partnership in English or Hindi, as the case may be.

2. **Instances where name shall be considered as undesirable:** The Proposed name shall be considered undesirable in any of the following conditions:

- a. In case proposed name attracts the provisions of section 3 of the Emblems and Names (Prevention and Improper Use) Act, 1950 (12 of 1950);
- b. In case proposed name includes the name of a registered trade mark or a trade mark which is subject of an application for registration, unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters;
- c. In case proposed name includes any word or words which are offensive to any section of the people;
- d. In case proposed name is identical with or too nearly resembles the name of a limited liability partnership;
- e. In case proposed name is not in consonance with the principal objects of the company as set out in the memorandum of association;

**Note:** Every name need not be necessarily indicative of the objects of the company, but when there is some indication of objects in the name, then it shall be in conformity with the objects mentioned in the memorandum;

- f. the company's main business is financing, leasing, chit fund, investments, securities or combination thereof, such name shall not be allowed unless the name is indicative of such related financial activities, viz., Chit Fund or Investment or Loan, etc.;

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- g. In case proposed name resembles closely the popular or abbreviated description of an existing company or limited liability partnership;
- h. In case proposed name is identical with or too nearly resembles the name of a company or limited liability partnership incorporated outside India and reserved by such company or limited liability partnership with the Registrar:

**Note:** If a foreign company is incorporating its subsidiary company in India, then the original name of the holding company as it may be allowed with the addition of word India or name of any Indian state or city, if otherwise available;

- i. any part of the proposed name includes the words indicative of a separate type of business constitution or legal person or any connotation thereof e.g. co-operative, sehkari, trust, LLP, partnership, society, proprietor, HUF, firm, Inc., PLC, GmbH, SA, PTE, Sdn, AG etc.;

**Explanation.-** For the purposes of this sub-clause, it is hereby clarified that the name including phrase '**Electoral Trust**' may be allowed for Registration of companies to be formed under section 8 of the Act, in accordance with the Electoral Trusts Scheme, 2013 notified by the Central Board of Direct Taxes (CBDT):

Provided that name application is accompanied with an affidavit to the effect that the name to be obtained shall be only for the purpose of registration of companies under Electoral Trust Scheme 13 as notified by the Central Board of Direct Taxes;

- j. In case proposed name contains the words 'British India';
- k. In case proposed name implies association or connection with embassy or consulate or a foreign government;
- l. In case proposed name includes or implies association or connection with or patronage of a national hero or any person held in high esteem or important personages who occupied or are occupying important positions in Government;
- m. In case proposed name is vague or an abbreviated name such as 'ABC limited' or '23K limited' or 'DJMO' Ltd: abbreviated name based on the name of the promoters will not be allowed. For example:- BMCD Limited representing first alphabet of the name of the promoter like Bharat, Mahesh, Chandan and David:

**Note:** Existing company may use its abbreviated name as part of the name for formation of a new company as subsidiary or joint venture or associate company but such joint venture or associated company shall not have an abbreviated name only e.g. Delhi Paper Mills Limited can get a joint venture or associated company as DPM Papers Limited and not as DPM Limited:

Provided further that the companies well known in their respective field by abbreviated names are allowed to change their names to abbreviation of their existing name after following the requirements of the Act;

- n. the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding and a period of two years have not elapsed from the date of such dissolution:

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**Note:** If the proposed name is identical with the name of a company which is struck off in pursuance of action under section 248 of the Act, then the same shall **not be allowed** before the expiry of **twenty years** from the publication in the Official Gazette being so struck off;

- o. it is identical with or too nearly resembles the name of a limited liability partnership in liquidation or the name of a limited liability partnership which is struck off up to a period of **five years**;
- p. the proposed name include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual fund' etc., unless a declaration is submitted by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with by the applicant;
- q. the proposed name includes the word "State", the same shall be allowed only in case the company is a government company;
- r. the proposed name is containing only the name of a continent, country, state, city such as Asia limited, Germany Limited, Haryana Limited, Mysore Limited;
- s. the name is only a general one, like Cotton Textile Mills Ltd. or Silk Manufacturing Ltd., and not Lakshmi Silk Manufacturing Co. Ltd;
- t. it is intended or likely to produce a misleading impression regarding the scope or scale of its activities which would be beyond the resources at its disposal:
- u. the proposed name includes name of any foreign country or any city in a foreign country, the same shall be allowed if the applicant produces any proof of significance of business relations with such foreign country like Memorandum Of Understanding with a company of such country.

**Note:** The name combining the name of a foreign country with the use of India like India Japan or Japan India shall be allowed if, there is a government to government participation or patronage and no company shall be incorporated using the name of an enemy country.

**Explanation-** For the purposes of this clause, enemy country means so declared by the Central Government from time to time.

### **3. Proposed Company Name contain name of an Individual**

In case the key word used in the name proposed is the name of a person other than the name(s) of the promoters or their close blood relatives, No objection from such other person(s) shall be attached with the application for name. In case the name includes the name of relatives, the proof of relation shall be attached and it shall be mandatory to furnish the significance and proof thereof for use of coined words made out of the name of the promoters or their relatives.

### **4. Declaration by the Applicant**

The applicant shall declare in affirmative or negative ( to affirm or deny ) whether they are using or have been using in the last five years, the name applied for incorporation of company or LLP in any other business constitution like Sole proprietor or Partnership or any other incorporated or unincorporated entity and if, yes details thereof and No Objection Certificate from other partners and associates for use of such name by the proposed Company or LLP, as the case may be, and also a declaration as to whether such other business shall be taken over by the proposed company or LLP or not .

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## **5. Specific Prohibition on using selected words in the proposed name**

The following words and combinations thereof shall not be used in the name of a company in English or any of the languages depicting the same meaning unless the previous approval of the Central Government has been obtained for the use of any such word or expression-

(a) Board; (b) Commission; (c) Authority; (d) Undertaking; (e) National; (f) Union; (g) Central; (h) Federal; (i) Republic; (j) President; (k) Rashtrapati; (l) Small Scale Industries; (m) Khadi and Village Industries Corporation; (n) Financial, Corporation and the like; (o) Municipal; (p) Panchayat; (q) Development Authority; (r) Prime Minister or Chief Minister; (s) Minister; (t) Nation; (u) Forest corporation; (v) Development Scheme; (w) Statute or Statutory; (x) Court or Judiciary; (y) Governor; (z) the use of word Scheme with the name of Government(s), State, India, Bharat or any government authority or in any manner resembling with the schemes launched by Central, state or local Governments and authorities; and (za) Bureau

## **6. Guideline for Non Profit making Company**

For the Companies under section 8 (Non Profit making Company) of the Act, the name shall include the words foundation, Forum, Association, Federation, Chambers, Confederation, council, Electoral trust and the like etc.

## **7. Restriction on use of Name released on change of name by any company**

The names released on change of name by any company shall remain in data base and shall not be allowed to be taken by any other company including the group company of the company who has changed the name for a period of three years from the date of change subject to specific direction from the competent authority in the course of compromise, arrangement and amalgamation.

### **Disclaimer:**

This write up is intended to start academic discussion on few significant interpretations under Companies Act, 2013. It is not intended to be a professional advice and should not be relied upon for real time professional facts. Readers are advised to refer relevant provision of law before applying or accepting any of the point mentioned above. Author accepts no responsibility whatsoever and will not be liable for any losses, claims or damages which may arise because of the contents of this write up.

I am hopeful that this write up would be of some help w.r.t. selection of right name for the company keeping in view the naming guidelines under Companies Act, 2013.

Thanks

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