

Name Availability – A Step Towards Incorporation

CA. Ashish Makhija, FCA, AICWA, LLB
Corporate Lawyer
E-mail : amclawfirm@rediffmail.com

What's in a name? Everything, if one goes by the provisions of the Companies Act, 1956. No company can come into existence without the name. A company is a juristic person and is equated to a natural person having separate legal entity of its own. This position was established in extremely well known and popular case of *Solomon Vs. Solomon & Co. Ltd. (1897) AC 22*. The similarity between a natural person and a company ends here. Invariably, **a company must have a name before it is incorporated**; a natural person can come into this world even without a name. It is not necessary to choose a name for a child before birth but the same is not true for a company to be incorporated under the Companies Act, 1956 (hereinafter referred to as 'the Act'). Further, no two companies can have same or identical names whereas any number of natural persons can have same name.

For choosing a name of a company, a simple procedure with comprehensive guidelines has been framed by the Central Government. The procedure starts with filing of Form 1-A with the Registrar of Companies of the state where it is proposed to locate the registered office of the company. The application is made with nominal application fee of Rs. 500/-. The following points must be considered while applying for availability of name of a company: -

1. Guidelines to be followed

The name chosen should be in consonance with the guidelines framed by the Central Government. The text of these guidelines have been reproduced elsewhere in this background material. Mainly, the guidelines concentrate on negative list of names or category of names, which cannot

be made available. Amongst others, generally the names are disallowed if:-

- a) they are not in consonance with main objects of the company;
- b) there is phonetic resemblance to an existing company;
- c) the name is general in nature, namely, All Services Private Limited, Chair Manufacturing India Limited etc.;
- d) the name violates the provisions of Emblems & Names (Prevention of Improper Use) Act, 1950;
- e) the name connotes participation or patronage of Government and the same is not justified;
- f) the name is similar or identical to an existing company;
- g) the name includes a name of a registered trade mark;
- h) the name is misleading;

The above negative list is only illustrative and the guidelines contain exhaustive list of names or categories of names, which are not permitted.

The question, which arises, is whether Registrar of Companies (ROC's) enjoy discretion in allowing the name in so far as the guidelines are concerned. Undoubtedly, the guidelines are mandatory and ROC's do not enjoy discretion in respect of application of guidelines. However, to decide whether any name fulfills the guidelines or not is a subjective matter that involves exercise of discretion by ROC's. The discretion, however, does not mean that ROC's have unfettered powers and as such the discretionary power bestowed on ROC's must be exercised reasonably, diligently and without any bias.

Though the guidelines also provide for prohibition of names having phonetic resemblance, it is doubtful whether ROC offices follow this

guideline. Similar is the concern about names involving registered trade marks.

2. **Requirement of Minimum Authorized Capital in some cases**

The Central Government has also linked allowance of certain names with the minimum requirement of authorized capital. Accordingly, the words such as 'Corporation', 'International', 'Globe', 'Universal', 'Industries', 'Business', 'Enterprises' etc. are allowed subject to a certain minimum proposed authorized capital. For instance, the word, 'Corporation' is allowed only if the authorized capital is Rs. 5 Crores or more. No discretion is allowed to the Registrar of Companies in this regard. The existence of such a guideline, though understandable, defeats the purpose, as these have not been amended since 1989.

3. **Search to know availability of name**

Prior to making an application for availability of name, it is advisable to conduct a search either in ROC offices or on the website of the Ministry of Company Affairs, namely <http://dca.nic.in> to know whether any company with similar name exists or not. This will shorten the process of grant of name availability. Majority of the applications are refused/rejected on the grounds of similarity and the promoters have to furnish fresh names time and again.

4. **State 4 names in order of preference with their significance**

At least 4 names in order of preference must be given. The application form also contains columns for stating 4 names in order of preference. This ensures that alternative names are considered at one go resulting in speedy disposal of the applications. It is also imperative to state

significance of each name, though there is no specified column in the application form for availability of name. The explanation of why and how the proposed names have been chosen leads to quicker processing of applications.

5. **Detailed Main Objects to be stated**

The main objects should be stated in detail and not briefly. This works two ways – firstly, it conclusively establishes that the name chosen is in consonance with the main objects and secondly, it strengthens the case of the promoters for allowance of main objects in the event of objection being raised by the ROC at the time of incorporation.

6. **Period of Name Availability & Revalidation**

The names are allowed for a period of 6 months. After the expiry of this period, fresh application in Form 1-A with filing fee can be made for name availability for a further period of 6 months. Technically, this means revalidation of name, though nowhere the Companies Act, 1956 uses this term. In such a case, the details of name allowed earlier must be stated in the application. It is advisable to make 'revalidation' application within a reasonable time of expiry of name.

7. **'General' names are prohibited**

The major problem faced by the professionals in name availability is with regard to 'generality' of names. This is where the ROC's exercise discretion in a manner giving a hint of arbitrariness. There is no uniformity within ROC offices with regard to this issue. A name disallowed in one ROC office is sometimes allowed by another ROC office. This can be

avoided by framing few guiding points on this issue and by giving few examples of 'generality 'creeping in and on removal of 'generality'.

8. Name allowed valid for incorporation of company within jurisdiction of Registrar allowing the name

The name allowed by a Registrar is valid for incorporation of company within the jurisdiction of the said Registrar. After availability of the name, the promoters cannot incorporate the company outside the jurisdiction of the Registrar who has allowed the name. In times of global economies, this condition seems restrictive and the name allowed by any Registrar should be valid for incorporating the company anywhere within the country.

9. Name indicating 'Foreign' Association

Normally names involving association of foreign companies are not allowed unless accompanied by 'No objection' from foreign associate or collaborator. The 'No-objection' is insisted by way of a Board Resolution of the foreign partner. Thus, care must be taken to obtain 'No-objection' prior to making application for name availability.

10. Grievance in respect of name availability

In case of any difficulty, the best person to approach the same is the Registrar of Companies. In the event of any further grievance, the applicants can approach Regional Directors or Ministry of Company Affairs.

11. Power of Attorney

It is vital for a Chartered Accountant to obtain power of attorney from the applicant for representing on his behalf.

Change in Name of a Company – Procedural Aspects

Ashish Makhija, FCA

Many a times, it becomes essential to change name of the company. The reasons could be many – change in principal business of the company, reflection of new identity, takeover of company by another group, desire to use abbreviated name etc. The change of name is, however, not allowed if it is not in consonance with the principal objects of the company or is undesirable. The change of name is permitted with the approval of shareholders by way of a special resolution and the approval of the Registrar of Companies. The change of name can be on company's own motion or on direction of a Regional Director. The change of name involves the following procedure: -

1. Board Resolution indicating desire to change

The desire to change the name is the first step. Such a desire is to be manifested by way of a Board Resolution. It is, therefore, necessary to pass a board resolution indicating few preferences, subject to the approval of the shareholders and Registrar of Companies. In the same resolution, a director or secretary should be authorized to make necessary application to the Registrar of Companies.

2. Application in Form 1-A

For ascertaining availability of name out of the chosen preferences, an application in Form 1-A is to be made. The guidelines issued by the Central Government for availability of the name are to be followed. The name chosen should not be identical with the name of any existing company. The application form should be accompanied with a fee of Rs. 500/- , a copy of the Board Resolution, copy of last annual accounts and a copy of Memorandum & Articles of Association.

3. **Special Resolution for Change of Name**

Once the Registrar of Companies makes available the new name, the company has to obtain approval of the members by passing a special resolution in a general meeting. The approval of members by a special resolution is, however, subject to approval of the Central Government, which is necessary in terms of provisions of Section 21 of the Act. The special resolution passed must be filed with the Registrar of Companies alongwith Form No. 23.

4. **Application to the Registrar of Companies**

The application for change of name is to be made to the Registrar of Companies once the special resolution has been passed by the members approving the change of name. Surprisingly, the rules do not prescribe any application format. The application is to be made on a plain paper containing the following particulars: -

- (i) name and address of applicant;
- (ii) proposed new name;
- (iii) reasons for change of name;
- (iv) date of passing of special resolution;

- (v) total number of members of the company, the number of members who voted against the resolution, the number of members who voted in favour of the resolution and the number of members who abstained from voting.

Copies of special resolution, annual accounts for last two years, copy of Memorandum & Articles of Association, copy of Form 23 for filing of special resolution together with proof of filing and valid name availability letter are required to be attached with application for change of name.

5. **Fees to be paid with application**

The fee to be paid with the application for change of name is not as per Schedule X. Instead, the fee is to be paid as stated in Companies (Fees on Applications) Rules, 1999. The scale of fee payable is as under: -

- (i) By a company having an authorized capital of –
- | | |
|--|---------|
| a. Less than Rs. 25 lacs | 500.00 |
| b. Rs 25 lacs or more but less than 5 crores | 1000.00 |
| c. Rs 5 crores or more | 2000.00 |
- (ii) By a company limited by guarantee not having
A share capital
- | | |
|--|--------|
| | 500.00 |
|--|--------|
- (iii) By a company having a valid licence issued
U/s 25 of the Act
- | | |
|--|--------|
| | 500.00 |
|--|--------|

6. **Issue of Fresh Certificate of Incorporation**

After receipt of approval of the Registrar of Companies, the original certificate of incorporation is required to be surrendered with the ROC for issue of a fresh certificate of incorporation consequent upon the change of name of the company. The change of name is effective only after the issue of such a certificate by the ROC.

7. Changes in Memorandum & Articles of Association

The change in name of the company leads to amendment in Memorandum & Articles of Association, which must be carried out. The change is also to be carried out in all books, documents, sign boards, common seal, letter heads etc.

8. Abbreviated Names

The new companies are not allowed to have abbreviated names. Only existing companies, which are well known by such abbreviated names are permitted to have abbreviated names. For example, Reliance Industries Limited popularly known as RIL may be allowed to change its name to RIL Limited.

9. Rectification of Name of Company

The Central Government can also pass orders directing a company to change its name if it is identical with or too nearly resembles the name of an existing company. The power of the Central Government has been delegated to Regional Directors. The Regional Directors can exercise power to direct change of name within specified period as stated below: -

(a) **In case of first registration or registration by a new name**

Within 12 months from such registration provided the name is identical with or too nearly resembles with the name of an existing company.

(b) **In case of objection by the proprietor of a registered trade mark**

Within 5 years from coming to notice of such registration in case the name is identical with or too nearly resembles with the registered trade mark.

10. **Effect of Change of Name**

The change in name of a company does not result in change in rights or obligations of the company. The company continues to enjoy same rights, privileges and have same liabilities as before. The change in name is only a change in identity; the substance remains same.