# Business and Company Name Reservation in South Africa

Companies and Intellectual Property Commission

a member of the dtic group

# Name Reservations Background

- It must be noted and duly taken into cognisance that the Commission no longer functions as a mere registration office, but rather as a regulator vested with a legislative mandate and purpose to oversee and regulate the conduct of companies.
- In addition to the aforementioned, name reservation is no longer a mandatory or compulsory initial step in the incorporation of a company.
- If a proposed name is rejected, the registration number may be adopted and utilised as the company's name.
- However, there is no Refund in case of name application been rejected due to the filling fees.
- Furthermore, name applications are no longer assessed in accordance with the Registrar's Directives on names or on the basis of undesirability; instead, such applications are evaluated in terms of various applicable legislative provisions, including but not limited to sections 11, 12, and related provisions of the Companies Act 71 of 2008 notwithstanding others statutes cutting across name reservation.

# Why Names Matter

- Because a name constitutes one of the most fundamental and significant elements of a business's identity, and indeed an asset, for the following reasons:
    - It shapes your brand — Customers form an initial impression on the basis of the name.

      It builds trust — A clear and professional name conveys credibility.
    - It must comply with the law — Names are required to comply with the Companies Act and other applicable legislation.
    - It affects your digital presence — An appropriate name enhances online searchability and the availability of domain names.
    - It avoids confusion — A distinctive name assists in differentiating the business from others.
    - Certainty – formalization assured certainty to the members of the public and investors

# What Influences Name Decisions

- CIPC considers names using several aspects:
  - The Constitution;
  - The Companies Act and its Regulations;
  - Various pieces of legislation;
  - Methodology adopted by both Companies Tribunal and Court;
  - What is already registered on the CIPC system;
  - Status of companies, close corporations and co-operatives on the registry;
  - Precedence; etc

# Legislations cutting across name reservations considerations

- Other pieces of legislations are  also considered:
  - The Bank Act;
  - Financial Services Board Act;
  - Merchandise Marks Act;
  - Medical Scheme Act;
  - Pension Act;
  - Pharmaceutical Act;
  - Higher Education Amendment Act
  - Trade Mark Act; etc



# Important Notes About Company Names

- Please note that the inclusion of a suffix (for example, “Pty Ltd,” “Co,” “Company,” “SOC,” “RF,” “Ltd,” “INC” “Co Op” or similar designations) is not permissible at the name reservation stage.
- Kindly note that, in terms of the Companies Act, the registration of shortened forms of company names and translated names is no longer permitted.
- Furthermore, by virtue of the fact that, under the current Companies Act, fees are characterised as filing fees rather than administrative fees, no refund is payable irrespective of whether the name is approved or rejected.

# Composition of the Proposed Company Names

- List of maximum of four unique names in your order of preference;
- However, one can still submit only one name if certain and or confident that it will surpass our name test;
- In case of name application being rejected, there is no refund;
- Proposed names/s must not be confusingly similar to the already registered names or trade mark;
- Profit making companies can be registered without a name wherein registration number serves as the name;
- Non profit company cannot be registered without a name:
- Trading names (Business/“T/A”) or Translated and or Shortened form of a name are not permitted and or registered by CIPC.

# Proposed Company Names Considerations

- A proposed name must not be identical or confusingly similar to the name of an entity that is already registered or otherwise reserved.
- Once approved, a reserved name shall remain valid for a period of six months from the date of approval.
- A reserved name may be transferred from the customer code under which it was initially approved to another customer code.
- The transfer of a reserved name shall not operate to extend, renew, or otherwise alter the original six-month validity period.
- As the manner in which customers conduct searches for proposed names on the website is beyond the control of CIPC, a name reservation shall only be regarded as formally confirmed upon receipt of the CoR 9.4 confirmation notice.
- Where a proposed name suggests, implies, or otherwise connotes governmental patronage, endorsement, affiliation, or association, the requisite consent must be obtained from the appropriate authority prior to the approval or reservation of such name.

# Grounds For Name Refusal

- A name may be refused if it is:
  - Confusingly similar to another name;
  - Suggesting a professional designation - Words implying someone is an engineer, doctor, lawyer, etc., requires permission for the profession;
  - Suggesting a regulated activity - Words like “Bank”, “Insurance”, “Exchange”, “Pension Fund”, etc - require permission from the relevant regulator;
  - Names incorporating terms such as National, Authority, South African, Commission, Office of, Tribunal;
  - Court, Ombud, Adjudicator, Mediation, Council, Board, Regulator, or Regulatory are prohibited as they imply governmental or regulatory association; etc
  - Names incorporating University, College, Higher Education, or Institute contravene section 51(3) of the Higher Education Amendment Act, 1997, and section 54(7) of the Higher Education Amendment Act, 2016.

# Name With Associations

- In case of name application (CoR9.1) with association, such application must be filed through our CIPC e-services (More Services) accompanied and or upload the following:
    - The application accompanies by a letter of consent confirming such association;
    - Such letter must be signed by the most senior authorised representative from the entity granting such a consent;
    - Certified ID copy or copies of director/s signing such a consent for our ease of reference;
    - Upload of the aforementioned as a single PDF for our efficient processing; and
    - Filling fees R75.

# Remedies for Name Disputes

- If any person aggrieved by the rejection of a name application, such person may file a new application comprising of new and distinctive names in accordance with the prescribed order of preference;
- Register the company without a name;
- Any person who believes a registered name contravenes s11(2) (confusingly similar, false association, misleading, offensive) in terms of section 160 of the Companies Act.
    - CIPC does not have the authority to deal with name objections
- Where a person contends that a registered company name is confusingly similar and or misleading, such person may lodge a name objection with either the Companies Tribunal or the High Court;

# Business Names / Trading As Names

- We (CIPC) required to establish Trading as names (“T/A”) register within the meaning of the Consumer Protection Act however the same is yet to be established.
- However, the same has since been deferred and or yet to be established.
- In view hereof, T/A are yet to be registered with CIPC but with SARS or BANKS
- Implementation of this requirement is indefinitely deferred, so CIPC does not  or no longer register “Trading As” names neither nor Translated and or Shortened Form of a Name.
- Businesses may trade under a different name and or trading as name however in conjunction with the registered name,

# Filing an Objection to a name reservation

- Any person who believes a registered name contravenes s11(2) (confusingly similar, false association, misleading, offensive) in terms of section 160 of the Companies Act.
- CIPC does not have the authority to deal with name objections
- Complainant must file with the Companies Tribunal
- No fixed time limit for a complainant to lodge an objection
- Companies Tribunal will hear the matter and decide.
  - If ordered to change its name (although stated in the order or not the respondent has 60 business days to do so whereafter CIPC can change the name.
  - We update the name to the **registration number with the suffix (South Africa).**

# What is a Defensive Name?

- A defensive name is registered to safeguard a person's, entity's, or organisation's proprietary or reputational interest and to prevent its use or registration by third parties.
- To register a defensive name, an applicant must first reserve the proposed name by submitting Form CoR 9.1.
- Once the name has been approved, the applicant must filed Form CoR 10.1 together with the CoR 9.4 Name Reservation Confirmation Notice, documentary proof of the applicant's material proof of interest in the name on the applicant's letterhead outlining the activities associated with the defensive name, and certified copies of identification documents, uploaded as a single PDF document through our dedicated e-mail box namereservationsandregistrations@cipc.co.za
- An application to extend a defensive name registration must be submitted on Form CoR 10.2.


Questions
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