

What are some of the matters that often cause delay in the registration of an external company?

Matters that commonly delay registration of a company include:

- failure to date or sign documents
- failure to have declarations witnessed by a Notary Public or appropriate official
- submission of uncertified corporate instruments
- failure to state the full residential addresses of the directors (Form 21)
- failure to state a street address location as the principal local office address of the company
- absence of a Request for Name Search and Name Reservation (Form 26)
- no stamp duty affixed to Power of Attorney (Form 23)

What are the consequences of failure to register?

An external company that commences business in the State without registering under the Companies Act is liable to a penalty of \$350.00 per day for every day on which it carries on business in the absence of registration. This penalty operates as a first charge on the assets of the company and may be sued for and recovered by the Registrar of Companies.

An unregistered external company is also affected by a statutory disability and cannot maintain any action, suit or other proceeding in any Court in St. Vincent and the Grenadines (s.357(1)). This incapacity applies to any contract made in whole or in part within St. Vincent and the Grenadines in the course of or in connection with the carrying on of any undertaking by the company. The incapacity of the company is removed upon registration under the Companies Act. Once the incapacity is removed, the company may maintain an action suit or other proceedings in respect of any contract, whether or not made before the date of registration.

Are there any exceptions to the requirement of registration?

An external company may be exempted from the registration requirements by Order of the Minister of Legal Affairs published in the Government Gazette (s.339).

What is required of an external company after registration?

External companies are required to file duly certified copies of the instruments by which any of the following changes has been made within 30 days after the change is made or directed (s.355):

- change of the company's name;
- alteration of the corporate instruments of the company to reflect a fundamental change within the meaning of Division K, Part 1 of the Companies Act
- change in the objects of the company or a restriction on its business; or
- change in the company's directorship.

In this regard, it is satisfactory to file a notarised copy of the resolution under which the change is effected or authorised, together with a copy of any amended instrument.

- \$50.00 applies for each filing
- The registration of the company maybe invalidated by operation of law pursuant to s.355 due to failure to file change(s) within the prescribed 60 day period. The restoration of the company's registration may be sought by submitting a written request to the Hon. Minister of Legal Affairs through the Registrar. **A fee of \$300.00 is payable.**

An external company is also required to file an *Annual Return* in Form 24, in duplicate original, on or before 1st April of each year following registration (s.356). The *Annual Return* captures current information on corporate structure, share capital, the nature of business, the identity of the attorney appointed under s.346 and the company's directorship. The fee on filing the *Annual Return* is \$100.00. A late fee of \$50.00 is payable per month or part thereof after the due date for submission. (after April 1st).

What are the consequences of not meeting the post-registration requirements?

The registration of an external company ceases to be valid 60 days after any of the changes identified in the preceding section is made or directed to be made, unless within that period certified copies of the relevant instrument is filed with the Registrar. Where the registration of an external company is invalidated by operation of law, the company may apply to the Minister of Legal Affairs, through the Registrar, for the exercise of the discretion given to him under s.351 of the Act to cancel the revocation of a registration.

If an external company fails to file Annual Returns, the Registrar may remove the external company from the *Register of Companies*

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External Companies: Registration and Compliance



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This brochure provides summary information on the registration and maintenance of an external company under the Companies Act, No. CAP. 143. Revised Edition, 2009 of the Laws of St. Vincent and the Grenadines. It is not intended to serve as a definitive guide and should be read together with the Act.

What is an external company?

An external company is any firm or other body of persons, whether incorporated or not, formed under the laws of a country other than St. Vincent and the Grenadines.

Why must an external company be registered?

The registration of an external company creates a legal presence within St. Vincent and the Grenadines, validates all legitimate operations of the company within the State and subjects the company to certain regulatory requirements of the *Companies Act*.

What constitutes the carrying on of business by an external company?

An external company is considered to be carrying on business in St. Vincent and the Grenadines in either of the following circumstances:

- the business of the company is regularly transacted from an office in the state established for that purpose.
- the company establishes or uses a share transfer or share registration office in the state;
- the company owns, possesses or uses assets situated in the State for the purpose of carrying on or pursuing its business and obtains or seeks to obtain from its assets, property gained directly or indirectly, profit or gain whether realised in the State or not;
- the company holds title to or has an interest in land in St. Vincent and the Grenadines;

When is an external company required to register?

An external company is required to register locally before it commences business in St. Vincent and the Grenadines.

What documents must be filed when seeking registration as an external company?

In order to become registered as an external company in St. Vincent and the Grenadines an *Application for Registration* in Form 21 must be filed with the Registrar. The application must be accompanied by the following:

- *Request for Name Search and Reservation* in Form 26;
- *Statutory Declaration of a Director* of the company verifying the particulars set out in the application form;
- *Statutory Declaration of an Attorney-at-law* confirming compliance with section 344;
- *Power of Attorney and Consent to act as Attorney* in Form 23 empowering some person resident in St. Vincent and the Grenadines to act as attorney of the company for the purpose of receiving service of process in all suits and proceedings in St. Vincent and the Grenadines and all lawful notices;
- a notarised copy of each of the corporate instruments of the company;
- the prescribed fees.

With the exception of the corporate instruments, all of the above documents are to be filed in *duplicate original*. In the case of the corporate instruments, photocopies of the notarised instruments should accompany the certified copies. The *Power of Attorney* attracts stamp duty of \$30.00, which should be affixed in revenue stamps to one original of the instrument and each of the statutory declarations, where made locally, attracts stamp duty of \$5.00.

What information is contained in the application for registration of an external company?

Form 21 is required to contain the following particulars:

- the name of the company;
- the jurisdiction within which the company was incorporated;
- the date of its incorporation;
- the manner in which it was incorporated;
- particulars of its corporate instruments;
- the period, if any, fixed by its corporate instruments for the duration of the company;
- the extent, if any, to which the liability of the shareholders or members of the company is limited;
- the business that the company will carry on in St. Vincent and the Grenadines;

- the date on which the company intends to commence any of its undertakings in St. Vincent and the Grenadines;
- the authorized, subscribed and paid-up or stated capital of the company, and the shares that the company is authorized to issue and their nominal or par value, if any;
- the full address of the registered or head office of the company in its jurisdiction of formation;
- the full address of the principal office of the company in St. Vincent and the Grenadines; and
- the full names, residential addresses and private occupations of the directors of the company.

How are the filings submitted by external companies processed?

Following receipt of the application for registration and supporting documents and the prescribed filing fee of \$3,000.00, a 'formal examination' of the documents will be conducted to ensure that all required documents have been submitted and that the documents on file meet the formal requirements of the *Companies Regulations, CAP. 143, Revised Edition, 2009 of the Laws of St. Vincent and the Grenadines*. This is followed by a 'substantive examination' to ensure that the application complies with the legal requirements of the *Companies Act*.

Where the application is in order, a number is assigned to the company and a Certificate of Registration is issued in duplicate original. The forms and documents comprising the application are then registered. Processing is generally completed within 2 to 3 working days after filing if there are no deficiencies in the application. Following registration, one set of documents is returned to the applicant. The other set is retained and forms part of the public records maintained by the office.

In order to ensure that an external company is not confused with any entity registered locally prior to the external company's application for registration, external companies are subject to the provisions of the *Companies Act* relating to the approval of corporate names (s.359). In cases of conflict, it may be necessary for an external company to change its name before it can be registered locally (s.341).