

Q. If I register a business name, does this give me the exclusive right to use that name ?

A. No. The business name registration process is designed to ensure that no two registered entities have an identical name, it is not a guarantee of exclusivity. The right to exclusive use of a trade name or logo in a particular jurisdiction can only be obtained through the registration of a trade mark. Accordingly, the registration of a business name, must not be construed as authorising the use of that name, if apart from registration, there is some basis on which its use could be prohibited (s.13). It is therefore wise to conduct a search of registered company names, trade marks, business names and also to check internet domain names to see if anyone else is already using the name you want. Prior users of a similar name or mark in the same line of business could sue you for passing off and owners of a similar trade mark have statutory means of preventing and securing compensation for infringement.

Q. Once registered, can I use variants of my business name?

A. No. In conducting business you may not use any variation of your registered business name. The name that is registered is the only name that can be legitimately used in trading.

Q. Can I change my business name?

A. Yes! If you want to change your registered business name, you may by completing and filing Notice of Change in Particulars. The proposed new name is however subject to approval and if approved, a Certificate of Change of Name will be issued.

Q. Do I have to update the information provided at the time of registration?

A. Yes! Whenever a change is made or occurs in any of the particulars registered in respect of any person or firm, Notice of Change in Particulars setting out the nature of the change must be filed with CIPO within fourteen (14) days after the date of the change (s. 10 (1)). A form designed for this purpose is available from CIPO on request. The form must be signed by all the proprietors previously notified to the Registrar and by any new proprietor. A letter addressed to the Registrar of Business Names setting out the nature and date of change and signed by all the owners of the business is also satisfactory.

Notice must be given of changes in registered particulars at a fee of \$50.00 in the following cases:

- variation or change of the business name
- addition of proprietors/partners - the name, address, nationality, nationality of origin and occupation of every new partner will be required.

- reduction of the number of partners by severance of the partnership or the death of a partner
- change in the name, address, nationality or occupation of any registered proprietor/partner.
- relocation of the main place of business
- expansion or narrowing of the nature of business

Q. Why is it important for me to notify CIPO of any changes that have occurred in my business?

A. The information which CIPO stores on business enterprises is kept for the benefit of members of the public who deal with these entities. Person interested in the information recorded at CIPO include banks, which need to verify the ownership of a business before granting a loan for the benefit of the business and customers, who may need ownership information in order to resolve a legitimate claim arising from the conduct of business. It is therefore important to notify the Registrar of any changes that have occurred in the registered business particulars so that accurate records can be maintained. Changes in the proprietorship of a business should be filed as soon as possible after they occur. This avoids the problem of not being able to locate former partners a later date to sign an outstanding notice.

Q. Do I need to notify the CIPO if I stop doing business?

Yes! At a cost of \$50.00. When a firm or individual registered under the Act ceases to carry on Business it is the duty of the sole proprietor, the partners of a firm or the personal representative of any deceased proprietor/partner to file Notice of Cessation of Business with the Registrar within 3 months after business has ceased. (s.12). A form designed for this purpose is available from CIPO on request. A letter addressed to the Registrar of Business Names setting out the fact and date of cessation and signed by all the owners of the business will suffice.

Q. Do I have to renew the registration of my business name?

A. No. You are not required to renew your registration, however if the Registrar has sufficient reason to believe that you are no longer carrying on business, you may be required to confirm that your business name is still in use to prevent it being removed from the *Register of Business Names*.

Visit CIPO today!

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What you need to know
about registering your



Business
Name



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Q. What is a business name?

A. A business name is a name or style under which a business is carried on.

Q. What is the difference between operating under a business name and forming a company ?

A. The registration of a business name, merely allows one or more individuals to carry on business in their private capacity, under a name that is different from their own. Forming a company has the effect of creating a legal personality that is separate and distinct from the persons (shareholders) who own the company.

Incorporation is a more expensive procedure and generally takes more time than the registration of a business name. In deciding whether to incorporate or operate a proprietorship it is useful to consider:

- Whether you want to create a separate legal entity with the potential for **perpetual existence**, beyond the lives of its owners. If so incorporation will achieve this.
- Whether you want to **limit personal liability**. Companies that are operated for profit are owned by the persons that have made an investment in the company, who are known as shareholders. The personal liability of the shareholders is limited to the amount they have invested in the company and in the event that liability arises in the course of the company's business, a successful claimant cannot generally recover beyond what can be realised from company's assets. The personal property of the shareholders/owners is therefore shielded. By contrast, in the case of a business name, any liability incurred in the course of business is the responsibility of the owner(s) of the business and the assets of the proprietors can be used to satisfy debts and judgment arising from business activity. A primary factor to be considered in deciding whether to limit personal liability is the degree of risk involved in the type of business. The more likely and the higher the amount of potential liability, the wiser it will be to incorporate, e.g. if providing construction services. The feasibility of maintaining adequate insurance cover against a particular risk may also be included in this analysis.
- Whether there are **tax advantages**, e.g. if doing business in sectors in which companies are taxed at lower rates than the usual 40%. Where a company engages in manufacturing for the local and export markets its tax rate is 15 to 30% of chargeable income. Where a company operates a hotel, the tax rate is 30% of chargeable income.

· Whether you are interested in **raising capital** through the sale of shares to the public. This can be done where a public company is formed.

Q. Who is required to register a business name?

A. Individuals and companies are required to register a business name if they wish to carry on business under any name which is not their legal name. Simply put, you may do business using your own name (or the initials of your given name(s) together with your surname), and if you choose to do this, you don't need to register. However, should you decide to carry on business under a name other than your own, you are required to register your business name. For example, if Jane C. Doe is conducting business as "Jane C. Doe" she **does not** have to register; however, if she conducts business as "Jane C. Doe and Associates", with "and Associates" as an addition to her legal name, she **does** have to register.

There are some exceptions to this requirement, most significantly, that registration will not be necessary where the addition merely indicates that the business is carried on in succession to a former owner.

Q. When should I register?

A. A person conducting business under any name other than his/her own legal name must register within 14 days after the start of business.

Q. Where do I go to register my business name?

A. Business name application forms may be obtained from and must be filed with the Commerce and Intellectual Property Office (CIPO), which is located on the Ground Floor of the Methodist Building at Granby Street, Kingstown.

Q. How much does it cost to register?

A. The registration fee is a mere \$250.00.

Q. What information must I state in my application for registration?

A. Every firm or person is required to provide the following information when applying to register a business name particulars:

1. the business name;
2. the general nature of business;
3. the address of the principal place of business;
4. in the case of individuals, the first name and surname, residential address, occupation and nationality. Where an individual has more than one nationality the original nationality must also be stated;
5. in the case of a company becoming a partner in a firm, its corporate name and registered office;
6. the date of commencement of business.

The application form must be signed by all persons seeking to be registered under the Act.

Q. How long does it take to register?

A. Once the application meets all the substantive requirements and the prescribed fee has been paid, a *Certificate of Registration* will generally be issued within 2 working days of filing. This certificate or a certified copy of it must be posted in the clear view of patrons at the place of business.

Q. Will I need to comply with any other requirements in order to conduct business?

A. You may, depending on the type of business. For example, if you plan to engage in retail or wholesale trading you will need to obtain a trader's licence from the Ministry of Foreign Affairs, Trade and Commerce. If you are setting up a restaurant, a food handler's licence must be obtained from the Ministry of Health and the Environment. If you are setting up a profession, you will need to obtain a professional license from the Income Tax Department. If you want to operate a pre-school or day care service you will need to consult the Ministry of Education, Youth and Sports. In addition to these examples, there may be other types of business for which there are special requirements.

Q. What are the advantages of registering my business name?

A. Registration is key to **establishing an identity for your business** in the commercial arena. It also **confers legitimacy** and is a prerequisite for the opening of a bank account in the name of the business. Registration also assists in **proving the ownership and age of a business**, and can therefore help you in accessing loans for business development. It also helps you in **gaining the trust of customers**, as persons who patronise your business will be reassured by the fact that there is information available to the public about your enterprise so that they need not worry about being the victim of a disappearing act.

Q. What are the consequences of not registering my business name?

A. Not being registered may result in difficulties and delays in doing business due to a lack of legitimacy. In addition, non-compliance with the Act constitutes an offence. Under section 17 of the Registration of Business Names Act, a person who fails, without reasonable excuse, to furnish a statement of the particulars required under the Act is guilty of an offence and is liable on conviction to a fine of \$250.00 for a first offence and for any subsequent offence to a fine of \$50.00 a day for every day during which the offence continues.