

If you have decided to form a company, it will be necessary for you to choose a suitable corporate name. To assist you in this process, this page sets out the statutory requirements and administrative practice in respect of the approval of corporate names under the Companies Act of 1994.

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### **What's in a name?**

A company's name is the means by which it is identified in the business community. It is therefore important to ensure that corporate names are unique and that they do not confuse or mislead members of the public.

### **Are there any restrictions on corporate names?**

Yes. The Companies Act restricts two categories of names.

The first category consists of prohibited names:

- Names that are reserved for other companies.
- Names that are identical or similar to the name of any other person or entity, where the use of the name would be likely to confuse or mislead, unless the party concerned gives written consent to use of the name and undertakes to cease to carry on business or to change its name to a dissimilar name, within 6 months of the filing of the Articles of Incorporation containing the similar name. (A form of consent is available from CIPO)
- Names that are likely to be confused with the name of an existing company, unless the proposed company is a successor to the business of the existing company, the existing company undertakes in writing to dissolve or change its name within a stipulated period and the proposed corporate name sets out in numerals the year of incorporation in brackets before the corporate designation.
- Names that are identical to the name of a domestic company incorporated prior to the 1st June 1996 commencement of the current Companies Act.

- Names that are obscene or connote an undertaking that is obscene or immoral.
- Names that suggest a connection with the Crown or the Government or any department thereof, unless the written consent of the appropriate Minister has been obtained.
- Names that imply or suggest a connection with a political party or a leader of a political party.
- Names that imply or suggest a connection with a university or professional association recognized by the laws of the State, unless that body consents in writing.

The second category consists of objectionable names:

- Names that lack distinctiveness because they are too general, or are descriptive only of the quality, function or other characteristic of the goods or services in which the company intends to deal or is a geographic name used alone, unless the applicant establishes that the name has acquired and continues to have a secondary meaning.
  - Names that are likely to be confused with the name of a dissolved company.
  - Names that contain the words "credit union" or "co-operative" or "co-op", connoting a co-operative venture.
  - Names that are defectively inaccurate in describing the business, the goods or services in association with which the name is to be used, the conditions under which the goods or services will be produced or supplied, the persons to be employed in the production or supply of those goods or services or the place of origin of those goods and services. Examples of names considered to be defectively inaccurate in the absence of certain preconditions being met or undertakings being made, include names which suggest involvement in licensable activity, names that are indicative of a business requiring special qualification and names that represent that a company will operate on a particular scale or have special standing.
  - Names that are, in the opinion of the Registrar, for any reason, objectionable. External companies wishing to conduct business in St. Vincent and the Grenadines and seeking registration under the Act are also subject to the above restrictions (s.359). In addition, where through inadvertence or otherwise, a registered corporate name contravenes any of these restrictions, the Registrar is empowered to direct that the company amend its articles to change its name.

**Are there any additional statutory requirements relevant to the approval of corporate names?**

Yes. The names of domestic companies are required to end with a prescribed corporate designation. In the case of private a company with share capital, the words Limited , Corporation or Incorporated or the abbreviations Ltd., Corp., or Inc. and in the case of a non-profit company, the words Corporation or Incorporated or the abbreviations Corp. or Inc..

### **Can I secure pre-approval of a corporate name?**

Yes. The names of domestic companies are required to end with a prescribed corporate designation. In the case of private a company with share capital, the words Limited , Corporation or Incorporated or the abbreviations Ltd., Corp., or Inc. and in the case of a non-profit company, the words Corporation or Incorporated or the abbreviations Corp. or Inc..

Pre-approval of a corporate name may be obtained by filing a Request for Name Search and Reservation (Form 26) with the Commerce and Intellectual Property Office (CIPO) in advance of the related application. To avoid unnecessary delay, care should be taken to comply with the statutory instructions for completion of the form. A fee of \$25.00 is payable and the form must be filed in duplicate original. Form 26 makes provision for the choice of 3 alternative names. Choices should be listed in order of preference and all 3 choices be utilized to ensure a greater chance of availability of one of the names. A request may not be amended to propose additional names where the names originally proposed are not approved.

### **How are requests for pre-approval processed?**

On receipt of a request for name reservation, CIPO will conduct a comparative search of registered business and corporate names and will consider the overall suitability of the proposed having regard to the prescribed restrictions. Where a name is approved, it will be reserved for a period of 90 days from approval, during which the application for which the name has been reserved may be made. It is recommended that all applicants use the name reservation procedure, particularly those seeking to incorporate a non-profit company, who will need to have the Attorney General approve Articles of Incorporation prepared in the proposed corporate name. Name reservation avoids the inconvenience of having to prepare a new set of forms should the first chosen name be refused.

### **What factors are considered in deciding if a proposed name is too similar to the name of an existing entity?**

In determining the likelihood of confusion that might be caused to the public by a name being similar to another name, the Registrar will consider the following:

Identical words - whether the names start with or contain the same words

Phonetics - whether the names sound similar, where their spelling is not the same.

Nature of business - whether the business of the existing entity is similar to the intended business of the proposed company.

### **Apart from cases of name similarity, what are some examples of names that are objectionable?**

The lists which follow are not exhaustive but provide examples of sensitive words and expressions and the conditions which must be met before names containing those words or their derivatives can be approved.

### **Are there any special requirements relative to the incorporation of 'dot com' companies?**

Where a '.com' or domain name forms part of a proposed corporate name, in addition to the documents required for incorporation, the applicant will be required to submit a statutory declaration containing the following information:

- Full name and address of the incorporator;
- Domain name of the website and the fact that it is legally owned by the incorporator;
- Contact information of the domain name administrator;
- A statement that there are no known disputes concerning the use and ownership of the domain name;
- A statement that the applicant as owner of the website consents to use of the domain name or a variation thereof being used in the corporate name of a proposed company formed under the laws of Saint Vincent and the Grenadines;
- An undertaking that the applicant will inform the Registrar of Companies in the event that the domain name becomes involved in any dispute and will request a change of name if the dispute is not resolved in favour of the applicant within a reasonable period of time.

### **What other guidance does CIPO offer regarding names?**

Domestic Companies: Organisation and Maintenance

This article offers guidance on organising and maintaining a domestic company incorporated under the Companies Act, No. 8 of 1994. It is not intended to serve as a definitive guide and should be read together with the applicable legislation.

After a Certificate of Incorporation is issued, a company must undergo a process of organisation in preparation for the commencement of business.

### **What is involved in the organisation of a company?**

The first directors of a company hold office from the issue of the certificate of incorporation until the first meeting of the shareholders (69(2)). Following incorporation, the directors are required to hold an organisational meeting (s.65) at which the following matters are typically addressed:

- **Adoption of By-laws:** A by-law is the instrument that regulates the conduct of a company's affairs. Model by-laws for use by commercial and non-profit companies are set out in the Fifth and Sixth Schedules of the Companies Regulations, respectively. By-laws should be adopted by the directors and later submitted to the shareholders for approval. Filings fees for by-laws for commercial and non-profit companies are \$100.00 and \$20.00 respectively.

- **Adoption of Share Certificate:** Ownership of shares is evidenced by a certificate signed on behalf of a company stating that such shares of the company as are designated in the certificate are held by an individual or company named therein. The directors should determine and approve the form of the company's share certificates.

- **Share Issue:** An interest in the ownership of a company is known as a share. Shares are personal property and a person who owns shares in a company is known as a shareholder. By operation of law, the incorporator of a domestic company becomes one of its shareholders (s.105 (1) (a), s.371 (3)). A company is prohibited from carrying on business until it has made an allotment of shares (s.18 (2)). Generally, shares may be issued at such times and to such persons as the directors of a company determine. Shares in a domestic company must be without nominal or par value (s.26 (2)) and may be issued only when fully paid whether by money or some other consideration (s.30). As the Act prohibits bearer shares, i.e., the issue of shares to the unidentified bearer of a share certificate, it is essential that the shareholder be named in the certificate (s.29 (2)).

- **Appointment of Auditor:** The directors may appoint the company's first auditor(s), who will hold office until the first shareholders' meeting. Thereafter, the shareholders appoint the auditors or alternatively may choose to waive the audit requirement (s.163).

- **Appointment of Bankers:** Bankers of the company should be appointed and all necessary banking resolutions executed.

- **Appointment of Officers:** Every company must have a secretary and may also have one or more assistant secretaries (s.59). A corporate secretary may be an individual, another company or a firm. The Registrar must be notified of the name, residential/registered office address of a corporate secretary and any assistant secretary, within 1 month after the date of appointment (s.178 (4)(b)(c)). A filing fee of \$50.00 is payable on filing notice in the form prescribed (Form 29). Other officers such as a Managing Director or Chief Executive Officer may also be appointed at the organisational meeting.

- **Adoption of Common Seal:** Every company should have a common seal on which its name is engraved in legible characters. Every document to which the common seal of a company is affixed binds the company.

- **Fiscal Year:** The directors should determine the fiscal year of the company which may be

a calendar year or other period of 12 months. Every director of a company must receive at least 7 days notice of the organisational meeting.

### **What am I generally entitled to do if I am a director?**

A director is a person authorised to manage and direct the business and affairs of the company. Where a company has more than one director, the directors collectively form the Board of Directors. Directors may either exercise the powers of the company directly or through employees and agents. They may also designate offices of the company, appoint officers, specify their duties and delegate to them certain powers (s.95). Unless otherwise provided, the articles of a company are presumed to empower the directors of the company to borrow upon the credit of the company; issue, re-issue, sell or pledge debentures of the company; subject to section 53, give a guarantee on behalf of the company to secure performance of an obligation; and mortgage, charge, pledge or otherwise create to secure any obligation of the company a security interest in all or any property of the company that is owned or subsequently acquired by the company (s.96).

### **Is any duty of care imposed on a company's directors and officers?**

In exercising their powers and discharging their duties, the directors and officers of a company must act honestly and in good faith with a view to the best interests of the company and must exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances (s.97). In determining what are the best interests of the company, directors must consider the interests of the company's employees in general as well as the interests of its shareholders.

### **How long can a director hold office?**

After their appointment by the shareholders (or their confirmation, in the case of first directors), the directors of a company may hold office for a term expiring no later than the close of the third annual general meeting of shareholders after their election. Where no term is stated on appointment, a director will hold office until the next annual general meeting of shareholders. Once a director's term has expired, he may be re-elected once this is not prohibited by the company's by-laws.

### **What am I generally entitled to do if I am a shareholder?**

Unless the Articles of Incorporation provide otherwise, each share in a company entitles the holder to vote at annual general meetings of the company, receive any dividend declared by the company and share in the distribution of the net assets of the company in the event of liquidation. In addition, shareholders are entitled to inspect the records of the company during

business hours and obtain copies free of charge (s.190), to receive the company's financial statements at least 21 days before each annual general meeting (s.153), to elect directors (s.69(3)), to approve and change by-laws (s.64(2)), to appoint the auditor of the company (s.162) or waive the requirement for an auditor (s.163) and to approve fundamental changes to the company (s.213).

Shareholders have limited liability in the company, and generally are not liable for its debts. They generally do not actively run the company, however, in many small businesses, shareholders assume these responsibilities by serving as directors and officers. The first meeting of the shareholders of a company is required to be held no later than 18 months after the company comes into existence (s.107).

### **How do shareholders exercise their rights?**

Shareholders generally exercise their influence over how a company is run at shareholders' meetings through resolutions. There are 2 types of shareholders' resolutions; ordinary resolutions which require the approval of the shareholders to the extent of more than half of the votes cast and special resolutions which require the approval of the shareholders to the extent of at least two thirds of the votes cast. Decisions which shareholders make routinely, such as electing directors, or approving by-laws are dealt with by ordinary resolution. Unusual events, such as changing the corporate name or merging with another company, may only be undertaken under the authority of a special resolution.

### **What regulatory requirements must be observed by companies generally?**

A company is required to disclose certain aspects of its affairs in statutory filings. Every such filing must be signed by an officer or director. The filings required of domestic companies include the following:

- Notice of change of directors, registered office address or secretary The directors and officers of a company are required to notify the Registrar of Companies of any change in its directors (Form 9), the location of its registered office (Form 4) or the holder of the office of secretary (Form 29). Within 15 days of a change of registered office (176(2) or of directors (s.77 (1)) and within 1 month after appointment or cessation of a secretary, notice in the prescribed form should be filed with the Registrar of Companies. A fee of \$50.00 is payable on the filing of every such notice.

- Financial Statements
  - All companies are required to file financial statements with the Registrar of Companies, at least 21 days before each annual meeting of the shareholders of the company and in any event, no later than 15 months after the date when the annual meeting should have been held. The fee on filing financial statements is \$50.00.

- Public companies and companies whose gross revenue exceeds \$4,000,000.00 or whose assets exceed \$2,000,000.00 are required to file comparative financial statements that have

been approved by the directors (ss.149-154). These must include a balance sheet, a statement of retained earnings, a statement of income and a statement of any change in the company's financial position (reg. 8). Holding companies have the option of filing consolidated financial statements detailing their subsidiaries' accounts and where this is done, the subsidiaries are not required to file.

- Commercial companies whose revenue and assets are below the above mentioned levels, must instead file a Certificate of Solvency, signed by at least one director of a company and the auditor, if any, made up with reference to the company's assets and liabilities at the date when the financial statements were laid before the shareholders and agreeing with the profit and loss account included in the financial statements (s.155). A Certificate of Solvency must state the amounts shown in the company's balance sheet as the total value of fixed assets, current assets, investments and other assets, the total amount of company's debt and liabilities accrued due at or accruing due within 1 year after the date at which the balance sheet is made out and whether in the opinion of the auditor, the company was at the date at which the balance sheet was made out able or unable to pay its debts and liabilities as they fell due.

- Non-profit companies are required to file a duly audited and approved Balance Sheet and a Statement of Revenue and Expenditure (reg. 20).

- Annual Return

- Every company is required to file no later than the 1st of April of each year after its incorporation, an Annual Return (Form 28) made up to 31st December of the preceding year. The Annual Return serves to cross-check compliance with routine statutory requirements and captures current information on primary business activity, shareholding, ownership of real property, territorial scope of operations and details of corporate affiliation. The fee on filing the Annual Return is \$100.00.

- Transfer of Shares

- Shares in a company may be transferred by a written instrument of transfer, signed by the transferor and naming the transferee. For a transfer to be valid, the instrument of transfer must be co-signed by the Registrar who must first be satisfied that the appropriate stamp duty has been paid (s.195). Where so satisfied, a certificate of compliance will be endorsed on the instrument.

### **How are the filings submitted by companies processed?**

Following receipt of the prescribed documents in duplicate original and the appropriate filing fee, a formality examination is conducted to ensure that the documents have been prepared in accordance with the statutory instructions as to form and a substantive examination carried out to ensure compliance with legal requirements. Formality requirements which are often overlooked include the requirement that "Not Applicable"/"N/A" be stated in response to inapplicable items; that a signatory's name be stated beneath his/her signature, that the middle initial(s) of every person named in a document be stated, that lengthy items be incorporated by reference to an annexed schedule and that document be filed in duplicate original. Any material deviation from the statutory requirements is noted on a pending file, which should be checked by persons filing documents in the days following their submission. Where a document conforms to all requirements, it will be registered in duplicate and endorsed with the date of registration. One copy of each registered document is made available to the company for its

records.

### **What records must a company maintain?**

A company should generally keep on record, copies of all instruments executed on behalf of the company and other important documents. The Companies Act specifically requires each company to keep a record of its Articles of Incorporation, by-laws, any unanimous shareholder agreement, Form 4 and Form 9 notices, proper accounting records and the minutes and resolutions of meetings of the directors and shareholders. Companies must also keep a Register of Members, a Register of Directors and Secretaries, a Register of Debentures where these have been issued and where applicable, a Register of persons to whom conversion privileges, options or rights to acquire shares have been granted. A public company must in addition keep a register of substantial shareholding and a register of directors' holdings. (ss.177 - 188)

### **Why is it important to comply with the Companies Act?**