

This article offers guidance on forming a domestic company under the Companies Act, No. 8 of 1994. For a more complete understanding of the provisions referenced in this document, the Act should be consulted.

Q. What is a Company?

A. A company is a legal entity created by incorporation, which has the capacity to transact business, which it exercises through the actions of its directors, officers and employees.

Q. What are the benefits of incorporation?

A. The main advantages of incorporation are that it:

- creates a separate legal entity with the potential for perpetual existence.
- limits the personal
- ability of the shareholders to the amount they have invested in the company, except in cases of insolvency.
- may have tax advantages once revenues reach a certain level, especially if doing business in certain sectors in which companies are taxed at lower rates than the usual 40% (e.g., manufacturing for local and export markets - 15 to 30% of chargeable income depending on where derived; operating a hotel - 30% of chargeable income)
- enables the raising of capital through the sale of shares (where a public company is formed).

Q. Who can form a company?

A. A company may be formed by any person whom section 4(2) disqualifies persons who are under 18 years, bankrupt, or of unsound mind

Q. Will I need to consult an Attorney-at-law?

A. The companies Act is a legal document containing provisions that may require professional skill for proper interpretation. An attorney-at-Law can provide valuable advice on the legal implications of company formation and can help you to properly structure your company at the outset, thereby reducing the likelihood of subsequent amendments to its articles of incorporation. Whether or not you decide to seek legal advice, you will need an Attorney-at-Law to make a Statutory Declaration, which confirms that none of the persons signing the Articles of Incorporation is a disqualified individual.

Q. How much does it cost to incorporate a company?

A. Apart from the name reservation fee of \$25.00 which is required to secure pre-approval of a corporate name, a fee of \$950.00 is payable to the Registrar on making application for incorporation. Fees will also be payable to an Attorney-at-Law for professional services.

Q. What documents are required for incorporation?

A. The following forms are required for incorporation, along with the statutory declaration mentioned above:

- Name Search and Reservation, Form 26
- Articles of Incorporation, Form 1/Form 2
- Notice of Address or Change of Address of Registered Office, Form 4
- Notice of Directors or Change of Directors, Form 9
- These forms are prescribed under the Fourth Schedule to the Companies Regulation, 1996,

Q. How do I go about choosing a corporate name?

A. Because a company's name is the means by which it is identified in the business community, it is important that it be unique and in no way misleading to the public. A name will generally be suitable where it is sufficiently dissimilar to other registered names and includes the following elements:

- A distinctive element: This is a word or phrase that clearly distinguishes the name from every other name within the particular area of enterprise, e.g., a coined word
- A descriptive element: This word or phrase should describe to potential customers the nature of your company's business. If your intended business is hairdressing, the words "hair salon" might be a suitable descriptive element to include in your name.
- A legal element: Every name must end with a corporate designation that connotes the legal capacity of the entity as in incorporated one. The prescribed corporate designations for

commercial companies are limited (Ltd.), Corporation (Corp.) and Incorporated (Inc.) (s.10). The names of non-profit companies must end with either Corporation or Incorporated.(s.331).

- This brochure "Choosing a corporate name" should be consulted for further information on name suitability and the name approval process

Q. How can I secure my chosen name?

A. You can obtain approval for and reserve a corporate name by filing a Request for Name Search and Reservation (Form 26) prior to applying for incorporation. Form 26 must be filed in duplicate and accompanied by the prescribed fee of \$25.00. The form makes provision for the choice of 3 alternative names. Choices should be listed in order of preference. All 3 choices should be utilized to ensure a greater chance of availability of one of the names. A comparative search of registered business and corporate names will be carried out and the overall suitability of the proposed name will be assessed. Where a name is approved, it will be reserved for a period of 90 days from approval, during which the application for incorporation which the name has been reserved may be made. Applicants are encouraged to use the name reservation procedure as this avoids unnecessary delay in the processing of related applications.

Q. What information is contained in Articles of Incorporation?

A. Articles of Incorporation in Form 1 are used for a commercial company, while Form 2 is used for a non-profit company. Articles must contain the following information:

- The corporate name. This must be the same in all the documents filed for incorporation.
- In the case of a commercial company, the classes and maximum number of shares that the company is authorized to issue. Where 2 or more classes of shares are desired, the rights, privileges, restrictions and conditions attaching to each class must also be set out. Where a class of shares can be issued in series, the authority given to the directors to fix the number or determine designation of the rights, privileges, restrictions and conditions attaching to the shares of each series must be stated. In the case of a non-profit company, the Articles must state that it has no authorized share capital, is to be carried on without pecuniary gain to its members and that any profits or other accretions to the company are to be used in furthering its business.
- In the case of a commercial company, the fact and nature of any restriction on share transfer, e.g., pre-emptive rights entitling existing shareholders to have the first option to purchase shares offered for sale by another shareholder (s.34).
- The fixed or the minimum and maximum number of directors.
- In the case of a non-profit company with an undertaking of a social nature, the full address of the building where the company is operating.
- Any restriction on the business that the company may carry on. It should however be noted

that even where the response to this item is "None", the company remains subject both to the restrictions under the Companies Act such as the section 328 limitations on non-profit activity and to restriction under other legislation such as licensing requirements for activities such as banking, insurance business, providing trustee services, etc.

- Any other provisions. For a private commercial company not intending to offer shares for purchase on a stock exchange, this item may state that "Invitation to the public to subscribe for shares or debentures of the company is prohibited." In the case of a non-profit company other provisions might include whether the interest of each member in the company is transferable on death and how the assets of the company are to be distributed in event of dissolution (s.337)

- The name, residential address and signature of the incorporators/members.

- If you intend to form a public company (one that will offer shares for sale to the public on a stock exchange), a prospectus that conforms to the requirements of Part II, Division D of the Act must also accompany the application for incorporation.

- If you wish to form a non-profit company, you will need to seek the Attorney-General's written approval of your Articles of Incorporation and submit this with your application for incorporation. To qualify for approval, the undertaking of the proposed company must be of a patriotic, religious, philanthropic, charitable, artistic, educational, scientific, literary, historical, social, professional, fraternal, sporting or athletic nature or must promote some other useful object (s.328).

Q. What information does the Notice of Address contain?

A. The Notice of Address (Form 4) must state the registered office address and the mailing address of the company. The registered office address must be a location within St. Vincent and the Grenadines where directors and officers can be contacted and served with any documents relating to the company. For this reason, a post office box or "in care of " address, while acceptable as a mailing address, will not be allowed as a registered office address. When filed for incorporation, Form 4 must be signed by one of the persons who has signed the Articles of Incorporation.

Q. What information does the Notice of Directors contain?

A. The notice of Directors (Form 9) is required to state the first name, middle initial(s) and surname, full residential address and substantive occupation of each director. When filed for incorporation, the form must be signed by one of the persons who has signed the Articles of Incorporation.

Q. How many directors are required?

A. A private company with shares must have a minimum of 1 director and non-profit company a minimum of 3 directors, each of which may be an individual or another company. A public

company is required to have a minimum of 3 directors who must be individuals. Only one of these may also be an officer or employee of the company or any of its affiliates (s.62). Individuals who are under 18 years of age, of unsound mind or bankrupt are disqualified from serving as directors (s.66). there is no restriction on the maximum number of directors a company may have.

Q. Where do I obtain statutory forms?

A. Yes. The Companies Act is administered by the Registrar of Companies, who is the Registrar of the Commerce and Intellectual Property Office (CIPO). Statutory forms and specimen documents are available from CIPO on request and documents relative to domestic companies must be filed there. CIPO is located on the Ground Floor of the Methodist Building at Grandby Street, Kingstown.

Q. How long does it take to incorporate?

A. If the documents meet all the formal and substantive requirements and the prescribed fees have been paid, a Certificate of Incorporation will generally be issued within 2 working days after filing.

Q. How are applications for incorporation processed?

A. 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 for validity. In the event of any material deviation from the statutory requirements, this 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 along with the Certificate of Incorporation. A duplicate of the certificate of incorporation is placed on the company's file. A record of the transaction is then entered in the Register of Companies and the name and number of the company recorded in the Companies Index.

Q. What are some of matters that may delay incorporation?

A. Yes. Incorporation may be delayed disapproval of the desired corporate name in a case where the applicant did not seek pre-approval or more commonly by failure to meet formal requirements. Details of these requirements are contained in the brochure "Corporate Filings: Formal Requirements, Forms & Fees". Care should be taken to comply with all formal requirements.

Q. Does the public have access to the information filed by a company?

A. Yes. The ***Register of Companies*** and ***companies' filings*** may be inspected by any member of the public for a fee of \$5.00 for each search. Copies of documents may be obtained for a fee of \$1.00 per page. A fee of \$10.00 per document is payable for certification where this is requested.

end