



# **BVI Financial Services Commission**

## **Registry of Corporate Affairs**

### **User Guides on the BVI Business Companies Act**

#### **User Guide No. 2**

#### **Company Names**

This is one of a series of User Guides published by the Registry of Corporate Affairs that are intended to provide general information about different aspects of the BVI Business Companies Act ["the Act"].

The Guide is not intended to provide, and is not a substitute for, legal advice and is not intended to address the circumstances of any individual case. The Act has been summarised to make the Guide easier to read and the Guide should be read together with the Act. You should always consider carefully whether you might benefit from legal, accounting or other professional advice concerning your particular circumstances or the circumstances of your company.

#### **Topics Covered in this Guide**

This User Guide covers the selection and use of company names. The following topics are covered:

- Limitations on the choice of a company name.
- BVI company number names.
- Reserving a name.
- Changing a company name.
- The Registrar's powers with respect to company names.
- The use of company names.
- Possible problems with similar names.

Special provisions apply to the name to be used by a restricted purposes company, a private trust company and a segregated portfolio company. These are specialised companies and are not covered in this, or any other Registry User Guide. Professional advice should always be sought with respect to such companies.

#### **Limitations on the Choice of Company Names**

The Act contains a number of restrictions on the names that may be used by a company, whether on incorporation or continuation, or when a company changes its name. These are summarised below.

### ***Required ending***

The Act requires a company's name to have a particular ending, which signifies its legal status.

If the company is a ***limited company***, the name of the company must end with:

- the word "Limited", "Corporation" or "Incorporated";
- the words "Societe Anonyme" or "Sociedad Anominina"; or
- the abbreviation "Ltd", "Corp", "Inc" or "S.A."

The above endings are all intended to warn people who may wish to deal with the company that the liability of the members is limited.

The name of an ***unlimited company*** must end with the word "Unlimited" or the abbreviation "Unltd".

The Financial Services Commission may authorise certain charitable and non commercial companies to have a name that does not include one of the above endings.

### ***Identical and similar names***

The Registry is prohibited under the Act from registering a company with a name:

- that is identical, or misleadingly similar, to a name that is already in use or has previously been used by a company, whether under the Act, the former IBC Act or the former Companies Act or that has been reserved
- that contains a restricted word or phrase [unless the Financial Services Commission (the Commission) has consented to its use]
- that the Registrar considers offensive or otherwise objectionable
- the use of which is prohibited under any other enactment.

The Registry always undertakes a search against its index of names before incorporating or continuing a company or approving an application for a change of name. The index of names contains all names that are currently being used, or that have ever been used, by companies whether under the Act, the former IBC Act or the former Companies Act and all names that are currently reserved.

Subject to provisions that allow company names to be re-used in certain circumstances (the Registry is intending to issue separate guidance on this) you will never be permitted to use a name for your company that is identical to a name on the Registry's index of names. In determining whether two names are identical, the Registry ignores the following:

- the required ending
- punctuation
- the use of the definite article ('the') or indefinite article ('a' and 'an') as the first word in one or both names
- whether a word is in the plural or singular in one or both names and the use of the word "company" or the abbreviation "co."

For example, the following names would all be regarded as identical:

- Big Cheese Limited

- Big Cheese Inc.
- The Big Cheese Ltd.
- A Big Cheese Ltd
- Big (Cheese) Limited
- Big Cheeses Corp.
- Big Cheese Company Limited

Where the name that you wish to use for your company is similar to a name on the Registry's index of names, the Act requires the Registrar to decide whether its use would be likely confuse or mislead. This is a matter that the Act leaves to the discretion of the Registrar and, as decisions are taken on a case by case basis, it is difficult to provide general guidance.

### ***Restricted words or phrases***

The Act provides that the Commission may issue a notice specifying words and phrases as restricted words. The Registry is prohibited from registering a company name that includes a restricted word or phrase unless the Commission has given its written consent to the use of the name or phrase. This list is published on the Commission's website and is also available from the Registry.

The list contains words and phrases that:

- suggest a connection with financial services business
- suggest a connection with the Government
- the Commission considers may be prejudicial to the reputation of the BVI if used in a company name
- the Commission otherwise considers to be unsuitable for use in the names of ordinary companies

If you wish to use a company name that includes a restricted word or phrase you must apply to the Commission for its approval setting out the reasons that you consider justify its use.

### ***Offensive or objectionable names***

Even though a name does not contain a restricted word or phrase, the Registry may refuse to permit its use on the grounds that the Registrar considers it offensive or otherwise objectionable.

### ***Names prohibited under another enactment***

Some laws prohibit the use of certain words in a company name, usually unless certain conditions are met, such as having the appropriate licence. For example, the Insurance Act prohibits the use of many words that suggest the undertaking of insurance business, including "insurance", "assurance" and "reinsurance" unless the company has an insurance licence.

It is an offence to use any of these words in a company name.

Although it is the responsibility of the company to ensure that it does not breach a BVI law, the Registry will not knowingly permit a company to use a name prohibited under another BVI law unless the company concerned has the appropriate licence or authorisation.

## **BVI Company Number Names**

The Act requires the Registry to allocate a unique number to every company that is registered. It is not necessary for you to choose a name for your company. If you prefer, the name of the company can be its BVI Company Number together with the required ending. A BVI company number name will be in the form “**BVI Company Number 12345**” with the selected ending, such as “Limited” or “Ltd.”.

The BVI company number name can, of course, be changed to another name at any time. However, it is never possible for a company to change its number.

## **Reserving a Company Name**

If you want to be sure that the name you intend to be used by your company cannot be taken for use by another company before you are ready to incorporate your company or change your company’s name, a registered agent may apply to the Registry to reserve the name on your behalf.

If the Registry approves the name, it will reserve it for ninety days.

## **Changing a Company Name**

Before applying to change a company’s name, the members or directors of the company must pass the appropriate resolution, or sign a written resolution, to change the name in accordance with the company’s memorandum or articles, although it is possible for the memorandum or articles of a company to prohibit a change of name either absolutely or unless certain conditions are met.

The company (through the registered agent) must then file an application together with the fee of \$50.00 [\$25.00 for the application and \$25.00 for issuing a certificate of change of name]. If the Registry approves the new name, a certificate of change of name will be issued.

The company’s name is changed from the date of the certificate and the change of name does not affect the identity of the company in any way.

## **Registrar’s Powers to Direct a Company to Change its Name**

If the Registrar considers, on reasonable grounds, that the name of a company does not comply with the Act, he may direct the company to make application to change its name within a period of not less than 21 days from the date of the notice.

If the company does not make application to change its name to a name acceptable to the Registrar within the time limit specified in the notice, the Registrar can revoke the name of the company and assign a new name to it. In these circumstances, the Registrar will normally assign the company its BVI company number name.

Note that the Registrar can exercise this power at any time, even if the company’s name did comply with the Act when it was first registered. For example, the Registrar can issue a direction under the Act if a law is subsequently passed or amended to

prohibit the use of certain words included in a company's name or if words or phrases are added to the list of restricted words or phrases.

## Requirements with Respect to the Use of a Company's Name

The Act provides that the full name of a company must be clearly stated in:

- every written communication sent by or on behalf of the company; and
- every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company

### ***What documents does this include and what documents are not included?***

Whilst companies must interpret the requirements of the Act for themselves with the benefit of appropriate legal advice, in the Registrar's opinion:

1. Documents on which the company's name must be stated include:

- all letters sent by, or on behalf of, the company
- all documents required to be lodged with the Registry
- statements of account, including invoices
- receipts
- orders for goods and services
- official company notices
- cheques, promissory notes and bills of exchange
- order forms, including where printed in an advertisement

2. The company's full name need not be stated on:

- packaging and labelling, including envelopes
- general advertisements, for example where there is no order form
- credit cards and credit card vouchers
- business cards and 'with compliments' slips
- items which are not documents

It is important that you appreciate that the Registry cannot provide an authoritative view. The interpretation of this provision is ultimately a matter for the Court.

### ***Penalties***

Failure to comply with this requirement is an offence which attracts a fine of up to \$1,000.

## Possible problems with similar names

The fact that the Registry registers or reserves a company name does not mean that the company acquires any ownership rights with respect to the name or that its use of the name cannot be challenged by other companies or persons inside or outside the BVI.

### ***Trade and service marks***

For example, if the company name infringes a trade or service mark that has been registered in the BVI, legal action may be taken against the company by the owner of the mark which, if successful, could be costly to the company.

You should be aware that the Registrar does not check company names against the trade and service marks registers. That is entirely the responsibility of the person seeking to incorporate a company, or in the case of a change of name, the company itself.

If you are in any doubt, you should seek the advice of a legal practitioner in the BVI.

### ***Passing off***

If the name of your company misleads the public into believing that your business is that of another business, then you may face a legal action for 'passing off' by the person whose business you have affected.

Registration of a name by the Registry is no guarantee that you are safe from such an action.