

CHOOSING A COMPANY NAME

“What's in a name? That which we call a rose by any other name would smell as sweet.”
- **Romeo & Juliet by Shakespeare**

Not so, if you are incorporating a company in India. For Ministry of Corporate Affairs (MCA), the name of a new company must be distinct – appear and sound different from any other existing company name. This article will take you through the Name Availability Guidelines, 2011 issued by MCA. It is relevant before one thinks up of all the fancy names for his/her “entrepreneurial baby”.

FAQS FOR NAME AVAILABILITY

1. Can the application for name availability be made online?

Yes. As a part of the “e-governance”, Ministry of Corporate Affairs (MCA) has done away with the physical submission of the documents, and made the whole incorporation process online including Name Availability.

2. How to apply for name?

e-Form 1A with necessary documents, if any, to be submitted online with an application fee of Rs.1000.

3. Can we get any kind of name for the proposed company?

- No. Name will be made available as per the Name Availability Guidelines, 2011 issued by the Ministry of Corporate Affairs, as amended from time to time.
- MCA website has provided an option “**Check Company or LLP Name**”. Before applying for a name, it is the duty of the applicant to use this search facility for checking the resemblance of the proposed name(s) with the companies and Limited Liability Partnerships (LLPs) already registered or the names already approved.

If the form is being certified by a practicing professional, a search report should be attached to the application as evidence that they have used the MCA search facility and proposed name is not identical / resembling with any existing company / LLP name.

- 6 names, in order of preference, should be given in the application form. If the form is certified by a Practicing Professional only one name is to be entered.
 - **Few select guidelines w.r.t. Name Availability:**
 - Proposed name need not be indicative of the main object.

- If the Company's main business is finance, housing finance, chit fund, leasing etc, name should be indicative of such related finance activities.
- Words in the name should not be indicative of a separate type of business constitution or legal person viz.co-operative, trust, society, HUF etc.
- If the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding, it will not be allowed for a period of 2 years from the date of such dissolution since the dissolution of the company could be declared void within the period aforesaid by an order of the Court u/s 559 of the Companies Act, 1956.
- If the proposed name is identical with the name of a company which is struck off u/s 560 of the Act, then the same will not be allowed before the expiry of 20 years from the publication in the Official Gazette being so struck off since the company can be restored anytime within such period by the competent authority.
- If a foreign company is incorporating its subsidiary company, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian state or city, if otherwise available.
- Following examples shows how the proposed name does not distinguish from an existing name.
 - Using different phonetic spellings or spelling variations. Eg: *P.J. Industries Limited* and *P & J Industries Limited*.
 - Different combination of the same words. Eg: *Builders and Contractors Limited* and *Contractors and Builders Limited*.
 - Joining words together or separating the words. Eg: *Shiv Kumar Enterprises Pvt. Ltd.* and *Shivkumar Enterprises Pvt. Ltd.*
 - The addition of words like New, Modern, Nav, Shri, Sri, Shree, Sree, Om, Jai, Sai Eg: *Bharat Electronics Ltd.* and *Nav Bharat Electronics Ltd.*
 - Use of a different tense or number of the same word. Eg: *Teen Murti Exports Pvt. Ltd.* and *Three Murti Exports Pvt. Ltd.*
- **Provisions w.r.t. Trademark**
 - As per Section 20 of the Companies Act, 1956, the proposed name should not be identical with or too nearly resembling with a registered trade-mark or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999.
 - Section 29(5) of the Trade Marks Act, 1999 provides that a registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of

his trade name, or name of his business concern or part of the name, of his business concern dealing in goods or services in respect of which the trade mark is registered.

- Hitherto the company name data base was available online but there was no online search facility for trademark. Applicants could approach any of the Trademark Registries and obtain certified Search Report to ensure that the proposed name does not infringe any registered trademark. But unfortunately majority of the applicants had obtained name without undertaking trademark search which led to several trademark litigations.
- To mitigate such problems, recently MCA has made a provision for trademark search by providing a new option called “**Public Search of Trademark**” in its website www.mca.gov.in.
- Now the responsibility lies on the applicant as well as on certifying professional (if the form is certified by them) to undertake a search facility through this option before applying for a name. The facility is now used by ROC office also before approving a name.
- In our experience if there are any names (which are similar or resembling with the applied name) registered or applied for in the same class of Trade Marks under which the proposed name is applied for, the name will not be made available by the ROC office.

4. Is the name approval process automatic?

If the application (e-Form 1A) is certified by a Practicing Professional (CS/CA/CWA), the name will be approved automatically through a process called Straight Through Process (STP).

If the form is not certified by a Practicing Professional, it will be processed by the back office of Registrar of Companies (ROC) and availability or non availability of name will be communicated to the applicant.

5. For how long the approved name will be valid?

Name, once approved, will be valid for a period of 60 days. With an application to Registrar of Companies (ROC), it can be further extended for a period of 30 days with revalidation application and fee. Application for extension should be made before expiry of 60 days.

We hope this issue provided useful information about how to choose a name for a proposed company. For more questions to be answered, wait till our next issue of Lexspeak.