

# Ministry of Corporate Affairs

17.12.2018

Subject:- Amendments in the Companies (Incorporation) Rules, 2014 – reg. name availability

## NOTICE INVITING COMMENTS

Draft amendment to rule 8 of the Companies (Incorporation) Rules, 2014 is attached as an **Annexure-A** to this notice.

This amendment intends to bring more clarity to the rules related to name availability by:

- (i) inclusion of illustrations in the rules;
- (ii) providing a clear test to determine as to whether the applied name resembles too nearly with the name of an existing company; and
- (iii) bringing more clarity in the rule related to “general names”/descriptive names and trademark applicability;

Suggestion/Comments on the proposed amendments along with justification in brief may be sent latest by **31<sup>st</sup> December, 2018** through email at **reservation.name@mca.gov.in**.

It is requested that the name, contact number, email address and postal address of the sender may be indicated clearly at the time of sending suggestions/comments in the following format:-

### **Format for sending suggestions/comments**

1. Name, contact number, email address and postal address of stakeholder
2. Suggestions/comments as under:-

Serial Number	Clause/Sub-Clause	Suggestion/comments	Justification

## ANNEXURE-A

In the Companies (Incorporation) Rules, 2014, for rule 8, the following rules shall be substituted, namely:-

### **“8. Names which resemble too nearly with the name of an existing company.**

(1) A name applied for shall be deemed to resemble too nearly with the name of an existing company, if, and only if, after comparing the name applied for with the name of an existing company by disregarding the matters set out in sub-rule (2), the names are same.

(2) The following matters are to be disregarded:

(a) the words like Private, Pvt, Pvt., (P), OPC Pvt. Ltd., IFSC Limited, IFSC Pvt. Limited, Producer Limited, Limited, Unlimited, Ltd, Ltd., LLP, Limited Liability Partnership, company, and company, & co, & co., co., co, corporation, corp, corpn, corp, group;

(b) whether a word is in the plural or singular number in one or both names;

### **Illustrations**

- (i) Green Technology Ltd. is same as Greens Technology Ltd. and Greens Technologies Ltd.
- (ii) Pratap Technology Ltd. is the same as Prataps Technology Ltd. and Prataps Technologies Ltd.

(c) type and case of letters, spacing between letters, punctuation marks and special characters used in one or both names;

### **Illustrations**

- (i) ABC Ltd. is same as A.B.C. Ltd. and A B C Ltd.
- (i) TeamWork Ltd. is same as Team@Work Ltd. and Team-Work Ltd.

(d) use of different tenses in the names;

**Illustration**

Ascend Solutions Ltd. is same as Ascended Solutions Ltd. and Ascending Solutions Ltd.

(e) using different phonetic spellings including use of misspelled words of an expression;

**Illustrations**

- (i) Chemtech Ltd. is same as Chemtec Ltd., Chemtek Ltd., Cemtech Ltd., Cemtek Ltd., Kemtech Ltd., and Kemtek Ltd.
- (ii) Bee Kay Ltd is same as BK Ltd, Be Kay Ltd., B Kay Ltd., Bee K Ltd., B.K. Ltd. and Beee Kay Ltd.

(f) whether one or both names includes a host name such as 'www' or a domain extension such as 'net', 'org', 'dot' or 'com';

(g) the addition of commonly used prefixes, including salutations, before an existing name such as New, Modern, Nav, Shri, Sri, Shree, Sree, Om, Jai, Sai, Hari, Mr., Mrs., Ms., Dr., Prof. or any other such commonly used prefixes;

**Illustrations**

- (i) Vijay Corporation Ltd is same as Shree Vijay Corporation Ltd, Modern Vijay Corporation Ltd and Dr. Vijay Corporation Ltd.
- (ii) Manjushree Industries limited is not the same as Manju Industries limited.
- (iii) Vijay Corporation Ltd is not the same as Deep Vijay Corporation Limited.

(h) the order of words in the names;

**Illustrations**

- (i) Ravi Builders and Contractors Ltd. is same as Ravi Contractors and Builders Ltd.
- (ii) Ravi Builders and Contractors Limited is not the same as Ravi Shankar Builders and Contractors limited

(i) the use of the definite or indefinite article in the names;

#### **Illustration**

Congenial Tours Ltd. is same as A Congenial Tours Ltd. and The Congenial Tours Ltd.

(j) a slight variation in the spelling of the two names including a grammatical variation thereof;

#### **Illustration**

Color Technologies Ltd. is same as Colour Technologies Ltd as there is a slight variation in the spelling.

(k) complete translation or transliteration, and not part thereof, of an existing name, in Hindi or in English

#### **Illustrations**

- (i) National Electricity Corporation Ltd. is same as Rashtriya Vidyut Nigam Ltd.
- (ii) Hike Construction Ltd. is not the same as Hike Nirman Ltd.

(l) Addition of the name of a place to an existing name, which did not contain the name of any place;

#### **Illustrations**

- (i) If Salvage Technologies Ltd. is an existing name, it is same as Salvage Technologies Delhi Ltd and Salvage Delhi Technologies Ltd.
- (ii) Retro Pharmaceuticals Ranchi Ltd. is not the same as Retro Pharmaceuticals Chennai Ltd.

(m) addition or deletion of words like global, international or any other word which symbolizes the geographical reach of the company, in an existing name;

#### **Illustration**

- (i) If Hardnut Finance Ltd is an existing name, it is the same as Hardnut Finance Pan-India Ltd or Hardnut Finance International Ltd.
- (ii) If Glory Construction International Ltd. is an existing name, it is the same as Glory Construction Ltd. but not the same as Glory Construction Global Ltd.

(n) addition or deletion of numerals in an existing name;

#### **Illustration**

- (i) If Thunder Services Ltd is an existing name, it is same as Thunder11 Services Ltd.
- (ii) If Style Garments11 Ltd. is an existing name, it is same as Style Garments Ltd.

Provided that clauses (f) to (h) and clauses (k) to (n) shall not be disregarded while comparing the names, if a no objection by way of a Board resolution has been provided by an existing company.

### **8A. Undesirable names.**

(1) The name shall be considered undesirable, if-

(a) it attracts the provisions of section 3 of the Emblems and Names (Prevention and Improper Use) Act, 1950 (12 of 1950);

(b) subject to section 35 of the Trade Marks Act, 1999 (47 of 1999), if the name includes a trade mark registered under the Trade Marks Act, 1999 (47 of 1999) and the rules framed thereunder in the same class of goods or services in which the activity of the company is being carried out or is proposed to be carried out, unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters;

(c) it includes any word or words which are offensive to any section of the people;

(d) the proposed name is identical with or too nearly resembles the name of a limited liability partnership:

Provided that the provisions of rule 8 shall apply *mutatis mutandis* while determining whether a proposed name is too nearly resembling the name of a limited liability partnership;

(e) the proposed name is identical with or too nearly resembles with a name which is for the time being reserved in accordance with rule 9:

Provided that the provisions of rule 8 shall apply *mutatis mutandis* while determining whether a proposed name is too nearly resembling with a reserved name;

(f) the company's main business is financing, leasing, chit fund, investments, securities or combination thereof, but the proposed name is not indicative of such related financial activities, viz., Chit Fund or Investment or Loan, etc.;

(g) the company's name is indicative of activities financing, leasing, chit fund, investments, securities or combination thereof, but the company's main business is not related to such activities;

(h) it resembles closely the popular or abbreviated description of an existing company or limited liability partnership;

(i) the proposed name is identical with or too nearly resembles the name of a company or limited liability partnership incorporated outside India and reserved by such company or limited liability partnership with the Registrar:

Provided that if a foreign company is incorporating its subsidiary company in India, 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;

Provided further that provisions of rule 8 shall apply *mutatis mutandis* while determining whether a proposed name is too nearly resembling the name of a company or limited liability partnership incorporated outside India;

(j) any part of the proposed name includes the words indicative of a separate type of business constitution or legal person or any connotation thereof e.g. co-operative, sehkari, trust, LLP, partnership, society, proprietor, HUF, firm, Inc., PLC, GmbH, SA, PTE, Sdn, AG etc.;

Explanation.- For the purposes of this sub-clause, it is hereby clarified that the name including phrase 'Electoral Trust' may be allowed for Registration of companies to be formed under section 8 of the Act, in accordance with the

Electoral Trusts Scheme, 2013 notified by the Central Board of Direct Taxes (CBDT):

Provided that name application is accompanied with an affidavit to the effect that the name to be obtained shall be only for the purpose of registration of companies under Electoral Trust Scheme as notified by the Central Board of Direct Taxes;

(k) the proposed name contains the words 'British India';

(l) the proposed name implies association or connection with an embassy or consulate or a foreign government;

(m) the proposed name includes or implies association or connection with or patronage of a national hero or any person held in high esteem or important personages who occupied or are occupying important positions in Government;

(n) the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding and a period of two years have not elapsed from the date of such dissolution:

Provided that if the proposed name is identical with the name of a company which is struck off in pursuance of action under section 248 of the Act or under section 560 of the Companies Act, 1956(1 of 1956) then the same shall not be allowed before the expiry of twenty years from the publication in the Official Gazette being so struck off;

(o) it is identical with or too nearly resembles the name of a limited liability partnership in liquidation or the name of a limited liability partnership which is struck off up to a period of five years;

(p) the proposed name include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual fund' etc., unless a declaration is submitted by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with by the applicant;

(q) the proposed name includes the word "State", in case the company is not a government company;

(r) the proposed name is containing only the name of a continent, country, state, city such as Asia limited, Germany Limited, Haryana Limited, Mysore Limited;

(s) Use of descriptive names, where the name merely consists of commonly used words to describe an activity.

Explanation 1: The term “commonly used words” refers to use of generic expressions which may be used by any other company to describe its trade.

Explanation 2: While determining whether a name is descriptive or not, the objects of the proposed company or the order of words appearing in a name shall not be relevant.

### **Illustrations**

(i) The names Silk Manufacturers Private Limited and Manufacturers Silk Ltd. are descriptive names as they merely describe an activity which may also be carried out by any other company and the order of the words is not relevant while determining a descriptive name.

(ii) The names Technical Vista Ltd or Vista Technical are not descriptive as the names do not merely consist of commonly used words and the order of the words is not relevant while determining whether a name is descriptive.

(iii) The name Drinking Water Plant Ltd. is a descriptive name, even if the object of the company is not related to making drinking water plant as it consists of commonly used words and objects of the proposed company is not relevant while determining whether a name is descriptive.

(t) the proposed name includes name of any foreign country or any city in a foreign country, the same shall be allowed if the applicant produces any proof of significance of business relations with such foreign country like Memorandum Of Understanding with a company of such country:

Provided that the name combining the name of a foreign country with the use of India like India Japan or Japan India shall be allowed if, there is a government to government participation or patronage and no company shall be incorporated using the name of an enemy country.

Explanation.- For the purposes of this clause, enemy country means so declared by the Central Government from time to time.

(u) the proposed name of a section 8 company under the Act does not include the words foundation, Forum, Association, Federation, Chambers, Confederation, council, Electoral trust and the like etc.

(v) the proposed name of a Nidhi company under the Act does not have the last words “Nidhi Limited” as a part of its name.

(w) the proposed name has been released from the register of companies upon change of name of a company and three years have not elapsed since the date of



change unless a specific direction has been received from the competent authority in the course of compromise, arrangement and amalgamation.

(2) The applicant shall declare in affirmative or negative (to affirm or deny) whether they are using or have been using in the last five years , the name applied for incorporation of company or LLP in any other business constitution like Sole proprietor or Partnership or any other incorporated or unincorporated entity and if, yes details thereof and No Objection Certificate from other partners and associates for use of such name by the proposed Company or LLP, as the case may be, and also a declaration as to whether such other business shall be taken over by the proposed company or LLP or not.

**8B. Word or expression which can be used only after obtaining previous approval of the Central Government.**

In terms clause (b) to sub-section (3) of section 4, the following words and combinations thereof shall not be used in the name of a company in English or any of the languages depicting the same meaning unless the previous approval of the Central Government has been obtained for the use of any such word or expression-

- (a) Board;
- (b) Commission;
- (c) Authority;
- (d) Undertaking;
- (e) National;
- (f) Union;
- (g) Central;
- (h) Federal;
- (i) Republic;
- (j) President;
- (k) Rashtrapati;
- (l) Small Scale Industries;
- (m) Khadi and Village Industries Corporation;

(n) Financial, Corporation and the like;

(o) Municipal;

(p) Panchayat;

(q) Development Authority;

(r) Prime Minister or Chief Minister;

(s) Minister;

(t) Nation;

(u) Forest corporation;

(v) Development Scheme;

(w) Statute or Statutory;

(x) Court or Judiciary;

(y) Governor;

(z) the use of word Scheme with the name of Government (s) , State , India, Bharat or any government authority or in any manner resembling with the schemes launched by Central, state or local Governments and authorities; and

(za) Bureau.”