

I NEED A NAME FOR MY NEW COMPANY.

HOW DO I GET ONE? WHAT NAME CAN I CHOOSE?

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Introduction

This information is provided by the Registrar of Companies. It is available also on the IPA website at www.ipa.gov.pg

A name is an essential requirement for a company. Obtaining a name is the first step in setting up a company. So how do I get one? What name can I choose?

The Registrar of Companies is responsible for approving and reserving names. A company, whether local or overseas, cannot be registered under a name unless that name has been approved by the Registrar. For a PNG company, approval is obtained from the Registrar by applying for the reservation of its proposed name before registration or before a change of name (section 21)

HOW TO RESERVE A NAME

To reserve a company name an 'Application for Reservation of a Company Name' must be completed and lodged with the Registrar. This is Form 6 of the Companies Regulations 1998 (This form is available from this site – see the Companies Regulations 1998).

The prescribed fee is K50. However the K50 fee is not payable where the reservation relates to an application for incorporation of a company to which section 412 applies - that is, all shareholders and directors are citizens of PNG. If a Form 6 is submitted without the application for registration and it is desired to avoid the fee, written evidence must be provided that section 412 is applicable.

PROCESSING AN APPLICATION

A name that is requested is checked against the Register of Names to see that it does not contravene any of the restrictions on certain names. See below 'Names that cannot be reserved'.

If a name is acceptable, a notice of reservation will be issued by the Registrar to the applicant.

A name will be reserved for up to 3 months after the approval date. The Registrar will advise an applicant if a name cannot be reserved (section 23).

CHANGING THE NAME OF A COMPANY

A company may choose to change its name, or it may be directed by the Registrar to change its name if it is believed on reasonable grounds that its name should not have been registered.

If a company changes its name voluntarily then the procedure for reserving a new name is the same as described above under 'How to reserve a name'.

If the Registrar directs a company to change its name, the Registrar will issue a written notice to do so within a specified period of not less than one month.

A company that receives a direction to change its name can either reserve a new name by following the reservation procedure described above, or appeal to the National Court against the Registrar's direction. If it does neither, the Registrar may choose a name for the company, enter it on the register and issue a new certificate of incorporation of the company (section 25(3))

NAMES THAT CANNOT BE RESERVED

Under section 22 of the Companies Act, any name can be reserved unless it comes within any one of the following categories:

- a name, the use of which would contravene any law;
- a name that is identical or almost identical to the name of another company;
- a name that is identical or almost identical to a name reserved by the Registrar;
- a name that, in the opinion of the Registrar, is:
 - (a) undesirable; or
 - (b) misleading, deceptive or offensive; or
 - (c) a name that the Minister has directed the Registrar not to accept.

The above also applies to names in *tok pisin* or *tokples*. For example, the name 'Biskits bilong Niugini' is considered identical to 'New Guinea Biscuits'.

Contravention of a law

Some Acts prohibit the use of certain names or words. For example, a company name which includes the word 'bank', or any other word indicating the transaction of banking business, will not be registered as it would, unless the Minister has granted a banking licence to the company, contravene the 'Banks and Financial Institutions Act 2000'.

Identical or almost identical

Certain words and phrases can be disregarded when determining whether names are identical or almost identical. The words and phrases are:

- the definite article ('the') when it is the first word in a name;
- the following words appearing at the end of a name:
 - 'company'
 - 'company limited'
 - 'and company'
 - 'Limited'
- the following abbreviations whenever they appear in a name:
 - '&' instead of 'and'
 - 'no.' instead of 'number'
 - 'co' or 'coy' instead of 'company'
 - 'P.N.G.' or 'PNG' or 'Niugini' instead of 'Papua New Guinea'
 - 'Bros.' For 'Brothers'
- the typeface and case (upper or lower) of letters, accents, spaces between letters and punctuation marks; and
- the use of plurals.

'*Identical*' can therefore have the ordinary meaning of 'the same in every aspect', or it can mean a name in which the number and order of key words is the same as those in another name.

'*Almost identical*' is more difficult to define but the Registrar's policy is that it means a name in which the key words and/or the order in which they appear make that name virtually indistinguishable from another.

The Registrar will consider if there is any likelihood that a name would cause confusion with another name and lead members of the public to think that both companies are the same organisation. Each case is considered in light of its own individual circumstances.

Undesirable, misleading, deceptive or offensive

The question of whether a name is undesirable, misleading, deceptive or offensive is a matter within the Registrar's discretion.

The Registrar has determined that the use of the word 'landowner' is undesirable and misleading unless the following is provided:

- substantiation of the purported right to land, and verification from an independent source, for example the Department of Lands; and
- restriction of membership of the company to those who have a claim on the land.

In determining whether a name is offensive the Registrar will consider if it is:

- of an obscene nature; or
- contrary to public policy; or
- likely to offend a friendly state, any particular section of the community or any particular religion.

Direction by the Minister not to accept certain names

By order in the National Gazette No. G49 of 17 June 1993 the Minister directed the Registrar not to accept certain names without the consent of the Minister. These include names suggesting a connection with the Royal family or Crown, a Government department, authority or instrumentality or a Government of a foreign country, and names containing words such as blind, returned soldier, ANZAC, trust and trustee.

A copy of the Ministerial Direction may be obtained from the office of the Registrar of Companies for K2.

USE OF 'LIMITED' IN THE NAME

Where the liability of shareholders is limited, the name of the company must end with the word 'Limited' (section 22).

This requirement is to signal to persons dealing with the company that they are dealing with a company whose shareholders enjoy limited liability.

USE OF COMPANY NAME

A company must ensure that its full name is clearly stated:

- in every written communication sent by, or on behalf of the company; and
- in every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company (section 26).

Such documents include cheques, orders for money, goods or services, and letterhead.

However without breaking section 26, the company may use any of these abbreviations:

- 'Ltd' instead of 'Limited'
- 'Co' or 'Coy' instead of 'Company'
- '&' instead of 'and'.

There are significant consequences if the name is not shown as required:

- a person who issues or signs a document by or on behalf of a company, and the name of the company is incorrectly stated, may be personally liable for the obligation or debt of the company;
- the company commits an offence and is liable on conviction to a penalty of up to K5,000
- every director of the company commits an offence and is liable on conviction to a penalty of up to K5,000.

Finally, it should also be noted that any person or group that is not incorporated with the limited liability that carries on business under a name or title that includes the word 'Limited' or the abbreviation 'Ltd' as the last word in the name commits an offence. The maximum penalty is K10,000

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This is not a substitute for legal advice. Users should obtain professional advice.