

GUIDELINES OF THE REGISTRAR ON APPLICATIONS FOR THE RESERVATION OF NAMES OF COMPANIES, CLOSE CORPORATIONS AND DEFENSIVE NAMES

COMPANIES ACT, 2004 (ACT 28 OF 2004) *as amended*
Section 47 to 58

CLOSE CORPORATIONS ACT, 1988 (ACT 26 OF 1988) *as amended*
Section 18 to 23

These Guidelines are developed to guide the Name Reservations' process at the Business and Intellectual Property Authority (hereinafter BIPA). These Guidelines have no statutory effect and should not be regarded as exhaustive. The Registrar reserves the right to exercise his/her discretion and is not bound to follow these Guidelines in every detail.

DEFINITIONS

"Company" in the notes below includes the expression "Close Corporation" and *vice versa*.

"Names" means the reserved or registered name of a Company, Close Corporation or a Defensive Name.


1. GENERAL PRINCIPLES RELATING TO UNDESIRABLE NAMES

Any name may be allowed, provided that it does not prejudice the existing rights of any person or entity, or that such name is, in the opinion of the Registrar, desirable.

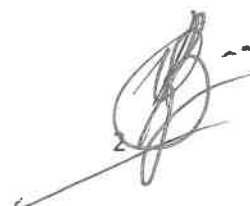
1.1 A name will be considered to be undesirable if –

1.1.1 It is identical or confusingly similar to a name already on the register of the Registrar. Similarity in this context includes similarities in appearance, semantics, phonetics and homophones;

1.1.1.1 It is identical to a name already registered, or so nearly resembling such a name as to be calculated to deceive or mislead the public. Only in most exceptional circumstances will a non-generic identical name be allowed with different describing wording for controlled, subsidiary or associated companies; *e.g. Maria Construction and Maria Building Contractors or ABC Pre-School and ABC Kindergarten Academy or Alleta Cash Loan and Letta Micro-lenders or CJ Investments CC and JC Trading CC;*

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- 1.1.2 it does not contain a descriptive part; e.g. *Maria CC* or *Local House CC*, *ABC CC*;
- 1.1.3 the descriptive elements in the name differ materially from the stated main object or principal activities of the business;
- 1.1.4 it contains letters or abbreviations without a descriptive part, or the descriptive part of the name is abbreviated; e.g. *Maria Tech Solutions CC*, *ABC Xplore CC* or *Maria CC*
- 1.1.5 it contains signs and/or symbols e.g. @, &, etc. unless they are derived from a local vernacular language. (with the exception of full stops, hyphens, dash) e.g. *Monica @57 CC* or *Monica & Maria Investments CC*;
- 1.1.6 the name reads as a statement/slogan/motto or a sentence e.g. '*Feel at Home Investments*' or '*So wonderful entertainment*', or "*The Show Events CC*" etc. unless the construction of such a name still meets the requirements of having a prefix and a descriptive part;
- 1.1.7 a surname is incorporated in the name but no major shareholder, director, past director or member bears such surname;
- 1.1.8 a surname containing forenames and/or initials identical to or nearly identical to those of a surname already on the register, will irrespective of the descriptive wording following such surnames not be allowed. e.g. *AB Shikongo Investments* and *BA Shikongo Investments*.
- 1.1.9 words suggestive of governmental patronage or association at any level of government are employed in a name, unless this is the case or appropriate consent was obtained:
- 1.1.10 words pertaining to a trade mark are contained in a name, if such name will be used in the course of trade in the class of goods or services in which the mark is registered, unless the applicant has appropriate rights to the use of such trade mark;
- 1.1.11 words pertaining to a well-known trade mark entitled to protection under the Paris Convention as referred to in the Industrial Property Act, 2012 are contained in a name, e.g. "Navara", "Toyota", "Nando's", "Coca-Cola" etc., unless the applicant has appropriate rights to the use of such trade mark;
- 1.1.12 words suggestive of blasphemy or indecency or words which could cause annoyance or offence to any person or class of persons appear in a name;
- 1.1.13 words or letters suggestive of a profession or group of people requiring specialised qualifications or registration in terms of relevant legislation are used in a name while the applicant is not a member of such profession or group of people. Proof of qualification and/or registration must be attached;



- 1.1.14 words or abbreviations relating to the liability of companies in other countries are incorporated in a name e.g. *Maria Carwash LLC*;
- 1.1.15 the word "Holding" or "Holdings" forms part of the name while the name will not be that of a holding company as defined in section 1 of the Companies Act;
- 1.1.16 Non descriptive words such as "Enterprises", , "Consulting" "Business Solutions", "Consortium", "Commercial", "Industries", "Associates" etc., are contained in the name as a description, unless such words are preceded by the description of the actual main object of the business, e.g. "ABC Property Enterprises" or "DEF investments";
- 1.1.17 the word "trust" or "Joint Venture", "Partnership", "Trading As" appears in a name,
- 1.1.18 Geographical names appear in a name while the business will not conduct business in such geographical area, unless such terms are clearly used as innocent decorative descriptions, such as "Manhattan Restaurant", "The London Inn", etc. This includes the names of countries in company names which invoke the false appearance that companies originate from such countries. The Registrar may require an undertaking that majority of the business will be carried on in that geographical area and the business has a registered address in that area.
- 1.1.19 the name is too long. At least it should not contain more than 5 words.

1.2 Use of brackets in a name will be considered in the following instances:

- 1.2.1 Where in exceptional circumstances a subsequent identical or nearly identical name is allowed, it will have to be distinguished by a geographical name which must appear in brackets immediately before the words "Limited" or "(Proprietary) Limited" or "Incorporated", as the case may be; provided that at least a relationship will exist between the company to be incorporated and the already registered company e.g. Primrose Butchery (Pty) Limited and Primrose Butchery (Gobabis) (Pty) Ltd.
- 1.2.2 Figures denoting the current calendar year in brackets will be allowed for a new name provided that:
- (a) An identical name is already registered and the name is changed on or before the registration of a new name; or
 - (b) The existing company is in the course of being wound up, and the liquidator consents to the use of the name.
- 1.2.3 The words "South Africa", "Botswana" or abbreviations "SA" or "BOTS" or any other country, in brackets will only be allowed in the name of a company which is at least related to a company in that foreign country.

2. PROHIBITED WORDS

- 2.1 The following words or expressions are either prohibited by statute or will only be allowed in a name on certain conditions, or are disallowed in accordance with the discretion of the Registrar in terms of sections 47 and 48 of the Companies Act and section 19(1) of the Close Corporations Act (this list is not exhaustive):
- 2.1.1 "Administrators of Estates", "Executors" or "Liquidators", "Board of Executors", or any word or words suggesting that the company undertakes the work normally performed by an attorney, notary or conveyancer;
 - 2.1.2 "Accountant", "Accountancy", "Accounting", "Auditor" or "Auditing" or any word or words or letters tending to indicate and association with the accounting or auditing profession;
- 2.2 the name that consists of a single generic word or common expression only. (So-called "made-up names") - Non-generic words not found in a dictionary are not allowed on their own or without a suffix relating to the main object of the business. Duplications of such made-up names will only be allowed with different affixes relating to differing main objects for subsidiary or associated companies, for example "Primrose Construction", "Primrose Petroleum", and so on);
- 2.3 the words "Red Cross" or any international bodies, unless used by that organisation itself;
- 2.4 any word or expression signifying or implying some or other association with any stock exchange in the country, or indicating that a company will be a stock exchange while this is not the case;
- 2.5 "Namibia Defence Force", "National Defence Force", "NDF", "Nampol" or any other words or letters indicating an association with the Namibian armed forces or police force;
- 2.6 the name "Namibia" or its abbreviated form and the names of any other state shall only be permitted at the end of a business name unless consent is obtained or the name is associated with that respective government.
- 2.7 Any other word or words or combination of letters prohibited by a statute or statutory regulation.
- 2.8 the word "Unlimited", used as the last word in a name;
- 2.9 The words "association and/or foundation" may only be used in a name that belongs to a non-profit making organisation;
- 2.9.1 The first word at the beginning of a business name (prefix) should be a unique word, a combination of letters, or a common word that will not be construed to

be misleading and it should be independent of the business objectives of that respective business e.g. MJJM Logistics CC or Incredible Cash Loan but not Logistics MJJM CC;

- 2.10 Figures denoting a calendar year appear in a name, while this is not the year of registration of the company;
- 2.11 the word "Incorporated" or its abbreviated form, as the last word in the name of a company unless the company will be incorporated in terms of the special provisions of section 53 of the Companies Act;
- 2.12 "company" in the name of a close corporation and *vice versa*. ("Corporation" is permitted in the name of a company);
- 2.13 expansive descriptions such as "National", "National" or "Global" in a name while the company will not be operating on such a scale;
- 2.14 e-mail and Web addresses;
- 2.15 domain names;
- 2.16 names consisting solely of words describing the business objectives, such as "Medical Services", "Brick Distributors";
- 2.17 a surname on its own, except in extraordinary circumstances. A combination of two or more surnames is permitted. A single surname is permitted if preceded by the initials or first names of the incumbent person, or with a description of the main object of the company, for instance, "AB Smith Construction";
- 2.18 geographical names on their own;
- 2.19 well-known names such as "Founding Father", "Sam Nujoma", "Nelson Mandela" and others, unless with appropriate consent.

3. WORDS SUBJECT TO APPROVAL UNDER VARIOUS ACTS.

- 3.1 the expression "Bank" or any derivative thereof such as "Banking", "Cash Loans", "Finance", "Friendly Society", "Mutual Aid", "Insurance", "Assurance", "Underwrite", "Pension", "Building Society", "Units", "Unit Portfolio", "Unit Certificate", "Unit Securities", "Unit Trusts", "Mutual Funds", or any derivative thereof, as well as "Unit Trust Scheme" with the word "invest" etc., will only be permitted in a name on condition that the Registrar of Financial Institutions approve of the use of such a word; *(this list is not exhaustive)*;
- 3.2 "Standard" will only be allowed with the approval of the Ministry of Industrialisation, Trade and SME Development
- 3.3 "Medical Scheme", "Medical Aid" or "Medical Aid Scheme" will only be allowed with the approval of the Registrar of Medical Schemes;

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3.4 "Attorney" or "Attorneys" will not be allowed in the name of an incorporated company for attorneys, in terms of the Legal Practitioners Act;

3.5 words prohibited under section 15 of the Merchandise Marks Act, 1941;

4. TRANSLATED NAMES

4.1 Where a Vernacular word is to be used for the name of a company, the meaning of the word in official language of the Republic should be endorsed on the application form for name reservation.

4.2 Where application is made to register a literal translation of a name into another language of the Republic, the Registrar shall not be required to verify the grammatical correctness of the spelling of the translated words.

5. SHORTENED FORMS OF NAMES

5.1 The shortened form of a name must contain some or all of the elements of the name from which it is derived or will be registered for the company incorporated or to be incorporated.

5.2 A shortened form of a name must not contain more than seven letters derived from the approved name. No figures will be allowed.

6. DEFENSIVE NAMES

The same principles that apply in the case of the reservation of company names, apply in the case of the reservation of defensive names. The Registrar may require proof of the direct and material interest that an applicant claims in a name to be defensively registered. The registration of a defensive name may be refused if the Registrar has reasonable grounds to believe that it may lead to trafficking in names.

7. REGISTRAR'S DISCRETION

In considering the reservation of a name, the Registrar takes cognisance of all surrounding circumstances, including precedents in case law. An application for the reservation of a name that complies fully with these Guidelines and appears to be available for reservation, may still be refused for other reasons falling within the ambit of the discretion of the Registrar.

Signed
MR RIUNDJA ALI KAAKUNGA (OTHY)
CHAIRPERSON OF BOARD OF DIRECTORS

Date 2019/12/11