

## **ARTICLE ON NAME AVILABILITY GUIDELINES, 2011 INCLUDING AMENDMENTS UPTO MAY, 2012.**

### **Introduction:**

The first step towards incorporation / registration of a Company under the Companies Act, 1956 is ensuring the availability of the desired name of the proposed company and reserving the same with the Registrar of Companies having jurisdiction over the proposed registered office of the new company.

Earlier, before the introduction of the Name Availability Guidelines, 2011 the name availability procedures were governed by various circulars issued by Ministry of Corporate Affairs, and there were specific compliances for use of particular words in the proposed names, whereas with a view to streamline and decentralize (by STP approval) the name availability procedure, Ministry of Corporate Affairs had issued Name availability Guidelines, 2011 vide General Circular No. 45/2011 dated 8<sup>th</sup> July 2011 effective from 24<sup>th</sup> July 2011.

### **Applicability of Name Availability Guidelines, 2011**

The Name Availability Guidelines, 2011 is applicable for reserving names for new companies and for changing the names of already existing companies under the compliance of Section 21 of the Companies Act, 1956.

### **Name Availability Guidelines, 2011**

As per the provisions of Section 20 of the Companies Act, 1956, no Company is to be registered with an **undesirable name**. Undesirability of the proposed name is given and regulated by the *Name Availability Guidelines, 2011*.

In Supersession of all the circulars issued by the Ministry of corporate Affairs, regarding name availability,

#### **A. A proposed name is considered to be undesirable if it is identical with or too nearly resembling with:**

- (i) *Name of a company already in existence and names already approved by the Registrar of Companies*
- (ii) *Name of a LLP in existence or names already approved by Registrar of LLP*
- (iii) *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.*

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- B. Besides the above broad guidelines for considering a name to be undesirable, the following general guidelines for reserving a proposed name are also given by the Ministry of Corporate Affairs under the Name Availability Guidelines, 2011.**
- a. If the Company's main business *is finance, housing finance, chit fund, leasing, investments, securities or combination thereof*, such name shall not be allowed unless the name is indicative of such related financial activities, viz., Chit Fund/ Investment/Loan, etc.;
  - b. Abbreviated name such as 'BARL Private Limited' or '24\*7 limited' cannot be given to a new company. However the companies well known in their respective field by abbreviated names are allowed to change their names to abbreviation of their existing name (for Delhi Cloth Mills limited to DCM Limited)
  - c. Proposed name should not be identical to a company dissolved under liquidation proceeding under Companies Act, 1956 (*such similar names resembling names of dissolved companies will not be available for a period of 2 years from the date of the dissolution*)
  - d. Proposed name should not be identical to a company struck off under the provisions of Section 560 Companies Act, 1956 (*such similar names resembling names of struck off companies will not be available for a period of 20 years from publication in the official gazette*)
  - e. Use of the word "State" or names of any State will be allowed only for Government companies.
  - f. In case the proposed name include words like "Insurance" or " Venture Capital" or " Nidhi" then the applicant has to give a declaration that the respective compliances with respective regulators such as IRDA, SEBI, RBI have been complied by the applicant
  - g. Prior approval of the Central Government is required to be obtained in case the proposed name contains any word of expression which gives an impression that the proposed company is connected with Central Government or any State Government, local authority etc.
  - H. Change of name of existing company will be allowed if it in default of filing its Annual Return or Balance Sheet or in repayment of matured deposits/debentures or interest thereon.
  - I. The proposed name should not be in violation of provisions of Emblems and Names (prevention of Improper Use) Act, 1950
  - J. The proposed name should not be offensive to any section of people (i.e. the proposed name should not contain any profanity of defaming words etc)

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**C. Points disregarded by the Registrar of Companies as differences in determination of a proposed name to be identical or resembling that of already existing company**

- i. Use of the words pvt, or (P) or Ltd, Limited etc
- ii. The plural version of any of the words appearing in the names of existing companies. E.g. Indian Shoes Limited for existing name of Indian Shoe Limited
- iii. Use of the word co instead of company, corp or corpn instead of corporation etc
- iv. Case (I.e. using upper case etc), spacing or punctuation marks in proposed names.
- v. Joining two or more words together or separating the words in the proposed name.  
  
eg. Proposing the word Shivsagar Exports Private Limited where a company exists in the name of Shiv Sagar Exports P Ltd or vice versa.
- vi. Using different tense or number of the same word. Such as Teen Murti Exports P Ltd in case Three Murti Exports P Ltd already exists.
- vii. Using different phonetic spellings for already existing names eg. Ishwarya Industries P Ltd in case Aishwarya Industries Limited is existing etc and if a name contains numeric character like 4, resemblance with Four / Char etc will not be allowed.
- viii. Usage of suffixes like .COM, .ORG, .IN etc will not be considered as differences even when (.) is written as “dot”.
- ix. Usage of additional words like New, Modern, Nav, Shri, Shree, Sri, Jai, Sai etc will not be considered as distinguishing factor from and existing company name.
- x. Exact Hindi translation of the name of an existing company in English or vice versa will not be allowed.
- xi. Different combinations of the same words of the name of an existing company will not be allowed.

#### **D. Option of Certification of Name availability by Practising Professionals.**

In the Name Availability Guidelines, 2011, a unique concept of direct (STP – Straight Through Process) reservation of names for new companies under the certification of practising professionals like Company Secretary, Chartered Accountant and Cost Accountants was introduced.

This option of certification by practising professionals shall be used where a proposed name (note : if this option is used then only one proposed name to be given in E FORM 1A instead of 6 names) is finalized by an applicant (promoter) after making due searches under the “Check Company or LLP name” services available with the Ministry of Corporate Affairs website and if the same is in conformity with the Name Availability Guidelines, 2011.

Under this option such finalized name is allowed to certified by a Practising Professional by affixing his Digital Signature where the certifying professional has to give a declaration that he has

- (i) used the search facilities available on the portal of the Ministry of Corporate Affairs (MCA) i.e., [www.mca.gov.in/MCA21](http://www.mca.gov.in/MCA21) for checking the resemblance of the proposed name(s) with the companies and Limited Liability Partnerships (LLPs) respectively already registered or the names already approved and the search report is attached with the application form.

*The professional will also certify that the proposed name is not an undesirable name under the provisions of Section 20 of the Companies Act, 1956 and also is in conformity with Name Availability Guidelines, 2011.*

Such name as certified above by a practising professional will approved and made available to the applicant under STP by the Registrar of Companies without any backend verification at their end depending solely on the certification made by the professional.

*Note: Where a name has been made available online on the basis of certification of practising professional in the manner stated above, if it is found later on that the name ought not to have been allowed under provisions of section 20 of the Companies Act read with Name Availability Guidelines, 2011 the professional shall also be liable for penal action under provisions of the Companies Act, 1956 in addition to the penal action under regulations of respective professional Institutes.*

The option of certification by practising professionals is not available for changing the names of existing companies.

**E. Amendments made to approval under STP mode of names under certification of practising professionals by General Circular No. 7/ 2012 dated 25.04.2012 effective from 20.05.2012**

- ❖ Name Certified by practising professional will be put to online check for any resemblance with registered trademarks, and in case any similarity is found then the E Form 1A will be taken into non STP mode and will be sent to verification to the back office of Registrar of Companies.
- ❖ The names in E Form 1A submitted in STP mode shall checked by the system for any exact match for any two of the words ( except private limited or limited) with the names of already existing companies, if any such successful match is found then also the E Form 1A shall be processed in non STP mode.
- ❖ Approval for names with Single word like “HUM Private Limited” shall not be processed under STP mode.
- ❖ All the names approved under STP mode under certification of practising professional shall be kept for the immediate examination of concerned Registrar of Companies.
- ❖ The Incorporation Forms (E Form 1, 18 and 32) for such names approved under STP mode shall be available for filing till 19: 00 hrs (7 PM) of the same day if the name is availed under STP mode before 11 :00 hours of the same day and 19.00 hrs (7 PM ) of the next working day if the name is approved under STP mode after 11.00 hours of the first day.

**F. Time period for which the approved names will be available.**

The name, after approval of the Registrar of Companies, shall be reserved for sixty days from the date of approval. If, the proposed company has not been incorporated within such period, the name shall be lapsed and will be available for other applicants.

**G. Power of Registrar of Companies and Central Government.**

- (i) The name, if made available, is liable to be withdrawn anytime before registration of the company, if it is found later on that the name ought not to have been allowed. However, Registrar of Companies will pass a specific order giving reasons for withdrawal of name, with an opportunity to the applicant of being heard, before withdrawal of such name.
- (ii) Even after incorporation of the company, the Central Government has the power to direct the company to change the name under section 22 of the Companies Act, 1956, if it comes to his notice or is brought to his notice through an application that the name too nearly resembles that of another existing company or a registered trademark.

**Conclusion:**

The Name Availability Guidelines, 2011 were introduced with a view to regulate and streamline the availing of name for new companies and for name change of existing companies and also to prevent companies from availing names for which similar trademark has been registered with the trademark registry.

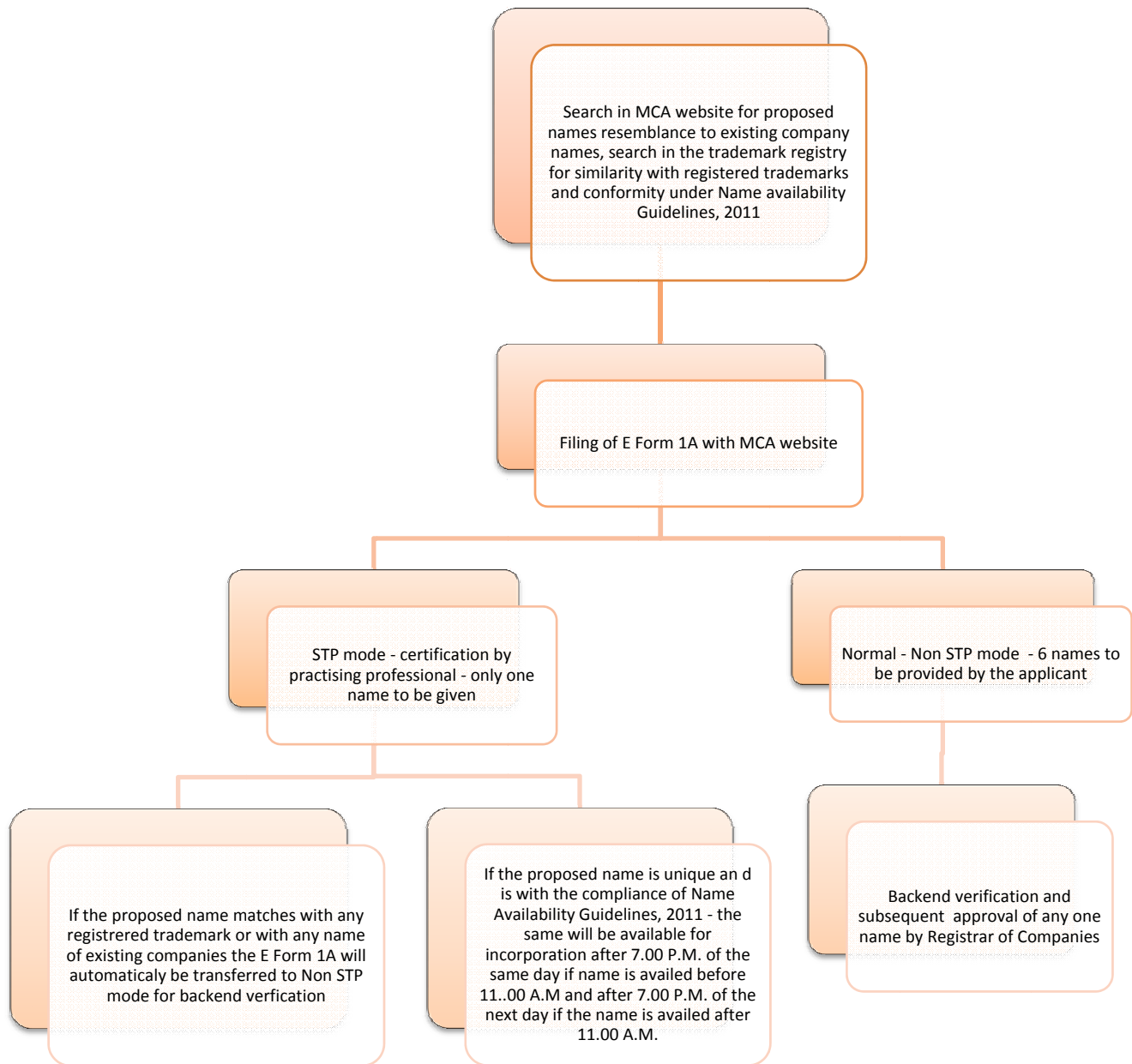
Ministry of Corporate Affairs also delegated the authority of availing of names of new companies to the practicing professionals through straight through process (STP) under their professional certification without backend verification by the Registrar of Companies.

Whereas, during the post approval examination of such names availed under STP mode many discrepancies were found and undesirable names were being availed by new companies and subsequently incorporated without proper search being made in the MCA website as well as in the trademark registry.

In order to curb such practices by professionals for availing undesirable names the Ministry of Corporate Affairs had made certain amendments in the Name Availability Guidelines, 2011 effective from 20<sup>th</sup> May 2012, under which the MCA system automatically checks for similar names and similar registered trademarks even after approving a name under STP mode and also certain practical time line restrictions have been put into place for filing of incorporation forms of names availed through STP mode for better regulation of names being availed as per the provisions of the Name Availability Guidelines, 2011

**Procedure for reservation of names for new companies under the Name Availability Guidelines, 2011.**

Application for reserving name for new companies and for changing the name of existing companies should be made in E Form 1A filed with MCA website ([www.mca.gov.in](http://www.mca.gov.in)) and a payment of Rs. 1000/- should be made in favour of Ministry of Corporate Affairs (Fees for E Form 1A increased from Rs. 500/- to Rs. 1000/- with effect from 24<sup>th</sup> July 2011 vide Circular No. 48/2011 dated 22.07.2011)



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