

# COJ ADVISORY

22<sup>nd</sup> Edition

March 2015



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## Welcome

Welcome to the 22<sup>nd</sup> Edition of the COJ Advisory. The COJ Advisory is a quarterly newsletter disseminated by the Companies Office of Jamaica. It highlights news, events and general happenings in the Agency which are pertinent to you, our stakeholders.

We invite you to be informed on the areas of focus carried in this publication; and ask that you contact us with your comments and queries on any area of interest carried in this edition or any other publication of this newsletter.

## Opening Hours

Our offices are opened for business during the following hours:

Mondays to Wednesdays: 8:30 a.m. – 3:30 p.m.

Thursdays and Fridays: 8:30 a.m. – 3:00 p.m.

**Our Drop-Off Box facility is available Mondays to Fridays 7:00 a.m. to 7:00 p.m.**

# The Effects of The Insolvency Act

The Insolvency Act, which took effect on January 2, 2015, was passed with the intention of, among other things, establishing an orderly liquidation process that allows insolvent persons to have a chance for a new start. Legislation of this nature is deemed to be an important step in the development of the legal and economic landscape of any country.

It is hoped that the Insolvency Act will encourage investment and foster the growth of businesses in Jamaica. The Act contains all provisions relating to the administration of insolvency for both individuals and corporate entities. In order for this to have been done effectively, several changes were made to the Companies Act. The effect of these changes is outlined below.

## Insolvent Winding up

**BEFORE THE INSOLVENCY ACT:** Before the Insolvency Act, an insolvent company could have been wound up under the Companies Act.

**NOW:** An Insolvent Company cannot be wound up under the Companies Act but must proceed under the Insolvency Act by making an application for an Assignment for the general benefit of creditors. This is done by filing Form 27, Form 3 (sworn Statement of Affairs) and a resolution authorizing the assignment with the Supervisor of Insolvency. The forms are available at the Office of the Supervisor of Insolvency.

**NB:** Notice of the Application for Assignment must be given to the Registrar of Companies.

## Powers of the Court

**BEFORE THE INSOLVENCY ACT:** A company could have been wound up by the Court on the ground that the company is unable to pay its debts. The court can no longer make such an order under the Companies Act.

**NOW:** The Court may make a Receiving Order under the Insolvency Act on the application of one or more creditors who are owed an aggregate of \$300,000 on an unsecured basis.

**BEFORE THE INSOLVENCY ACT:** Where under a winding up of the Court it became apparent that the assets of a company were insufficient to satisfy its liabilities, the Court could have made an order as to the payment out of the assets of the company, any costs, charges and expenses incurred in the winding up in such priority as the Court thought just.

**NOW:** Where under a winding up of the Court it becomes apparent that the assets of the company are insufficient to satisfy its liabilities, the trustee must apply to the Supervisor of Insolvency for an Assignment in accordance with the Insolvency Act.

**NB:** The position is the same in a members' voluntary winding up where the trustee is of the opinion that the company will not be able to pay its debts in full within 12 months from the commencement of the winding up.

## Liquidator/Trustee

**BEFORE THE INSOLVENCY ACT:** The person responsible for winding up a company was referred to as a liquidator and a body corporate was disqualified from acting as a liquidator.

**NOW:** The person responsible for winding up a company is referred to as a trustee and may be an individual or a body corporate. A trustee must be licensed to act as such by the Supervisor of Insolvency. The Insolvency Regulations set out the criteria for a person to qualify to be licensed as a trustee.

# Charities Act

The Charities Act 2014 provides a comprehensive regime for registration, monitoring, and tax treatment of charitable organizations.

## DEFINITION

Charity: an institution, whether corporate or not, which is –

- (a) Established for charitable purposes only; and
- (b) Intended to and does operate for the public benefit.

These are therefore the two requirements a charity must have.

## CHARITABLE PURPOSE

Charitable purpose would essentially be an object or goal of an institution that falls within one of the following categories:

- ▶ the prevention or relief of poverty;
- ▶ the advancement of education;
- ▶ the advancement of religion;
- ▶ the advancement of health or the saving of lives;
- ▶ the advancement of citizenship or community development;
- ▶ the advancement of the arts, culture, heritage or science;
- ▶ the advancement of amateur sport;
- ▶ the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- ▶ the advancement of environmental protection or improvement;
- ▶ the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage (including temporary disadvantages such as the effects of a natural disaster);
- ▶ the advancement of animal welfare; and
- ▶ the promotion of the efficiency of the armed forces or of the efficiency of the police forces.

## THE CHARITIES AUTHORITY

The Charities Authority (The Department of Cooperatives and Friendly Societies) accepts applications for the registration of charities. Upon approval of the registration a certificate is issued which is valid for 2 years.

The certificate entitles the charitable organization to all the tax benefits set out in the act.

The authority also has the power to suspend or revoke registration of charitable organizations which are not in compliance with the provisions of the act.

## REGISTRAR OF CHARITIES

The Registrar of Charities (The Companies Office of Jamaica) is responsible for maintaining the register of all approved charities.

# Charities Act - Continued

## CHARITABLE STATUS

For an organization to be registered under the new act it will need to fulfill certain requirements. The organization must be either:

- A charitable trust, or
- An incorporated or unincorporated institution which does the following:
  - a) is established exclusively for a charitable purpose,
  - b) intends to and does operate for the public benefit; and
  - c) No part of its net income or assets ensures to the personal benefit of any governing board member or settler of the charity, or of any other private individual

## REGISTRATION REQUIREMENTS FOR CHARITABLE STATUS:

Applications for registration are to be made to the Department of Cooperatives and Friendly Societies (DCFS) located at:

2 Musgrave Avenue,  
Kingston 10,  
Telephone: 927-4912/927-6572 or 978-1946

## WHAT YOU WILL NEED:

- 1) A Completed Fit and Proper Questionnaire \*\*These are available at [www.dcfSJamaica.org](http://www.dcfSJamaica.org)  
Each of the governing board members (i.e. the directors or trustees and the secretary) of a charity must be a fit and proper person.
  - Such persons must not have been convicted of an offence involving dishonesty or be an undercharged bankrupt,
  - And must be, in the Authority's assessment, a person of sound probity, able to exercise competence, diligence and sound judgment in fulfilling his or her responsibilities.
- 2) Accompanying documents include:
  - Memorandum of Association/Rules/Constitution
  - Articles of Association
  - Form 1 B – Articles of Incorporation
  - Schedule 1
  - Prior Year Audited Financial Statement
  - Fit and Proper Questionnaire
  - Certificate of Incorporation
  - Entity's Tax Registration Number (TRN)

### NOTE:

- ✚ It is important to note that charities must state how they will operate in detail, in the documents outlining the objects and powers of the organization.
- ✚ The must be clear and explicit that no part of its net income or assets ensues to the personal benefit of any governing board member or settler of the charity, or of any other private individual

# Charities Act - Continued

## Charitable Status:

A certificate is issued which is valid for 2 years. This must be renewed when expired

## BENEFITS OF CHARITABLE STATUS

There is no requirement to make separate applications for tax waivers/exemptions in respect of:

- Customs duty
- General Consumption Tax (GCT) and Special Consumption Tax(SCT),
- Income Tax,
- Property Tax,
- Stamp Duty, And
- Transfer Tax etc.

These exemptions will now be automatic.

## IMPORTANT:

A registered charity shall state that:

**They are a registered charitable organization on all notices, advertisements, letters, bills, invoices and other documents issued by the charity.**

## License to Remove The Word “Limited”

- For Limited liability Companies Section 16 of the Companies Act 2004 still applies to non- profit companies.
- Section 16 states that an organization is required to apply to the Minister of Industry, Investment and Commerce at or after incorporation for a Licence to remove the word “limited” from its name.
- The removal of the word limited means that the charity will be exempt from Asset Tax.

# Security Interests In Personal Property

The Security Interests in Personal Property Act 2013 (SIPPA) was passed into law on December 30, 2013 and came into effect January 2, 2014. The laws allow for the use of personal property as collateral and reduce the transaction cost of borrowing. It allows persons (whether natural or corporate) to pledge any type of personal property as collateral to secure any loan.

The property used may be tangible or intangible presently acquired or expected to be acquired in the future. This includes:

- Crops and livestock, including future crops and unborn livestock.
- Present or future accounts receivable.
- Equipment and machinery.
- Inventory, including raw material or goods to be sold.
- Consumer goods.
- Some types of stocks and bonds.
- Intellectual property such as copyrights, trademarks and patents.

SIPPA reduces the lender's risk by anticipating conflicting claims to the same collateral and establishing, in advance, rules that prioritize lenders' rights to the property pledged.

## THE SIPP REGISTRY

SIPPA provides for a registry on which lenders or their duly authorized agents register their rights in collateral by filing a simple notice. The Registry is an online Register on which individuals, companies, statutory bodies, government departments and agencies and other bodies corporate such as Banks, Credit Unions, Hire Purchase Operators, Micro Financiers, can note their interests in moveable property used as collateral for loans they have made. The Registry is a notice registry and the notices thereon is merely an indication that a security interest MAY exist. This is so because a registration notice may be registered before or after a security contract has been concluded.

A person may register a registration notice only if the debtor concerned authorizes the registration. Note however that where a debtor signs a security contract the said debtor is deemed to have consented to the filing of the registration notice on the National Security Interests in personal Property (NSIPP) registry. Where a lender therefore registers the notice before the signing of the security contract separate authorization of the debtor/s must be obtained.

## INFORMATION ON THE SIPP REGISTRY

The information on the NSIPP registry is uploaded by the lender. The Companies Office of Jamaica does not create or edit any of the information on the NSIPP registry.

Where the lender wishes to correct an error in the original notice (for example add or remove a debtor or secured creditor, add or remove collateral), such a lender must file an amendment notice. A fee of \$500 is applicable for any amendment notices filed and there is no limit on the number of amendment notices that may be filed.

Filers of notices must be very careful that they have accurately inputted the information for registration notices as errors with a debtor's name or the VIN of a motor vehicle may result in the invalidity of the registration notice.

# Security Interests In Personal Property- Continued

## NOTICE REQUIREMENTS

The notice requires the name and address of the secured creditor or lending institution; sufficient identification of the debtor; the name of the debtor and all parties to the loan (including guarantors as a guarantor is legally designated as a debtor); the business **OR** residential address of the debtor; the amount of the loan; and a description of the collateral securing the loan (including any serial numbers, or motor vehicle identification numbers). The date of birth of the debtor is not required and the security contract should not be uploaded on the registry site.

## TAXPAYER REGISTRATION NUMBERS

TRN's of persons are not viewable from the registry. Where a searcher has the name of the debtor and their TRN then that search criteria may be used to locate a particular filing such as a registration or amendment notice. The TRN is not in the report of the notice details.

## NSIPP PUBLIC SEARCH

On Friday, February 13, 2015 The Honorable Minister, Anthony Hylton instructed the Companies Office to temporarily disable the public search feature, until further advised. Subscribers to the site may however access this feature by logging in to their user accounts and clicking on the tab “search for notices/request a certified search report”.

## FREQUENTLY ASKED QUESTIONS

### **Question: Is there still a requirement to stamp Bills of Sale (the Security Contract)?**

Answer: Yes, the Bill of Sale must still be stamped as SIPPA did not remove the obligation for stamping same.

### **Question: Is it still necessary to record motor vehicle liens with Tax Administration Jamaica?**

Answer: Yes. AFTER the notice of the security interest has been entered on the NSIPP registry lenders should precede to the TAJ with a copy of proof of registration.

### **Question: Are ship's mortgages still registrable at the Companies Office of Jamaica on the Register of Charges?**

Answer: No. Ship's mortgages are now only registered at the Ship's Registry located at the Port Authority of Jamaica.

### **Question: Where charges were previously registered at the COJ have been upstamped, must notice of the upstamping be presented to the COJ?**

Answer: No. SIPPA amended the Companies Act by removing the obligation to notify the COJ of an upstamping.

### **Question: Must the duration of the Security Contract be identical to the lapse date of the notice on the NSIPP Registry?**

Answer: No. Lenders will typically indicate a later lapse date to facilitate any extension in the repayment time.

## Security Interests In Personal Property- Continued

**Question: Where a charge was registered on the Register of Charges at the COJ but was never registered on the NSIPP registry and a change has been made in regard to that charge, what action must be taken?**

Answer: If the charge was on land then notice of the change must be entered on the Register of Charges at the COJ and notice of the security interest must be filed on the NSIPP registry and amendment notices filed where necessary.

Note that failure to register the security interest on the NSIPP registry prior to January 2, 2015 will lead to a loss of priority for repayment over the personal assets affected.

The debt will still be enforceable but the lender will rank after any other lender who registered a security interest against the personal property on the NSIPP Registry after January 2, 2015 but before the original lender.

A registration notice must be filed on the NSIPP registry BUT note that failure to register the security interest on the NSIPP registry prior to January 2, 2015 will lead to a loss of priority for repayment over the personal assets affected. The debt will still be enforceable but the lender will rank after any other lender who registered a security interest against the personal property on the NSIPP Registry after January 2, 2015 but before the original lender.

**Question: What should be done after the loan obligations of a debtor have been discharged?**

Answer: The Lender or his Agent should file a termination notice on the NSIPP Registry. If however a termination notice has not been filed the validity of a registration notice lapses at the expiration of the term indicated in the registration notice or the expiration of 10 years after the date and time on which the registration notice was filed if no continuation notice is filed.

A lender who fails to file a termination notice and this prejudices the borrower may be subject to legal action being taken against the said lender.

**Question: Can private individuals place a notice on the NSIPP Registry?**

Answer: Yes. Any person who has granted a loan and has taken personal property as security may file a registration notice on the NSIPP registry.

**Question: How detailed should the description of the collateral be?**

Answer: Collateral may be specifically or generically described but note that where serial numbers are used to describe collateral, great care must be taken to ensure that the numbers inputted are accurate as inaccuracies may invalidate a registration notice.

**Question: What action should be taken when a bank (secured creditor #2) takes over a part of or the entire loan portfolio of another bank (secured creditor#1)?**

Answer: Secured Creditor #2 should file an amendment notice on the NSIPP Registry having obtained the consent of Secured Creditor # 1 to remove it as secured creditor and substitute Secured Creditor #2 as secured creditor.



# The COJ Website Redevelopment Project (WRP)

The screenshot displays the homepage of the Companies Office of Jamaica. At the top left is the COJ logo with the tagline 'Protection, Freedom, Commerce'. The main header features the text 'COMPANIES OFFICE OF JAMAICA' and a search bar with a 'Go' button. Below the header is a navigation menu with links: HOME, ABOUT US, CITIZENS CHARTER, SERVICES, FEES, COMPLIANCE, FORMS, HELP, SITE MAP, and CONTACT US. A large banner image shows the COJ building. To the right, a 'LATEST NEWS' section lists several announcements with dates. Below the banner are four service categories: 'Quick Services', 'Online Services', 'Subscriber Information & Services', and 'Documents & Information'. The main content area is divided into three columns: 'FIND A DOCUMENT OR REGISTERED ENTITY' (with a keyboard image), 'REQUEST CERTIFIED COPIES OF DOCUMENTS' (with a document image), and 'IMPORTANT DOCUMENTS' (with a list of legal acts and rules). Each column includes a brief description and a 'GO TO SERVICE' button.

The eagerly awaited COJ redeveloped website is scheduled to come on stream very early in the new financial year which commences April 1, 2015. The upgraded website will take the form of a new look webpage, the retention and refinement of some existing features, as well as the addition of new features.


Once implemented, the upgraded website application will boast several new and improved features which will enhance customers' experience. The combination of the new look webpage and additional features will:

- Provide users with a facility to conduct transactions on their own schedule
- Provide users with a convenient, user friendly application, which includes field level help to guide them through the registration process
- Advise users in real time of errors in their application, enabling them to take the necessary corrective action in a timely manner.
- Reduce the need to visit the COJ's office.
- Provide more effective service delivery as a result of reduced walk in traffic.
- Facilitate more efficient processing of customer requests.

Quick Services | **Online Services** | Subscriber Information & Services | Documents & Information

Search | Requests | Registration (New) | Filing for Existing

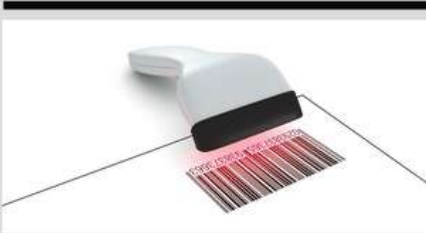
### FIND A DOCUMENT OR REGISTERED ENTITY



You wanted it, you've got it. Total accuracy of data. Now you can see the images of documents filed with the COJ.

[MORE INFO](#)      [GO TO SERVICE](#)


### VALIDATE BARCODED DOCUMENT



Certified documents submitted by the Companies Office of Jamaica can be checked by entering codes on the document in our system.

[MORE INFO](#)      [GO TO SERVICE](#)


### DOCUMENT WATCH



Need to know the status of a document? You can now easily track the status of a document for any company through our document watch feature.

[MORE INFO](#)      [GO TO SERVICE](#)

### DOCUMENT FILING TRACKING



Track filed documents as they are being processed by the COJ. See the filing status, department and officer currently processing it.

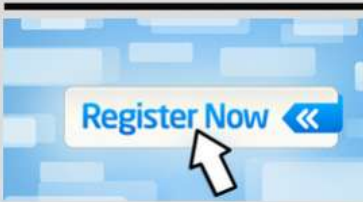
[MORE INFO](#)      [GO TO SERVICE](#)

## New Features of the site include:

- **Name Search and Reservation:** Users can Reserve Business and Company names for future use
- **Request Letters of Good Standing & Confirmation:** Online requests will be couriered to the user
- **Certified Documents:** Copies will be done on security paper and made available for courier or pick up
- **Courier Documents:** Request courier delivery of documents.
- **Document Verification:** Verify any certified document obtained from COJ by utilizing a barcode feature.
- **Document Filing Tracking:** Track progress of filings made at COJ
- **Document Filing Watch:** Request notification alert for document filed, approved or rejected
- **Notifications:** Receive notification alerts about present and future events
- **Subscription Expiration:** Receive reminders when subscription will soon expire
- **Business Names Details:** Access list of the proprietors, addresses, name/registration number of the business

Quick Services | Online Services | **Subscriber Information & Services** | Documents & Information


**SUBSCRIBER REGISTRATION**



Sign-up Now! Become a COJ Subscriber and reap the rewards. Start your account today, enjoy the convenience of conducting online transactions

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**SUBSCRIBER ACCOUNT CREATION**



Create your COJ account Now! Your account allows you to purchase the online services offered by the COJ, such as name searches.

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**SUBSCRIBER ACCOUNT MANAGEMENT**



Management your COJ Subscriber Account with ease, Top Up your account, Purchase Subscription and Add Users and Administrators.

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**SUBSCRIBER PREFERENCES**



Make changes to your subscriber preferences. Determine how you want to receive notifications for transactions.

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## Enhanced Features of the site include:

- **Company Details:** Access information on company name, number & address; current directors, secretary, & other details if available.
- **View and Print Documents:** Print publicly viewable company and business name documents
- **Company and Business Name Search:** Search the company register and the business name register to find an entity if they know the name of the entity; the registration number or the name of a director or proprietor. Having found the company or business in question, the user would then be able to undertake the other features, e.g. view details, request a status letter, and request certified copies.
- **Document Search:** Find documents directly without going through the list of filed documents. This allows users readily identify the documents needed.

**REQUEST LETTER OF GOOD STANDING**



Filing your particulars of directors has never been easier, just follow the simple instructions provided.

[MORE INFO](#) [GO TO SERVICE](#)

**PRINT DOCUMENTS**



There is no need for hassle in visiting the office to get documents. Print your from the convenience of anywhere.

[MORE INFO](#) [GO TO SERVICE](#)

**VIEW DOCUMENTS**



View documents for companies and businesses from any where in the world at your convenience.

[MORE INFO](#) [GO TO SERVICE](#)

# WHAT'S IN A NAME?

## Guidelines for Choosing A Company Name

### 1. INTRODUCTION

A company name is a critical part of corporate communication and advertising and may be an extremely valuable asset. It may serve the purpose of announcing to the public the sphere of a company's business activities and should, ideally, leave an indelible impression on the minds of the public. In devising a company name, the ultimate goal is often that, eventually, the name be immediately and favourably associated with a product, service or range of activities. It is not difficult to suppose that this goal may be rendered near impossible if the chosen name is similar to any other name in the marketplace or simply without some unique quality.

In Jamaica, company names are governed by both **The Companies Act 2004 (The Act)** and **The Companies Rules 2006 (The Rules)** which were drafted to, among other things, reform a name approval process which saw multiple companies possessed of similar and identical names leading to instances of passing off and general confusion in the business community/ marketplace. The Rules, in particular, Part I, and the Act now provide the Registrar with strict criteria by which proposed names are to be assessed and approved. What follows is an in depth treatment of the requirements of both the Rules and the Act but with particular focus on The Rules and all the sections contained within it.

### 2. NAME ASSESSMENT CRITERIA

#### A. Rule 2(1)(a) – IDENTICAL COMPANY NAMES

Rule 2(1) (a) mandates that a company may not be incorporated with a name that is identical to that of an existing company or other body corporate that is registered under the Act. It is of no importance whether a company is in liquidation or receivership. There are, however, exceptions to this rule.

#### EXCEPTIONS

- **The proposed company name is the same as the applicant's previously registered business name.**

The easiest method to establishing a business entity is the registration of a business name. After the business is proved to be viable and likely to grow, the desire is to "upgrade" to a limited liability company. Ideally, this transition should commence with a closure of the business name registration, followed by an application for the incorporation of a company. Practically speaking, this gives rise to numerous issues, not least of which is the danger of a name being open to registration by an unrelated party wishing to use the name or one that closely resembles the preferred name and the need to temporarily halt business activities as a result.

The Registrar, in light of this situation, may permit the incorporation of a company with a name identical to the name of a previously registered business name provided that it is communicated to the Registrar, in writing, that all the proprietors consent to the use of the name and that they undertake to close the business name within a reasonable period after the company's incorporation. This will prevent barring any other unforeseen circumstances the use of the name by anyone who is not affiliated with the business.

If the situation is not one as described above, and a party wishes to incorporate a company using the same business name, he may, close the business name, then incorporate the company using the same business name. There is however a risk that the name may not be available at the time of incorporation of the company.

It is very important to bear in mind that a name which has fulfilled the business names criteria will not necessarily pass the tests stipulated by the various sections of the Rules, which are more rigorous and contain additional tests and lays down conditionalities as is outlined below.

## **B. Rule 2(b) - SIMILAR NAMES**

Similar names are not uncommon; however, a name may be unacceptably or acceptably similar. An unacceptably similar name is one which will, for example, cause confusion in the marketplace/business community or is considered to be misleading. Whereas, a proposed name that is similar to an existing business or company name may be acceptable if it sufficiently distinguishes itself from the existing business name and or company, may stand on its own and is not likely to cause any sort of confusion (deceive) or mislead the general public. For example;

*“Premier Caribbean Bank Limited”*  
*“Premier Caribbean Sugar Company Limited”*

These two names though similar ought to be accepted as the two entities are in two different lines of business and it is unlikely that a person intending to deal with Premier Caribbean Bank Limited will as a result of the name be misled to deal with Premier Caribbean Sugar Company Limited.

Rule 2(b) stipulates that it is the Registrar who is the arbiter of whether a name is similar or not and mandates that Rules 3 and 4 are to also be taken into consideration in this assessment.

Rule 3 which is to be construed disjunctively states that a name may be deemed similar if:

- (a) It is phonetically identical to a previously registered name or the two bear a distinctive element in common.
- (b) There is similarity in name and operations of the entities, there is likely to be some confusion in the business community.

### **B. I Rule 3(a) – PHONETICALLY IDENTICAL NAMES**

Rule 3 which should be construed disjunctively states that a name is similar to an existing name previously registered if both names sound alike (phonetically identical) or have the same distinctive element (see below for definition) in common or share some similarity in name and operation.

The term phonetically identical is not defined in law and as such guidance must be sought from case law. In this regard the Canadian Courts are instructive. They have agreed that it encompasses the degree of similarity between two names in appearance and sound i.e. the visual and auditory impact of the words in the name. So if two names when put side by side, either visually or orally are the same or similar in the sense that their similarity would probably deceive, they are considered phonetically similar.

In assessing names phonetically all standard and possible ways of pronouncing words are used. That is whether the names when pronounced sound the same or similar to each other.

Therefore, the following are considered to be phonetically identical because when pronounced they sound the same.

*Hands Pluz Limited*  
*And*  
*Hand-Z Plus Limited*

*Rubies Jamaica Limited*  
*And*  
*Rubis Jamaica Limited*  
*Or*  
*D.A.S.H.E.E.N Limited*  
*And.*  
*Dash In Limited*

## **B. II Rule 3(a) – II. COMMON DISTINCTIVE ELEMENT**

A distinctive element, though not defined anywhere in the Rules, is generally agreed to be, that component of a name which is unique enough to serve as the main identifier of the name and satisfactorily differentiate it from any other. It may be a coined word or ordinary words used in a fanciful sense quite different from their ordinary meaning or it may simply be an uncommon word(s).

An example of names bearing the same distinctive element (see underlined) would be:

*Coeur Blanc Limited*  
*and*  
*Coeur Blanc Cleaners Limited*  
*Or*  
*Sofnol Materials Company Limited*  
*And*  
*Sofnol Limited*

The first two words of each name are identical and may cause confusion.

### **Initials as Distinctive Element**

There is no hard and fast rule with respect to when a name containing initials is likely to cause confusion. However, the nature of the business is one relevant consideration when assessing these names.

Where a distinctive element is made up of two initials, the proposed name may be considered confusing in the market place /business community and likely to cause the assumption that the both entities may be related, either as a subsidiary, or branch if:

1. the distinctive element (in this case the initials) is the same or similar in terms of industry, category or genre to another name in use,
2. The initials are identical and in the same order or if the first initial is the same and the last initial sounds the same.

For example the proposed name *BN Construction Limited* would be deemed confusingly similar to the name *BN Builders Limited* as the industry is the same. So too would *BM Construction Limited* - (initials similar) and *BFN Construction Limited*.

If there are three or more initials which are the only elements making up the distinctive element of a name, the proposed name may be considered confusing in the market place or business community where:

1. The descriptive element is the same (descriptive element may be a word which describes or suggests the line of business that the company is engaged in), and
2. All of the initials except for the last one are identical, or the first two initials are identical, and
3. The initials are in the same order as those in the existing corporate name.

For example - For a company that is in the lighting industry, lighting would be the descriptive element/feature):

- *ABC Lighting Limited – ABC Lighting Limited (not acceptable, initials and descriptive element are the same)*
- *BAC Lighting Limited (not acceptable, confusing)*
- *ABF Lightning Limited (not acceptable, confusing)*
- *RAC Lighting Limited (acceptable)*

### **Numbers as Distinctive Element**

Numbers in their numerical forms or in words will not by themselves be acceptable, however, they can be included as part of a name. So, for example,

- *365 Limited - not acceptable*
- *876 Grasshopper Limited acceptable*
- *ORB 360 Astronomy Supplies Limited - acceptable*
- *One Million Dollar Club Limited - acceptable*

A name that is sufficiently distinctive name must be able to withstand any distortion and not be confused with any existing corporate name, mislead or confuse the public as to the nature of the entity or its relationship to other corporations.

### **B.III Rule 3(b) – I. SIMILARITY IN NAME AND OPERATION**

A name will be unacceptably similar or too close to the name of a previously registered company where there is a similarity in the name and nature of the operations of the entities which is likely to cause confusion. Two or more companies will be deemed to have a similarity in nature of operations where one or more of the products or services offered by the entities are similar or identical.

Entities with similar names and operations:

*Patty's Deep Blue Sea Fish Store Limited*  
and

*Pratty's Deep Blue Sea Shop Limited (not acceptable)*

Or

*Kool Cat One Stop Auto Limited*

*and*  
*Cat Cool Auto Stop Limited (not acceptable)*

**Successor companies with similar names**

Rule 4 which is to be construed conjunctively, that is, they must be read together provides that where a proposed name may be confused with the name of a previously registered company or body corporate registration will not be refused in three instances where;

- (a) The request for the name relates to a proposed company that is **the successor** to the business of a registered company, which has ceased or will cease to carry on business.
- (b) The registered company undertakes in writing to dissolve or to change its name within six (6) weeks or such longer period as the Registrar may approve pursuant to a notification under section 15(2) of the Act.
- (c) The name sets out in numerals the year of incorporation in parenthesis immediately before the word “Limited” or the abbreviation thereof or before such other word and the Registrar may approve.

It must be noted that rule 4(c) pertains only to the successor of a previously registered company. If the proposed company is unrelated to the previously registered company, this section will be inapplicable and the proposed name will be refused on the basis of having been found to be unacceptably similar to a previously registered name, as the addition of a year will be deemed as being insufficient to distinguish the two.

So, an example of this would be where a new company is the affiliate of an existing company which will remain in existence and “2014” is proposed as the distinguishing element then this is seen as misleading because “2014” connotes a successor.

*Example: Shims Wholesale Limited (still in business)*  
*Shims 2014 Wholesale Limited (this would be unacceptable)*

**C. Part 1, Rule 5 – THE USE OF THE WORD “LIMITED”**

The word “Limited” must be the last word in the names of all companies. However, a company limited by guarantee may be granted a licence by the Minister to omit this word from the company’s name. If this licence is granted before incorporation, it must accompany the company incorporation documents.

**D. Part 1, Rule 6 – UNDESIRABLE COMPANY NAMES**

Rule 6 of the Rules and section 15 of the Act explicitly state that no company shall be registered by a name which is undesirable. The natural question is then: What constitutes an undesirable name? According to the Rules, an undesirable name:

- 1. Is offensive, for example *Knife A Boy Records Limited, Hold Down An Tek Entertainment Limited*
- 2. Outrages public decency and morality, for example, *Xxx Exctasy Limited,*
- 3. Connotes an undertaking that is scandalous, obscene or immoral, for example *The Downlow Men’s Club Limited; Pedherhasts Unleashed Limited*
- 4. Contravenes the national policy on security, for example, *Shinobi Espionage And Eavesdropper Services Limited.*



The first three of these four criteria are assessed in accordance with the prevailing attitudes of society and naturally are, in application, dynamic. Words which are commonplace today may have been found to be wholly unacceptable generally and even as a company name a few decades ago.

Where the Registrar grants a name but later realizes that the name is now undesirable, section 15 ss.3-6 of the Act authorizes the Registrar to notify the company of its undesirable name and may direct the company to change its name within six weeks of such direction. If however, an appeal is lodged to the Court against the Registrar's direction, the name may not be changed until the Court hears the appeal and confirms or cancels the Registrar's direction. If the direction has been upheld by the Court then the company within six weeks of such time after the direction has been confirmed must then change its name.

#### **E. Rule 7 – MISLEADING NAMES**

There are three circumstances in which a name may be found to be misleading or deceiving. Where a name;

1. Suggests that the company is trading on a large scale or a wide field and uses words such as *international* or *group* when in truth and in fact it contrary to the nature of the company.
2. Is all embracing suggesting that it is associated with a top level association. Words such as "*CARICOM* or *CSE* or *CARIFORA*".
3. Gives the impression that the company is associated with the Government of Jamaica. A name such as *National Educational Initiative Limited* is one such example. On the other hand names such as *National Meat Suppliers Limited* and *National Wholesale and Alcohol Distributors Limited*

It should be appreciated that the use of the word *national* does not automatically cause a name to fall in this category. However, care should be taken in the construction and arrangement of the components of a name particularly in the instances where the sphere of activities indicated by the name is easily associated or connotes an apparent association with the government.

#### **F. Rule 8 - JUSTIFICATION OF CERTAIN WORDS USED**

The use of certain words in proposed company names must be justified in a manner which satisfies the Registrar. Where the words of a name:

1. Suggest a connection with the Crown or Royal family, eg *Royal, King, Princess, Crown*.
2. When taken as a whole, suggest a connection with a Government department, statutory undertaking, local authority or any government, eg "*KSAC Workers Union Limited*", "*Jamaica 50 Celebrations Limited*".
3. Refer to a particular nationality, eg "*Chinese Occidental Business Alliance Limited*".
4. Give the impression the company is pre-eminent in a particular field when the name is taken as a whole, eg "*Mozart's Musical Experience Limited*".
5. Includes the family name or the name of an individual with or without initials, for example; "*Khemplani Foundation For Music Limited*", "*Rex Nettleford Foundation Limited*", "*Lee Growth Industries Limited*". The use of a family name requires the presentation of consent from the individual or where this individual is deceased, from his heir or legal representative. Documentary evidence or proof of the standing of the heir or legal representative is also required.

**G. Rule 9 – THE USE OF CERTAIN WORDS IN PROPOSED NAMES**

Rule 9 requires that the use of certain words in a proposed company name shall require the production of certification from the relevant professional or regulatory body upon submission for registration. Words such as, *engineer, medical, dental* and their derivatives, *engineering, medicine, dentistry*, etc, require the submission of a valid certificate for at least one officer involved in the company. Therefore, where, for example, the word *medical* is used as part of a company name such as *Solaris Medical Centre Limited*, at least one officer must present a current practising certificate issued to him by the Medical Council of Jamaica. Below is a list of words, which when used in a company name require the submission of certification from the relevant professional body upon submission for registration.

THE USE OF THESE WORDS IN A NAME MAKING REFERENCE TO THESE PROFESSIONS/ OCCUPATIONS REQUIRE CERTIFICATION	PROFESSIONAL/ REGULATORY BODY	CERTIFICATION
Accountant (Public)	Public Accountancy Board	Practising Certificate
Architect	Architects Registration Board	Practising Certificate
Dentist	Dental Council of Jamaica	Practising Certificate
Engineer	Professional Engineers Registration Board	Practising Certificate
Land Surveyor	Land Surveyors Board	Practising Certificate
Medical	Medical Council of Jamaica	Practising Certificate
Ophthalmologist, Optician & Optometry Professional	Medical Council of Jamaica (Ophthalmologist)/ Registrar General's Department (Optician and Optometrist)	Practising Certificate from Medical Council or Letter from Registrar of Births and Deaths evidencing registration and/ / or copy of most recent Gazette showing registration.
Pharmacy	Pharmacy Council of Jamaica	No objection Letter from Council
Veterinary Surgeon	Veterinary Council of Jamaica	Certificate of Registration

## H. Rule 10(1) (2) – USE OF CERTAIN WORDS WITHOUT CONSENT

If a proposed company wishes to use the words *Standard* or *Blue Mountain* as part of its name, permission must be granted by the Minister of Industry, Investment and Commerce (as it relates to the use of the word *Standard*) or the Coffee Industry Board (as it relates to the use of the word *Blue Mountain*). This permission or consent though not stated in the Rules or Act is to be presented in writing and signed by an authorized person.

## I. Rule 11- GENERAL WORDS

Rule 11 stipulates that a name may not be entirely comprised of general words unless the proposed name was in long and continuous prior use or, the general words are prefixed by initials or a distinctive word.

General words have been deemed to be those words which commonly occur in everyday usage or are in common use in the English language and have been defined in several dictionaries. They are also those words which commonly occur in conversations of the average person and are recognizable as such or those which are unspecific and in their ordinary meaning without delimitation.

The use of general words in a name will be prohibited where the name:

1. is only descriptive of the products or services in which the company deals or intends to deal for example Lawn Maintenance Services, Janitorial Services Limited,
2. is primarily or only the name or surname of an individual, for example Brown's Limited, or consists primarily or only of a geographic name for example Brown's Town Limited St. Mary Limited.

The reason for the prohibition of the use of general words in a name is that a person should not be permitted to expropriate for his exclusive use words which are in common everyday use and which describe the product or service they are associated with. General words not only infringe on a number of existing names but will likely restrict or limit the possibility of using any of these words later on that would have otherwise been available for use but for the existence of the company name.

If both requirements stated in the first paragraph are taken apart and looked at separately, it would be necessary to understand what "prefixed by a distinctive word" means. A distinctive word is a unique identifier of any proposed name which when used will not confuse its name with existing names of other companies. It distinguishes one company from another especially when the core business is the same or similar.

A distinctive word may be a fanciful, coined or made up word which has no meaning, for example "*Zwittica*", "*Mozenza*" "*Trismegistus*". It may also however be an ordinary word or words which have meaning but when used in the name is not *only descriptive of the products or services in which the company deals or intends to deal* "*Reggae Fever Innovations Limited*".

Where the proposed name is made up of general words but, was established by a long and continuous prior use then consideration will be given to the approval of such a name. This consideration stipulated by Rule 11 (2) must take into account the name in its entirety or as a whole and not separately before refusing a name. It permits the Registrar to determine whether the manner of combination of general words is itself unique and not of such a quality that the use of the combination would create a monopoly on a commonly occurring combination of general words (e.g. Jamaica Tours Limited, Jamaica Jerk Chicken Limited).

## **J. Rule 12 – TYPES OF AFFILIATION A CORPORATE NAME MAY NOT HAVE**

This Part of the Rules speaks to the affiliation which a corporate name may not have and if it has such an affiliation then permission must be granted.

Rule 12 (a) purports that a corporate name must not suggest, imply or connote affiliation with a political party or the leader unless he consents **in writing** for use of such a proposed name likewise subsection (b) prohibits the similar association with university or a professional body that is recognized by the laws of Jamaica and consent is given **in writing** to the use of the proposed name.

## **K. Rule 2 – TRADEMARKS**

The general rule regarding trademarks is that, any company name that partially or entirely encroaches or infringes on a registered trademark shall not be registered. Therefore an applicant when registering a company name must ensure that his proposed name is not a registered trademark. If there is an infringement, the Registrar may refuse incorporation or where after incorporation the infringement is brought to the Registrar's attention the Registrar will direct the name to be changed.

Where an applicant intends to use a registered trademark in whole or in part in a company name, consent must be granted in writing by the registered proprietor of the trademark. The Applicant may also present a license to use the trademark, franchise agreement (if the new entity is a franchise of the registered trademark) or any other contractual agreement from the holder of the trademark, otherwise the Registrar will not be permitted to register such a name.

## **L. CONSENT**

As was previously discussed consent is required in the use of family names. Consent is also required in the registration of a similar name. So for example, in the case of the previously registered company "*Trismegistus Limited*" and a proposed name, "*Trismegistus Pharmaceutical Company Limited*" consent from the directors of "*Trismegistus Limited*" to the incorporation of "*Trismegistus Pharmaceutical Company Limited*" must be submitted. This is also the case with a previously registered business name and a proposed company name. In the case of a business name all proprietors of the business name must consent in writing to registration of the proposed name. The onus is on the applicant to obtain this consent which must be granted from the respective authority. Although the Rules do not state the form which this consent must be taken it is understood to be in writing.

## **M. TYPES OF ACCEPTABLE NAMES**

Acceptable names fall within four categories:

1. A name containing a distinctive element. For example; Oetoke Limited
2. A name containing both a distinctive and descriptive element. For example; Retsibusha Night Club Limited.
3. A name which consists of general words which are prefixed by initials. For example; H.C.F. Welding Services Limited.
4. A name which consists of general words which when taken together are not descriptive of the product or service they are associated with. For Example; "Reggae Fever Innovations Limited" and "Irie Express Limited".

# General Notices

## Our Partners:

The following Government Ministries and Agencies have partnered with the Companies Office of Jamaica (COJ) to make your business registration and start-up experience easy and convenient:

- ✓ Ministry of Industry Investment & Commerce
- ✓ eGov Jamaica Ltd (formerly Fiscal Services Ltd)
- ✓ Tax Administration Jamaica (TAJ)



Companies Office of Jamaica,

1 Grenada Way, Kingston 5, Jamaica West Indies  
www.orcjamaica.com info@orcjamaica.com  
1876-908-4419-24

## General Reminders

1. ONLINE SUBSCRIBERS  
Online subscribers may top up accounts using VISA and MASTERCARD.
2. OFFICIAL RECEIPTS  
All customers collecting document(s) from the COJ are required to present the official receipt received upon lodgment of the said document(s).

### Appointments with Examiners

Clients who are having issues with multiple rejections are reminded that they may come in and sit with a Business Registration examiner who will assist with the issues being experienced.

This service is available every Wednesday and by Appointment Only.

To access this service simply:

Call our Customer Service Department at 754-2292 to make an appointment;

Or

Email:

- Donald Kelly at [kellydr@orcjamaica.com](mailto:kellydr@orcjamaica.com)