

Department of Economic Development

Rheynn Lhiasaghey Tarmaynagh

**GUIDANCE NOTES
CHOOSING YOUR COMPANY
OR BUSINESS NAME**

Revised August 2013
The Companies Registry
PO Box 345
St George's Court
Upper Church Street
Douglas
Isle of Man
IM99 2QS

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Part I

Introduction

This guidance note sets out the policies operated by the Department in relation to the consideration and approval of company and business names. It is intended as a general guide only and should be read in conjunction with the relevant legislation. The guidance does not have any binding force and does not affect any right of appeal.

The terminology used in this guidance note generally refers to “companies” however, this guidance note extends to other entities maintained by the Companies Registry. Please refer to **Part VI** for a list of the legislation covered by this guidance note.

Should you require any further information, guidance or assistance on this subject, please contact the Companies Registry.

The Company and Business Names etc Act 2012 (“the Act”) creates a new central point of reference for all matters pertaining to the naming of companies and other bodies corporate and unincorporate that are incorporated or established in the Isle of Man. Some limited matters remain within the scope of other legislation such as the requirement for limited companies to utilise the suffix of limited or ltd under the Companies Acts 1931 and Companies Act 2006.

The Act standardises the terminology across the various other enactments. Most notable of these is the creation of the “appropriate name approval authority” (“the authority”). The authority was previously variously referred to as the Department of Economic Development, Registrar of Companies or Registrar of Foundations. No new role has been created – this is simply new terminology.

The authority has the power to approve a name for use. It also has the power to refuse to permit the use of a name which, in its opinion, is undesirable. Use of a name can also be permitted subject to set conditions that must be met.

There is a power for the authority to direct that a name must be changed if, in its opinion, the name is undesirable.

The Act makes provision for rights of appeal against conditional approval, refusal or a direction to change a name. If the authority approves a name subject to conditions which are not met, or a name is not changed after a direction to do so has been issued, subject to no appeal being lodged, the authority can change the name to one it considers is to be acceptable, and enter the new name on the register.

The authority is under a statutory obligation to consult those named as “consultee in respect of word or phrase” in the Company and Business Names (restricted words and phrases) Regulations 2013 (“the Regulations”). The authority will seek the views of consultees, including Departments, Statutory Boards and professional organisations as appropriate, especially if the proposed name implies the business will be undertaking licensable or regulated business.

The authority has a power under the Act to approve the use of a word or phrase that would ordinarily, and after consultation, be refused. Circumstances in which this power might be used would be, for example, where a company wished to register as the Land Bank Limited with the intended business being the purchase of real estate. The word "bank" would ordinarily imply that a licensable regulated activity of banking was being undertaken. In order to ensure that there is no danger of the public being misled, in this instance, the word bank would be approved and the name of the company entered on a new public register of names containing restricted words and phrases.

The Act places a statutory obligation on the authority to refuse to approve a name that contravenes the Act for a number of reasons. The decision of the authority is absolute. This is subject to a statutory right of appeal against a decision of the authority. The authority and the appellant are both bound by any decision of the High Court.

A name can be reserved for a period of three months. Should the name still be required but not used within three months, further application can be made to reserve the name for additional periods of three months.

The Act creates a power to charge a fee on application for use of a name. This fee is currently set at £0.00.

Choosing your company or business name

Whether you are starting up a new company or changing the name of an existing business venture, making sure that your proposed name is available and acceptable for registration could save you time and money.

Q. What should I do?

A. Try to ensure the name you apply for is unique, distinctive and not too similar to that of another company or business, especially one in a similar line of business.

Q. How do I obtain Approval for a Company or Business Name

A. If you are setting up a company or business for the first time, or changing the name of an existing company or business, you should first obtain approval for use of the name from the authority. You can do this by completing a simple Name Request Form sending it by e-mail, post or fax to the authority at the Companies Registry.

<http://www.gov.im/lib/docs/ded/companies/companynames/nameenquiryform.pdf>

A copy of the name Request Form is available at the end of this publication, in the Companies Registry and on our web site.

You can also check the availability of proposed names on our web site http://www.gov.im/ded/pvi/pvi_fr.html and submit an application directly to reserve a name.

Q. *Are there any restrictions when choosing a name?*

A. Yes. The authority has the power to refuse to register a company or a business by a name, or to refuse to register a change of a name, which in its opinion is undesirable. You should ensure, therefore, that your proposed name is appropriate, descriptive and not misleading.

'Undesirable' means misleading, offensive or in any way likely to be harmful to the public.

Whenever a name implies a company will be undertaking an activity that is regulated or requires a licence or any other form of approval, from whatever source, the name is unlikely to be approved without an undertaking from the company that it will obtain the appropriate licence or approval.

Q. *Do I have to obtain pre-approval of a proposed company or business name?*

A. No. You can deliver documents for incorporation or registration to the Department through the Companies Registry without prior name approval. However, checking to ensure that your chosen name is available and that you are, if required, in a position to produce supporting information relevant to your proposed name makes good business sense and could help avoid delays in getting your business up and running.

Q. *How much does it cost to obtain pre-approval?*

A. There is no charge. The Act allows for a fee to be charged. This fee is currently set at £0.00.

Q. *Which names are likely to be refused?*

A. Names which are likely to be refused include those which:

- are identical to a company or business name already registered in the Isle of Man;
- are descriptive of a business activity but not distinctive;
- are identical to a company known to exist elsewhere;
- are grandiose and imply the company is in some way pre-eminent in its field (unless this is the case);
- are not conducive to the good name of the Isle of Man;
- are similar enough to an existing company or business name already registered in the Isle of Man, or known to be registered elsewhere, to cause confusion in the minds of those who might deal with the other business;
- contain restricted words and phrases such as "Bank" or "Building Society";
- contain words which imply royal patronage or connection, e.g. "Royal", "Royalty", "King", "Queen", "Prince", "Princess", "Windsor";
- do not contain an approved suffix, where one is required;
- imply the company will be undertaking a regulated activity, without holding the appropriate licence;
- were used by a company that has been struck off or dissolved in the preceding 5 years;

- would indicate that the company may be engaging in illegal activities;
- are registered for the main purpose of obtaining money (or other consideration) from a person who has goodwill in the same or sufficiently similar name elsewhere;
- imply a relationship or association with a Government Department or Statutory Board.

Q. *How does the authority determine if a name is the 'same as' or 'similar to an existing name'?*

- A.** In considering whether a name is the same as an existing name or a name which has been struck off in the preceding 5 years, the authority will ignore punctuation marks, definite articles such as the word 'the' appearing at the beginning of a name, a company suffix such as 'limited' or 'PLC' and words such as 'company' or 'co'.

Names are normally considered to be too similar to an existing name if:

- the names are phonetically identical;
- there is only a slight variation in the spelling of the two names and the variation does not make a significant difference between the names;
- the name contains a word or words which might be regarded as a distinctive element, unless that element is qualified in such a way as would minimise the risk of confusion. "Distinctive element" includes made up words, non-dictionary words or combinations of two or more letters as a prefix. In some cases everyday words used in a distinctive way may also be considered as distinctive elements. Place names or everyday descriptive words in general use will not normally be regarded as distinctive.

In considering whether names are too similar, the authority will take account of all factors, which may be considered to suggest similarity and whether or not those factors are likely to lead to confusion being caused to the public. These will include, for example, the nature and location of the businesses concerned.

Q. *What are restricted words and phrases?*

- A.** Restricted words and phrases include those which imply business pre-eminence, a particular status or involvement in a regulated activity. If you wish to use such words, you will be asked to provide precise information about the proposed business and the location from which the central management and control of the business will be exercised. Restricted words and phrases are considered further in Part II of these notes.

Q. *What is a company suffix and do I have to use one?*

- A.** A company suffix denotes the fact that a company has either limited or unlimited liability (eg: "limited" or "plc"). If you are forming a company, the law normally requires that the company's name must end with an appropriate suffix.

Q. Can I use a foreign name?

A. Yes. Foreign words will be considered for registration provided they can be written in the Latin alphabet. Where a foreign language is used, you should provide a translation of the proposed name to avoid any delay in considering the application. However, as a general rule, foreign scripts such as Chinese, Arabic, Russian or Greek, are unlikely to be approved.

Q. Can my proposed name incorporate a domain name?

A. Yes. However, you will be asked to provide evidence to show that you are the registered holder of the domain name and you may be asked to change the name if you dispose of, or otherwise lose control of the domain name.

Q. Does the authority consult any Trade Mark Index or other Trade Mark Register?

A. No, approval of a name is not an indication that no Trade Mark rights exist over it. There is no Trade Mark Index in the Isle of Man, but Isle of Man Trade Marks are included in the UK Trade Mark Index. In case of doubt, in relation to Isle of Man or UK Trade Mark matters, you may wish to contact the relevant authorities at either or both of the following addresses:

UK Intellectual Property Office Concept House Cardiff Road Newport South Wales NP10 8QQ United Kingdom	UK Intellectual Property Office 21 Bloomsbury Street London WC1B 3HF	Information about the UK Intellectual Property Office is available on their web site; http://www.ipo.gov.uk/home.htm UK Intellectual Property Office is an operating name of the Patent Office
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Please also note that if you do business using a name that misleads the public into believing that your business is that of another, you may face legal action on the grounds of 'passing off' by any person whose business you have affected. Registration of a name with the Department is no guarantee that you are safe from such action. You should always seek appropriate legal advice before proceeding.

Q. How will I know whether my name has been approved or refused?

A. The authority will advise you. The decision will be available from 2pm on the next working day after submission. Where your name is approved as a new name, you will be advised in writing and the name will be reserved for your use for a period of three months. If you are unable to complete the formalities within this period you may reapply for a further period of three months. If you do not contact us the approval will lapse and another applicant may reserve the name. Where your name is approved as a

change of name, you will receive confirmation that the desired name has been reserved. A practice note is available on our web site and from the Companies Registry outlining the procedure for changing the name of a company.

Please note the authority has the right to reconsider its decision on a name approval, prior to incorporation, should it become aware of circumstances that make use of the name undesirable, or misleading. It is inadvisable therefore, to undertake final printing of letterheads etc. until all of the registration formalities have been completed.

Q. Can I appeal against a decision to refuse my proposed name?

A. Yes, there is a statutory right of appeal against a decision by the authority to either refuse to register a name or if you are directed to change a name. This is set out in the Act.

Q. How will the name be presented on the certificate of incorporation, registration or change of name?

A. The name will always be presented in upper case. There is, however, no reason why a name cannot be presented in company documentation and literature in any graphical format or mixture of upper or lower case provided the spelling remains the same. This is a presentational issue for the company.

Part II

Restricted words and phrases

The authority is, under the Regulations, obliged to consult with those listed as consultees in the Regulations where a name application includes the use of a restricted word or phrase. Whenever a name implies a company or business will be undertaking a regulated activity that requires a licence or some form of official approval, the name is unlikely to be approved without an undertaking that the company will obtain the appropriate licence. If the company does not obtain the licence or it is withdrawn or surrendered, the authority may direct the company to change its name if it is subsequently deemed to be undesirable.

The list of restricted words and phrases and the relevant consultees are set out in the Regulations and in Part VII of these guidance notes. This list is not exhaustive and any word/expression that might be construed as having the same meaning or implication, in any language, as any of the words/expressions listed will be subject to the same justification or conditions.

If you are applying for a name that contains a restricted word or phrase or the business to be carried out is associated with a restricted word or phrase you should have spoken with the relevant consultee(s).

Part III
Change of Name

Q. Do the same restrictions and considerations apply when changing an existing company or business name?

A. Yes. A change of name is subject to exactly the same restrictions and considerations as when first registering a name. Where the new name includes any restricted words and phrases that have specific conditions attached to their use, you will be expected to meet those conditions **before** the change of name can formally take effect.

Q. How will I know whether my name has been approved or refused?

A. Where your name is approved as a change of name, the authority will confirm that the desired name has been reserved.

Part IV
Foreign Companies Registered Under Part XI

Q. Do the same restrictions and conditions apply to foreign registered companies?

A. The authority will, in the first instance, make every effort to ensure that a company that is registered as a foreign company under Part XI of the Companies Act 1931, is registered under the same name as it is registered in its jurisdiction of incorporation. If however, the authority considers that the name of a foreign company is undesirable, the authority has the power to refuse to register the company under that name. The Act would then apply to the new name.

Q. Can a company trade under a name different to its corporate name?

A. The power for a company to use another corporate name in carrying on business in the Isle of Man is set out in section 313A(4) of the Companies Act. Applicants are advised to familiarise themselves with the provisions of that section of the Act.

Part V
Directions to Change a Company's Name

Q. What is a "direction"?

A. A "direction" to change a company name is a legally binding instruction to a company to pass a resolution adopting a new name and to register the change at the Companies Registry within a specific time. A "direction" may be issued, for example, as a result of an objection being lodged by an interested party because the name is "too like" another.

Q. Who can direct a company to change its name?

- A.** The appropriate name approval authority has statutory powers to direct a company to change its name.

Q. How do I object to a company's name?

- A.** If you wish to object to a name, for example, because its similarity to your own company name may lead to confusion, then you should write to:

The Companies Registry
PO Box 345
St George's Court
Upper Church Street
Douglas
Isle of Man
IM99 2QS

Please provide a copy of any correspondence relating to the name and state your reasons for objecting.

Part VI
Legislative References

The Act applies to the following (each a “**person in respect of which this Act applies**”) —

- (a) a company to which the Companies Acts 1931 to 2004 apply, including —
 - (i) a company within the meaning of the *Companies Act 1931*;
 - (ii) an existing company within the meaning of the *Companies Act 1931*;
 - (iii) a company incorporated outside the Island to which *Part XI of the Companies Act 1931* (companies incorporated outside the Island carrying on business within the Island) applies;
 - (iv) a protected cell company within the meaning of the *Protected Cell Companies Act 2004*;
 - (v) an incorporated cell company within the meaning of the *Incorporated Cell Companies Act 2010* to which the Companies Acts 1931 to 2004 apply;
 - (vi) an incorporated cell within the meaning of the *Incorporated Cell Companies Act 2010* to which the Companies Acts 1931 to 2004 apply; and
 - (vii) a company continued in the Island under *Part 1 of the Companies (Transfer of Domicile) Act 1998*;
- (b) a company to which the *Companies Act 2006* applies, including —
 - (i) a company within the meaning of the *Companies Act 2006*;
 - (ii) a protected cell company within the meaning of the *Companies Act 2006*;
 - (iii) an incorporated cell company within the meaning of the *Incorporated Cell Companies Act 2010* to which the *Companies Act 2006* applies;
 - (iv) an incorporated cell within the meaning of the *Incorporated Cell Companies Act 2010* to which the *Companies Act 2006* applies;
- (c) a limited liability company to which the *Limited Liability Companies Act 1997* applies;
- (d) a foundation to which the *Foundations Act 2011* applies;
- (e) a limited partnership to which *Part II of the Partnership Act 1909* applies;
- (f) a society to which the Industrial and Building Societies Acts 1892 to 1955 apply;
- (g) a firm or person required to be registered under the Registration of Business Names Acts 1918 and 1954

Part VII

List of Restricted Words and Phrases

<u>Word or phrase</u>	<u>Consultee</u>
Asset(s)	Financial Supervision Commission (FSC)
Asset Management/Manager	
Banc	
Bancorp	
Bank	
Banking	
Banque	
Banx	
Bond(s)	
Broker(s)	
Bureau(x) de change	
Capital	
Capital Management	
Cheque Cashing	
Collective Investment Scheme(s)	
Commodities	
Commodity Adviser/Advisory	
Commodity Management/Manager	
Commodity Services	
Company/Corporate Administrator(s)	
Company/Corporate Director(s)	
Company/Corporate Formation(s)	
Company/Corporate Incorporation(s)	
Company/Corporate Management	
Company/Corporate Manager(s)	
Company/Corporate Nominee(s)	
Company/Corporate Registration(s)	
Company/Corporate Secretary	
Company/Corporate Secretaries	
Company/Corporate Service(s)	
Credit Union	
CSP	
Currency	
Custodian	
Dealer	
Dealing	
Deal(s)	
Deposit	
Deposit Taker/Taking	
Derivative(s)	
E-money	
Electronic money	
Enforcer	
Equity	

Exchange	Financial Supervision Commission (FSC)
Fiduciaire	
Fiduciary	
Finance	
Financial	
Financial Adviser/Advisory	
Financial Management/Manager	
Financial Services	
Finanz	
Fiscal	
Fond	
Forex	
Foreign Exchange	
Foundation	
Fund	
Fund Administration	
Fund Management/Manager	
Fund Services	
Funding	
Futures	
FX	
Gilt	
Gilt-Edged	
Guarantee	
Invest	
Investment(s)	
Investment Adviser/Advisory	
Fund Adviser/Advisory	
Investment Management/Manager	
Investment Service	
Investor	
Life and Pensions	
Markets	
Money	
Money Transmission	
Mutual	
Option(s)	
Payment Services	
Pension	
Portfolio	
Portfolio Advisor/Advisory	
Portfolio Management/Manager	
Portfolio Services	
Protector	
Savings	
Scheme	
Securities Management/Manager	
Securities Services	
Trustee	

Trust TSP Underwriter(s) Underwriting Unit Trust	
Assurance Benefit(s) Insurance International Benefit Fund Life and Pensions ("L & P") Pension(s) Pension Scheme Trustee Pension Trustee Plan(s) Provident Fund Re-Assurance Re-Insurance Retirement Retirement Benefit(s) Scheme(s) Risk SSAS(s) Scheme(s) Scheme Administrator Self Invested Personal Pension(s) SIPP(s) Small Self Administered Scheme(s) Superannuation Underwriting	Insurance & Pensions Authority (IPA)
Credit Estate Agent(s) Estate Agency Finance Lending Loan(s) Moneylender Money Lending Mortgage Pay day Timeshare	Office of Fair Trading (OFT)
Driving Instructor	Department of Infrastructure (DOI)

Betting Bookmaking Casino Gaming Gambling	Gambling Supervision Commission (GSC)
Chemist Child Childcare Children Optician Health Medical Pharmaceutical Pharmacy	Department of Health (DOH)
Disposal of electronic and electrical equipment Recycling Tyre Disposal Waste Disposal	Environmental Protection Officer (EPO)

Application Number

(For official use only)

NAME ENQUIRY FORM

Companies Registry, PO Box 345, St George's Court, Upper Church Street, Douglas, Isle of Man, IM99
2QS

Tel: +44 (0)1624 689389 E-mail: companies@gov.im

Department of Economic Development

FOR COMPLETION BY APPLICANT

August 2013

Please complete all parts of the Form as it will enable a quicker response to your application
Decisions will be available from 2pm on the next working day after submission

Name of Applicant:

Address:

Email:

Tel No:

Entity Type: Please tick as appropriate

• 2006 Act Company	
• 1931 Act Company	
• Business Name	
• Foreign Company	
• LLC	
• Foundation	
• Limited Partnership	

New Name:

Change of name:

Please tick as appropriate.

Proposed name (and translation if proposed name is in a foreign language):

Existing name and company number (if any):

Type of business to be carried out:

Relevance of any significant words, initials or figures in the name:

ADDITIONAL INFORMATION

Will the company be engaged in any of the following:

	YES	NO
(a) deposit taking under the Financial Services Act 2008		
(b) investment business or services to collective investment schemes under the Financial Services Act 2008		
(c) money transmission services or e-money business under the Financial Services Act 2008		
(d) acting as a collective investment scheme under the Collective Investment Schemes Act 2008 *		
(e) provision of corporate and/or trust services under the Financial Services Act 2008		
(f) insurance or reinsurance business (including broking) under the Insurance Act 2008		
(g) the business of trustee of retirement benefits scheme or the business of a retirement benefits schemes administrator under the Retirement Benefits Schemes Act 2000		
(h) gaming, betting or operating a lottery under the Gaming (Amendment) Act 1984; Casino Act 1986; the Gaming, Betting and Lotteries Act 1988 or the Online Gambling Regulation Act 2001		
* NB: If a collective investment scheme, please specify the type in the space below – e.g. Authorised Scheme, Regulated Fund, Specialist Fund, Qualifying Fund, Full International Scheme, Professional Investor Fund, Experienced Investor Fund, or Exempt Scheme:		

Signed _____ Date _____

A Guidance Note entitled 'Choosing Your Company or Business Name' is available on our web site and from the Companies Registry. www.companiesregistry.gov.im

The Department has powers exercised by the Companies Registrar to refuse to register a company or a business by a name, or to refuse to register a change of a name, which in its opinion is undesirable. You should ensure, therefore, that your proposed name is appropriate, descriptive and not misleading.