COMPANY LAW

PART II

CPA SECTION 3
CCP SECTION 3
CS SECTION 3

STUDY TEXT

Rules Regarding the Name of the Company

A company cannot adopt a name by which another company is registered. If by inadvertence, mistake or otherwise, a name is selected which is the same as that of an existing company or closely resembles it, the name must be changed.

If the name of company closely resembles the name of a previous company, the public may be misled and may be defrauded. In such a case the court will direct the change of the name of the company.

In Sec.19(2) of the Act provides that a proposed name must not, in the opinion of the registrar, be undesirable. The name may be rejected if

i. It is too like the name of an existing company.
ii. It is misleading, for example, if the name of a company likely to have small resources suggests that it is going to trade on a great scale over a wide field.
iii. It suggests some connection with the crown or members of the Royal Family or royal patronage, including names containing such words as "Royal", "King", "Queen", "Princess" and "Crown".
iv. It suggests connection with a government department or any municipality or other local authority or anybody incorporated by Royal Charter or by statute or with the government of any part of the Commonwealth or of any foreign country.
v. It contains the words "British", unless the undertaking is British-controlled and entirely or almost entirely British-owned and is also of substantial size and importance in its particular field of business.
vi. It includes "Imperial", "Commonwealth", "National", "International", "Corporation", "Co-operative", "Building Society", "Bank", "Bankers", "Banking", "Investment Trust", or "Trust", unless the circumstances justify the inclusion.
vii. It includes a surname which is not that of a proposed director, unless the circumstances justify the inclusion.
viii. It includes words which might be trademarks, unless a trade mark clearance has been obtained.

The name and the address of the registered office of every company must be painted or affixed on the outside of its business premises in a conspicuous position and in letters easily legible in one or more of the languages used in the locality. The words "Limited" and "Private Limited" are parts of the names of public and private companies respectively and must be added at the end of the name of the company.

The name and the address of the registered office of the company must be engraved in legible characters on the company's seal and mentioned in all business letters, bill heads, notices and other documents. But they need not be mentioned in advertisements.If a company does not paint or affix its name as prescribed, the company and every officer in default are liable to a fine not exceeding one hundred shillings and if the company does not keep its name painted or affixed as prescribed, the company and the officer in default shall be liable to a default fine.

The Act provides that the last word of the name of a limited company must be "limited" this would not be if the Central Government may by license, permit the omission of the words limited

h) operate securities account for the handling of book entry securities and cash ifany.

Prescription for Securities for Immobilization

A securities exchange may from time to time after consultation with the central depository prescribe that any security listed or quoted or proposed to be listed or quoted on the securities exchange be immobilized by depositing such security with the central depository. A security exchange shall in respect of securities listed or quoted on securities exchange give notice to the public in the manner prescribed by the central depository requiring all eligible securities prescribed by it to be immobilized with a central depository.

The deposit by a person of any eligible security with an agent of central depository shall be deemed to be a deposit of such security with that central depository. Application for approval to operate central depository

Any person wishing to operate central depository shall submit an application in prescribed form.

The application shall be accompanied with:

i. Memorandum and articles of association of the applicants whose main objective shall be to operate a central depository.
ii. A certificate of incorporation and applicants proposed rules
iii. The name(s), certificate(s) and memorandum and articles of association for all its nominee companies.
iv. A business model including the details of the central depository of settlements system proposed to be adopted by the applicant.
v. A certified copy of the agreement between the systems provider and the applicant where applicable.
vi. Prescribed fees by capital market.
vii. Schedule of proposed fees and penalties and
viii. Any such additional document as may be required by the authority.

Contents of proposed Central Depository rules

The rules proposed to be adopted by an applicant for approval to operate a central depository shall contain the following provisions:

a) Appointment, functions, suspension and revocation of appointment of central depository agent.
b) Appointment of a manager for a suspended central depository agent
c) Notification to the issuers and the public of all eligible securities prescribed to be immobilized or dematerialized with the central depository.
d) A deposit of certificates
e) Information to be contained in the record of depositors.
f) Frequency of issue of the statement of accounts by the company to the depositors
g) Charging of securities.
h) Circumstances when book entry security in securities account in suspense in circumstances other than provided under the act circumstances for investigation or restriction of dealing in any book entry transfer partially or otherwise.

The magistrate held that as the respondent had never possessed or acquired his qualifying share, his appointment was invalid and that there was no case for him to answer. He also held that the respondent was never even a de facto director and that in any event a de facto director was not criminally liable as a director for offences under the Companies Act.
Against that decision the attorney-general appealed to the High Court by way of case stated, but the appeal was dismissed, the court holding that a de facto director was not liable qua director for criminal offences under the Companies Act. On a further appeal it was submitted (for the crown) that the respondent was validly appointed a de jure director, that thereafter he was a de facto director and that a de facto director was criminally liable for offences under the Companies Act.

The court held the following:

i) The word "director" in the Companies Act includes a de facto director unless the context otherwise requires, and looking at the mischief at which the sections in question aimed a de facto director is as much a person whose conduct should be the subject of the sections as a person who has been duly appointed a director.
ii) The respondent was duly and validly appointed a de jure director but he ceased to be a de jure director two months later as he failed to acquire his share qualification within that time.
iii) If the respondent acted as a director after the expiration of two months from his appointment he was then a de facto director and he was a director for the purpose of those sections of the Companies Act which it was alleged he had contravened.

The appeal allowed and there for the acquittal set aside.

Disqualification of Directors

A person is disqualified to be appointed as director of a company if he suffers from any of the following disabilities:

(1) lf he has been adjudged to be of unsound mind.,
(2) If he has been absent from the company's meetings for 6 months.
(3) If is un-discharged bankrupt/insolvent.
(4) If he has been convicted of any offence for which he been sentenced to more than 6 months imprisonment for an offence involving moral turpitude and five years having not elapsed from the date of expiry of the sentence.
(5) If he has failed to pay any call on his shares for six months.
(6) If he has otherwise been guilty of any fraud in the relation to the company or of any breach of his duty to the company.
(7) If he has not attained the age of 21 years.
(8) If heis over 70 years.

REMOVAL AND VACATION OF OFFICE

In addition to vacating office under the aforesaid provisions of Article 88 a person may cease to be a director for various reasons, such as—

(a) death; or
(b) retirement by rotation under the articles; or

SCHEMES OF ARRANGEMENT

It can be used to effect any type of compromise or arrangement with creditors or members, for example changing their rights in or against the company, or transferring their rights to another company which then issues shares or takes over liabilities in return for cancellation of existing rights against the first company, i.e. it can be used for both reconstructions and mergers. There must however be a 'compromise' or an 'arrangement':

A compromise can only be made when there has previously been a dispute
An arrangement has a much wider meaning and does not depend on the presence ofa dispute.

Procedure of Reconstruction

1) The first step is for the company, or any creditor, or any member or, if the company is being wound up, the liquidator asks the court to convene a meeting of creditors and meetings of each class of members.
2) The company must send out with the notice of any meeting called a statement explaining the effect of the scheme and in particular details of material interests of directors and its effect on them (Sec. 208(1))
3) The compromise or arrangement must be agreed at each meeting by a simple majority in number representing 75% in value of those voting in person or by proxy. (Sec. 207(2))
4) When the necessary meetings have been held and the required majorities obtained the court must give its approval.

The role of the court in reconstruction

The court plays a key role in reconstruction as discussed below

1) The court will ensure that the scheme is not ultra vires or an improper use of the procedure laid down in reconstruction
2) The court will check that the meetings were properly convened and that the required majority approval was obtained.
3) Since the requirement is only for a majority of members voting rather than of all the members, the court will examine whether the class was fairly represented at the meeting
4) Probably the court will have already directed that a substantial percentage of the class constitute a quorum when the initial application was made to the court to hold the meeting.
5) The court will be very careful if the majority of one class of shares also hold the shares of another class since they may vote in favour of a scheme which harms the first class of shares but benefits the second class.
6) The court will look at situations where creditors are also shareholders since a similar conflict of interest could arise.
7) In general, the court will require disclosure of all relevant information, listen to any minority objections and finally only sanction the scheme if it is one that an honest and intelligent businessman would approve. Once the court has approved the scheme it binds all parties and cannot be altered.