

CORPORATIONS LAW
SIMPLIFICATION PROGRAM

COMPANY NAMES
PROPOSAL FOR SIMPLIFICATION

TASK FORCE
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Simplification Task Force
Attorney-General's Department
BARTON ACT 2600

COMPANY NAMES - PROPOSAL FOR SIMPLIFICATION

Current problems

The existing provisions governing company names have a number of problems.

Reservation of names

At the moment, a name must be reserved before it is registered. The First Corporate Law Simplification Bill deals with this problem by making the reservation of names optional.

Accessibility

The names provisions are not accessible to users. They are complicated and spread throughout various areas of the Corporations Law and the Regulations. Most of the provisions are found in Part 4.2 of the Law, 'Names and Registration Numbers' (sections 366-383C). Other provisions are found in sections 99A, 219, 358, 361 and 362. Regulations 4.2.01 and 4.2.02, and Schedules 6, 6A and 7 to the Regulations set out additional company names provisions. Moreover, the placement of the rules seems haphazard. It is difficult for users to tell where to go first.

The Law also contains extensive repetition in the rules applicable to companies and those applicable to registrable Australian bodies and foreign companies.

The identical names test

Since the commencement in January 1991 of the national corporations scheme, the Law has contained an 'identical names' test for determining whether or not a particular name is available to a company for registration.

Apart from names declared to be unacceptable by the Corporations Regulations, a name is unavailable for registration under section 367 of the Law if it is identical to a name that is:

- already reserved or registered, or
- included on the national business names register.

The strict application of this test can result in anomalies. The Law already provides that in determining whether a name is identical to another name, certain factors are disregarded. These factors are:

- the use of the definite article as the first word of a name
- the type, size and case of letters
- the size of numbers or characters
- the use of accents or punctuation marks
- the use of spaces between letters, numbers or characters
- the inclusion of 'Limited', 'No Liability' or 'Proprietary' or an abbreviation of one of these
- the use of either the full or abbreviated form of 'Company', 'Proprietary', 'Limited', 'Australian', 'Number', 'and', 'No Liability' and 'Australian Company Number'
- whether or not full stops are used in abbreviations.

The Ministerial Council for Corporations is considering whether further modifications should be made to the application of the test. The proposed modifications to the identical names test in this proposal originated in work undertaken for the Council.

Licence to omit 'Limited' from a company's name

The ASC may grant a company a licence that allows the company to have a name that does not contain the word 'Limited'. The company must have objects for charitable or certain other community purposes.

The Law says that only a limited company can have such a licence. The ASC exercises its discretion so that only companies limited by guarantee may obtain a licence.

The use of a licence to achieve the omission of 'Limited' from a company's name seems unnecessarily complex.

In addition, the range of companies which may apply to omit 'limited' extends to companies which do not have charitable or benevolent objects (eg companies formed for the purpose of providing amusement).

ASC power to revoke a name

Although the ASC has the power to direct a company to change its name where that name was registered by mistake, there is no explicit power for the ASC to enforce a direction where a company does not comply, except through expensive court proceedings.

The proposal

This proposal simplifies the requirements for company names under the Corporations Law by:

- providing a more sensible division between the rules contained in the Law and the Regulations and reducing duplication
- modifying the identical names test to take account of various anomalies
- revising the process of allowing a company to omit the word 'Limited' from its name
- empowering the ASC to change a company name in appropriate circumstances.

Benefits of the proposal

The practical benefits of the proposal include:

- the names provisions will be easier to understand and use
- the identical names test will operate more effectively
- the procedure for allowing a company to omit the word 'Limited' from its name will be streamlined.

Separate review

The Attorney-General has recently asked his Department to carry out a review of the directors' disqualification provisions in the Law. One aspect of this review will deal with the re-use of the names of failed companies by people associated with those companies.

