

COMPANY AND BUSINESS NAMES

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1. CHOICE OF NAME FOR A COMPANY

1.1 Can I choose any name I want?

Generally you have freedom of choice in choosing your company's name. However there are restrictions imposed by the Companies Act 1985 (**CA**) and related regulations. A name may be rejected if:

- 1.1.1 it does not end with the word 'limited' if the company is a private limited company or the words 'public limited company' if it is a public company. (NB this does not apply to a company limited by guarantee rather than shares);
- 1.1.2 it is the same as that of an existing registered company (note that the word 'the' at the start of the name is ignored for this purpose, as is punctuation);
- 1.1.3 in the opinion of the Secretary of the State, its use would constitute a criminal offence, or it is offensive;
- 1.1.4 it includes the words 'limited', 'unlimited' or 'public limited company' otherwise than at the end of the name; or
- 1.1.5 it includes words suggesting a connection with the Government or a local authority, or particular words specified in the Company and Business Name Regulations 1981 (as amended). (Note, however, that the Registrar does have discretion to give approval for registration of the name – see below).

NB: the Companies Act 2006 (see below) contains a new power for a person to object to a company's name if that name is the same as, or confusingly similar to, a name in which the objector has goodwill. The objection will be upheld if the name was not adopted in good faith or if the main reason for its choice was either to obtain money from the person objecting or to prevent their using its name. This change came into force on 1 October 2008. One other main change under the Companies Act 2006 that will be coming into force on 1 October 2009 is that people will be able to use their own names (although not their nicknames), thereby putting into statute what is already allowed under common law.

1.2 How do I register my name?

- 1.2.1 If your choice of name is not already on the Company Names Index and is not one which needs the Secretary of State's approval, then you should send your documents to the New Companies Section of Companies House in Cardiff. If your documents are correct, the company name will be registered and a certificate of incorporation issued.
- 1.2.2 If your choice of name is one which needs approval, contact the New Companies Section at Companies House in Cardiff, and they will explain what process is required, depending on the rules governing the use of the word you have chosen.

- 1.2.3 **NB:** Davenport Lyons' Company Secretarial Unit can carry out this process for you – for further information, please contact Naomi Zamet or Fola Sanu on 0207 468 2600.

1.3 What must I do with my name?

1.3.1 Every company must have its name displayed outside its registered office and any place of inspection (being any other location where a company keeps available for inspection any company records that it is required to keep so available). The name must also be displayed at any other location at which the company carries on business, unless that location is primarily used for accommodation. The display of the name will have to be clearly visible to any visitors to the location and must be continuously displayed. .

1.3.2 In addition a company must have its name mentioned:

- (a) in all business letters (including e-mails) and order forms of the company;
- (b) on all company websites;
- (c) in all its notices and other official publications;
- (d) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods or services purporting to be signed by or on behalf of the company;
- (e) in all applications for licences to carry on a trade or activity;
- (f) in all bills, invoices, receipts and letters of credit; and
- (g) in all other forms of business correspondence and documentation.

Failure to comply will result in a fine.

1.4 Can I be ordered to change my company name?

1.4.1 The Secretary of State has the power to order a change of name in the following circumstances:

- (a) within 12 months of registration, if the name is too like a name appearing in the index of names at the time of registration or is the same as a name which should have been in the index at that time;
- (b) within 5 years of registration, if misleading information was given at the time of registration; and
- (c) at any time, if the name gives so misleading an indication of the nature of the Company's activities as to be likely to cause harm to the public.

1.5 What is passing off and how could it affect me?

If you adopt a name which misleads the public into believing that your business is that of another business – for example, trading as a department store under the name 'Debenhams' – then you may face legal action for 'passing off' by the person

whose business you have affected. Registration of your company with a particular name will not give the company any protection against a passing-off action if an existing business already trades under the same or a similar name. See above for a new right in this area for a person to object to a company name on the grounds of goodwill.

1.6 Trade marks – how could my choice of name be affected?

If your company name includes a registered trade mark of another business it will be open to an infringement action. You should therefore inspect the trade marks register before applying to register a company name.

For more information about registering and protecting your business name, our trade marks team led by Bill Ladas can help. The team can be reached on 0207 468 2600.

1.7 How do I change my company's name

1.7.1 You can change your company's name by passing a special resolution (requiring a 75% majority), subject to the same restrictions as apply to the choice of name by a new company.

NB: pursuant to the Companies Act 2006 (see below) a company will be able to change its name either by special resolution or by any other means provided in its articles.

1.7.2 You must send a copy of the special resolution to the Registrar together with a fee of £10. You must also, within 15 days of the change, send a printed copy of the memorandum with the name change to the Registrar. The change becomes effective when the Registrar issues a certificate of incorporation altered to meet the circumstances. However, the company remains the same legal person so that its rights and obligations are not affected by the change. Once the name is changed you must use it on the company's notepaper and other documents, as above.

1.7.3 If all the documents are correct, the change of name will normally be processed within five working days from receipt at Companies House. Note, however, that change of name can be done on the same day as receipt of the resolution, although this will cost £50.

2. CARRYING ON BUSINESS UNDER A DIFFERENT NAME

2.1 Can I choose any name I want?

Where a company carries on business otherwise than under its full corporate name (for example a 'XYZ Limited' trading as 'Holidays Direct'), it is subject to some of the requirements of the Business Names Act 1985 (**BNA**) in addition of those of the CA and the Companies Act 2006 (and related regulations). Under the BNA, a business cannot carry on business under a name without the written approval of the Secretary of State, if:

2.1.1 it would be likely to give the impression the business is connected with the Government or a local authority;

2.1.2 it includes any word or expression specified in the Company and Business Names Regulations 1981 (as amended), for which see above.

2.2 What information must I disclose?

Companies carrying on business otherwise than under their full company name are no longer subject to two different sets of rules as the relevant provisions of the Business Names Act 1985 have been repealed for these purposes. Such companies must therefore display the information set out in paragraph 1.3 above and no longer need, for example, to include an address for service of documents that are not business letters or order forms or in signs at their premises.

NB: The Companies Act 2006, which received Royal Assent in November 2006, repeals the BNA and makes provision for the relevant requirements relating to business names. Not much substantive change is made, except that coverage of the requirements will extend to all overseas companies carrying on business in the UK. However, the relevant provisions for this, and the other areas noted above (except as specified), will not be coming into force until 1 October 2009.

3. RULES APPLYING TO A PARTNERSHIP

3.1 Can I choose any name I want?

A partnership can choose any name it wishes subject to the passing off and trade mark issues mentioned above. However, where a partnership's name does not contain the surnames of all its individual partners or the corporate names of its corporate partners it is subject to the BNA. The BNA imposes the same restrictions on a partnership as for a company which does not trade under its full corporate name.

3.2 What information must I disclose?

3.2.1 The same guidelines apply as for a company covered by the BNA, except that the names of the partners must be disclosed. However where a partnership contains more than 20 people it need not list the names of all its partners on its documents. But:

- (a) a list of the names of all the partners must be kept at the partnership's principal place of business;
- (b) none of the names of the partners must appear in the documents other than as in the text or as signatories; and
- (c) the documents must state in legible characters the address of the partnership's principal place of business and that the list is open to inspection there.

4. RULES APPLYING TO A SOLE TRADER

4.1 Can I choose any name I want?

A sole trader who carries on business under a name other than his or her surname (without any addition other than his or her initials or forename) must also comply with the BNA. The restrictions are the same as for a company or a partnership.

4.2 What information must I disclose?

Similar rules apply under the BNA as for a company and a partnership regarding the use of the trader's full name and service address on business letters etc and a notice in business premises.

5. WHERE CAN I GO FOR FURTHER INFORMATION?

- 5.1 Companies House has full form guidance on both company names and business names. Please go to www.companies-house.gov.uk/about/guidance. Alternatively, telephone Companies House on 0870 3333636.

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