

BUSINESS NAMES

Overview

It is necessary to consider certain legal issues in connection with the company or business name, if a branch or company is set up in England and Wales. The name must end with the word "Limited" in the case of companies or "LLP" in the case of limited liability partnerships.

Restrictions on Certain Names

The name must not be offensive. It must not be similar to or the same as a name already on the register. The name cannot include certain sensitive words or expressions unless permission has been obtained to use them. It is possible to check with Companies House in England and Wales (equivalent to the Irish Companies Registration Office) in relation to their criteria for acceptable names.

Sensitive words, to which Companies House takes objection, include the following:-

- words that suggest that the business is of national importance e.g. Irish etc.;
- words suggesting a special status e.g. association, society, council, chartered;
- words suggesting a particular function e.g. charity, insurance, register;
- words suggesting a specialised activity e.g. architect, solicitor, health centre;
- words suggesting connection with Royalty or the Government e.g. parliament, government, royalty, queen etc.

Problems with pre-existing names

It is also desirable to verify that the chosen name does not too closely resemble a registered trade mark or the trading name of an established business. Registering with a similar name may not necessarily cause legal difficulties, but it could potentially do so and it is as well to avoid this risk. It is possible to check the register of trade marks with the UK Intellectual Property Office website (UKIPO). The Internet or trade directories should be searched to check whether there are similar trading names, in the same line of business.

People operating as sole traders or in partnership can trade under their own name or chose a different business name. Similar considerations to those in relation to company names, apply to business names.

It is necessary to obtain consent from the Department of Business, Enterprise and Regulatory Reform in order to use certain classes of names. It may also be necessary to register the business name with the Register of Business Names in Ireland if any business is carried on in Ireland.

Any number of people can chose the same business name. However, there is a risk that if a business trades under the same business name as someone else, the prior business may be able to substantiate a claim that the later business is taking advantage of its goodwill. This could even happen unintentionally. It is particularly likely to happen if the trade is in the same area as an existing company or business which trades under the same or under a similar name.

It is usually possible to check the online local business directories relevant to a particular business. The registration of a business name guarantees no exclusivity.

Displaying the Name

A business name and company name must be displayed on headed notepaper and stationery. The company or LLP name must be clearly shown outside every place of business. The name must be included on all business letters, electronic business communications, orders, payments, invoices, receipts and other business documents. Business letters, external emails and order forms must show the company or LLP's registered address, number and place of registration.

Partnerships must state the names of all partners and address of principal office on letters, orders and invoices. Invoices should include VAT number.

The new Companies Act, 2006 has introduced the following rules in relation to displaying the company's and LLP details on a website. The following is required:-

- full name of the company or LLP;
- registered office;
- registered number;
- place of registration of the company

If a company is being wound up, this must be stated. There is no need to list the names of all company directors. If names are listed, all must be named. Invoices must show the company name and VAT number. The word "limited" must be used unless the company has been specifically exempted (which would be unusual).

If a company or LLP is not used, then the business or partnership name must be displayed, wherever business is conducted or customers are dealt with. It must be included in all business letters, orders, payments, invoices, receipts and business documents.

In the case of an online business, general information must be displayed about the business including business name, address, email address, VAT registration number. Details of any relevant professional body to which the business or individual belongs or whose authorisation scheme it is subject to, must be displayed.

Domain Names

Certain legal considerations arise in relation to the use of a website in business or email. The official registry for UK domain names is "nominet". It is possible to register a name with any registration agent. There are hundreds of registration agents and a good starting point is nominet. UK business domain names end with ".co.uk".

It may be possible to use ".eu" subject to compliance with certain requirements. The .eu domain name can be registered at the European Registry of Internet Domain Names. It is necessary to use an agent who will charge a small fee. This can be particularly helpful in cases where a business is in another EU state such as Ireland and it is used as a platform to market the business on a pan European basis. There may be an advantage in trade mark registering a business name.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

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