

GAR SIDE & CO LLP



GUIDANCE ON CA2006 THE COMPANY AND BUSINESS NAMES (MISCELLANEOUS PROVISIONS) REGULATIONS 2009

- Chapter 1 Incorporation of a company – The Company's Name**
- Chapter 2 Sensitive Words and Expressions**
- Chapter 3 Objections to Companies Names**

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Chapter 1 - Incorporation of a Company - The Company's name

Before incorporating your own or your clients company you will need to choose a name. The name chosen must not be identical or the 'same as' another name appearing on the index of company names, even if this name is already being used as the name of a sole trader or partnership.

The Companies Act 2006 has strengthened the rules regarding 'same as' by the introduction of 'The Company and Business Names (Miscellaneous Provisions) Regulations 2009' (SI 2009/1085).

These Regulations have tightened the rules regarding differentiating one company from another with the use of words or abbreviations such as 'UK', Services or trading, even the use of a plural. Differences we have taken for granted in the past, for example, XYZ Ltd being already taken so we therefore incorporate XYZ UK Ltd since it is different from XYZ Ltd, this has now been deemed under these Regulations as 'same as', so therefore not allowable.

The characters and punctuation that can be used in a company's name are also specified in regulations. While accents may not sometimes be included in a company's registered name, due to the limitations of Companies House, this does not prevent them being included in the company's stationery.

With over 2.5million company names already on the register these Regulations will force us in some circumstances to be more inventive in the choice of the company name. As Business Advisors our clients look to us to advise and guide them through the Regulations. The rest of this guide is aimed at giving you understanding of the new Regulations as well as a reference point for future use.

1. Can I choose any name I want for a proposed company?

If the company is:

a private limited company - its name must end in "limited" or, if its registered office is in Wales, in "cyfyngedig" or in the permitted alternatives, ie "ltd" or

"cyf". There is an exception to this rule: a private company limited by guarantee can apply for an exemption if:

the objects of the company are the promotion or regulation of commerce, art, science, education, religion, charity or any profession, and anything incidental or conducive to any of those objects;

The company's articles:

- (a) require its income to be applied in promoting its objects;
- (b) prohibit the payment of dividends, or any return of capital, to its members; and
- (c) require each member to contribute to the assets of the company if it is wound up during the time that he is a member or within 1 year of him ceasing to be a member

a **private unlimited company** its name may end in "unlimited" but it is not required to do so;

a **public limited company** its name must end in "public limited company" or, if its registered office is in Wales, in "cwmni cyfyngedig cyhoeddus" or in the permitted alternatives, ie "plc" or "ccc" with or without full stops.

There are a number of controls and restrictions which apply to the main part of your company's name. Companies House administers these controls on behalf of the Secretary of State and we will not register a company in a name if:

Its use would constitute an offence or it is offensive;

The name suggests a connection with Her Majesty's Government or a devolved administration or a local authority or certain specified public authorities;

It includes a sensitive word or expression unless certain tests are satisfied and you provide a statement of support by the appropriate government department or other official body. (see chapter 3)

It includes characters, signs, symbols and punctuation which are not permitted. A list of permitted characters, signs, symbols and punctuation is included in 'The Company and Business Names (Miscellaneous Provisions) Regulations 2009' (SI2009/1085);

It is identical to another name appearing on the index of company names or differs from another name in a trivial way, ie is effectively the "same as" an existing name. (A name that is effectively the "same as" another's may still be permitted if the two companies will be part of the same group and if the existing company agrees to the other taking the proposed name.) Further information about 'same as' names is provided in question 2.

It does not end with the appropriate designator (or permitted abbreviation) for the company type (e.g. "limited" or "Ltd"; "public limited company" or "plc"; "unlimited");

If any of the designators "limited", "Ltd", "unlimited", "cyfyngedig", "cyf", "anghyfyngedig" is used but:

- (a) one or more characters have been omitted;
- (b) one or more characters, symbols signs or punctuation has been added; or
- (c) any one or more of these characters have been replaced with one or more other characters, symbols, signs or punctuation

If, in the case of a company limited by guarantee exempt from using "limited", the name concludes with "unlimited" or "anghyfyngedig" or one of the words or expressions (or permitted abbreviation) set out in (a) to (f) below in such a way as to mislead the public as to the legal form of the company if included in the registered name of the company. I

If, in the case of an unlimited company, the name concludes with "limited" or "cyfyngedig" or one of the words or expressions (or permitted abbreviations) set out in (a) to (f) below in such a way as to mislead the public as to the legal form of the company if included in the registered name of the company.

If the name includes in any part of the name any of the expressions or abbreviations in (g) to (u) below.

- (a) public limited company or (with or without full stops) plc.
- (b) cwmni cyfyngedig cyhoeddus or (with or without full stops) ccc.
- (c) community interest company or (with or without full stops) cic.
- (d) cwmni buddiant cymunedol and abbreviation cbc.
- (e) community interest public limited company or (with or without full stops) community interest plc.
- (f) cwmni buddiant cymunedol cyhoeddus cyfyngedig or (with or without full stops) cwmni buddiant ccc.
- (g) right to enfranchisement or RTE.

- (h) Hawl I Ryddfreniad.
- (i) right to manage or RTM. or SEC.
- (j) Cwmni RTM cyfyngedig.
- (k) european economic interest grouping.
- (l) investment company with variable capital.
- (m) cwmni buddsoddi a chyalaf newidiol.
- (n) limited partnership.
- (o) partneriaeth cyfyngedig. (p)limited liability partnership or (with or without full stops) llp.
- (q) partneriaeth atebolrwydd cyfyngedig or (with or without full stops) pac.
- (r) open ended investment company.
- (s) cwmni buddsoddiant penagored.
- (t) charitable incorporated organisation or cio.
- (u) sefdydliad elusennol corfforedig or

In addition the name of a commonhold association registered under the Companies Act 2006 must end with 'commonhold association', in accordance with the requirements of The Commonhold Regulations 2004' (Statutory Instrument 2004/1829).

2. What does 'same as' mean?

A name is the 'same as' another name appearing on the index of company names if it is either identical to an existing name or would be deemed to be essentially the same because the name differs only by minor elements which the law requires us to disregard when comparing the two names. For example, Companies House would disregard plurals or certain types of punctuation marks when comparing names.

Examples of what will be disregarded or ignored when comparing names are:

any of the designated name endings (including permitted abbreviations with or without full stops or their Welsh equivalents) set out in question 1 above, for example, "limited", "unlimited", "public limited company" or "community interest company";

words and expressions such as "biz", "co", "co uk", "co.uk", "com", "company", "UK", "United Kingdom", "Wales", "Cymru", "net", "GB", "Great Britain", "org.uk", "services", "international" (but see question 3 of this chapter for circumstances when these will not be ignored);

a blank space between or after a word, expression, character, sign or symbol;

punctuation including a full stop, comma, colon, semi colon, hyphen, apostrophe, bracket, exclamation mark, question mark;

permitted characters “*”, “=”, “#”, “%” and “+” if they are used as one of the first three characters in a name;

“s” at the end of a name;

“the” and “www” at the beginning of a name;

any but the first 60 characters in a name.

In addition, we will treat certain words and expressions as if they were the same, eg “and” and “&”, “plus” and “+”, “1” and “one”, “6” and “six”, “€” and “euro”, “\$” and “dollar”, “%” and “percent”, “@” and “at”,

Please note, the “same as” rules do not prevent someone else trading under a name that is the same as a company’s registered name in all respects excepting only the designator (eg “Ltd”).

3. Are there any exceptions to the ‘same as’ rules?

Yes. Where 2 companies are in the same group, they may have names that differ only by certain specified words and expressions (such as “biz”, “co”, “co uk”, “co.uk”, “com”, “company”, “UK”, “United Kingdom”, “Wales”, “Cymru”, “net”, “GB”, “Great Britain”, “org.uk”, “services”, “international”). This is permitted only if the member of the group whose name is already on the Registrar’s Index of company names gives its consent to the other company adopting the name that differs from its own in this way. The application for the proposed name must include

a copy of a statement in which the existing company consents to the other company adopting the proposed name and confirms it will be part of the same group

4. What are some examples of ‘same as’ names?

If 'Hands Limited' is already registered Companies House would reject the following applications:

Hand S Limited or Ltd;

H and S Public Limited Company (or PLC);

H & S Services Limited (or Ltd);

@H & S Limited (or Ltd);

Hands: Limited (or Ltd);

H & S Limited (or Ltd);

Similarly, if 'Catering Limited' is already a registered company Companies House would reject the following applications unless the application is for a company in the same group as “Catering Limited” and Catering Limited has given its consent:

Catering UK Limited (or Ltd);

Catering.co.uk Limited (or Ltd);

Catering International Limited (or Ltd)

Catering Company (Services) Limited (or Ltd);

5. Which names need approval?

You will need the Secretary of State's prior approval if your chosen name:

suggests a connection with Her Majesty's Government or a devolved administration or a local authority or a specified public authority (see chapter 3);

a sensitive word or expression

In the case of any name that requires approval because of the connection it suggests and also in the case of a name that includes certain sensitive words or expressions, you must request the specified Government department or body to indicate whether (and if so why) it has any objection to the proposed name. You must also deliver a copy of any response received and other supporting information with your application for incorporation. Companies House will then consider whether to approve the name on behalf of the Secretary of State.

Chapter 2 - Sensitive words and expressions

1. What are sensitive words and expressions?

These are words and expressions which, when included in a company name, may imply business pre-eminence, a particular status or a specific function. For this reason, you must seek approval of the Secretary of State before the proposed company can be incorporated (or requesting a change to a company's name). The aim is to ensure that the inclusion of the word is justified so that its use in the name does not mislead the public. Companies House administers the approval process on behalf of the Secretary of State.

2. What types of words and expressions are sensitive?

The following words imply national or international pre-eminence:

British: You would need to show that the company is pre eminent in its field by providing supporting evidence from an independent source such as a government department, trade association or other representative body.

The level of pre-eminence in a name that includes 'British' depends on the impact created by the other words in the name. Usually the sense of preeminence reduces if the overall name does not describe a product, but you would still have to show that your company is substantial in its field even if this was not described in the company name.

National: The criteria for use of this word is the same as for 'British'

England, English, Scotland, Scottish, Wales, Welsh, Ireland or Irish: If one of these words appears as the prefix to a name, the requirements are similar to those for 'British'. If you intend to use, for example, 'of England' in the name this could also imply pre eminence in the field. If you intend to use one of these words in the middle of a name or as the last word in a name this would normally be acceptable provided you can demonstrate that the company has its main place of business in the country concerned. If you want to use one of these words because it is a surname, you will usually be given approval if the company name includes forenames or initials.

Great Britain or United Kingdom: If you wish to use these expressions at the start of a name or if you intend to use 'of Great Britain' or 'of the United Kingdom' at the end of the name, the requirements are similar to those for 'British'. Using the initials 'GB' or 'UK' in your company name does not require approval.

European: We will not approve names which include this word if they unjustifiably imply a connection with official bodies of the European Union. If there is a genuine connection with an official body, we may allow the name if the appropriate body provides written support for the application.

International: If you wish to use this word as the first word in a name, you need to show that the major part of the company's activities is in trading overseas. If you wish to use it anywhere else in the name we will usually approve it if you can show that the company operates in two or more overseas countries.

The following words imply business pre-eminence or representative or authoritative status:

Association, Federation or Society: If you wish to use one of these words, your company must normally be limited by guarantee. Each member should have one vote and the constitution should contain a non profit distribution clause. This provides that the company must use any profits to further the objects of the company and not pay them to the members as dividends.

Authority, Board or Council: If you want to use any of these words, you should contact Companies House Cardiff, Edinburgh, or Belfast depending on where the company is to be incorporated.

Institute or Institution: Companies House normally only approve these words for those organisations which are carrying out research at the highest level or to professional bodies of the highest standing. You will need to show them that there is a need for the proposed institute and that it has appropriate regulations or examination standards. You will need evidence of support from other representative and independent bodies.

Government: Companies House will only grant approval for the use of this word in a name if they are satisfied it does not give the impression that the company is connected with Her Majesty's Government, any part of the Scottish or Welsh administrations, or any overseas government. They will take the whole company name into consideration and judge it on its own merits.

HSC or HPSS: These stand for Health and Social Care and Health and Personal Social Services. Companies House may consult DHSSPS (Department of Health, Social Services and Public Safety) when considering the approval of names containing this word as it could foster a misleading impression among patients, service users and wider public that the business enjoys an approved status in connection with the Health and Social Care or Personal Social Services.

The following words imply specific objects or functions:

Assurance, Assurer, Insurance, Insurer, Re Assurance, Re Assurer, Re insurance or Re insurer: If the name is for an underwriting company, Companies House will normally seek further advice. However, if you want to use the name for a company that will only provide insurance services, you should include the appropriate qualification, for example 'agents', 'consultants' or 'services', in the name.

Benevolent, Foundation or Fund: Companies House will not approve names that include any of these words if they unjustifiably give the impression that the company has charitable status. If the company is limited by guarantee and has a nonprofit distribution clause in the memorandum of association, we will normally approve the name.

Charter or Chartered: Companies House will not approve names that include these words if they unjustifiably give the impression that the company has a Royal Charter. If you use the words to qualify a profession, Companies House will seek the advice of the appropriate governing body before considering whether to give approval.

Charity or Charitable: To use these words the company must provide a letter of non objection from the 'Charity Commission' or 'The Office of the Scottish Charity Regulator (OSCR)'. If the company is not intended to be a charity, you must send a copy of the proposed memorandum and articles of association along with details of the company activities and an explanation of why the word is required to the Charity Commission or the OSCR.

Chemist or Chemistry: If you want to use these words, you should ask for advice from Companies House in Cardiff, Edinburgh or Belfast as appropriate.

Co operative: If you wish to use this word, your company's Articles of Association should follow the rules generally associated with co operatives in the UK. If you need further advice you should contact Companies House in Cardiff, Edinburgh or Belfast as appropriate.

Friendly Society or Industrial and Provident Society: Companies House will refer names which include these expressions to the Registrar of Friendly Societies for advice. If you need further advice you should contact Companies House in Cardiff, Edinburgh or Belfast as appropriate.

Group: If use of this word implies several companies under one corporate ownership, you will need to provide evidence of a parent and/or subsidiary association with two or more other British or overseas companies. If the name clearly shows that the company is to promote the interests of a group of individuals, then the name will normally be approved.

Holding(s): A company wishing to use this word must be a holding company as defined under section 1159 (2) of the Companies Act 2006.

Patent or Patentee: Companies House will only approve a name including either word if it does not infringe the Copyright, Designs and Patent Act 1988.

Post Office: These words are registered trade marks of the Royal Mail group and Companies House will seek advice on applications that include these words.

Register or Registered: Companies House treat every application for use of these words on its merits. Generally, Companies House will seek advice from the appropriate governing body

If names that include these words relate to a professional qualification, Companies House will not register the name if it unjustifiably implies a connection with Her Majesty's Government or a local authority. If there is a connection Companies House will register the name if the appropriate body supports the application.

Sheffield: If you wish to use a name that includes the word 'Sheffield', Companies House will need to establish details of the company's location and its business activities. Companies House will also consult the Company of Cutlers in Hallamshire.

Stock Exchange: Companies House will not approve names including this expression unless there are special circumstances.

Trade Union: Companies House will not approve names including this expression unless they conform to legislation relating to trade unions.

Trust: The word 'trust' can be used to suit a range of different situations and the requirements for such trusts are explained below:

Charitable Trust these companies need to have charitable objects and a non profit distribution clause in the Articles of Association. Companies House will ask you for confirmation that you have made, or will make, an application for registration as a charity with the Charity Commission. Scottish companies wishing to use the expression 'charitable trust' will need to apply to Her Majesty's Revenue & Customs (HMRC) in Edinburgh as the Charity Commission has no jurisdiction in Scotland.

Educational trust or Artistic Trust such companies should have a non profit distribution clause in the Articles of Association and the name should reflect the nature of the trust. The promoters should be of high standing in the field.

Enterprise Trust these companies must have a non profit distribution clause in the Articles of Association and they must be able to provide evidence of support from, for example, local authorities, businesses or banks.

Family Trust such companies must be non profit distributing and the objects must reflect the nature of the trust. Names of family trusts will usually be approved if the name as a whole identifies the company as a family trust.

Financial Trust or Investment Trust if you wish to use these expressions, you will need to provide a written assurance that substantial paid up share capital or other funds will be achieved within a reasonable period after incorporation.

Pensions or Staff Trust the names of such companies must include the name of the parent company, and the objects of the company must include the operation of pension funds.

Unit Trust if you wish to use this as part of your company name, you should seek the advice of Companies House in Cardiff or if the company is to be registered in Scotland, Companies House in Edinburgh.

Chapter 3 - Objections to company names

1. Could I have to change my company name after incorporation?

In general, a company can keep its registered name for ever. However a company can be required to change its name:

within 12 months of the adoption of the name, if the Secretary of State upholds an objection that a newly adopted name is “too like” an already existing name or if the name was incorrectly registered because it is the ‘same as’ an existing company name. Any objection must be made in writing within 12 months of the date of the registration of the name. If such an objection is upheld, then the company must change its name as directed and deliver the required documents within 12 weeks of the date of the direction. Further information on ‘too like’ names is provided in question 3;

within 5 years of the company’s adoption of the name, if misleading information has been given for the purposes of registration by a particular name for example for the approval of a sensitive name;

within 5 years of the company’s adoption of the name, if an undertaking or assurance given at the time of registration, for example support for a sensitive name has not been fulfilled;

at any time, if the Company Names Adjudicator upholds an objection that the name is the same as one in which the objector has goodwill or is so similar to such a name that its use in the UK would be likely to suggest a connection between the company and the objector. Such an objection will be upheld if the objector shows that the main purpose in registering the name was to obtain money or other consideration from him or to prevent his registering the name. (It may also be upheld if none of certain other matters have happened or apply).

at any time, if the name gives so misleading an indication of the nature of its activities that it is likely to cause harm to the public;

at any time, if a company is no longer entitled to the exemption allowing it to omit “limited” or any of the permitted alternatives in its name.

2. What does ‘too like’ mean?

Any company that registers a name which is very similar (‘too like’) to an existing company name could be directed to change its name. When considering whether one company name is ‘too like’ an existing company name Companies House only considers the visible appearance or sound of the two names. Companies House do not take into account external factors such as geographic location, trading activities, share ownership or whether a company is dormant. In addition Companies House take no account of a name or part of a name that is a registered trade mark.

Normally, if the names differ by only a few characters or minor differences they are likely to be 'too like', for example, H & S Consultants Limited and H & S Consulting Limited. Most examples of 'too like' names also suggest a certain level of confusion.

If the names differ by one or more words, especially longer descriptive words they are unlikely to be 'too like'. For example, an existing company, H & S Consultants Limited might justifiably complain that the registration of H & S Consultants (Cardiff) Limited is a cause of confusion. This might be the case but the names are not 'too like' under the Companies Act and we would be unlikely to issue a direction in these circumstances.

However, we would issue a direction if the names have substantial or very distinctive elements in common and differ only by the inclusion of meaning starved words such as "services" or "trading".

3. How do I object to a name?

If you wish to object to a name, for example because its similarity to your company name may lead to confusion between companies, you must write to: For companies incorporated in England & Wales:	For companies incorporated in Scotland:	For companies incorporated in Northern Ireland:
The Secretary of State New Companies Companies House Crown Way Cardiff CF14 3UZ or DX33050 Cardiff 1	The Secretary of State New Companies Companies House 4th Floor Edinburgh Quay 2 139 Fountainbridge Edinburgh EH3 9FF or DX ED235 Edinburgh 1 or LP – 4 Edinburgh 2	The Secretary of State Companies House 1st Floor Waterfront Plaza 8 Laganbank Road Belfast BT1 3BS