

The legal essentials

Running your business within the law

This leaflet will help you to be aware of the legalities of naming, setting up and managing a business.

- Naming your business
- Setting up your business
- Running your business and trading
- Useful links

Naming your business

Deciding on a name is one of the first decisions you'll need to make when starting out in business. The right name can make an important contribution to building your business's profile and helping it succeed.

The legal issues

Your 'business name' is the name you choose to trade under.

- For a company or a limited liability partnership, it can be a name other than its registered name.
- For a sole trader, it can be a name other than a surname with or without forenames or initials.
- For a partnership, it can be a name other than the partners' names.

There's no need to register your business name, but it must comply with Business Names legislation. In contrast, you must register your company name (i.e. registered name) at Companies House and comply with the Companies Act legislation. For more guidance on incorporation and names visit Companies House.

Is someone already using your name?

If you would rather not use your own name, check that no one else is already using the name you want to use. You can do this for free by consulting any of the following:

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- The Internet, to check whether another business has already registered your domain name
- The Companies House register, for names of all limited companies, Limited Liability Partnerships (LLPs) and Community Interest Companies (CICs)
- The Trade Marks Journal, which is published by UK Intellectual Property Office (UK-IPO)
- Trade and telephone directories
- The membership directories for chambers of commerce or professional bodies.

The risk of having a name like another business

There's a danger in choosing a name that's easily confused with an existing business in the same area or same line of business. It can be confusing for you, the other business and your customers. If there is a potential conflict, the other party could take you to court to force you to choose another name.

Names not permitted:

- Any offensive words and phrases.
- Names suggesting your business is connected with the government or a local authority.
- Around 80 special, reserved words, including British, Royal and National – you need the agreement of the Secretary of State before you can use them.
- Names that could mislead the public about your business status – e.g. a sole trader cannot choose a phrase including the word limited.

Use your name clearly

You should display your registered name and business name (where you have one) on all documents, including stationery, invoices and receipts, and on websites as well.

If you are a registered company, then check the additional requirements at [Companies House](#).

Names that work, names that don't

A business name informs people, and adds life to your business profile and image.

Try asking these questions when thinking about your name:

- Do you want one that describes the type of business you're in or your location?
- How will it sound when you say it over the telephone?
- Is it simple to pronounce and spell?
- It is easy to find in telephone directories?
- Will it be suitable as an Internet domain name (and is it available)?
- Could it be shortened for use in social media?
- Does it have any bad connotations or subtle meanings that could distract or upset prospective customers?
- If you plan to do business internationally, is your name easy to translate into the languages of the markets you want to trade with?
- How will your chosen market perceive your name?
- Will it limit you? Will it date?
- How does it contribute to your business image?

Things to avoid:

- Trying to put too much into a name – e.g. 'A–Z International Global Enterprises'. Instead of being informative, such a name can sound pretentious.
- An overly-long description, like 'ABC Consultants, Copywriters, Counsellors and General Advisers', lacks impact and can confuse your customers.
- Using initials as a name, e.g. EFG Solutions, can sound bland. It's also easy to forget.
- Using your own name or geographical information, such as a street name, can result in a name that has little impact, is hard to say, or is too much like a competitor's. If however you are building a personal name by recommendation, perhaps using your own name makes more sense because that is how people will recommend you.

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Your name says a lot about you

How big do you want to appear?

Certain names will position your business as small, e.g. Dartmoor Data Services. This might work if you want to be seen as a local business that delivers personal service. It may not be helpful though if you want to expand your business across a wider geographical area.

Using a word like 'International' in your name can imply size and make your business look more important. However, if you don't trade internationally, you could mislead people and attract customers you're unable to help.

Your brand

A well-chosen name that's charming, catchy or unconventional can work well, but it's not enough to build your image. Back it up with intelligent, consistent branding and promotion. To help you develop a brand identity for your business, it's worth investing in a professional designer. They can create a logo and look for your business that you can use not just on your business premises, but on your website and stationery as well.

Remember to protect your name

If you register your name as a trademark it will be easier to protect your rights. Remember though: A mark will be protected for a set period of time and need regular renewing. Find out more from the [UK Intellectual Property Office](#).

Once you've started trading under your business name, do occasional checks to protect it. Make sure no one else is starting up, nearby or in the same line of business, using a similar name.

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Setting up your business

What will your trading status be?

When you set up, you need to choose between being a sole trader, a partnership, a limited company or a community interest company:

- As a **sole trader** you are on your own as the owner operator of your business. To set up a business as a sole trader, you need to let HM Revenue and Customs know that you are self-employed. If you are going to trade under a name that's different from your personal name, you must include your own name on your business stationery.
- If your business is a **partnership**, there will be two or more of you doing the work and investing capital.
- As a **limited company** your business will be owned by its shareholders, who invest money in it in return for a share of its profits. A limited company must be registered with Companies House.
- As a **community interest company** your business will be owned by a group of members who will have an interest in working in a "not for profit" organisation but with limited liability. This is also registered through Companies House but with an additional statement on the disposal of assets on winding up the company – the "asset lock" agreed by the official regulator.

Partnership agreements

If you are planning to run your business with another person, it is sensible to have a written partnership agreement (even with a spouse) and then have a solicitor check it. The law doesn't require you to have a partnership agreement, but if you don't you will be bound by the default partnership terms set out in the Partnership Act 1890 – so you may prefer to set out your own terms in a partnership agreement.

Make sure you don't create a partnership by accident, e.g. running a business with someone else but not employing them. In a partnership, each of you will be responsible for the other partners' business debts, whether or not you have all agreed this, and the liability will not be limited.

Limited liability partnerships (LLP)

These are a cross between a partnership and a limited company. They allow you to operate like a normal partnership but your liability is limited to how much you have invested in the LLP. If you choose to be an LLP, you must register it with Companies House.

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Incorporating a business

This means forming a company. There are different sorts of company, defined by their investors (e.g. a private company, a public limited company, a community interest company, etc.), but the main advantage to incorporating a business is that your liability is limited. As a sole trader, you take on all the liability of the business, but when you are incorporated, each of the individual shareholders has their liability limited to the amount they have invested in the business.

A standard limited company can stay in business even after the resignation, death or personal bankruptcy of either its management or shareholders. It's also an effective structure if you're planning to expand your business, since it is easier to raise capital from outside investors by selling shares. Bear in mind though, company directors have certain duties and if you fail to fulfil these, it can result in fines, personal liability, disqualification and even imprisonment. There are different rules for Community Interest Companies.

Raising finance

If someone offers to invest in your business, get an agreement in writing and have a solicitor check it. Make sure you understand the terms of the investment. Is it meant to be a gift, or a loan which you will need to repay – and if so, will interest need to be paid?

Be aware of the consequences of accepting an investment. If a relative lends half the money you need to start a business, you may have entered into a partnership without realising it. Also, your relative may be legally able to claim a share of your business profits.

Be sure to read loan and overdraft agreements carefully so that you understand all the terms and conditions. Think about the implications before you sign any personal guarantees, especially if you are putting up property as collateral. It's always worth taking professional advice to avoid problems later.

Any property given as security, which may include your home, may be repossessed if you do not keep up repayments on your mortgage or other debts secured on it.

All lending is subject to a satisfactory credit assessment and we will need your permission to carry out a credit check on you and your business.

You should not apply for an amount that you cannot comfortably afford to repay now and in the future to avoid the possibility of legal action.

Running your business and trading

Data protection

If you hold information about customers, staff or contacts, and someone else could use it to identify the person, you may need to notify the Information Commissioner's Office (ICO).

Whatever your business, you must follow the principles of the Data Protection

Act 1998 which applies to information on websites as much as to computer and paper records.

There are eight areas of good practice concerning data that you must enforce Data must be:

- Fairly and lawfully processed
- Used for limited purposes
- Adequate, relevant and not excessive
- Accurate
- Kept only as long as necessary
- Processed in line with the subject's rights
- Not transferred to countries that don't have adequate protection
- Secure: you are responsible for security (even if you accidentally disclosed personal information you could still be liable to pay compensation to the individual concerned).

Data processing is allowed only if you have met one of the following conditions:

- The person concerned has permitted you to process their data.
- The processing is essential in order to fulfil a contract you have with the individual.
- It's done to safeguard the person's vital interests.
- It's for compliance with a particular law.
- It's in the legitimate interests of your business (unless this negatively affects the person).

It's a criminal offence to break the law on data protection. If you are caught doing this, you could face a fine, a custodial sentence or community service.

Find out more about your responsibilities under the Data Protection Act from the [Information Commissioner's Office](#).

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When you advertise

- Always check that your advertising is accurate, truthful and not unfairly discrediting your competition. Only make claims in your advertisement that are true, or the Advertising Standards Authority may demand that you stop running it. Trading Standards Officers can take action against your business if they believe an ad contains false or misleading information.
- Be mindful when you compare your business or brand with your competitors, whether it's by implication or explicitly. Whatever you say should be clear, fair, true and accurate. The legal restrictions are described in the British Code of Advertising – find them at the [Advertising Standards Agency](#)

Your and their intellectual property

The reason we have copyright is to protect creative works such as articles, poems, photographs, designs, sculptures and songs. You do not have to register copyright, but be very careful about copying material belonging to others. If you want to use their photographs or drawings, always ask for their permission.

- Copyright only concerns the original works, not copies, and only the way a concept is expressed, not the concept itself. So if, for example, someone writes an article, only the words, not the ideas in it, are protected by copyright.
- If you want to protect an invention, you will have to apply for a patent. You must do this before its details are made public anywhere.
- To protect your logo or a slogan, you must register it as a trademark.
- In case you ever have to defend your intellectual property rights, you might want to take out intellectual property insurance.

When you employ staff

If you hire people to work in your business, by law you have particular responsibilities and obligations. If you fail to meet these you may face legal action.

- Be sure to check that all your new employees are legally entitled to work in the UK, or you could be heavily penalised. You'll find a list of the documents you should read, and general guidance on employing foreign workers from the [Border and Immigration office](#).

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- You should have a signed contract of employment ready from the day any employee starts work. To see a sample contract, speak to a solicitor.
- Take independent legal advice before you alter terms and conditions of employment, make people redundant or dismiss them. This will help you avoid claims for unfair dismissal, discrimination and breach of contract.
- Warn employees that you will not tolerate any discrimination, sexual harassment and other illegal acts. As their employer you could be found liable if you've failed to take action in such cases.
- Depending on the size of your workforce, consider other requirements, such as how you will arrange pensions for employees.

Find out more about Employment law: by - [check with ACAS](#)

Health and Safety matters

As a business owner, you have important legal obligations concerning health and safety. By failing to carry these out, you could face prosecution, your insurance premiums could rise, and you could find it hard to buy any insurance at all.

Find out more about health and safety for business from the [Health & Safety Executive](#).

Insuring your business

If you employ people, whether it's full-time or on a casual, part-time basis, by law you must have employer's liability insurance in the UK.

You may also want to think about:

- **Product liability insurance.** This helps protect you if a defect in your product causes an injury.
- **Professional indemnity insurance.** If you offer services or advice, this can protect you against the effects of a mistake in a service or product you have provided. Many professional bodies insist on their members taking out professional indemnity insurance.

Your business and the environment

Your business must comply with [environmental obligations](#); for example, concerning the control and disposal of hazardous substances.

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When you trade

Refunds, returns and the law

Remote buyers (e.g. customers buying on the telephone, Internet or by direct mail) have rights under The Consumer Protection (Distance Selling) Regulations 2000. These include the right to cancel an order within seven days. You must make these rights clear to your customers.

There are exceptions, which could include holidays, perishable goods and personalised goods.

Tapes, CDs, videos and computer software are also excluded unless customers return them to you unopened.

You'll need to comply with statutory rights for refunds – make sure that you are aware of the customer's rights, as well as your own, when you are asked to refund money. In order to protect your business, make conditions clear to customers at the time of purchase.

Agreements and contracts

Business relationships are based on contracts. These can be oral or even implicit, but it's best to have them in writing. If you breach a contract you have with another party, they will be entitled to damages. To be binding, a contract must be clear as to what all parties are to do. Both parties must agree on it, and it should include an intention from both parties to be bound to the contract.

Terms and conditions

To make sure you have effective means of debt control, you should spell out your terms and conditions of trade (T&Cs). Also, make your customers agree to, and ideally sign them, when they place an order.

If you use a service that provides you with generic terms and conditions which can be adapted for your business, have a solicitor check them first to make sure they offer you the best protection. Watch out for:

- **Retention of title clauses.** With these, you retain ownership until payment – if your customer becomes insolvent before they've paid in full, you may not be able to reclaim your goods without such a clause.
- **Payment terms.** Make it clear to your customers the date when you expect payment from them for goods or services.

Licences

With some trades, e.g. the food industry and financial services providers, you must have specific licences to operate.

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Insolvency

If your business doesn't have enough cash to operate, it becomes insolvent. It is a criminal offence to continue trading when you know your business is insolvent, and directors of limited companies can become personally liable.

If your business ever has financial problems, seek professional advice immediately. You may be able to reschedule debts through a Voluntary Arrangement. Be aware that your business could end up in liquidation or receivership.

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Useful links

- [UK International Property Office](#)
- [Information Commissioner's Office](#)
- [Health & Safety Executive website](#)
- [Financial Conduct Authority](#)
- [Companies Registration](#) 0303 1234 500

Records of limited companies are kept at the Companies Registration Offices and can be searched online. Find also guidance on how to form a limited company and other matters on the:

[Government business help website](#)

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