



22 May 2013

Our ref: ICAEW Rep 81/13

Catherine Crowsley
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Department for Business, Innovation and Skills
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By email: catherine.crowsley@bis.gsi.gov.uk

Dear Ms Crowsley

Company and business names: Red Tape Challenge

ICAEW is pleased to respond to your request for comments on *Company and business names: Red Tape Challenge*.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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ICAEW REPRESENTATION

COMPANY AND BUSINESS NAMES: RED TAPE CHALLENGE

Memorandum of comment submitted in May 2013 by ICAEW, in response to Department for Business, Innovation and Skills consultation paper Company and business names: Red Tape Challenge published in February 2013

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation paper *Company and business names: Red Tape Challenge* published by Department for Business, Innovation and Skills (BIS) on 27 February 2013, a copy of which is available from this [link](#).

WHO WE ARE

2. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 140,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
3. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.
4. This response reflects consultation with the ICAEW Business Law Committee which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

MAJOR POINTS

5. In our view, there is no apparent need to make fundamental changes to the regime. The only problem with the current system that could usefully be resolved arises with 'same as' names (see our answer to Q4 below). Otherwise, where Companies House can intervene, it can be prompt and helpful in dealing with any query and (unless there is a real problem, which will always need to be reviewed) there is no delay in forming a company. The current regime is therefore very helpful to companies, especially as the cost of changing names subsequently is expensive in administration such as changing web sites. A failure to provide protection for existing companies in relation to 'same name' registrations would build up a new industry in constantly checking for similar names coming on to the register, which would be costly. In addition, we are particularly concerned that the 'sensitive names' regime should not be repealed, and that 'Chartered' should remain as a sensitive name (see our answer to Q3 below).

RESPONSES TO SPECIFIC QUESTIONS

Question 1: Do you think all regulations relating to names should be repealed? Please give reasons for your answer.

6. No. There is still a requirement to protect owners of businesses from others using similar names to theirs – normally to defraud. There is also a requirement in the public interest to ensure that certain names and words are not used, to protect members of the public from being misled as a result of the use of a name which falsely conveys authority, status or pre-eminence (for example 'Chartered', as mentioned at Q3 below).

Question 2: Do you think regulations relating to names should be retained but reduced and simplified? Please give reasons for your answer.

7. Yes. Please see our other comments.

Question 3: Do you think the list of “sensitive” words should be reduced? If so, which words would you recommend for removal and why?

8. We are strongly of the view that the ‘sensitive names’ regime should not be repealed. It is in the public interest to ensure that certain names and words are not freely used, to protect members of the public from being misled as a result of the use of a name which falsely conveys authority, status or pre-eminence. In our view, the current process that companies must comply with in order to satisfy the Registrar of their pre-eminence or status is not unreasonably costly or time consuming (when compared to the benefit of protecting members of the public from being misled). The removal of the sensitive names regime, rather than simplifying the process, would result in increased costs and administration both to bodies that would feel compelled to monitor company name registrations to ensure sensitive terms are not inappropriately used, and for the firms and businesses that inadvertently register a sensitive name and that are subsequently forced to change their name (eg, replacing all stationery, literature, amending websites etc).
9. It is possible to think of words that might be added or subtracted from the list of sensitive words. ‘Group’, for example, can cause unnecessary questions as it requires two or more companies in the group (impossible for an as-yet unformed company, which cannot be a parent company in a group pre-formation). Its removal would be welcome. Regardless of any changes to the list, it is important to have a flexible and sensible regime to deal with individual cases where a sensitive name is requested. For example, there should be no problem with ‘Queen Street Properties Limited’ which might own a property in Queen Street. Companies House is normally very helpful in this regard.
10. We are also particularly concerned that ‘Chartered’, which is a title pertaining to bodies incorporated under Royal Charter, should remain as a sensitive name, to avoid:
 - the risk that public will be deceived, especially if (for example) unqualified accountants were to register ‘Chartered Accountants’ within their company name, and
 - the extra burden on ICAEW and other chartered bodies to monitor new company registrations, and to file objections whenever we become aware of a registration from a firm that includes wording such as ‘Chartered Accountants’ within its company name.

Although there may be strong arguments to have certain names removed from the sensitive names list, in our view ‘Chartered’ should not be one of them. As we mention above, ‘Chartered’ is a title pertaining to bodies incorporated under Royal Charter, and should therefore in our view be treated with the same importance as ‘Charity’, ‘Bank’, ‘Institute’, ‘University’ etc.

Question 4: Do you think the list of words on the “same as” list should be reduced? If so, which words would you recommend for removal?

11. Yes. First of all, the current list, extensively widened under the Companies Act 2006, contains too many ‘meaning devoid’ words (ie, those that must be disregarded when determining whether a proposed company name is the same as another name already appearing on the register), and the resulting regime is therefore much too restrictive. Words that in our view could usefully be removed are Exports, Great Britain, Group, Holdings, Imports, International, Northern Ireland, Services, United Kingdom, Wales (and their Welsh and Gaelic equivalents). In our view, all these can be considered as distinctively descriptive.
12. By way of illustration, major problems have arisen under the current regime when trying to register a new company as a subsidiary or holding company of an existing company, incorporating the existing company’s name. For example, currently a new holding company cannot be formed above an existing company with the same name as the existing company plus the word ‘Holdings’.

13. Second and setting aside the meaning-devoid issue, whilst there is appropriate room for discretion on the part of Companies House, use of that discretion seems to be variable dependent upon the level of seniority of the staff at Companies House dealing with the customer. More junior staff may sometimes need to be more willing to escalate a customer's enquiry to someone of more seniority. .

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