

Business Entities and Business Name Changes

Introduction

Approved contractors sometimes confuse or misunderstand the difference between a change in name or legal entity, and the implication for their ACS approval. It is often only when we explore a particular business's circumstances in more detail that it becomes clear whether the change is a simple name change or whether a change to the legal entity has occurred. This document is intended to provide guidance to approved contractors, and to promote approval decisions that are consistent and fair. It sets out some background information, the policy for managing a change to a business name and/or to a new business entity, and includes some examples of commonly occurring scenarios.

Background

The approved contractor scheme grants approval based on a specific legal entity, whether it be an incorporated company (e.g. ABC Limited/Ltd), limited liability partnership (LLP), Community Interest Company, Scottish Partnership, charity, or other unincorporated association. The name of the approved contractor [the legal entity], is included in the public register of approved contractors. Where an approved contractor additionally declares the use of a trading or business name that is different to the name of the legal entity that the SIA has approved, then this can also be included on the public register. The trading or business name is differentiated on the register by wording such as 'trading as' or t/a.

For incorporated entities, there are also legal implications under the Companies Act – see Note 1 and 2 below.

Note.1:

Limited companies (i.e. companies registered under the Companies Act, and listed at Companies House) each have an identifiable registered company name and number and must display this at their registered company address and on other company material such as their website and headed paper.

The Companies Act, includes provisions on the use of the words Limited or Ltd. It also covers the use of trading names ('business names'):

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A "business name" is any name under which someone carries on business other than their own. In the case of a limited company or limited liability partnership, it means a name that is not its registered name. In the case of a sole trader, it means a name other than a surname with or without forenames or initials. In the case of a partnership, it means a name other than the partners' names.

In addition, an approved contractor may be a parent of a group of companies (as defined by the Companies Act) and the approval may include one or more wholly owned subsidiary companies that deliver designated security services. In this case the public register will include the name of the parent/group followed by (in brackets) the names of the subsidiaries within that group that are included in the approval. Similarly, a partnership may list the partners.

Approved contractors may from time to time be involved in take-overs, mergers and/or acquisitions, or may enter administration, receivership or liquidation. This may impact the nature and status of their legal entity, including their name. Get Approved, April 2019, states that the Approved Contractor must inform the SIA in advance of a change occurring, but in any event within 21 calendar days after a change has occurred, if it is involved in a take-over, merger or acquisition or if it enters into a company voluntary arrangement or into administration, receivership or liquidation.

Approved contractors may also choose to change the name of their business for other reasons that do not impact the legal status of the business but help change the way they operate e.g. a different name might increase their profile or visibility in a particular market, or simply reflect a change in branding to better reflect the benefits the business can bring.

Note 2:

The Companies Act requires a registered company to complete the relevant process if it wishes to change its registered company name.

Relevant ACS requirements

Get Approved, Approval Condition 6. 'Notify us of the following changes in advance of a change occurring, but in any event within 21 calendar days after a change has

occurred’:

- a) a change in the name of your business;
- c) a change in the legal status of your business;
- d) in relation to your business or any of its controlling minds, any merger, acquisition, take-over, company voluntary agreement, individual voluntary agreement, administrative order, County Court judgment, liquidation, administration, receivership, bankruptcy, disqualification as a director, or debt relief restriction order.

Policy

Change to legal entity

Approval is granted to a particular legal entity. If you start providing services as a different legal entity because of a merger, takeover or other re-structuring then you must apply for a new approval. This applies even if the key individuals remain the same and the new business is providing the same services as the old one.

For example, if company A (an approved contractor) is taken over by company B (not approved), even if many of the business processes, customers and key individuals remain the same, the new business (company B) would require a new approval and would therefore have to make a fresh application. Any previous approval for Company A would be withdrawn. Similarly, if a sole trader decided to incorporate and start trading through a company, the company would require a new approval and would need to make an application in its own right.

Change to name

An approved contractor is not required to apply for a new approval if the controlling minds or name of your business changes, but the legal entity remains the same. However, in accordance with the approval conditions, you must notify us of any such changes in advance of, or in any event within 21 calendar days after, the change has occurred.

Examples:

- ABC Security Ltd is an approved contractor, goes into liquidation. DEF Security Ltd, trading as *ABC Security*, takes over all of the contracts and staff, and has the same directors.

This is a change of legal entity. DEF Security Ltd must make a fresh application to become approved. The ACS approval is withdrawn from ABC Security Ltd.

- ABC Security Ltd is an approved contractor, and acquires another company. All services will now be delivered by ABC Security Ltd. ABC Security Ltd change their registered company name to ABC Securities Limited.

This is a change of name but not a change to the legal entity that is approved. Depending on the circumstances (e.g. size and nature of the acquired company), ABC Security Ltd would be able to continue to be approved.

- Two ACS companies (Star Security Ltd and Moon Security Ltd) merge, and then decide to transfer all the staff and contracts to a new company Moon and Stars Security Ltd.

This is a change of legal entity and will require a fresh application.

- Two ACS companies (Sun Security Ltd and Rain Security Ltd) tell us ‘*we have merged and are now trading as one - Sun and Rain Security.*

We would need further clarification:

- a) is there is a new legal entity, and if so what is its status and what is its name?

or

- b) has one of the limited companies taken over the other company? and is the other no longer trading? and is there now a trading/business name. This is a name change plus a new trading name.

- An ACS company tells us ‘*We have changed our name and are now trading as Sun Security Limited* ‘

- We would need further clarification:

a) They may have changed their legal entity because they mention a new 'limited' company.

b) They may have changed their name, but not their legal entity.

From what they have told us, they may have unknowingly used a prohibited trading/business name (the words Ltd and Limited can only be used by companies incorporated under the Companies Act). An unincorporated company (such as a sole trader) cannot use a trading name that implies that it is a registered company (e.g. XYZ Limited/Ltd). A limited company cannot use a trading name that is different to its registered company name but includes the word Limited/Ltd (e.g. Sun Security Ltd can have a trading name of 'Sunsec' but not 'Sunsec Ltd'.)