



What's in a name?

Limited Liability: Many businesses trade through a limited liability company because doing so provides a good measure of protection from personal liability for debts of the business. However, that protection can be lost if care is not taken with the use of the company's name.

Section 25 of the Companies Act 1993 creates a trap for the unwary, the breach of which can lead to the imposition of personal liability for directors and others, or a fine, or both. This section provides that a company must state its name clearly and correctly in every one of the company's written communications. This is to ensure that in any given case, the other party to the transaction knows who is being dealt with. The section applies to documents:

- recording a legal obligation of the company;
- sent "on behalf of" the company; and
- "issued or signed" by the company.

A point to note is that, other than when using abbreviations such as "&" instead of "and", "Co" or "Coy" instead of "Company", great care must be taken to ensure that the name of the company is fully and correctly stated. Failure to comply can result in every person who issued or signed the document being liable to the same extent as the company, if the company fails to discharge the obligation.

The only **two** circumstances where the rule does not apply are:

- if the person who signs the document proves that the other party to the document was aware, at the time the document was issued or signed, that the obligation was incurred by the company; or
- the Court is satisfied that it would not be just and equitable for the person who issued or signed the document to be liable under the document.

Consequences of failing to comply

The consequences of failing to comply with section 25 are illustrated by a case decided in the High Court in Wellington in 1998 - *Hutt Valley Energy Board v Hayman*. In that case, Mr Hayman was a director and the principal shareholder of Harewood Holdings Limited ("HHL") which operated a service station trading under the name "Steve Hayman Motors".

HHL entered into a contract with the Hutt Valley Energy Board for a supply of gas to the service station. Mr Hayman filled out the application form and inserted "Steve Hayman Motors" as the address for the company and "S F J Hayman" as the customer.

HHL defaulted under the contract and Mr Hayman and HHL were sued for the amounts outstanding. The Court held that Mr Hayman and HHL were in breach of the section in the previous 1955 Companies Act comparable to the present section 25. Mr Hayman was personally liable to pay the amount of \$20,180.98 owed by HHL to the Energy Board.

The lesson is simple.

If you wish to enjoy the benefits of limited liability by trading through a company, you must make it clear in all your dealings on behalf of the company that you are transacting on behalf of a limited liability company. Wherever documents are involved (including correspondence and contracts),

you must ensure that the full and correct name of the company is recorded on all documents. Mr Hayman could have avoided personal liability if he had completed the application form in the name of "Harewood Holdings Limited", and had signed as "S F J Hayman, director of Harewood Holdings Limited".

"What's in a name?" was written by Sara Litchfield a Senior Associate from Hesketh Henry. For further information on how Hesketh Henry can help you please contact Sara:
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