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# AR Factsheet

UNITED KINGDOM



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## Business structure. What types of business structures are there?

- **Public Limited Company (PLC):** A public company is a corporation whose ownership is open to the public. Anyone can buy shares in the company's stocks. A limited company is a corporation in which an individual's financial liability for the company is restricted to a fixed sum - this sum is usually the value of their investment. A PLC is a combination of these two concepts - it is a public company whose shareholders (who could, theoretically, be anyone) are responsible for the company's financial liabilities to the extent of their investment. The other key point of note is that before a PLC can start business, it must have allotted shares to the total value of at least £50,000.
- **Private Company Limited by Shares (LTD):** In contrast to a public company, a private company cannot be owned by any members of the public. It will instead be owned by an NGO (non-government organisation) or a relatively small number of shareholders, and the sale of company shares is handled privately. However, these companies are limited, like PLCs, and this has the same implications for a private company as it does for a public company. Once again, an individual is only responsible for the business's financial liabilities to the extent that they invested in the company. Private limited companies are one of the most common types of companies.
- **Royal Charter (RC):** If a company or organisation has been created by Royal Charter, it means that it has been granted power or a right by the monarch. Once upon a time, all companies had to be approved by Royal Charter, but those days are long gone, and other methods of starting a company have become far more prevalent. Notable examples of chartered organisations include the BBC, the Bank of England and the Royal Opera House. It's worth knowing that chartered companies exist, but it's unlikely that this type of company will have much bearing on your day to day business.
- **Sole Trader:** A sole trader is an unincorporated business, i.e. one not registered with Companies House. They usually have one owner who will run and work in the business on a day to day basis. Sole traders are not seen within the law as separate from the person or people who own the business as is the case with a limited company. The assets and liabilities of a sole trader are therefore seen as those of the person owning and running the business. This not only effects the way in which the business is taxed, but also the level of exposure of the owner has to the business' debts. The debts of the business become the liabilities of the owner whose personal property can be sought should the unincorporated enterprise be unable to pay.



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## Data sources. Where can I find information about a company?

- ▶ Corporate information is available at Companies House:  
[www.gov.uk/government/organisations/companies-house](http://www.gov.uk/government/organisations/companies-house)

## Credit Checks. Where can I find financial information about a business?

- ▶ You can obtain information on the financial state of affairs for companies and industry at Companies House. There are also numerous private reporting agencies offering credit checks.

## Judgment Search. Can I find out if a business already has a judgment against it?

- ▶ Normally you find this information in a credit report. Credit reports are offered as a service online.

## Contracting. How do businesses contract with each other and which documents do you need if you have to go to court?

- ▶ As a minimum you will need:
  - Copies of the invoices
  - Copies of the orders, order confirmations, and delivery notes
  - Copies of the general conditions of sale, should there be any

## Retention of title

- ▶ There are two types of retention of title (ROT) clauses:
  - ▶ **Simple**
    - The title to the goods only passes to the buyer in respect of payment for each invoice relating to the goods.
  - ▶ **All monies**
    - The title to the goods only passes to the buyer when they have paid for all the goods supplied.

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## PRE-LITIGATION

Letter before action. Do you have to send a demand letter to a debtor before going to court?

- ▶ You must issue a letter before action (LBA), which is the start of legal proceedings.
- ▶ This is a letter sent to the debtor from a solicitor, informing them that should they not make payment in full (usually timed as within 14 days), legal proceedings will commence.

Can you claim interest and collection costs from customers if their payment is late?

- ▶ **Late Payment of Interest Act**
  - This act sets out to assist businesses faced with late payment problems. This legislation applies only to commercial debts. Both parties should be businesses, commercial entities, or public sector organisations.
  - Interest is claimed at the prevailing Bank of England rate – currently at 0.1% plus 8.0%.
- ▶ **Late Payment Charges**
  - You may also charge an amount to compensate for the costs of collecting late payment. The amount of compensation that can be claimed is determined by the outstanding amount.



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Amount Owed	LPC Amount
Up to GBP 999.99	GBP 40.00
GBP 1,000.00 – GBP 9,999.99	GBP 70.00
Over GBP 10,000.00	GBP 100.00

## LITIGATION

### Limitation period. How much time do you have before you must start legal proceedings?

- ▶ The Limitations Act 1980 outlines the time limit in which you can chase your debtors for outstanding debts. This act only applies when no contact has been made between you and your debtors within the given time limit and only applies to the residents of England and Wales. You are given a fixed period of six years to chase your debtors, after which it is no longer possible to pursue the debt.

### ADR. What forms of Alternative Dispute Resolution are available and are they compulsory?

- ▶ In the UK, ADR is generally understood to describe all dispute resolution methods other than court proceedings and arbitration.
- ▶ ADR is consensual, in that parties must agree to refer their disputes to some form of ADR. The court cannot compel them to do so, although it can penalise them in costs if they refuse unreasonably to try ADR.
- ▶ ADR is conducted in private and on a "without prejudice" basis. The result of a reference to most types of ADR only becomes binding on the parties once they have reached an enforceable agreement. Until then, either party can withdraw from the ADR process and start or continue proceedings before a court or an arbitral tribunal. If the reference to ADR does not result in a settlement and litigation or arbitration then starts or continues, neither party may use or refer to anything that arose during the ADR process.
- ▶ **Mediation** is the most common form of ADR. The parties engage the assistance of a neutral mediator to help them reach a negotiated agreement to resolve their differences without formal adjudication.
- ▶ **Conciliation** is very similar to mediation except that it usually has a statutory basis, with conciliators appointed by an outside body rather than the parties. During conciliation the neutral third party actively helps the parties to settle the dispute, for example by suggesting settlement options. Conciliation is more commonly used in employment and family disputes.
- ▶ **Early Neutral Evaluation:** The parties obtain from a neutral third party (usually a judge) a non-binding opinion regarding the likely outcome of the dispute if it were to proceed to trial. The intention is that this opinion will enable the parties to negotiate an outcome, with or without the assistance of a third party, or settle the dispute based on the evaluation provided.



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## Court Proceedings. What forms of court proceedings are available, and do you need legal representation?

- If the LBA is not successful, there are three main options:
    - County court judgement
    - Full court proceedings, generally a trial
    - Making the debtor company insolvent\*, often called winding up
- \*There is no guarantee that making the debtor company insolvent will recoup any funds.*

## Time frame. How long does it take before you can get a judgment against a debtor?

- Litigation action takes approximately 12 weeks for a standard case to reach a judgment. The case is then transferred to the High Court to obtain relevant documentation to proceed to enforcement. This can take another three to four weeks. Enforcement can take up to an additional 12 weeks but is entirely dependent on the sheriff's ability to make contact.

## How much does it cost to go to Court?

- Costs will differ greatly depending on the type of legal action necessary and the jurisdiction where you take legal action.
- Court fees for England and Wales were increased some 5 years ago. You can find more details at: [www.gov.uk/make-court-claim-for-money/court-fees](http://www.gov.uk/make-court-claim-for-money/court-fees).
- Certain legal costs, such as some of the court costs, can be charged to the debtor. The decision to allocate costs lies with the judge, but in most cases, approximately 60.0% to 70.0% of all the costs are charged to the debtor's account after successful judgment.
- Legal costs of defended cases are charged at an hourly rate. This depends entirely on the nature of the case and the seniority and experience of the legal advice needed. This cost usually ranges from GBP 150.00 to GBP 500.00 per hour.

## Enforcement of a court judgment. How do you enforce domestic/overseas judgments?

- There are two steps to successfully recover monies in the UK, the first of which is obtaining a judgment followed by the enforcement of that judgment. There are several options for enforcement, but the most common one is via enforcement officer or sheriff. Once the judgment is obtained, then enforcement actions can be taken. A judgment does not necessarily lead to successful collections. The enforcement officer will visit the debtor's premises to try to collect the monies. This can be a lengthy process lasting several months.



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- If the debtor is not able to make any payments, then the sheriff can seize the goods relating to the debtor's business as payment towards the debt through a notice of seizure, followed by the seizure itself. The goods are then sold by the sheriff to realise funds. Any costs involved in making the sale are deducted from the monies recovered.
- If the debtor owns property, then you can apply for a judgment mortgage. This means that the property cannot be sold without first discharging the debt. There can be several judgment mortgages against one property, so it's advisable to check the likelihood of success before incurring additional costs.

## Insolvency

- There are a variety of insolvency types within the UK, ranging from
  - a voluntary arrangement - offering a fixed percentage pay-out to the creditors
  - to administration - where an administrator is appointed to try and trade out the debtor company
  - to liquidation - where all the debtor's assets are liquidated. The debtor company can move between these types.
- Claims usually need to be lodged in formal insolvency within six months. The insolvency practitioner will write directly to you in the first instance. In the UK, insolvency proceedings can last up to five years.



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*The information in this document is accurate to our knowledge as of July 2019*

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