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## USING A SIMILAR NAME FOR YOUR NEW COMPANY/TRADING AS THE ONE THAT IS INSOLVENT

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This leaflet sets out the law relating to trading with a similar name to that with which a company now in administration or liquidation used to trade.

Before even reading the rest of this leaflet, think about what you will change so that the next company does not also end up in liquidation or administration.

This is a complicated area of law in which you can easily make mistakes. If you do not get **EVERYTHING** correct you may end up breaking the law and paying a lot of money.

You should therefore take your own independent legal advice. This leaflet is provided so that you can read in advance of your meeting with a solicitor to make sure that you get the most from that meeting.

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## Insolvency Act 1986

### 216. Restriction on re-use of company names

- (1) This section applies to a person where a company ("the liquidating company") has gone into insolvent liquidation on or after the appointed day and he was a director or shadow director of the company at any time in the period of 12 months ending with the day before it went into liquidation.
- (2) For the purposes of this section, a name is a prohibited name in relation to such a person if -
  - (a) it is a name by which the liquidating company was known at any time in that period of 12 months, or
  - (b) it is a name which is so similar to a name falling within paragraph (a) as to suggest an association with that company.
- (3) Except with leave of the court or in such circumstances as may be prescribed, a person to whom this section applies shall not at any time in the period of 5 years beginning with the day on which the liquidating company went into liquidation -
  - (a) be a director of any other company that is known by a prohibited name, or
  - (b) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any such company, or
  - (c) in any way, whether directly or indirectly, be concerned or take part in the carrying on of the business carried on (otherwise than by a company) under a prohibited name.
- (4) If a person acts in contravention of this section, he is liable to imprisonment or a fine, or both.
- (5) In subsection (3) "the court" means any court having jurisdiction to wind up companies; and on an application for leave under that subsection, the Secretary of State or the official receiver may appear and call the attention of the court to any matters which seem to him to be relevant.
- (6) References in this section, in relation to any time, to a name by which a company is known are to the name of the company at that time or to any name under which the company carries on business at that time.

- (7) For the purposes of this section a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.
- (8) In this section "company" includes a company which may be wound up under Part V of this Act.

### **Insolvency Rules 1986**

#### **4.227A Application for permission under s 216(3)**

- (1) At least 14 days notice of any application for permission to act in any of the circumstances which would otherwise be prohibited by section 216(3) must be given by the applicant to the Secretary of State, who may—
  - (a) appear at the hearing of the application; and
  - (b) whether or not appearing at the hearing, make representations.
- (2) When considering an application for permission under section 216, the court may call on the liquidator, or any former liquidator, of the liquidating company for a report of the circumstances in which that company became insolvent and the extent (if any) of the applicant's apparent responsibility for its doing so.

#### **4.228 First excepted case (as amended by The Insolvency (Amendment) Rules 2007)**

- (1) This Rule applies where—
  - (a) a person ("the person") was within the period mentioned in section 216(1) a director, or shadow director, of an insolvent company that has gone into insolvent liquidation
  - (b) the person acts in all or any of the ways specified in section 216(3) in connection with, or for the purposes of, the carrying on (or proposed carrying on) of the whole or substantially the whole of the business of the insolvent company where that business (or substantially the whole of it) is (or is to be) acquired from the insolvent company under arrangements—
    - (i) made by its liquidator; or
    - (ii) made before the insolvent company entered into insolvent liquidation by an office-holder acting in

relation to it as administrator, administrative receiver or supervisor of a voluntary arrangement under Part 1 of the Act.

- (2) The person, will not be taken to have contravened section 216 if prior to his acting in the circumstances set out in paragraph (1) a notice is, in accordance with the requirements of paragraph (3),—
  - (a) given by the person, to every creditor of the insolvent company whose name and address—
    - (i) is known by him; or
    - (ii) is ascertainable by him on the making of such enquiries as are reasonable in the circumstances; and
  - (b) published in the Gazette.
- (3) The notice referred to in paragraph (2)—
  - (a) may, subject to compliance with sub-paragraph (a), be given and published before the completion of the arrangements referred to in paragraph (1)(b) but must be given and published no later than 28 days after that completion;
  - (b) must state—
    - (i) the name and registered number of the insolvent company;
    - (ii) the name of the person;
    - (iii) that it is his intention to act (or, where the insolvent company has not entered insolvent liquidation, to act or continue to act) in all or any of the ways specified in section 216(3) in connection with, or for the purposes of, the carrying on of the whole or substantially the whole of the business of the insolvent company; and
    - (iv) the prohibited name or, where the company has not entered insolvent liquidation, the name under which the business is being, or is to be, carried on which would be a prohibited name in respect of the person in the event of the insolvent company entering insolvent liquidation; and
  - (c) must in the case of notice given to each creditor of the company be given using Form 4.73.
- (4) Notice may in particular be given under this Rule—
  - (a) prior to the insolvent company entering insolvent liquidation where the business (or substantially the whole of the

business) is, or is to be, acquired by another company under arrangements made by an office-holder acting in relation to the insolvent company as administrator, administrative receiver or supervisor of a voluntary arrangement (whether or not at the time of the giving of the notice the director is a director of that other company); or

- (b) at a time where the person is a director of another company where—
  - (i) the other company has acquired, or is to acquire, the whole, or substantially the whole, of the business of the insolvent company under arrangements made by its liquidator; and
  - (ii) it is proposed that after the giving of the notice a prohibited name should be adopted by the other company.

#### **4.229 Second excepted case**

- (1) Where a person to whom section 216 applies as having been a director or shadow director of the liquidating company applies for leave of the court under that section not later than 7 days from the date on which the company went into liquidation, he may, during the period specified in paragraph (2) below, act in any of the ways mentioned in section 216(3), notwithstanding that he has not the leave of the court under that section.
- (2) The period referred to in paragraph (1) begins with the day on which the company goes into liquidation and ends either on the day falling six weeks after that date or on the day on which the court disposes of the application for leave under section 216, whichever of those days occurs first.

#### **4.230 Third excepted case**

The court's leave under section 216(3) is not required where the company there referred to, though known by a prohibited name within the meaning of the section-

- (a) has been known by that name for the whole of the period of 12 months ending with the day before the liquidating company went into liquidation, and
- (b) has not at any time in those 12 months been dormant within the meaning of section 252(5) of the Companies Act.

**Notes for Completion**

\*delete as applicable.

(a) Insert name of insolvent company.

(b) Insert registered number of insolvent company then complete **either section A or section B.**

(c) Complete this section where the company has entered administration, an administrative receiver has been appointed in respect of the company or the company is subject to a voluntary arrangement under Part 1 of the Insolvency Act 1986. **This section should not be completed if the company is in insolvent liquidation. In that case complete section B.**

(d) Insert date. In cases where the company has been subject to different insolvency procedures which immediately follow each other e.g. administration followed by a voluntary arrangement the date of the first proceedings should be entered.

(e) Insert name of director.

(f) Insert address of director.

(g) The director in question may already be acting in relation to a successor company that has adopted a name which in the event that the insolvent company enters insolvent liquidation would be a prohibited name. Alternatively he may be proposing so to act. The appropriate deletion should accordingly be made.

(h) Insert name which would be a prohibited name if the company were to enter insolvent liquidation.

**WARNING – THIS FORM MAY NOT BE USED IF YOU HAVE ALREADY ACTED IN BREACH OF SECTION 216 OF THE INSOLVENCY ACT 1986**

**Rule 4.228 of the Insolvency Rules 1986  
Notice to the creditors of an insolvent company  
of the re-use of a prohibited name**

**EXAMPLE – use the official form!**

(a)

Registered number

(b)

**SECTION A – COMPANY IN ADMINISTRATION,  
ADMINISTRATIVE RECEIVER APPOINTED, OR COMPANY  
SUBJECT TO VOLUNTARY ARRANGEMENT(c)**

On (d) , [\*the above-named company entered administration] [\*an administrative receiver was appointed in respect of the above-named company.] [\*a voluntary arrangement under Part 1 of the Insolvency Act 1986 was approved in respect of the above named company.]

I,

(e)

of

(f)

was a director of the above-named company on the day it [\*entered administration] [\*the receiver was appointed] [\*the voluntary arrangement under Part 1 of the Insolvency Act 1986 was approved.]

I give notice that (g) [\*I am acting and intend to continue to act in one or more of the ways to which section 216(3) of the Insolvency Act 1986 would apply if the above-named company were to go into insolvent liquidation] [\*it is my intention to act in one or more of the ways to which section 216(3) of the Insolvency Act 1986 would apply if the above-named company were to go into insolvent liquidation] in connection with, or for the purposes of, the carrying on of the whole or substantially the whole of the business of the above-named company under the following name:

(h)

**Form 4.73**

**Cont.**

Notes for completion

(i) Insert date.

(j) Insert name of director.

(k) Insert address of director.

(l) Insert name under which the business is to be carried on.

**SECTION B - COMPANY IN INSOLVENT LIQUIDATION**

On  the above-named company  
(i) went  
into insolvent liquidation.

I,  (j)

of  (k)

was a director of the above-named company during the 12 months ending with the day before it went into liquidation.

I give notice that it is my intention to act in one or more of the ways specified in section 216(3) of the Insolvency Act 1986 in connection with, or for the purposes of, the carrying on of the whole or substantially the whole of the business of the insolvent company under the following name:

(l)

**Notes:**

Section 216(3) of the Insolvency Act 1986, which is referred to above, lists the activities that a director of a company

that has gone into insolvent liquidation may not undertake without the court giving leave or the application of an exception created under Rules made under the Insolvency Act 1986. (This includes Rule 4.228 of the Insolvency Rules 1986.) These activities are,

- (a) acting as a director of another company that is known by a name which is either the same as a name used by the company in insolvent liquidation in the period of 12 months ending on the day before it entered liquidation or is so similar as to suggest an association with that company,
- (b) directly or indirectly being concerned or taking part in the promotion, formation or management of any such company, or
- (c) directly or indirectly being concerned in the carrying on of a business otherwise than through a company under a name of the kind mentioned in (a) above.

This notice is given in pursuance of Rule 4.223 of the Insolvency Rules 1986 where the business of a company which is in, or may go into, insolvent liquidation is, or is to be, carried on otherwise than by the company in liquidation with the involvement of a director of that company and under the same or a similar name to that of that company. The purpose of the giving of this notice is to permit the director to act in these circumstances where the company enters (or has entered) insolvent liquidation without the director committing a criminal offence and in the case of the carrying on of the business through another company, being personally liable for that company's debts.

Notice using this form may be given where the director giving the notice is already the director of a company which proposes to adopt a prohibited name.

EXAMPLE OF APPROPRIATE NOTICE FOR PUBLICATION IN THE LONDON GAZETTE

**SECTION 216 OF THE INSOLVENCY ACT 1986 PURSUANT TO RULE 4.228 OF THE INSOLVENCY RULES 1986**

**[Name of Company]**

(Company Number **[Company Number]**)

On **[Date of Liquidation/Administration]** the above-named Company went into insolvent liquidation.

I, <sup>(a)</sup>

Of <sup>(b)</sup>

.....  
.....  
.....  
.....  
.....

was a Director of the above-named Company during the 12 months ending with the day before it went into liquidation.

I give notice that it is my intention to act in one or more of the ways specified in section 216(3) of the Insolvency Act 1986 in connection with, or for the purposes of, the carrying on of the whole or substantially the whole of the business of the insolvent Company under the following name

<sup>(c)</sup>

.....

Signed

.....

Name in Capitals

.....

Date

.....

Notes

- a Insert your full name
- b Insert your full address
- c Insert trading name you intend to use