

Restrictions on the re-use of a company name

Business Restructuring and Insolvency



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1. Restriction on the re-use of a company name

When a company enters into insolvent liquidation there is a prohibition on the re-use of its name¹, save for certain prescribed circumstances. It is an offence for a person, who is or who has been a director or shadow director of that company², to perform, any of the following functions within a period of five years beginning with the day the company entered into liquidation.

- a) To be a director of any other company that is known by a prohibited name
- b) To be in any way, whether directly or indirectly, concerned or take part in the promotion, formation or management of a company that is known by a prohibited name
- c) To be in any way, whether directly or indirectly, concerned or take part in the carrying on of a business carried on (otherwise than by a company) under a prohibited name

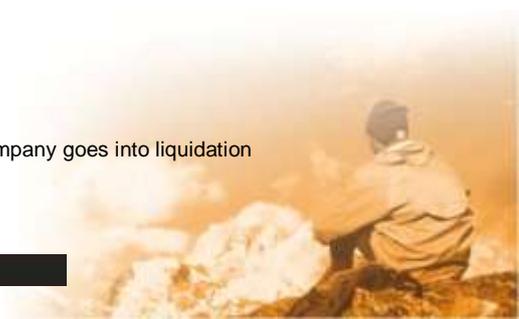
2. When is a name prohibited?

A name is a prohibited name if,

- a) It is a name by which the company in liquidation was known at any time in the period of 12 months ending with the date on which the company goes into liquidation, or
- b) It is a name which is so similar to a name falling within paragraph a) as to suggest an association with the company in liquidation

¹ Section 216 Insolvency Act 1996

² At any time in the period of 12 months ending with the date on which the company goes into liquidation



3. Consequences of using a prohibited name

Anyone who acts in contravention of these rules is liable to imprisonment, a fine or both. Furthermore, a person can be held personally liable for the debts incurred by a company when.

- a) In contravention of these rules, a person is involved with the management of the company, or
- b) If a person who is involved in the management of the company acts or is willing to act on the instructions given by a person whom they know at the time to be in contravention of these rules.

4. Exceptions

There are four circumstances where the use of a prohibited name is permitted, as follows:

- 1) Where the Court grants permission for the re-use of the company name.
- 2) Where an individual, who would otherwise fall foul of the prohibition is, has or is going to acquire the business (or substantially all of it) from the insolvent company under arrangements entered into it by its liquidator, or administrator, administrative receiver or supervisor of a voluntary arrangement provided they have circulated to every creditor whose name and address is known to them, or ascertainable by them, a notice as prescribed by statute. This notice must be circulated and published in the London Gazette either before completion of any acquisition or within 28 days after that completion thereof.
- 3) Where such an individual has made an application to the Court for permission to contravene the rules, not later than seven days from the date on which the company went into liquidation³.

³ In this case they may act in contravention of the rules beginning with the day on which the company enters liquidation until either the day falling six weeks after that date or the day on which the Court disposes the application for permission, whichever occurs first.

- 4) Where the company, although known by a prohibited name, has been known by that name for the whole of the period of 12 months ending with the day before the liquidation and was not dormant at any time within that period. The most likely situation in which this might apply is where the company which became insolvent was one of a group of active companies all operating under similar names.

5. Further information

If you would like further information then please contact one of our team on the contact details above.

