

## Re-use of Company Name after Liquidation

Directors of insolvent companies often wish to start up a new business with a similar name in order to benefit from any reputational goodwill that they believe had been created. However, Section 216 (s216) of the Insolvency Act 1986 imposes certain restrictions in order to prevent the formation of such 'Phoenix' companies.

Unless strict rules are followed, a director of a company which has gone into insolvent liquidation cannot be involved in the promotion, formation or management of any business (incorporated or unincorporated) if that business uses any name by which the liquidating company was known or traded under. The name will also be prohibited if it is so similar as to suggest an association with the company in liquidation. For example, if John Smith Consulting Limited went into insolvent liquidation, "JS Consulting Limited" and "John Smith Consultants" would all be treated as prohibited under s216.

The restriction on the use of a name lasts for 5 years from the date of liquidation. Failure to comply with s216 brings with it severe penalties including a fine and/or imprisonment, personal liability for the debts of the phoenix business (should it fail) and potential disqualification for directors.

Section 217 of the Insolvency Act 1986 provides three exceptions to s216 :

1. Sale of a business – if the new venture purchases the whole or substantially the whole of the business of the insolvent company from its liquidator, then a similar name may be used. In these circumstances a notice must be published in the London Gazette and sent to all known creditors within 28 days of completion. Note: purchase of just the name or trading style from the liquidator will not be sufficient to avoid s216.
2. Application to court for permission to use a name – This can be done prior to the commencement of the liquidation or within 7 business days of the liquidation.
3. Use of existing trading company or business with similar name – This usually arises where the company being liquidated is part of a group, and requires the 'surviving' company to have been trading and known by that name for a period of 12 months prior to the liquidation date. For example, John Smith Consulting Limited is part of a group with JS Holdings Limited and JS Consultants Limited. When John Smith Consulting Limited enters into liquidation, then a person is permitted to continue to act, or be appointed, as a Director of the remaining companies providing they have been actively trading and using those names during the whole 12-month period prior to liquidation.

One final note of caution, s216 only applies in insolvent liquidations, not administrations. However, directors of companies entering administration should be aware that liquidation may follow the administration, at which point s216 would apply.

Please note that should your clients require any confidential advice regarding this or any other insolvency matter they are welcome to contact one of our Partners. An initial consultation is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedure, please do not hesitate to contact us.