

## Section 216 Letter

[Director/ Shadow Director name]  
[Address]

IP Firm name  
IP Firm address

Date:

Dear [Sir/Madam]

**RE: [COMPANY NAME] LIMITED (IN LIQUIDATION)**

I refer to the fact that [Company Name] Limited went into creditors' voluntary liquidation on [date] and I have been appointed as its liquidator.

Your attention is drawn to the provisions of Section 216 and 217 of the Insolvency Act 1986 which are briefly explained below.

As you were [acting as a director of] [taking part in the management of] [a director of] [liquidated company name] at any time in the period of 12 months ending with the day before the company went into liquidation you are prohibited from using any name by which [liquidated company name] was known, including any trading names, or a name which is so similar as to suggest an association with that company.

The restriction from using a prohibited name applies for the period of 5 years beginning with the day on which [liquidated company name] went into liquidation and except with the permission of the court you cannot:

- a) be a director of any other company that is known be a prohibited name, or,
- b) be in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any such company, or,
- c) be in any way, whether directly or indirectly, be concerned or take part in the carrying on of an unincorporated business under a prohibited name.

Your attention is also drawn to Rules 4.226 to 4.230 of the Insolvency Rules 1986 which provides three exceptions to the restriction imposed by Section 216 of the Insolvency Act 1986.

You should note that it is a criminal offence to contravene Section 216 of the Insolvency Act 1986 and if you act in contravention of this section you are liable on conviction to imprisonment and/ or a fine.

Your attention is also drawn to Section 217 of the Insolvency Act 1986, which provides, amongst other things, that a person who is involved in the management

of a company in contravention of Section 216 of the Insolvency Act 1986 is personally liable for any debts of the company incurred during the period of that involvement.

A copy of Sections 216 and 217 of the Insolvency Act 1986 is attached together with a copy of Rules 4.226 to 4.230 of the Insolvency Rules 1986.

If you have any doubts about the contents of this letter, please discuss them with me direct. Alternatively, you may wish to seek legal advice. If you do not know the name of a solicitor to contact, you may find that your local Citizens' Advice Bureau will be able to offer you some assistance.

Yours faithfully

[IP name]

## **Enclosure:**

### **SECTION 216 INSOLVENCY ACT 1986**

- (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 a 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.*

### **SECTION 217 INSOLVENCY ACT 1986**

- (1) *A person is personally responsible for all the relevant debts of a company if at any time -*
- (a) *in contravention of section 216, he is involved in the management of the company, or*
  - (b) *as a person who is involved in the management of the company, he acts or is willing to act on instructions given (without the leave of the court) by a person whom he knows at that time to be in contravention in relation to the company of section 216.*
- (2) *Where a person is personally responsible under this section for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this section or otherwise, is so liable.*
- (3) *For the purposes of this section the relevant debts of a company are -*
- (a) *in relation to a person who is personally responsible under paragraph (a) of subsection (1), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company, and*
  - (b) *in relation to a person who is personally responsible under paragraph (b) of that subsection, such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in that paragraph.*
- (4) *For the purposes of this section, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.*
- (5) *For the purposes of this section a person who, as a person involved in the management of a company, has at any time acted on instructions given (without the leave of the court) by a person whom he knew at that time to be in contravention in relation to the company of section 216 is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.*
- (6) *In this section “company” includes a company which may be wound up under Part V.*

## **CHAPTER 22 of the Insolvency Rules 1986 as amended**

LEAVE TO ACT AS DIRECTOR, ETC, OF COMPANY WITH PROHIBITED NAME (SECTION 216 OF THE ACT)

### **Rule 4.226 - Preliminary**

*The Rules in this Chapter –*

- (a) *relate to the leave required under section 216 (restriction on re-use of name of company in insolvent liquidation) for a person to act as mentioned in section 216(3) in relation to a company with a prohibited name,*
- (b) *prescribe the cases excepted from that provision, that is to say, those in which a person to whom the section applies may so act without that leave, and*
- (c) *apply to all windings up to which section 216 applies, whether or not the winding up commenced before the coming into force of the Rules.*

### **Rule 4.227 – Application for leave under s 216(3)**

*When considering an application for leave 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 responsibility for its doing so.*

### **Rule 4.228 – First excepted case**

- (1) *Where a company (“the successor company”) acquires the whole, or substantially the whole, of the business of an insolvent company, under arrangements made by an insolvency practitioner acting as its liquidator, administrator or administrative receiver, or as supervisor of a voluntary arrangement under Part I of the Act, the successor company may for the purposes of section 216 give notice under this Rule to the insolvent company's creditors.*
- (2) *To be effective, the notice must be given within 28 days from the completion of the arrangement, to all creditors of the insolvent company of whose addresses the successor company is aware in that period; and it must specify -*
  - (a) *the name and registered number of the insolvent company and the circumstances in which its business has been acquired by the successor company,*
  - (b) *the name which the successor company has assumed, or proposes to assume for the purpose of carrying on the business, if that name is or will be a prohibited name under section 216, and*

- (c) any change of name which it has made, or proposes to make, for that purpose under section 28 of the Companies Act.*
- (3) The notice may name a person to whom section 216 may apply as having been a director or shadow director of the insolvent company, and give particulars as to the nature and duration of that directorship, with a view to his being a director of the successor company or being otherwise associated with its management.*
- (4) If the successor company has effectively given notice under this Rule to the insolvent company's creditors, a person who is so named in the notice may act in relation to the successor company in any of the ways mentioned in section 216(3), notwithstanding that he has not the leave of the court under that section.*

**Rule 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.*

**Rule 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 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.*