

The law restricts the re-use of a name previously used by a company that has gone into liquidation (section 216 of The Insolvency Act 1986). This restriction applies personally to a director of the company in liquidation. The name which can't be used is known as the "prohibited name".

This leaflet explains what re-use of a prohibited name means. It does not give a complete list of everything you must and must not do, nor does it give you legal advice.

To understand exactly how the restrictions affect you, you should always take your own independent professional advice.

What is a prohibited name?

A prohibited name is a name by which the liquidated company was known at any time in the 12 months immediately before the liquidation: whether this is its registered name at Companies House, or its trading name, or any name so similar to its registered or trading name as to suggest an association with the liquidated company.

Who is restricted?

The restriction applies to a person who was registered as a director or acted as a director of the company in liquidation at

any time during the 12 months immediately before the liquidation.

What is the restriction?

For 5 years from the date of liquidation, you are not permitted to be a director of or take part in the promotion, formation or management of a limited company that is using a prohibited name. In addition you may not be concerned in or take any part in carrying on a business that is using a prohibited name if the business is not a limited company (for example, if it is a partnership or sole trader).

What is an example of a prohibited name?

Say the company in liquidation was registered at Companies House as ABC Limited and it used the trading name XYZ, then the following would apply:

- The registered name ABC Limited or XYZ Limited would be prohibited.
- The trading name ABC or XYZ would be prohibited.
- The trading name ABC or XYZ used by an unincorporated business (such as a sole trader or partnership) would be prohibited.
- If a company or business had a

registered name or trading name so similar as to suggest an association with ABC or XYZ, the name would be prohibited.

Exceptions

There are three exceptions to the restrictions on the re-use of a prohibited name.

First exception: Sale of business

You may use the name if you are or intend to be a director of a company or are or intend to be proprietor of a business and the company or business buys the whole, or substantially the whole, of the business of the company in liquidation from the liquidator. If this happens or is intended to happen under arrangements made by an administrator, administrative receiver or supervisor of a voluntary arrangement of the insolvent company, you must use a prescribed form (form 4.73) to publish a Notice in the Gazette and also send it to all creditors known to you or whose names and addresses could be obtained by you by making reasonable enquiries. The prescribed form 4.73 can be downloaded through the following internet link: <http://www.opsi.gov.uk/si/si2007/20071974.htm> The Notice may be published and given before the completion of the sale arrangements but must be published and given no later than 28 days after completion.

Second exception: Immediate application to court for permission

You can get permission from the court to use the prohibited name. You should apply to the court within 7 days of the liquidation. If you apply within that time, you may carry on using the prohibited name for 6 weeks from the date of the liquidation or until the court decides whether to grant you permission, whichever is the earlier. It is important that your application is heard within the six weeks; otherwise the restriction will again apply to you.

The court can grant permission at any time during the five years that a name is prohibited, but it cannot retrospectively authorise use of a prohibited name for any time during the period before it gave permission.

If a company has gone into compulsory liquidation (i.e. your company in liquidation was wound up in the court and was dealt with by the official receiver), you should apply for permission to the same court that made the winding-up order. If a company has gone into voluntary liquidation, you should apply for permission to any county court in the area where the company traded, as long as that county court has the jurisdiction to wind up companies.

If you apply to the court for permission to use a prohibited name, you should send a copy of your application to Hotline and S216(3) Applications Team, 3rd Floor, Cannon House, 18 Priory Queensway Birmingham B4 6FD. This is because the court may call on the liquidator, or any former liquidator, to report the circumstances in which the liquidated company became insolvent, and the extent (if any) of your responsibility for the insolvency.

Third exception: Previous use of name by another company or business

The restriction on the re-use of a prohibited name does not apply to you if you are a director of another company that has used a prohibited name continuously for 12 months up to the date of the liquidation of the liquidated company. In these specific circumstances your use of a name would not be prohibited, even though the name was also used by the liquidated company. However, your company must have been actively trading during the whole of the 12 months up to the date of the liquidation of the liquidated company, and must have used the name during the whole of that period. If your company was dormant (not actively trading) during any part of the 12 months or used the name during only part of the period, then the restriction will apply and you will not

be allowed to re-use the prohibited name, without the permission of the court.

Penalties

If you contravene section 216 of the Act, you are committing a criminal offence. You may be prosecuted by the Department of Trade and Industry and could go to prison if you are convicted. In addition, under section 217 of the Act you could be made personally liable for the debts incurred during the time that you were involved in managing a business using a prohibited name, even if it was a limited company. This could happen whether you are prosecuted under section 216 or not.

Employee who helps someone else contravene section 216

Even if you are not contravening Section 216 of the Act, you will be personally liable for the debts of a company if you are involved in managing a business and you act on instructions from someone you know is contravening section 216. This is because you are helping someone to commit a criminal offence by contravening section 216.

Where can I find out more?

Our publications give more details of insolvency procedures. Please see 'A Guide for Directors'.

You can get more copies of this booklet from The Insolvency Service website: <http://www.insolvency.gov.uk/>. All our publications are also available on this website.

You may also, free of charge, order copies of our publications from the BERR Publications Orderline. To do this you will need the reference number (URN) of the forms required. This can be found on the back cover of the leaflets or on the website. Orders can be made:

by telephone: 0845 015 0010;
by email: publications@berr.gsi.gov.uk;
by fax: 0845 015 0020;
Minicom users should telephone: 0845 015 00308

You can also contact The Insolvency Enquiry Line for general enquiries on 0845 602 9848, or email us at: Insolvency.Enquiryline@insolvency.gsi.gov.uk.



www.insolvency.gov.uk

Re-use of a company name after liquidation



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