

OUR GUIDE TO RE-USING YOUR COMPANY'S NAME AFTER ITS LIQUIDATION

The Insolvency Act 1986 prevents a director from using a prohibited name in respect of a new business, unless clearly defined procedures are followed.

What is a prohibited name?

It's a name by which an insolvent company was known at any time in the 12 months before liquidation (Compulsory or Creditors' Voluntary), in respect of which you were acting as a director at any point in the same period, or is so similar to that name as to suggest an association with that company. This can include a trading style and not just the name by which the company is registered at Companies House.

What are the penalties for re-using a prohibited name?

You wouldn't want to be caught out as you can be held to be liable for a fine or imprisonment, or both¹. If the new company falls into insolvent liquidation like the first, you can also be held to be personally liable for the debts of the new company which have arisen over the period in which you were managing the company in contravention of the provisions². If someone else is managing the company with you at this time and knows that you are breaking the law, then they can be held personally liable too.

The Insolvency Service has a Compliance and Targeting Team that specifically deals with directors in these situations.

How long am I prohibited from re-using the name?

You are not able to re-use the name, or be involved in the management of a company that is re-using the name, for a period of five years from the start of the first company's liquidation.

How can I avoid breaking the law?

You may apply to Court or follow a set procedure. In either case you should do so *before* you start acting.

Shall I just not register my name against the new company at Companies House?

This won't protect you. The Insolvency Act 1986 is clear that you are managing a company not only when you are a registered director, but when you tell people you are a director, act as a shadow director by giving instructions to the registered director(s) or are involved directly or indirectly in the management, promotion or formation of the company.

I don't want to apply to Court so what's the procedure to follow?

If the following all apply to you³:

- you were a director or shadow director of a company in insolvent liquidation (Compulsory or Creditors' Voluntary) at any time in the 12 months before liquidation; *and*
- you *intend* (ie you're not already doing it) to be a director or involved in the management of a company with a prohibited name; *and*
- the business of the insolvent company is to be bought from its Liquidator or has already been bought from its Administrator, Administrative Receiver or Supervisor of a Company Voluntary Arrangement ("CVA") prior to the liquidation.

Notice must be given *before* acting to:

- every known or reasonably ascertainable creditor of the insolvent company; and
- the London Gazette.

¹ Section 216 Insolvency Act 1986

² Section 217 Insolvency Act 1986

³ Rule 22.4 of the Insolvency (England and Wales) Rules 2016

The notices may be sent before the completion of the sale of the whole, or substantially the whole, of the insolvent company's business but no later than 28 days afterwards. Whether the notices are pre or post sale, they must be *before* you act.

My company is in Administration (or a CVA) and isn't yet in insolvent liquidation

You should still issue the notices as set out above if the company is to be placed into insolvent liquidation at a later date.

I've made my application to Court but am worried I'm breaching the provisions whilst I wait for the Hearing

If you made your application within 7 days of the liquidation then you have a period of protection of up to six weeks, whilst the Court hears the application. If you didn't, then you may be exposed whilst you wait for the Hearing. The Court will not grant retrospective protection.

I've been a director for years of a company that now has a prohibited name, so do I need to apply to Court or follow the notice provisions?

Not if the company with a prohibited name has been known by that name for the 12 months before the insolvent liquidation *and* it has been trading throughout that period.

I think I'm in breach

Take immediate advice.

This is a very complicated area of insolvency law, which is designed to protect creditors from the actions of directors of phoenix companies. If you would like specific guidance for you or your company, talk to Sadlers today.