



## FUTURE EVENTS

7th February 2014

City Professionals Networking event

Register for the event [here](#)

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## ABC NEWS BULLETIN

### PROHIBITED NAMES

## A MINEFIELD FOR DIRECTORS

*Simon Parker highlights the issues surrounding phoenix companies and prohibited names which if ignored by directors could result in a fine, imprisonment and personal liability.*

Great care needs to be taken by directors of an insolvent company if they are considering setting up a new company with a similar trading name to the insolvent company. It is an offence under Section 216 of the Insolvency Act 1986 for a person who has been a director or a shadow director of a company in insolvent liquidation, within the period of 12 months ending on the day before it went into liquidation, to be for a period of 5 years, a director or involved in any way in the management of any other company or business carried on under or known by prohibited name.

A prohibited name is any name by which the liquidated company was known at any time in the 12 months prior to the liquidation, or any name so similar as to suggest an association with that company. Section 217 of the Insolvency Act 1986 provides, amongst other things, that a person who is involved in the management of a company (or a person acting on instruction of someone) in contravention of Section 216 of The Insolvency Act 1986 is personally liable for the debts of the company that are incurred during the period of that involvement. However, under the Rules 4.226 to 4.230 of the Insolvency Rules 1986 there are three exceptions to the restrictions imposed by Section 216 of the Insolvency Act 1986 :-

1

Where a 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 Notice must be given to creditors and advertised in the London Gazette within 28 days of the acquisition. Great care should be taken here as notice should be given before the director involves himself in the phoenix company.

2

Where an individual affected by Section 216 applies for leave of the court to use the prohibited name.

The application must be made within seven days of liquidation and the court must grant permission with six weeks. The time restrictions are therefore significant.

The court takes these applications very seriously and may want to see evidence that the phoenix company has access to sufficient capital and is backed up by a strong financial team.

3

It is clear that the exceptions to the restrictions under Section 216 are not straightforward. Directors should therefore seek insolvency advice as the penalty for non-compliance could be a fine, imprisonment or both and in the case of Section 217, personal liability.

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