



## RE-USE OF A COMPANY NAME

SOMETIMES THE STEPS  
TO RECOVERY ARE  
HIDDEN

WE'RE EXPERTS IN HELPING  
YOU FIND THEM

Insolvency legislation restricts the use of a name previously used by a company that has gone into Liquidation (“the liquidating company”). The restriction is known as a “Prohibited Name”.

The purpose of this guide is to explain to whom it applies, the restrictions applicable, the circumstances where it may be possible to re-use a Prohibited Name and the penalties if a Prohibited Name is used and the correct procedures are not followed. This guide does not replace taking formal legal advice and should not be treated as giving legal advice.

### What is a Prohibited Name?

A Prohibited Name is a registered or trading name by which the liquidating company was known at any time in the 12 months immediately before Liquidation and it is a name which is so similar to the liquidating company’s registered or trading name as to suggest an association with the liquidating company.

### Who is restricted?

The restriction applies to a person where a liquidating company has gone into insolvent Liquidation and that person 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 (s216 of The Insolvency Act 1986, as amended (“the Act”)).

### What is the restriction?

Except with leave of the court, or where one of the exceptions below is utilised, a person to whom the restriction 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 another company known by a Prohibited Name,
- 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 under a Prohibited Name.

### What is the penalty?

It is a criminal offence if a person acts in contravention of the restriction and that person may be prosecuted by the Department of Business for Innovation and Skills and may be liable to imprisonment or a fine, or both. In addition, a person is personally responsible for all the debts of the company using the Prohibited Name if;

- a) at any time, in contravention of s216 of the Act, that person is involved in the management of the company, or
- b) as a person who is involved in the management of the company, that person acts or is willing to act on instructions given by a person whom he

knows at that time to be in contravention of s216 of the Act.

### What are the exceptions?

In addition to making an application to the Court, there are three exceptions to the restrictions on the re-use of a Prohibited Name;

#### First Exception – Purchase of business

A person will not be deemed to have contravened the restriction if the new company or business acquires the whole or substantially the whole of the business of the insolvent company under arrangements made with an office holder and has served the prescribed notice (form 4.73) to every known creditor of the insolvent company and published the prescribed notice in the London Gazette. The notice may be given and published before completion of the acquisition but must be given and published no later than 28 days after that completion.

Such a notice may be given before the liquidating company enters into insolvent Liquidation or in circumstances where the new company or business has not yet adopted the Prohibited Name.

For the purposes of this exception, an office holder is, prior to Liquidation, an Administrator, Administrative Receiver or Supervisor of a Voluntary Arrangement of the insolvent company, or following Liquidation, the Liquidator.

#### Second Exception – Period pending Court application for permission

A person will not be deemed to have contravened s216 of the Act during the relevant period if an application is made to court for permission to use a Prohibited Name not later than 7 days from the date on which the liquidating company went into Liquidation. The relevant period begins with the day on which the company goes into Liquidation and ends either on the day falling 6 weeks after that date or on the day on which the Court disposes of the application, whichever occurs first.

#### Third Exception – Previous use of name by another company or business

The Court's permission to re-use a Prohibited Name does not apply where a company, though known by a Prohibited Name, has been known by that name for the whole of a 12 month period ending with the day before the liquidating company went into Liquidation and during the period has not been dormant. Dormant is defined as having no significant accounting transactions.

As can be seen there are severe penalties if a person contravenes the rules relating to the re-use of a company name after Liquidation and therefore it is important that proper advice is taken if a Prohibited Name is to be used.



Please contact  
**Tony Mitchell or Brett Barton** at Cranfield  
Business Recovery on **024 7655 3700** for  
further advice.

E-mail: [office@cranfieldbusinessrecovery.co.uk](mailto:office@cranfieldbusinessrecovery.co.uk)  
[cranfieldbusinessrecovery.co.uk](http://cranfieldbusinessrecovery.co.uk)

 @CranfieldBR  Cranfield Business Recovery Limited

 [cranfieldbusinessrecovery.tumblr.com](http://cranfieldbusinessrecovery.tumblr.com)

This guide outlines the legal provisions relating to the re-use of a company name and is no substitute for legal advice. Cranfield Business Recovery Limited accepts no responsibility for the use of the information set out herein.