



## WHAT'S IN A NAME!

**The name of a company is an integral part of its brand and image and a great tool for promoting a business. However, few directors will even consider that a name could put them both at risk from a financial and a criminal perspective if it is misused in certain circumstances.**

Sections 216 and 217 of the Insolvency Act were introduced to prevent the so called "phoenix syndrome" where a company would be placed into liquidation or receivership, transfer the assets to a new company at a fraction of market value and carry on trading thus leaving the creditors of the old company high and dry. The sections prevent a director of a company that has gone into liquidation from being a director of another company for a period of 5 years after the liquidation of the old company where the name of the new business is either the same or so similar as to suggest an association with the liquidated company. If a director is found in contravention of statutory provisions, then he can be found personally liable for all the company's debts and also be subject to criminal liability.

**There are three exceptions to the statutory provisions.**

The first exception is where the successor company acquires the whole of the business of an insolvent company from the insolvency practitioner and notice is given to the creditors within 28 days of the transaction.

The second excepted case is where the director applies to Court for leave to use a prohibited name, such application to be made within 6 weeks of the insolvent company proceeding into liquidation.

The third excepted case is where the director has been involved with a company known by a prohibited name for at least 12 months prior to the date that the insolvent company went into liquidation.

It goes to show just how easy it is for directors to be innocently caught by the provisions of 216 and 217 of the Insolvency Act 1986 when they are directors of groups of companies all bearing similar names.

## RESOLVING LEASE DEFAULTS

Walk-in possession is one of the few self-help remedies still available to them but it only applies to shops, offices, industrial premises and warehouses that do not have a residential element attached. Walk-in possession entitles landlords to regain access to their properties and change the locks without first obtaining a Court order, effectively expelling the tenant. It means that the tenant has forfeited the lease and he then has six months in which to apply for release from forfeiture and pay off the arrears.

Landlords who exercise this legal right can appoint bailiffs to assess whether there is equipment, furniture or stock of sufficient value to satisfy the outstanding debt. If there is, bailiffs will tag the goods with a view to seizing and selling them to raise the sum owed unless the arrears are paid with a given time limit.

