
STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE FIRST GROUP OF PARTS

PART 4

COMPANIES WINDING UP

CHAPTER 22

LEAVE TO ACT AS DIRECTOR, ETC., OF COMPANY WITH PROHIBITED NAME (SECTION 216 OF THE ACT)

Preliminary

4.226. The Rules in this Chapter—

- (a) relate to the leave required under section 216 (restriction on reuse of name of company in insolvent liquidation) for a person to act as mentioned in section 216(3) in relation to a company with a prohibited name, and
- (b) prescribe the cases excepted from that provision, that is to say, those in which a person to whom the section applies may so act without that leave.

Application for leave under s.216(3)

4.227. When considering an application for leave under section 216, the court may call on the liquidator, or any former liquidator, of the liquidating company for a report of the circumstances in which that company became insolvent, and the extent (if any) of the applicant's apparent responsibility for its doing so.

First excepted case

4.228.—(1) Where a company (“the successor 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 under Part I of the Act, the successor company may for the purposes of section 216 give notice under this Rule to the insolvent company's creditors.

(2) To be effective, the notice must be given within 28 days from the completion of the arrangements, to all creditors of the insolvent company of whose addresses the successor company is aware in that period; and it must specify—

- (a) the name and registered number of the insolvent company and the circumstances in which its business has been acquired by the successor company,
- (b) the name which the successor company has assumed, or proposes to assume for the purpose of carrying on the business, if that name is or will be a prohibited name under section 216, and

(c) any change of name which it has made, or proposes to make, for that purpose under section 28 of the Companies Act.

(3) The notice may name a person to whom section 216 may apply as having been a director or shadow director of the insolvent company, and give particulars as to the nature and duration of that directorship, with a view to his being a director of the successor company or being otherwise associated with its management.

(4) If the successor company has effectively given notice under this Rule to the insolvent company's creditors, a person who is so named in the notice may act in relation to the successor company in any of the ways mentioned in section 216(3), notwithstanding that he has not the leave of the court under that section.

Second excepted case

4.229.—(1) In the circumstances specified below, a person to whom section 216 applies as having been a director or shadow director of the liquidating company may act in any of the ways mentioned in section 216(3), notwithstanding that he has not the leave of the court under that section.

(2) Those circumstances are that—

- (a) he applies to the court for leave, not later than 7 days from the date on which the company went into liquidation, and
- (b) leave is granted by the court not later than 6 weeks from that date.

Third excepted case

4.230. The court's leave under section 216(3) is not required where the company there referred to, though known by a prohibited name within the meaning of the section—

- (a) has been known by that name for the whole of the period of 12 months ending with the day before the liquidating company went into liquidation, and
- (b) has not at any time in those 12 months been dormant within the meaning of section 252(5) of the Companies Act.