|  |  |
| --- | --- |
| Our Ref: CVL103  Your Ref: | Date  When telephoning please ask for:  Contact Name  Direct Line:  Direct Line |

Dear Sirs

Company Name Limited (the Company)

Following our recent meeting regarding the financial position of the Company, you have concluded that the Company is insolvent and that steps should be taken to place the Company into Creditors’ Voluntary Liquidation.

**Purpose of this letter**

Thank you for instructing Firm Name to assist you with this process. The purpose of this letter is to record that this firm has been engaged by the Company to provide the services (the **Services**) set out below and to explain our respective responsibilities. This letter outlines the Services to be provided and the fees to be paid in respect of those Services.

I would also confirm that the Insolvency Practitioner(s) at this firm are bound by the Insolvency Code of Ethics when carrying out all professional work relating to an insolvency appointment.

**Scope of Services**

We will provide the following services:

* Advise the directors in the financial control and supervision of the business up to the date of the passing of a resolution for winding up
* Assist the Directors in passing the resolution to wind-up the Company and appoint a liquidator and in seeking a decision of creditors on the nomination of a liquidator by them
* Assist the directors in the preparation of the statement of affairs and other information required to be made available to creditors ahead of the decision being made by them

It is clearly understood that these services are requested and given for the benefit of the creditors of the Company.

Our role is not to advise the directors personally or any parties connected with any eventual purchaser of the Company’s assets (where relevant) and with this in mind, the directors should take their own independent advice on their position as necessary.

It is also possible that a different insolvency practitioner may be the eventual Liquidator appointed to the Company, should creditors make this decision.

**Information required of the Directors**  
As discussed with you, the preparation of the Statement of Affairs to be verified and sent to all creditors ahead of their decision on the nomination of a liquidator is key to the liquidation process as is the gathering of information to be made available to creditors of the Company as required by Statement of Insolvency Practice No 6 (**SIP6**).

Before we can issue notices to creditors to facilitate this decision, we need to be in a position where the preparation of the Statement of Affairs and the gathering of Company information is underway, if not already finalised. Insolvency legislation requires this information to be made available to creditors before the liquidation occurs and we would therefore ask for your co-operation in making sure any information we request from you in the lead up to the liquidation of the Company is dealt with promptly.

**Preparation of the Statement of Affairs**

I would ask that you provide us with a comprehensive list of creditors by return. Creditors include liabilities of any nature whatsoever including debts to Crown departments, trade and expense creditors, bank liabilities and financing such as hire purchase, leasing and any contract hire arrangement and may include any contingent creditors such as unexpired leases and disputed claims or any matter which either now or in the future could give rise to a claim against the Company.

The Statement of Affairs must schedule any debts due to employees/former employees, or consumer creditors who have paid for goods or services in advance, ***separately***. To assist with this requirement, I would be grateful if you would identify such claims on separate schedules.

Please also provide the following information as soon as possible:

* A narrative explanation of the Company’s trading history, including the reasons for the Company’s current financial difficulties and inability to continue trading, for inclusion in the report to creditors
* An explanation of any material transactions other than in the ordinary course of business during the last 12 months (if any) - this needs to be disclosed in the report to creditors
* Sales and purchase ledgers with invoices to support the outstanding balances
* Any writs, demands or winding-up petitions received (these should be sent to us immediately)
* Cash books
* Copies of the Company’s bank statements since 1 March 2020 (for all accounts in the Company’s name) and cheque stubs/paying-in books for any bank accounts operated by the Company
* If any Covid-19 financial support schemes were utilized during the pandemic (eg, Bounce Back Loans, Coronavirus Business Interruption Loans, etc) by the Company, please provide any relevant paperwork for these, such as application forms and details of any repayments made by the Company to date. Any outstanding balances should be included in the schedule of creditors above. Please be aware that any appointed Liquidator will have an obligation to review any such loans obtained as part of their statutory investigations into the directors’ conduct prior to liquidation. See section below on ***‘The position of the Directors’*** for further information about statutory duties to report on the conduct of directors following liquidation
* Employee wage records, including details of relevant company pension schemes (name and address of pension provider and details of relevant policy numbers and information about any arrears of contributions)
* The address and tax references for HM Revenue & Customs (PAYE & Corporation Tax)
* Nominal ledger
* Details of any parent, subsidiary or associated companies - including their company numbers and an analysis of any inter-company debts between the parties
* Details of any personal debt due to / from Company officers to the Company (including details of any directors’ loan account balances)
* Copies of any finance, lease, hire-purchase, rental and any other binding agreements
* Details of all agents acting for the Company, to include insurers, insurance brokers, solicitors, accountants, auditors, surveyors, etc
* Whether the Company is currently registered with the Information Commissioner.  If the Company is registered and the registered office of the Company is ultimately transferred to our offices, we will notify the Registrar on behalf of the Company

Whilst we will be assisting you with the preparation of the draft Statement of Affairs, the directors should note that it is an offence punishable by imprisonment and/or a fine, if any officer of the Company makes any material omission in any statement relating to the Company’s affairs, therefore it is important that you make a full disclosure of the assets and liabilities of the Company.

Please note that the directors remain responsible for the Company until the liquidator is appointed. Would you please ensure that all the Company's books are written up-to-date. Wages records should be written up, but only in respect of monies actually paid to employees. All outstanding VAT and PAYE returns should be completed. Where forms P45 are issued to employees, Part 1 of the form should be handed to us.

Finally, I would advise you that any material transaction involving company assets after the Statement of Affairs has been verified by the directors (but before the nomination of a liquidator is decided by creditors), will trigger the requirement under insolvency legislation for a material transaction report to be made to creditors. This may have the effect of delaying the proposed decision on the nomination of a liquidator.

Should any material transactions occur during the above timeframe which are not disclosed, a liquidator once appointed, would be required to investigate these as antecedent transactions and report the findings to creditors.

**Agents and other professionals**

It may be necessary to instruct agents to value the Company’s assets and thereafter dispose of them following liquidation.  If so, we will discuss with you the alternative agents and their respective areas of expertise to assist you in choosing the most appropriate and cost effective option.

It will greatly assist the agents if copies of any finance agreements, together with the lease (if appropriate) of the premises are made available as soon as possible.

In order that we may arrange for the valuation of any goodwill or intellectual property we will require full and comprehensive details of any patent applications, designs, copyrights, customer/product details and any other agreements or documentation that could prove to have a realisable value.

Similarly, if the need arises to instruct solicitors or other professionals, we will discuss the alternatives with you.

**Directors’ Responsibilities**

The directors’ responsibilities are as follows:

* In the period up to the meeting of the members and the decision of creditors you remain responsible for the conduct of the affairs of the Company and you are under a duty to act so as to preserve the Company’s assets and minimise its liabilities in the interest of creditors and members generally.
* You must ensure that any action that you take will not result in any creditor or member, or group of creditors or members, being preferred or given an advantage over the remainder. In particular, you should ensure that any secured creditor having a fixed and floating charge over the Company’s assets is not put in a better position as a result of trading, sales of assets on credit etc.
* No payments should be made or authorised to existing creditors of the Company, nor should you obtain any goods or services on credit.
* No delivery of goods already ordered should be accepted with the exception of goods and services required for the realisation of the assets, which should be paid for out of money specifically allocated.
* No assets should be disposed of, except to the extent necessary to meet essential costs and expenses, and you should take care not to allow any of the Company’s creditors to obtain possession of the Company assets pending investigation of any entitlements by a subsequently appointed Liquidator. Creditors seeking to recover goods supplied pursuant to reservation of title clauses embodied in their conditions of sale should not be allowed to remove any items from the Company’s premises and any such claims should be referred to us.
* You should not supply any goods or services on credit to existing or potential creditors.
* Cash or cheques received by the Company should be handed over to us for payment into our client account. We shall use these funds to meet the costs and expenses associated with the preparation of the statement of affairs and the seeking of a decision of creditors on the nomination of a liquidator. The remaining balance will be paid over to the duly appointed Liquidator.
* No goods or other assets should be deposited with, supplied or returned to any supplier, customer or any other person, the value of which could be used as a set off against an existing debt.
* Any overdrawn bank account must not be used. All standing orders, direct debits etc. should be cancelled.
* Adequate insurance cover must be maintained. Please advise us immediately if any insurance cover has, or is due to expire before the Company is placed into liquidation.
* You should be aware that if a Company proposes to make 20 or more employees redundant at one establishment within a 90-day period, there is a responsibility on the employer to provide advance notification to the Secretary of State of the proposed redundancies (using Form HR1), as required by section 193 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA). Under section 194, failure to notify the Secretary of State is a criminal offence, and from 12 March 2015 the potential fine is unlimited in value. We will discuss this with you in further detail if it appears applicable, however the directors should be aware of these obligations prior to liquidation.
* Finally, we expect you to co-operate with us as we carry out our role. In particular, we need you to be available to provide information as required, and we expect you not to act improperly, mislead us or withhold information.

**The position of the Directors**  
The directors’ and officers’ powers cease automatically upon liquidation. Consequently, there is no requirement to file a formal notice of resignation with the Registrar of Companies. There is however a continuing responsibility to assist the Liquidator and failure to do so is an offence under the Insolvency Act 1986 and may lead to disqualification proceedings being taken by the Department for Business, Energy & Industrial Strategy (**BEIS**).

It is the duty of the liquidator to report on the conduct of the Company’s officers, in pursuance of the Company Directors Disqualification Act 1986.

Any adverse report could result in any, all, or a number of the Company’s officers being disqualified from acting as a director of a company for a period of two to fifteen years, depending on the severity of any unfit conduct. A breach of a disqualification order can result in criminal proceedings, leading to a fine or imprisonment (or both).

Liquidation may give rise to the crystallisation of any personal guarantees or surety that has been provided. If requested, we will discuss with you any potential personal liability, however it must be stressed that we are instructed to act in relation to the Company and in order to avoid any potential conflict of interest we may recommend that you seek separate independent professional advice as to your personal position.

Liquidation brings only one automatic restriction on the officers of that Company. Under Section 216 of the Insolvency Act 1986, the officers are barred from acting as a director or in the formation, promotion or management of another business with a name or trading style so similar as to that of the Company, as to imply association. The purpose of the provision is to ensure that directors do not open consecutive businesses and benefit from ongoing goodwill at the expense of creditors. It also seeks to ensure creditors are not duped into providing credit facilities to a new business, in the belief it is an established company.

There are provisions in the Insolvency (England and Wales) Rules 2016 (Rules 22.1 to 22.7) which allow exemption from the effects of Section 216 in circumstances where there are genuine reasons and perhaps benefits for a new company/business to utilise such a name. We will advise you on the provisions of the Act and provide copies of the appropriate statute, should you require. We strongly recommend that you seek independent legal advice if you feel the provisions of Section 216 are likely to apply to you. Attached are extracts of The Insolvency Act 1986 ie, Sections 216, 217 and 235 and the relevant rules noted above. Please ensure these are copied to all directors including any person who might be said to have acted as a director in the 12 months preceding liquidation, in order that matters are brought to their attention.

Finally, where there are amounts owed to the Company by a director, the duly appointed liquidator will request that any outstanding director’s loan be repaid.  Any element of the loan not repaid, and therefore benefitted from, will be considered as having been released or written off.  It is the responsibility of the director to return the relevant income on their next Self-Assessment tax return per Section 415 Income Tax (Trading and Other Income) Act 2005. This firm will not be responsible for providing any advice to the director(s) regarding their personal tax affairs, which will remain solely the responsibility of the director(s).

**Privacy, Data Protection and the Company’s Books & Records**

As part of our role, we may need to access and use data relating to individuals. In doing so, we must abide by data protection requirements. Information about the way that we will use, and store personal data in relation to insolvency appointments can be found in the attached Privacy Notice *[OR]* can be found at [insert web link or link to creditor portal where this is located]. If you are unable to download this, please contact my office and a hard copy will be provided to you.

We would ask that you provide details about the extent of personal data held by the Company eg, employee records, etc and inform us of any current, or recent historical, breaches under data protection legislation that you are aware have been reported to the Information Commissioners’ Office against the Company.

As part of the liquidation process, the Company’s books and records should be brought up to date and you will be required to make all manual and electronic records available to the Liquidator on his appointment. As noted above, it is the duty of the liquidator to report on the conduct of the Company’s officers and to investigate the Company’s affairs and in order to do so, the liquidator must secure and list the books and records (in whatever form these may take). There is also an obligation on the liquidator to ensure that personal data contained within a Company’s records is safeguarded and we would therefore ask that you co-operate in this regard by making all records available to us in due course and by advising us of any data held electronically (by whatever means).

## Firm Name Team

I will lead our team and be responsible for the preparation of the statement of affairs and supporting documentation and will be assisted by [Insert Name].

**Fees**

We will charge £[amount] plus VAT, in respect of assistance to be rendered by us in connection with the preparation of the statement of affairs. In addition, we will charge £[amount] plus VAT, in respect of the assistance to be given in seeking a decision of the Company’s creditors over the nomination of a liquidator which will include assistance with the gathering of information for creditors on the Company’s financial position. The scope of the work to be done prior to our appointment is outlined earlier in this letter and we consider that the basis of the fee proposed will produce a fair and reasonable reflection of the work we anticipate undertaking in order to place the Company into liquidation.

If this fee is not paid prior to the winding-up of the Company, approval will be sought from creditors to pay this an expense of the liquidation.

*[OR if seeking to charge the pre-appointment fee on a time cost basis include this information instead of the above]*

Our charges in respect of assistance to be rendered by us in connection with the preparation of the statement of affairs and in seeking a decision of the Company’s creditors over the nomination of a liquidator (which will include assistance with the gathering of information for creditors on the Company’s financial position), will based on time spent at hourly rates dependent on the level of experience of the individual. At this stage, it is estimated that the anticipated fee will be in the region of £[amount].

If this fee is not paid prior to the winding-up of the Company, approval will be sought from creditors to pay this as an expense of the liquidation.

*[Then continue with]*

Should the decision on the nomination of the proposed liquidator be objected to (which would result in the directors being required under insolvency legislation to convene a physical meeting of creditors instead to consider the liquidator’s nomination), or if creditors who meet certain thresholds request a physical meeting in any event, then we reserve the right to come back to you about any additional costs associated with this procedure.

*[If it is felt appropriate, include the next sentence giving an estimate of the above costs should a physical meeting ensue, otherwise delete it]*

Typically, the costs involved in convening and holding a physical meeting may be between £[amount] and £[amount].

*[Then continue with]*

In addition to the above fees, we may incur necessary expenses which may include for example, the costs of any statutory advertisements we are obliged to place in the London Gazette (where a meeting of creditors is to be held), the costs of any petitioning creditor and their solicitor (should a petition to wind-up the Company have been issued), room hire for any meetings of creditors that are convened, and any other legal or professional costs necessarily incurred by us or other expenses incurred which are necessary in assisting you to wind-up the Company.

It is clearly understood that these services are requested and given for the benefit of the creditors of the Company and you should note that the above fees relate to the work required up to the date of the Liquidator’s appointment.

Thereafter, the basis of the Liquidator’s remuneration following appointment, will be agreed with creditors (or the liquidation committee should one appointed by creditors) and may be based on time spent at hourly rates dependent on the level of experience of the individual. This firm’s current charge out rates are shown above.

|  |  |
| --- | --- |
|  | **Hourly rate**  **(£)** |
|  |  |
| Partner |  |
|  |  |
| Manager |  |
|  |  |
| Administrator |  |
|  |  |
| Support |  |
|  |  |

Please note that this firm records its time in minimum units of 6 minutes.

Alternatively, it may be appropriate to seek agreement from creditors to the basis of the Liquidator’s remuneration as a set amount or as a percentage of assets realised and/or distributed or as a combination of these bases. If it is anticipated that the assets of the Company will be insufficient to discharge my fees for acting as Liquidator, I reserve the right to seek either a deposit for costs from the Company or its directors prior to appointment, or an indemnity from the directors to discharge these costs personally. This will be discussed with you as appropriate.

In addition, expenses will be recharged which typically comprise of travel costs, external printing, advertising, room hire and postage.

**Terms and Conditions**

Our standard terms and conditions (the **Terms and Conditions**) are attached and detail the duties of each party in respect of the engagement. This letter and the Terms and Conditions are together referred to as the Contract, and evidence the entire agreement between us and the Company.

You should note that the Terms and Conditions provide that among other matters:

* The Company will indemnify us against claims brought by any third party; and
* Our aggregate liability to the Company whether in contract, tort or otherwise will be limited. For this purpose, our liability to the Company will in no circumstances exceed [insert limit of liability];
* In accordance with this firm’s usual practice, any reports should not be copied or provided in whole or in part to any other party without my prior written consent;
* I will be acting in an advisory capacity only. Management of the Company remains solely the responsibility of the Directors until any Liquidator is appointed;
* This firm is authorised by the Directors to discuss and disclose any information relevant to the Company’s affairs with management and its advisors, whether or not that information is included in the scope of the engagement.

**Quality of Service**

If for any reason you are dissatisfied with the services you are receiving, please contact the engagement partner disclosed in this letter. We will carefully consider any complaint we receive and, if we believe that we have given a less than satisfactory service, we will take all reasonable steps to put it right.

Whilst we undertake to look into any complaint carefully and promptly and to do all we can to explain the position to you, if you remain unsatisfied, you have the right to refer the matter to the Insolvency Complaints Gateway which is operated by the Insolvency Service, an Executive Agency of the Department for Business, Energy & Industrial Strategy (**BEIS**).

Complaints can be submitted via an online complaints form at [www.gov.uk/complain-about-insolvency-practitioner](http://www.gov.uk/complain-about-insolvency-practitioner) (Guidance for those who wish to complain can also be found on this site).

If you have difficulty accessing the online complaints form you can also make any complaint through the Insolvency Service Enquiry Line - email [insolvency.enquiryline@insolvency.gov.uk](mailto:%20insolvency.enquiryline@insolvency.gsi.gov.uk) or alternatively telephone 0300 678 0015 (Monday to Friday 9am to 5pm).

**Client Identification and the Money Laundering Regulations**

The firm is, in common with all accountancy and legal practices, required to

* Maintain identification procedures for all new clients;
* Maintain records of identification evidence;
* Report, in accordance with the relevant legislation and regulations, to the National Crime Agency

In order to comply with the above requirements, if not already provided, we will require either a certified copy of the passport and a utility bill (dated within 3 months of the date of this letter) for each director and each shareholder holding more than 25% of the Company’s shares, or a certified copy of a photocard driving licence which would act as suitable identity and address verification.

Alternatively, we may use electronic verification methods using a suitably secure and reliable provider of credit information. Unless you have already notified us separately, or notify us on receipt of this letter that any of the relevant individuals object to such electronic verification methods being utilised, by signing and returning this engagement letter, we will consider you to have provided the informed consent (ie, permission) of the relevant individuals. Such informed consent will include the access, use and storage of any identity verification checks made against the individual(s) and/or any other obligation required by law for these purposes.

I would confirm that the proposed office holder(s) is a Data Controller within the meaning of data protection legislation and any data received from you this regard, will only be processed for the purpose of preventing money laundering or terrorist financing, or as permitted under Regulation 41(3) of the 2017 Regulations.

Please see this firm’s Privacy Notice for further information about the handling of personal data in an insolvency context.

**Clients’ money regulations**

We may, from time to time, hold client monies. The money will be held in trust in a client bank account, which is segregated from the firm’s funds. The account will be operated, and all funds dealt with, in accordance with the Client Money Regulations of our regulatory body.

In order to avoid an excessive amount of administration, interest will only be paid where the amount earned on the balances held on the client’s behalf in any calendar year exceeds £25.00. If the total sum of money held on the client’s behalf is enough to give rise to a significant amount of interest or is likely to do so, then we will put the money in a separate designated interest bearing client bank account and account to the Company for the interest received, which subject to any tax legislation, will be paid gross. A separate account will always be opened where the total amount held exceeds £10,000 for a period of more than 30 days.

We will return monies held on the client’s behalf promptly as soon as there is no longer any reason to retain those funds.

**The Provision of Services Regulations 2009**

In accordance with the disclosure requirements of the Provision of Services Regulations 2009, our Professional Indemnity insurer is [Name/Address]. The territorial coverage is worldwide, excluding business conducted in the United States of America or Canada and excludes any action for a claim brought in any court of either of those two countries.

# Governing Law and Jurisdiction

The Contract shall be governed by and interpreted in accordance with the laws of England and Wales. The Courts of England and Wales shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning the Contract and any matter arising from it.

**Conflict of Interest**We have previously written to you about the existence of any prior relationships and would ask you to return confirmation of the same at your earliest opportunity, if you have not already done so.  
  
We trust this letter meets your current needs but, should you wish to discuss any aspect of the assignment in more detail, please call us.  
  
Yours faithfully

**Name**

Engagement Partner

Enc

**Confirmation of Terms of Engagement**

We confirm that the Contract properly sets out the arrangements agreed for this assignment, and we agree to its terms. We also confirm that Firm Name will have unrestricted access to the Company’s books and records and the full cooperation of its directors, who will keep you informed of any matters arising which they consider are relevant to your work. In addition, we confirm you may liaise fully with the Company’s bankers, factors, invoice discounters, solicitors and other relevant professional advisor on any matters concerning the Company’s financial position and available options.

Signed .......................................................................................

Position ………………………………………………………..........

On behalf of [Company Name] Limited

Date ...........................................................................................

**IMPORTANT NOTICE**

**EXTRACTS FROM THE INSOLVENCY ACT 1986 AND INSOLVENCY (ENGLAND AND WALES) RULES 2016**

**THE PROVISIONS OF SECTIONS 216, 217 AND 235 OF THE INSOLVENCY ACT 1986 and Rules 22.1 to 22.7 of the INSOLVENCY (ENGLAND AND WALES) RULES 2016**

**RESTRICTION ON RE-USE OF COMPANY NAMES**

**PERSONAL LIABILITY FOR DEBTS, FOLLOWING CONTRAVENTION OF S.216**

Any person who was acting as a director of a company in liquidation at any time in the period of 12 months ending with the day before the company went into liquidation is prohibited from using any name by which the liquidated company was known, including any trading names, or a name which is so similar as to suggest an association with that company.

The restriction from using a prohibited name applies for the period of 5 years beginning with the day on which the company went into liquidation and except with the permission of the court a director cannot:

a) be a director of any other company that is known to be a prohibited name, or

b) be in any way, whether directly or indirectly, concerned or take part in the promotion, formation or management of any such company, or

c) be in any way, whether directly or indirectly, concerned or take part in the carrying on of an unincorporated business under a prohibited name.

Your attention is also drawn to Rules 22.1 to 22.7 of the Insolvency (England and Wales) Rules 2016 which provides three exceptions to the restriction imposed by Section 216 of the Insolvency Act 1986.

It is a criminal offence to contravene Section 216 of the Insolvency Act 1986, and if a person acts in contravention of this section he/she is liable on conviction to imprisonment and/or a fine.

Section 217 of the Insolvency Act 1986 provides, amongst other things, that a person who is involved in the management of a company in contravention of Section 216 of the Insolvency Act 1986 is personally liable for any debts of the company incurred during the period of that involvement.

A copy of Sections 216, 217 and 235 of the Insolvency Act 1986 can be found below, together with a copy of Rules 22.1 to 22.7 of the Insolvency (England and Wales) Rules 2016.

# SECTION 216 INSOLVENCY ACT 1986

(1) This section applies to a person where a company (“the liquidating company”) has gone into insolvent liquidation on or after the appointed day and he 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.

(2) For the purposes of this section, a name is a prohibited name in relation to such a person if -

(a) it is a name by which the liquidating company was known at any time in that period of 12 months, or

(b) it is a name which is so similar to a name falling within paragraph (a) as to suggest an association with that company

(3) Except with leave of the court or in such circumstances as may be prescribed, a person to whom this section 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 any other company that is known by a prohibited name, or

(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 (otherwise than by a company) under a prohibited name.

(4) If a person acts in contravention of this section, he is liable to imprisonment or a fine, or both.

(5) In subsection (3) “the court” means any court having jurisdiction to wind up companies; and on an application for leave under that subsection, the Secretary of State or the official receiver may appear and call the attention of the court to any matters which seem to him to be relevant.

(6) References in this section, in relation to any time, to a name by which a company is known are to the name of the company at that time or to any name under which the company carries on business at that time.

(7) For the purposes of this section a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(8) In this section “company” includes a company which may be wound up under Part V of this Act.

# SECTION 217 INSOLVENCY ACT 1986

(1) A person is personally responsible for all the relevant debts of a company if at any time -

(a) in contravention of section 216, he is involved in the management of the company, or

(b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given (without the leave of the court) by a person whom he knows at that time to be in contravention in relation to the company of section 216.

(2) Where a person is personally responsible under this section for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this section or otherwise, is so liable.

(3) For the purposes of this section the relevant debts of a company are -

(a) in relation to a person who is personally responsible under paragraph (a) of subsection (1), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company, and

(b) in relation to a person who is personally responsible under paragraph (b) of that subsection, such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in that paragraph.

(4) For the purposes of this section, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.

(5) For the purposes of this section a person who, as a person involved in the management of a company, has at any time acted on instructions given (without the leave of the court) by a person whom he knew at that time to be in contravention in relation to the company of section 216 is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.

(6) In this section “company” includes a company which may be wound up under Part V.

#### SECTION 235 INSOLVENCY ACT 1986 - Duty to Co-operate with Liquidator

(1) This section applies as does section 234; and it also applies, in the case of a company in respect of which a winding-up order has been made by the court in England and Wales, as if references to the office-holder included the official receiver, whether or not he is the liquidator.

(2) Each of the persons mentioned in the next subsection shall -

1. give to the office-holder such information concerning the company and its promotion, formation, business, dealings, affairs or property as the officeholder may at any time after the effective date reasonably require, and
2. attend on the office-holder at such times as the latter may reasonably require.

(3) The persons referred to above are -

1. those who are or have at any time been officers of the company,
2. those who have taken part in the formation of the company at any time within one year before the effective date,
3. those who are in the employment of the company, or have been in its employment (including employment under a contract for services) within that year, and are in the office-holder's opinion capable of giving information which he requires,
4. those who are, or have within that year been, officers of, or in the employment (including employment under a contract for services) of, another company which is, or within that year was, an officer of the company in question, and
5. in the case of a company being wound up by the court, any person who has acted as administrator, administrative receiver or liquidator of the company.

(4) For the purposes of subsections (2) and (3), "the effective date" is whichever is applicable of the following dates -

1. the date on which the administration order was made,
2. the date on which the administrative receiver was appointed or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed,
3. the date on which the provisional liquidator was appointed, and
4. the date on which the company went into liquidation.

(5) If a person without reasonable excuse fails to comply with any obligation imposed by this section, he is liable to a fine and, for continued contravention, to a daily default fine.

**PART 22 of the Insolvency (England and Wales) Rules 2016**

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

**Preliminary**

**Rule 22.1. -** (1) The rules in this Part –

(a) relate to permission required under section 216 (restriction on re-use 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;

(b) prescribe the cases excepted from that provision, that is to say, in which a person to whom the section applies may so act without that permission; and

(c) apply to all windings up to which section 216 applies.

**Application for permission under section 216(3)**

**Rule 22.2.** - (1)  At least 14 days’ notice of any application for permission to act in any of the circumstances which would otherwise be prohibited by section 216(3) must be given by the applicant to the Secretary of State, who may—

(a) appear at the hearing of the application; and

(b) whether or not appearing at the hearing, make representations.

**Power of court to call for liquidator’s report**

**Rule 22.3.** When considering an application for permission 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**

**Rule 22.4. –** (1)This Rule applies where -

(a) a person ("the person") was within the period mentioned in section 216(1) a director, or shadow director, of an insolvent company that has gone into insolvent liquidation; and

(b) the person acts in all or any of the ways specified in section 216(3) in connection with, or for the purposes of, the carrying on (or proposed carrying on) of the whole or substantially the whole of the business of the insolvent company where that business (or substantially the whole of it) is (or is to be) acquired from the insolvent company under arrangements—

(i) made by its liquidator, or

(ii) made before the insolvent company entered into insolvent liquidation by an office-holder acting in relation to it as administrator, administrative receiver or supervisor of a CVA.

(2) The person will not be taken to have contravened section 216 if prior to that person acting in the circumstances set out in paragraph (1) a notice is, in accordance with the requirements of paragraph (3),—

(a) given by the person, to every creditor of the insolvent company whose name and address—

(i) is known by that person, or

(ii) is ascertainable by that person on the making of such enquiries as are reasonable in the circumstances, and

(b) published in the Gazette.

(3) The notice referred to in paragraph (2)—

(a) may be given and published before the completion of the arrangements referred to in paragraph (1)(b) but must be given and published no later than 28 days after that completion;

(b) must contain—

(i) identification details for the company,

(ii) the name and address of the person,

(iii) a statement that it is the person’s intention to act (or, where the insolvent company has not entered insolvent liquidation, to act or continue to act) in all or any of the ways specified in section 216(3) in connection with, or for the purposes of, the carrying on of the whole or substantially the whole of the business of the insolvent company,

(iv) the prohibited name or, where the company has not entered insolvent liquidation, the name under which the business is being, or is to be, carried on which would be a prohibited name in respect of the person in the event of the insolvent company entering insolvent liquidation,

(v) a statement that the person would not otherwise be permitted to undertake those activities without the leave of the court or the application of an exception created by Rules made under the Insolvency Act 1986,

(vi) a statement that breach of the prohibition created by section 216 is a criminal offence, and

(vii) a statement as set out in rule 22.5 of the effect of issuing the notice under rule 22.4(2);

(c) where the company is in administration, has an administrative receiver appointed or is subject to a CVA,-

(i) the date that the company entered administration, had an administrative receiver appointed or a CVA approved (whichever is the earliest), and

(ii) a statement that the person was a director of the company on that date; and

(d) where the company is in insolvent liquidation,-

(i) the date that the company entered insolvent liquidation, and

(ii) a statement that the person was a director of the company during the 12 months ending with that date.

(4) Notice may in particular be given under this rule—

(a) prior to the insolvent company entering insolvent liquidation where the business (or substantially the whole of the business) is, or is to be, acquired by another company under arrangements made by an office-holder acting in relation to the insolvent company as administrator, administrative receiver or supervisor of a CVA (whether or not at the time of the giving of the notice the director is a director of that other company); or

(b) at a time where the person is a director of another company where—

(i) the other company has acquired, or is to acquire, the whole, or substantially the whole, of the business of the insolvent company under arrangements made by its liquidator, and

(ii) it is proposed that after the giving of the notice a prohibited name should be adopted by the other company.

(5) Notice may not be given under this rule by a person who has already acted in breach of section 216.

**Statement as to the effect of the notice under rule 22.4(2)**

**Rule 22.5.** The statement as to the effect of the notice under rule 22.4(2) must be as set out below-

“Section 216(3) of the Insolvency Act 1986 lists the activities that a director of a company that has gone into insolvent liquidation may not undertake unless the court gives permission or there is an exception in the Insolvency Rules made under the Insolvency Act 1986. (This includes the exceptions in Part 22 of the Insolvency (England and Wales) Rules 2016.) These activities are-

1. acting as a director of another company that is known by a name which is either the same as a name used by the company in insolvent liquidation in the 12 months before it entered liquidation or is so similar as to suggest an association with that company;
2. directly or indirectly being concerned or taking part in the promotion, formation or management of any such company; or
3. directly or indirectly being concerned in the carrying on of a business otherwise than through a company under a name of the kind mentioned in (a) above.

This notice is given under rule 22.4 of the Insolvency (England and Wales) Rules 2016 where the business of a company which is in, or may go into, insolvent liquidation is, or is to be, carried on otherwise than by the company in liquidation with the involvement of a director of that company and under the same or a similar name to that of that company.

The purpose of giving this notice is to permit the director to act in these circumstances where the company enters (or has entered) insolvent liquidation without the director committing a criminal offence and in the case of the carrying on of the business through another company, being personally liable for that company’s debts.

Notice may be given where the person giving the notice is already the director of a company which proposes to adopt a prohibited name.”

**Second excepted case**

**Rule 22.6.-** (1) Where a person to whom section 216 applies as having been a director or shadow director of the liquidating company applies for permission of the court under that section not later than seven business days from the date on which the company went into liquidation, the person may, during the period specified in paragraph (2) below, act in any of the ways mentioned in section 216(3), notwithstanding that the person does not have the permission of the court under that section.

(2) The period referred to in paragraph (1) begins with the day on which the company goes into liquidation and ends either on the day falling six weeks after that date or on the day on which the court disposes of the application for permission under section 216, whichever of those days occurs first.

**Third excepted case**

**Rule 22.7.-** The court's permission 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 1169(1), (2) and (3)(a) of the Companies Act.