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Enabling greater use of s 216 of the Insolvency Act 1986: 'restriction on re-use of company names'

KEY POINTS

- Sections 216 and 217 of the Insolvency Act 1986 (IA 1986) are aimed at preventing phoenix companies from causing damage by controlling the re-use of company names, and making the rogue director personally liable where the director of a company that goes into insolvent liquidation ('Company A') is involved in the management of a second company with a similar name ('Company B').
- Despite the repercussions for breaching the section being relatively severe for a director, de facto or shadow director, the legislation is not effective in practice as many creditors are unaware of this entitlement and few have sufficiently significant debts to make a claim economically viable on their own.
- To enable the legislation to be widely used in practice and function effectively as a powerful tool, we would propose some relatively minor changes to ss 216 and 217 IA 1986 and the introduction of a new s 217A. The proposed changes (shown in the appendix to this article) would extend the ambit of the provisions to insolvent dissolved companies and are likely to enable creditors the ability to benefit from claims under these sections more effectively.

INTRODUCTION

The apparent aim of ss 216 and 217 IA 1986 is to prevent the abuse of phoenixism. According to the Insolvency Service:

> 'Phoenixing, or phoenixism, are terms used to describe the practice of carrying on the same business or trade successively through a series of companies where each becomes insolvent (cannot pay their debts) in turn. Each time this happens, the insolvent company's business, but not its debts, is transferred to a new, similar 'phoenix' company. The insolvent company then ceases to trade and might enter into formal insolvency proceedings (liquidation, administration or administrative receivership) or be dissolved.' (*Phoenix companies and the role of the Insolvency Service*, March 2017: bit.ly/3RJ0ryl.)

The re-use of company names can be important in the sale of a business and assets process. The company name usually holds the goodwill of the business and is a valuable asset of the company that is likely to increase realisations in an insolvency process. However, whilst there may be many legitimate reasons for a business to rise from the ashes and continue trading using the same name, there is a potential danger to creditors. To combat this, s 216 IA 1986 creates a strict liability criminal offence for the director and s 217 creates a personal civil liability for the director (we look into these in more detail below). There are exceptions to these consequences, all of which seek to create more transparency surrounding the re-use of company names in insolvency situations.

Despite the repercussions for breaching these sections being severe for a director, the legislation is not highly effective in practice, as many creditors are unaware of this entitlement and few have sufficiently significant debts to make a claim economically viable on their own.

To enable the legislation to be widely used in practice and function effectively as a powerful tool for creditors, we would propose some relatively minor changes to ss 216 and 217 IA 1986 and the introduction of a new s 217A. These proposed changes have the benefit of:

- targeting those individuals that use phoenix companies;
- illustrating the UK government being active in illegal phoenixing;
- broadening the claims to include dissolved companies, which would align with recent developments on directors' disqualifications; and
- benefitting all creditors of the second insolvent company, including the Crown.

THE PRESENT POSITION OF S 216 IA 1986

Section 216 IA 1986 bans the re-use of company names and makes the 'rogue' director criminally liable. It has a number of elements that must all be in place for the criminal liability to arise.

It applies to a person where a company ('Company A') has gone into insolvent liquidation and that person was a director (*de jure* or **de facto**) or shadow director of Company A at any time in the period of 12 months ending with the day before it went into liquidation.

That person cannot at any time in the period of five years beginning with the day on which Company A went into liquidation:

- be a director of any other company that is known by a prohibited name; or
- in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any such company; or

FIGURE 1: TIMELINE SHOWING COMPANY B'S USE OF A 'PROHIBITED NAME'

- 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 (eg trade as a sole trader using that prohibited name).

That second company ('Company B') uses a 'prohibited name' if:

- it is a name by which Company A was known at any time in the period of 12 months prior to its liquidation (including trading names); or
- it is a name which is so similar to a name Company A was known at any time in the period of 12 months prior to its liquidation as to suggest an association with that company (see Figure 1).

By way of example, in the case of *Revenue & Customs Commissioners v Benton-Diggins* [2006] EWHC 793 (Ch), a company called Williams Hair Studio Ltd went into liquidation (Company A). It had carried on a hairdressing business from premises where the name 'Williams' appeared over the door. A second company (Company B) was created shortly after the insolvency of Company A and called 'Williams & Xpress Ltd'. It was also a hairdresser's and traded as 'Williams Hair Studio'. The court found that the names were sufficiently similar and the director was acting in contravention of s 216 IA 1986.

If a director contravenes these rules, the director can be liable to imprisonment (for up to two years) or a fine, or both.

As you would expect, there are exceptions to this strict liability, as follows:

- If a court order gives the director leave to act in contravention of s 216 IA 1986.
- If the director makes an application to court for permission to act within seven business days of the liquidation, the director can act in contravention of s 216 for six weeks or until the application seeking permission to act is disposed of, whichever is the earliest.
- If Company B has been in existence, and known by the prohibited name and trading for at least 12 months prior to the liquidation of Company A;
- If the business and assets of Company A are sold to Company B by an administrator or liquidator and the director advertises and gives notice in the appropriate form to all creditors of Company A of his/her intention to act in contravention of s 216.

Further to a request to the Insolvency Service, the authors understand that for the 2021/22 period, the Compliance Team handled 223 s 216 breach cases, and only seven cases were submitted for prosecution.

THE PRESENT POSITION OF S 217 IA 1986

Section 217 IA 1986 makes a contravening director liable for the debts of Company B, incurred at a time when that person was involved in the management of Company B. It can also make a 'stooge' of the director liable. If a person who is involved in the management of Company B acts or is willing to act on instructions given (without the leave of the court) by a person whom the stooge knows at that time to be in contravention in relation to the company of s 216, that person can be liable for the debts incurred at a time when that person was acting or was willing to act on instructions.

The liability for the relevant debts is joint and several between Company B and the person in breach, which cannot be set off in anyway.

THE AIMS AND OBJECTIVES OF SS 216 AND 217 IA 1986

Section 216 IA 1986 is aimed at preventing phoenix companies from causing a disadvantage to creditors by creating more transparency surrounding the re-use of company names.

The purpose of s 217 IA 1986 is essentially to protect creditors and widen the pool of people from whom a creditor can recover:

> 'The purpose of section 217, therefore, is to protect creditors in the circumstances which Lewison J described and to widen the pool of people from whom the creditor may recover its debt. A director who contravenes section 216, in addition to the criminal penalty contained in that section, becomes personally responsible for the company's debts and liabilities if they are incurred whilst there is a contravention of section 216. It seems to me that the words are quite clear and no question of a doubtful penalty arises.' *PSV 1982 Ltd v Langdon* [2022] EWCA Civ 1319

Feature

Biog box

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ARE THE AIMS AND OBJECTIVES OF SS 216 AND 217 IA 1986 BEING MET?

It is not possible to perform a statistical analysis of the number of phoenix companies that are created each year, nor the number of directors that may act in contravention. This data is simply not captured.

However, there are many gaps in this legislation that are easy to fill, as set out below:

- Any director intending to phoenix on an ongoing basis will simply place their Company A into dissolution. Given the cost of forcing a company into liquidation is easily £5,000 or more, it is unlikely any trade creditor would make the effort (especially as a recovery would be unlikely). This could lead to a constant stream of restaurants, for instance, trading under the same name, but with different company names, and avoiding their tax and rates liabilities (anecdotally, we know this to be a problem for local authorities and the collection of rates). It is also true that this provision does not bite in the relatively common scenario where Company A is placed into administration, and exits administration into dissolution.
- Many creditors are unaware of their rights pursuant to s 217 IA 1986. It is perhaps telling of this point that there is a paucity of cases on the topic, and only in July 2022 did we have a judgment determining whether a director was able to challenge a debt of Company B after the creditor had obtained judgment against Company B, or whether the director was bound by that judgment (*PSV 1982 Ltd v Langdon* [2022] EWCA Civ 1319).
- It is also evident that most creditors:
  - rapidly lose their desire to bring such claims, as they focus more on their usual roles (a situation seen in many insolvency cases); and
  - it is not cost effective to prove the connection and similarity of name for smaller debts.
- Although it is not possible to perform a statistical analysis of the number of phoenix companies that are created each year, Companies House (England and Wales only) has published statistics showing the huge gulf between companies struck/dissolved and those placed into liquidation/administration (see Figure 2).

FIGURE 2: COMPANIES HOUSE STATISTICS (ENGLAND AND WALES) SHOWING THE GULF BETWEEN COMPANIES STRUCK/DISSOLVED AND THOSE PLACED INTO LIQUIDATION/ADMINISTRATION

Year	Struck off and dissolved	Wound up voluntarily or subject to the supervision of the Court under the Companies Act
2012/13	260,749	20,375
2013/14	282,104	20,731
2014/15	322,053	24,018
2015/16	364,178	21,220
2016/17	385,740	21,601
2017/18	441,349	22,409
2018/19	459,181	23,596
2019/20	468,584	24,667
2020/21	398,933	22,876
2021/22	524,046	22,395

THE SOLUTION

Proposed changes

Section 216 IA 1986 would be extended so that it bites not only on companies in liquidation, but also those that enter insolvent administration or are dissolved whilst balance sheet insolvent. This would accord with the government's recent extension of the director disqualification regime to dissolved companies.

A new s 217A IA 1986 would be inserted. This would:

- permit administrators or liquidators of Company B, to apply to court for an order that the rogue director pays into the estate of Company B that director's liabilities pursuant to s 217;

but only after:

- the liquidator or administrator had given notice to all creditors of the office holder's intention to bring a claim and therefore allowing the creditor to make a direct claim itself if it wished.

These simple changes would:

- bring the potential for a claim to the attention of creditors; and
- where those creditors believe it is not cost effective to bring a claim individually, enable the creditors to benefit from the collective claim the office holder would bring.

The detail of the proposed amendments can be found in the appendix to this article.

CONCLUSION

The current provisions relating to ss 216 and 217 IA 1986 are not effective nor widely used in practice. However, our proposed changes are likely to enable creditors the ability to benefit from claims under these sections more effectively. ■

Further reading

- LexisPSL Restructuring & Insolvency; Directors and insolvency; Directors' duties; How a director of an insolvent company can use a prohibited name and avoid personal liability
- Lexis Library; Section 216 of the Insolvency Act 1986; Restriction on re-use of company names; Mithani; Directors' Disqualification [154]
- LexisPSL Restructuring & Insolvency; Insolvency trading issues; Prohibited names; Establishing liability under section 217 of the Insolvency Act

Biog box

Ben Luxford is Head of Technical at R3. He provides technical support, answers technical queries raised by members, and produces bespoke guidance and materials including Technical Bulletins and Technical Alerts for R3's members. Ben has worked at PwC, UHY Hacker Young, BDO, and Moorfields Advisory. Ben's notable achievements include overseeing the final distribution of c$33m (in various currencies) to $2.8bn creditors in the case of Maxwell Communications Corporation Plc. Email: Ben.Luxford@r3.org.uk

APPENDIX

Proposed amendments to legislation concerning the re-use of company names INSOLVENCY ACT 1986

The proposed changes to ss 216 and 217 IA 1986 and the introduction of a new s 217A was the innovation of Stewart Perry but he was fortunate to have the assistance and constructive criticism of others when drafting. In this regard the authors would especially like to thank Stephen Hill, Jim James, Mark Lawford, Rachel Grant and Graham McPhie; who were or are at the time of drafting members of R3's General Technical Committee. Proposed insertions are shown in underline text and proposed deletions in strikethrough text.

s176ZB Application of proceeds of office-holder claims

The provisions are—

(a) section 213 or 246ZA (fraudulent trading);
(b) section 214 or 246ZB (wrongful trading);
(ba) section 217A (office-holder claims, following contravention of s 216)
(c) section 238 (transactions at an undervalue (England and Wales));
(d) section 239 (preferences (England and Wales));
(e) section 242 (gratuitous alienations (Scotland));
(f) section 243 (unfair preferences (Scotland));
(g) section 244 (extortionate credit transactions).

Section 216 Restriction on re-use of company names

(1) This section applies to a person where a company ('the liquidating company') has gone into insolvent liquidation, has entered insolvent administration or has been dissolved 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, entered insolvent administration or was dissolved.

(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, entered insolvent administration or was dissolved —
  (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 and section 217A, 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.

(7A) For the purposes of this section and section 217A a company enters insolvent administration if it enters administration at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the administration.

(7B) For the purposes of this section a dissolved company is not a 'liquidating company' if it is shown that it had no outstanding debts or liabilities (including all liabilities, claims or debts regardless of whether they are present or future, certain or contingent, ascertained or only sounding in damages) on dissolution.

(8) In this section, section 217 and section 217A, 'company' includes a company which may be wound up under Part V of this Act.

Feature

Section 217 Personal liability for debts, following contravention of s 216

(1) A person is personally responsible for all the relevant debts of a company ('company B') if at any time—
  (a) in contravention of section 216, he is involved in the management of ~~the~~ company B, or
  (b) as a person who is involved in the management of ~~the~~ company B, 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 B of section 216.

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

(2A) Where the relevant person is personally responsible under this section for the relevant debts of company B, he is jointly and severally liable in respect of those debts with any other person who, whether under this section or otherwise, is so liable. The relevant person shall have no right of contribution from or claim against company B for any payments made pursuant to this section 217 or section 217A, unless and until the creditors of company B have been paid in full, and then only to the extent of any sums that would otherwise be available to be distributed by the office-holder to any member of the company (in his character of a member).

(3) For the purposes of this section and section 217A 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 B as are incurred at a time when that person was involved in the management of ~~the~~ company B, 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 B 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 and section 217A, 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 and section 217A 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 217A (office-holder claims, following contravention of s 216)

(1) This section applies where a company ('company B') has gone into liquidation or has entered insolvent administration and 'office-holder' means the administrator or liquidator of company B, as the case may be.

(2) If in the course of the liquidation or insolvent administration it appears to the office-holder that a person ('the relevant person') would be personally responsible for the relevant debts of company B pursuant to section 217, the office-holder may apply to court for an order under this section.

(3) An office-holder may not apply for an order under this section unless:
  (a) he has given at least four weeks' written notice of his intention to do so to every creditor of company B of whose claim and address he is aware; and
  (b) the application is made within three months of the expiry of that notice period,

(4) A creditor no longer has the right to pursue a claim against the relevant person for a debt pursuant to section 217 if an office-holder has issued an application against the relevant person in respect of that debt pursuant to this section 217A.

(5) Any application made pursuant to this section 217A cannot seek relief in respect of debts for which legal proceedings have been issued, or judgments obtained, directly by any creditor against any relevant person pursuant to section 217, such direct creditor claims continuing unaffected by any application brought by the office-holder.

(6) Subject as follows, the court shall, on being satisfied that the facts supporting such an application have been proved, make an order that such relevant person must pay to the office-holder the amount of the relevant debts of company B.

(7) When specifying the amount payable by any party, the court shall not make the amount payable greater than the shortfall for creditors in the estate of company B (plus interest and costs as appropriate).

INSOVLENCY RULES 2016

22.1 Preliminary

(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 etc) 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~~ circumstances to which section 216 applies.

22.2 Application for permission under section 216(3)

(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.

22.3 Power of court to call for liquidator's report

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

22.4 First excepted case

(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 or insolvent administration; 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 administrator, or

(ii) made before the insolvent company ~~entered~~ went into insolvent liquidation or entered administration by an ~~officeholder~~ 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 their 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 into insolvent liquidation or insolvent administration, 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, must contain—
(i) the date that the company ~~entered administration,~~ had an administrative receiver appointed or a CVA approved (whichever is the ~~earliest~~ earlier), 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 or insolvent administration, must contain—
(i) the date that the company ~~entered~~ went into insolvent liquidation, or entered insolvent administration 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 going into insolvent liquidation or entering insolvent ~~liquidation~~ administration 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 person is a director of that other company); or
(b) at a time when 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 or administrator, 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.

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

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 or insolvent administration 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--

(a) 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 or insolvent administration in the 12 months before it ~~entered~~ went into insolvent liquidation or entered insolvent administration or is so similar as to suggest an association with that company;
(b) directly or indirectly being concerned or taking part in the promotion, formation or management of any such company; or
(c) 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 or which has entered, or may enter, insolvent administration is, or is to be, carried on otherwise than by the company in liquidation or administration 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.'

22.6 Second excepted case

(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 or entered insolvent administration, 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 or enters insolvent administration 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.

22.7. Third excepted case

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 or entered insolvent administration; 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.

22.8 Notice to creditors

Any notice given to creditors of company B pursuant to section 217A shall state:

(a) the fact the office-holder intends to bring a claim pursuant to section 217A;

(b) a list of the relevant debts, including the names of the creditors and the amounts of their respective debts that shall form the basis of the claim;

(c) the name or names of the intended defendant or defendants; and

(d) if a creditor fails to bring a claim against a relevant person within the four week time period, and the office-holder then issues an application, the creditor will lose the entitlement to bring a direct claim against the relevant person under section 217.