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Article: Clipping the wings of the Phoenix

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Harry Potter brought to everyone's attention the good and magical qualities of the phoenix, that mythical bird capable of rising again out of the ashes. 'However', says Gill Brown, partner and solicitor in the commercial team at Phillips, 'in the context of company law a "phoenix" has always been the name given to a new company miraculously arising from the dust of a liquidated company, usually having retained the assets of the first company but having succeeded in losing its creditors in the process.' The new company often traded with the same name as the liquidated company or with a subtle change to the title, e.g. adding a "UK", "Europe" or date to the original name. This enabled companies to effectively ditch their debts, move their assets to the new company and trade on without losing their public name and image or the goodwill of customers in their trading name.

This practice has been stopped in its tracks by prohibiting the promotion, formation or management of a company known by the same name or a similar name, for a period of 5 years from the date the on which the insolvent company went into liquidation.

Not only is it a criminal offence to re-use an insolvent company name but personal liability is also imposed on directors and even shadow directors of the defunct company if they become involved directly or even through nominees, in a phoenix company. Personal liability extends to the debts of the phoenix company for the entire period that a prohibited name is in use. This is particularly good news for HM Revenue & Customs and other creditors, who were often on the receiving end of the phoenix phenomenon. Gill warns: 'It is, however, a radical change and every business should be aware of this significant change, to avoid risking both criminal sanctions and personal liability.'

Call Gill for more employment law advice on 01256 854605

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