

Pre-pack Administrations

A pre-pack administration occurs when an Administrator sells the business at or soon after their appointment, often to the existing owners/directors. All of the preparatory work for the sale is carried out in advance of formal administration and before the creditors have been told about the failure of the business.

Whilst pre-pack administrations represent just over 3% of corporate insolvency procedures in the UK they attract a far greater amount of press coverage. An internet search of the term 'pre-pack' will not only bring up many articles on the subject but also a list of service providers recommending this process as the solution to a Company's financial problems. Such results add to the negative pre-conceptions many people have about the procedure, focussing on a lack of transparency with deals being agreed behind closed doors.

This criticism of the process has led Vince Cable, the Business Secretary to commission a review of the process as part of the Governments 'Transparency and Trust' Agenda. Theresa Graham CBE undertook this review with the results being published in June 2014

Ms Graham's report concluded that there is a place for pre-packs in the UK. Her research showed that pre-pack administrations were usually much cheaper than an upstream procedure and provided high levels of job preservation, both of which enhance the return to creditors.

Unfortunately, many of these positives are overlooked due to the nature of a pre-pack administration. With the negotiations taking place in advance of the Administrator's appointment, creditors only find out about the deal after it has completed. The marketing of such businesses is often very limited and disclosure of valuation work completed during the process minimal. This lack of transparency leads creditors to question whether or not the pre-pack has achieved the best result for them, especially when the sale is to the existing owners or directors.

To try and address these concerns Ms Graham has proposed a package of six recommendations:

- An independent pool of 'reviewers' to scrutinise proposed pre-packs before the deal takes place
- A viability review of the new company where a sale is to a connected party
- Redrafted guidance (SIP 16) from the Joint Insolvency Committee
- All pre-pack sales are to be marketed in accordance with six principles of good marketing
- Valuations must be carried out by a valuer holding professional indemnity insurance
- Monitoring of pre-pack deals to be undertaken by the recognised professional bodies

Ms Graham has suggested these recommendations are adopted by the profession and its regulators to avoid the need for legislation. Whilst we await the government's full response to the report, it is clear that the spot-light will remain on pre-pack administrations for some time yet.

Please note that should your clients require any confidential advice regarding this or any other insolvency matter they are welcome to contact one of our Partners. An initial consultation is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedure, please do not hesitate to contact us.