

# RPG Tips

## Business Recovery & Insolvency

### Pre-Pack Administration

**A pre-pack administration (i.e. a pre-packaged sale) is the name given to an arrangement under which the sale of all or part of a company's business or assets is negotiated with a purchaser prior to the appointment of an insolvency practitioner as administrator.**

**The sale is then executed by the insolvency practitioner shortly after his/her appointment. The purchaser may be new to the company or a competitor but it is also possible that the purchaser may be the existing management.**

Very briefly, when a business needs to be rescued there are often worries about maintaining value – both for existing creditors and for prospective purchasers trying to restart the business. As a result, the practice of 'pre-packaging' the administration process has developed. In a pre-pack a company is placed into administration and the business is sold shortly after the appointment of the administrator. Often, the insolvency practitioner, the directors and the bank will have obtained valuations, agreed a sale price and drafted contracts before the administration order is made, thereby enabling the business to be sold immediately after the appointment of the insolvency practitioner.

New rules contained in 'Statement of Insolvency Practice (SIP) number 16', were introduced on 1 January 2009. Under the new rules, the administrator (i.e. the insolvency practitioner) is required to explain to creditors the full background to his/her appointment and the reasons why they considered that a 'pre-pack' sale would be the best outcome for creditors.

The administrator is also required to reveal the name of the purchaser of the business/assets and the price paid. Importantly, the administrator is also required to provide details of any connection that the purchaser had with the former directors or shareholders.

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Further, SIP 16 identifies a series of no less than 17 key pieces of information that the administrator should disclose to creditors at the earliest possible opportunity. In most cases, this will mean with their notice of appointment. This information would include:

- Details of marketing activities undertaken by the company and/or administrator to attract possible buyers.
- Any valuations received.
- Rival bidders and alternative courses of action considered.

The aim of the new rules is to introduce greater transparency in the pre-pack administration process. In effect, creditors of the insolvent company will have better access to information about the new owners of a troubled business.

The pros and cons of pre-pack administrations is a subject much debated within the Insolvency industry. For instance, the Insolvency Service takes the view that pre-pack administrations can be a good thing:

In some circumstances they will improve returns to creditors. In addition they can help to preserve the business of a failed company, thereby saving jobs.

Similarly, commenting on how pre-packs work in practice, the Association of Business Recovery Professionals (known as 'R3') has said: **"If the conditions are appropriate, a pre-pack can be advantageous for all involved, and can be the best way of extracting value from a dire situation"**.

Pre-packs are not new. They have often been used to sell businesses in insolvencies where commercial pressures require urgent action. However, there has been an increase in the number of pre-packs recently. This partly reflects the greater variety of insolvent businesses over the last few years.

It is argued variously that when undertaken in appropriate circumstances and carried out in a professional manner, pre pack administration is a procedure by which a potentially successful business can be saved, protecting employment for the staff.

**If you would like further information on pre-packs or any other insolvency and business recovery matters please do not hesitate to contact:**

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