

Knowledge Bank 2



PRE-PACK ADMINISTRATION

A pre-pack administration sale is a legal way of selling a business to a third party, the existing directors or management team if the business has serious financial problems and creditor threats.

A BUSINESS CAN BE ESTABLISHED TO BE VIABLE IF:

- It would not have any current cash flow problems but for the burden of historic debt
- Its cash flow problems were linked to a one-off event such as a key customer becoming insolvent or a temporary loss of business.

OBJECTIVES OF PRE-PACK ADMINISTRATION

- Enable the continuity of the business
- Maintain the goodwill of the business
- Enable the administrator to realise greater value for the business and, in many cases, preserve jobs.

WHO CAN INSTIGATE THE PROPOSAL OF A PRE-PACK ADMINISTRATION?

In the majority of cases, it will be the directors and/or shareholders.

PRE-PACK ADMINISTRATION PROCEDURE

An insolvency practitioner would be engaged by directors/shareholders to explore the feasibility of a business undertaking a pre-pack process.

The insolvency practitioner has a duty under the SIP 16 regulations to disclose a number of matters to ensure transparency to creditors that the decision to undertake a pre-pack process was the best option available to the company.

When the pre-pack administration plan is ready for implementation, a contract of purchase is prepared and the company is protected by the court while the administrator sells the business and assets (not the company) to the new owners, usually on the day of their appointment.

The following disclosures – required by SIP 16 – give an insight to the considerations an insolvency practitioner must make before agreeing to proceed.

SIP 16 DISCLOSURE REQUIREMENTS

- The source of the administrator's introduction to the business
- Prior to the appointment, the extent of the administrator's involvement
- Details of marketing activities undertaken by the company and/or the administrator
- Valuations of the business or underlying assets including the qualifications of any valuers
- The alternative course of actions explored by the administrator and details of potential financial outcomes
- Why it was not appropriate to trade the business and offer it for sale as a going concern during the administration
- Details of requests made to potential funders to fund working capital requirements
- Details of efforts made to consult with major creditors
- The date of the transaction
- Details of the assets involved and the nature of the transaction
- The consideration for the transaction, terms of payment and any condition of the contract that could materially affect the consideration
- If the sale is part of a wider transaction, a description of the other aspects of the transaction
- The identity of the purchaser
- Any connection between the purchaser and the directors, shareholders or secured creditors of the company
- The names of any directors, or former directors, of the company who are involved in the management or ownership of the purchaser, or of any other entity into which any assets are transferred
- Whether any directors had given guarantees for amounts due from the company to a prior financier and whether that financier is financing the new business
- Any options, buy-back arrangements or similar conditions attached to the contract of sale.

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