

Pre Pack Administrations

In an effort to restore creditor confidence in Pre Pack Administrations, a number of changes have been made to the professional guidelines followed by Insolvency Practitioners.

The revisions include new valuation guidelines and “marketing essentials” which apply to all pre-packs. Valuations should now be carried out by independent valuers or advisors with sufficient professional indemnity cover. The marketing essentials set out a number of key principles to which the marketing exercise should conform including:

- The Insolvency Practitioner must provide a clear explanation of the particular marketing strategy chosen to creditors and
- The Insolvency Practitioner must provide justification why any deviation from the essentials was appropriate.

The effect of these new valuation and marketing guidelines may be limited in practice, as most Insolvency Practitioners should have been complying with these principles as a matter of best practice.

The nature of a Pre Pack sale is such that reporting to creditors occurs after the sale has been completed. Whilst Insolvency Practitioners have always been required to disclose details of a sale to creditors there is a perception that in some instances the deal may not always have been the best available to creditors, particularly when selling to a connected party. To address this, two significant changes have been introduced:

- The scope of information required to be disclosed has now been enhanced with a view to ensuring that creditors are better informed about key transaction particulars.
- Where sales are to a connected party, it is recommended that the sale is reviewed by an independent panel of experts known as ‘The Pre Pack Pool’ prior to completion. The Pool consists of a panel of business experts who will provide their opinion as to the reasonableness of a proposed transaction within 2 business days. Whilst this will aid transparency, there are some practical considerations:
- The Pool member will not give reasons for his/her opinion, there will be no appeal process, and there are no guidelines as to what will constitute a “reasonable” pre-pack.
- The two business day turnaround time may appear swift, but as many will know, pre-packs are often negotiated right up to completion against the backdrop of a business in free-fall and with directors concerned about their personal liability for continuing to trade pending a sale.
- The connected party will need to pay a fee of £800+VAT for this opinion despite the Pool not being a judicial body and its opinion not binding. Will purchasers and Insolvency Practitioners complete deals in circumstances where the Pool’s opinion is that the sale is unreasonable? Will we start to see sales being made conditional upon the Pool issuing a favourable opinion?

It will be interesting to see what certain organised unsecured creditor groups (e.g. HMRC, The Pensions Regulator, The Pension Protection Fund) will do with the additional information that will be made available and whether the new guidelines will, in practice, prompt more active scrutiny of Insolvency Practitioners, and potential ensuing litigation arising from pre-packs.

Please note that should your clients require any confidential advice regarding any insolvency matter they are welcome to contact Ian, John or Robert. 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.