

PRE-PACKAGED SALES IN ADMINISTRATIONS

INTRODUCTION

1. The term 'pre-packaged sale' refers 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 administrator, and the administrator effects the sale immediately on, or shortly after, his appointment.
2. The particular nature of an insolvency practitioner's position in these circumstances renders transparency in all dealings of primary importance. Creditors and other interested parties should be confident that the insolvency practitioner has acted professionally and with objectivity; failure to demonstrate this clearly can only bring the practitioner and the profession into disrepute.

PRINCIPLES

3. An insolvency practitioner should differentiate clearly the roles that are associated with an administration that involves a pre-packaged sale (that is, the provision of advice to the company before any formal appointment, and the functions and responsibilities of the administrator) and ensure that they are explained to the directors, and the creditors and other interested parties.
4. Creditors and other interested parties should be provided with a detailed explanation and justification of why a pre-packaged sale was undertaken, to demonstrate that the administrator has acted with due regard for their interests, as required by legislation.

KEY COMPLIANCE STANDARDS

Preparatory work

5. An insolvency practitioner should be clear about the nature and extent of the role of adviser in the pre-appointment period. When instructed to advise the company, the insolvency practitioner should make it clear that the role is not to advise the directors, who should be encouraged to take independent advice. This is particularly important if there is a possibility of the directors acquiring an interest in the assets in the pre-packaged sale.
6. An insolvency practitioner should bear in mind the duties that are owed to creditors in the pre-appointment period and the potential liability that may attach to any person who is party to a decision that causes a company to incur credit.

After appointment

7. When considering the manner of disposal of the business or assets as administrator, an insolvency practitioner should be able to demonstrate that the duties of an administrator under the legislation have been considered.

Disclosure

8. An administrator should provide creditors with a detailed explanation and justification of why a pre-packaged sale was undertaken, to demonstrate the administrator has acted with due regard for their interests. The administrator should include a statement confirming that the transaction enables the statutory purpose of the administration to be achieved, and that the price achieved was the best reasonably obtainable in all the circumstances.
9. The information set out in the appendix should be included in the explanation unless there are exceptional circumstances, in which case the administrator should explain why it has not been provided. If the sale is to a connected party it is unlikely that considerations of commercial confidentiality would outweigh the need for creditors to be provided with this information.
10. The explanation should be provided with the first notification to creditors and in any event within 7 calendar days, unless it is impracticable to do so. It should also be provided in the statement of proposals of the administrator.
11. When a pre-packaged sale has been undertaken, the administrator should hold the initial creditors' meeting as soon as practicable after appointment.
12. The Insolvency Act 1986 permits an administrator not to disclose information in certain limited circumstances. This Statement of Insolvency Practice will not restrict the effect of those statutory provisions.

Effective from XX XX 2013

Appendix

The following information should be included in the administrator's explanation of a pre-packaged sale, as far as the administrator is aware after making appropriate enquiries:

- The source (to be named) and date of the administrator's initial introduction
- The extent of the administrator's involvement prior to appointment
- Any marketing activities conducted by the company and/or the administrator and the outcome of those activities, or an explanation of why no marketing was undertaken
- The valuations obtained of the business or the underlying assets, or if no valuation has been obtained the reason for not having done so, and how the administrator satisfied themselves on the value of the assets
- A summary of the valuation methodology adopted by the administrator or his valuers/advisors
- The names and professional qualifications of the valuers/advisors and confirmation that they were independent of the company
- The alternative courses of action that were considered by the administrator, with an explanation of possible 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
- Whether efforts were made to consult with major creditors, and the outcome of any consultations
- 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
- Sale consideration disclosed under broad asset categories and split between fixed and floating realisations
- If the sale is part of a wider transaction, a description of the other aspects of the transaction
- In transactions impacting on more than 1 related company (group transactions) the administrator should ensure the disclosure is sufficient to enable a transparent explanation (for instance, allocation of the consideration paid).
- 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 of the 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 deferred consideration or other conditions attached to the contract of sale
- If the business or businesses assets have been acquired from an insolvency practitioner within the previous 24 months, or longer if the administrator deems that relevant to creditors understanding, the administrator should disclose both the details of that transaction, and whether the administrator, administrator's firm or associates were involved
- Details of registered charges, with dates of creation