

## **New Guidelines for 'Pre Packs'**

The introduction of Statement of Insolvency Practise 16 ("SIP 16") on 1<sup>st</sup> January 2009 has sought to improve transparency in a pre-packaged sale of a business and assets in an administration.

A pre-packaged administration sale, commonly referred to as a 'pre-pack,' occurs when the business of an insolvent company is sold as soon as the administrators are appointed. In order for this to take place an agreement for the sale is put in place before the company is placed into administration.

In the right circumstances adopting this strategy can result in the best return for all involved. A 'pre-pack' allows for a business and its assets to be sold without any adverse publicity which may devalue the business and lead to a loss of staff and customers. A 'pre-pack' may be appropriate when the proposed administrator has identified that there are no funds available to trade the business in administration and when the business has been marketed for a period prior to the administration.

However in recent months, pre-packs have come under the spotlight as company failures have become more common. The Business and Select Committee recently examined the issue. The BBC has broadcasted programmes and newspapers have run articles exploring the use of pre-packs. There is sometimes a perception that a failing business has simply closed its doors one day and reopened the next without any liabilities whilst still being under control of the same directors and shareholders.

However the appointed insolvency practitioner still has an obligation to obtain the best price for the business whether or not a pre-pack is implemented. An administration remains a formal insolvency process that demands that the administrator, who is an officer of the court, accounts for all his actions to all the creditors.

The introduction of SIP 16 has come at an ideal time and has been welcomed by insolvency practitioners and the regulatory bodies. The main obligation that is now placed on administrators involved in a pre-pack is that a detailed explanation and justification of why the sale was undertaken will have to be provided to the creditors as soon as possible. An administrator will not only have to reveal the name of the purchaser of the business and the consideration paid but details will also need to be provided of any connection that the purchaser had with the former directors or shareholders.

The SIP recommends that these details are provided in the first notice to creditors and that the first meeting of creditors should be held as soon as possible. The intended result is that the creditors will be satisfied that the administrator has acted in the best interests of the insolvent company and all its stakeholders, including unsecured creditors.

The objective for an administrator has always been to preserve the value in the business and assets of the company. Disclosing the reasons for the chosen strategy has always been best practice and SIP 16 now confirms this practice.

A copy of SIP 16 produced by R3 – The Association of Business Recovery Professional can be found at the following link;

<https://www.r3.org.uk/uploads/sip/StatementofInsolvencyPractice%20-%2016%20.pdf>