
STATEMENT OF INSOLVENCY PRACTICE 16 (Scotland)

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 may 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). The roles are to be explained to the directors and the creditors.
4. Creditors 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.

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 and obligations which are owed to creditors in the pre-appointment period. They should be mindful of the potential liability which may attach to any person who is party to a decision that causes a company to incur credit and who knows that there is no good reason to believe it will be repaid. Such liability is not restricted to the directors.
7. An administrator should keep a detailed record of the reasoning behind the decision to undertake a pre-packaged sale.

After appointment

8. 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

9. An administrator should provide creditors with a detailed narrative 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 explaining the statutory purpose pursued and confirming that the transaction enables the statutory purpose to be achieved and that the sale price achieved was the best reasonably obtainable in all the circumstances.
10. The information disclosure requirements should be included in the explanation unless there are exceptional circumstances, in which case the administrator should explain why the information 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.
11. The explanation should be provided with the first notification to creditors and in any event within seven calendar days of the transaction. If the administrator has been unable to meet this requirement they should provide a reasonable explanation for the delay. The statement provided in accordance with paragraph 4 should also be provided in the administrator's statement of proposals filed at Companies House.
12. When a pre-packaged sale has been undertaken, the administrator should seek the requisite approval of his proposals as soon as practicable after appointment. If the insolvency practitioner has been unable to meet this requirement they should explain the reasons for the delay.
13. 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.

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Information disclosure requirements

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:

Initial introduction

The source of the initial introduction to the insolvency practitioner (to be named) and the date of the administrator's initial introduction.

Pre-appointment considerations

The extent of the administrator's involvement prior to the appointment.

The alternative courses of action that were considered by the administrator with an explanation of possible financial outcomes.

Whether efforts were made to consult with major creditors and the outcome of any consultations.

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 registered charges with dates of creation.

If the business or business 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.

Marketing of the business and assets

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.

Valuation of the business and assets

The names and professional qualifications of the valuers/advisors and confirmation that they have confirmed their independence.

The valuations obtained of the business or the underlying assets.

A summary of the basis of valuation adopted by the administrator or his valuers/advisors.

The rationale for the basis of the valuations obtained and an explanation of the sale of the assets compared to those valuations.

If no valuation has been obtained, the reason for not having done so and how the administrator was satisfied as to the value of the assets.

The transaction

The date of the transaction.

Purchaser and related parties

- The identity of the purchaser.
- Any connection between the purchaser and the directors, shareholders or secured creditors of the company or their associates.

- 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.
- In transactions impacting on more than one related company (e.g. a group transaction) the administrator should ensure that the disclosure is sufficient to enable a transparent explanation (for instance, allocation of consideration paid).
- 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.

Assets

- Details of the assets involved and the nature of the transaction.

Sale consideration

- 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 valuation categories and split between fixed and floating charge realisations.
- Any options, buy-back agreements, deferred consideration or other conditions attached to the contract of sale.
- If the sale is part of a wider transaction, a description of the other aspects of the transaction.