

PPF Restructuring and Insolvency Team
Guidance Note 3
Pre-packaged administrations

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1. Background

- 1.1 This guidance sets out the Pension Protection Fund's (PPF) approach to pre-packaged administrations (pre-packs) where the same Insolvency Practitioner(s) (IP) intends to dissolve the company or continue as the office holder in the subsequent liquidation or company voluntary arrangement (CVA).
- 1.2 Pre-packs are used to sell all or part of a company's business or assets to new ownership free of the liabilities of the old company. The terms of the sale are negotiated with a purchaser prior to the appointment of the administrator, and the administrator effects the transaction or transactions immediately on or shortly after appointment. This may be for good commercial reasons and may be the right approach in certain circumstances.
- 1.3 However, it is often the case that the new company is controlled by, or has strong links to, the owners, management or investors of the old company that built up the liabilities (a "phoenix" situation).
- 1.4 Accordingly, there is the possibility that the process can be used to "dump" the company's liabilities, including pension schemes.
- 1.5 The insolvency profession has recognised and gone some way to address this problem through Statement of Insolvency Practice 16 (SIP16).
- 1.6 SIP16 sets out "key compliance standards" that an administrator should adopt when considering the possibility of a pre-pack. This includes keeping a detailed record of the reasoning behind both the decision to undertake a pre-pack and all alternatives considered. It also requires reporting on whether efforts were made to consult with major or representative creditors and the upshot of any consultations. That should include the defined benefit pension scheme where one exists, especially where IPs are concerned about the potential use of powers by The Pensions Regulator (TPR) regarding their actions prior to appointment.

2. Issue

- 2.1 The PPF is concerned that meaningful consultation with the pension trustees/PPF is not always taking place at an early stage and that transactions are presented as a "given". This may have implications for the IP should there be detriment to the pension scheme as a result of the transaction, and TPR considers the use of its powers. **We therefore encourage and expect early engagement from prospective IPs.**
- 2.2 Evaluators' reports are only required for sales to connected parties, and they often have little time in which to compile thorough reports. The PPF also considers that the statutory definition of a connected person is too restrictive and therefore does not provide sufficient comfort.
- 2.3 The administrator is usually appointed by the directors or qualifying floating charge holder, with the unsecured creditors having no say, and often not being made aware of the pre-pack until it has been completed. The SIP16 requirement for reporting shortly after the administrator's appointment is welcomed but does not alleviate this issue.
- 2.4 Accordingly, the checks on the administrator are, in reality, limited. There is the risk of there being no effective scrutiny of the administrator's actions and possibly those of the directors.
- 2.5 This situation was less likely to arise when administrative receiverships were more common than administrations because the receiver could not become the liquidator. The liquidator would review the actions and conduct of the receiver and the directors.
- 2.6 If the administrator does not fulfil the role of a subsequent liquidator, the new office holder will independently be able to review the background to the pre-pack, and the actions of the directors and administrators.
- 2.7 We are familiar with the argument that there is increased cost in an administrator handing over a case to a liquidator from a different firm. We consider that such cost, to the extent that it exists, is justified by the independent scrutiny of the pre-pack process.

3. PPF Practice

- 3.1 When presented with administrators' proposals following a pre-pack, the PPF will:
 - consider the extent to which the trustees/PPF have been consulted prior to the administrator's appointment;
 - assess whether the consultation has been effective and the views of the trustees/PPF have been taken properly into account, including consideration of the costs of the process;
 - resolve to appoint an alternative IP as soon as practicable to act as liquidator of the company if creditors' voluntary liquidation is the likely exit route and there has been no or ineffective consultation giving rise to concerns over the process, thus providing the opportunity to examine the conduct of the directors and administrators; and
 - consider the need for a compulsory winding up order to be made in situations where the company will be dissolved immediately after administration, to allow scrutiny by a liquidator.

- 3.2 The factors that the PPF will consider in reaching its decision include (but are not limited to):
- the level of consultation with the pension scheme trustees/PPF prior to the pre-pack being undertaken;
 - the nature of the underlying business and the risks to it from an insolvency marketing period;
 - the underlying causes of the insolvency (including the prior treatment of the scheme and the conduct of the company/directors) and the rationale for the pre-pack;
 - any interaction with TPR;
 - the extent to which SIP16 has been followed, including considerations around the application of marketing essentials, valuation and, if appropriate, the evaluator's report; and
 - the ongoing involvement of the original shareholders' management in the business post-administration.
- 3.3 The advantages of the PPF approach are:
- greater transparency to the process;
 - it is designed to encourage early and effective consultation with the trustees and PPF;
 - help to control fees & costs; and
 - act to enhance returns to unsecured creditors.

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Please note this leaflet seeks to assist stakeholders and insolvency professionals on our approach to restructuring and insolvency cases. It is an accompaniment to existing publications from the PPF published on our website, not a substitute. We encourage restructuring & insolvency practitioners and trustees to seek appropriate, specific case guidance.

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