



Frequently Asked Questions

Pre-Pack Administrations



Why do Pre-Packs sometimes cause controversy?

A pre-pack administration involves quickly selling all or parts of a business in severe financial difficulty. The business can be sold to an unconnected third party, but the directors or shareholders of the struggling Company are also able to purchase the assets and start trading through a new company.

This is where the controversy lies, and in the past, the lack of transparency has caused significant concern and criticism. A pre-pack sale happens very quickly, so it is inevitable that some creditors can conclude that the directors are trying to avoid their responsibilities to creditors and acquire the business and assets at an advantageous price.

In reality, the pre-pack administration process is strictly regulated. The appointed insolvency practitioner (IP) must be able to demonstrate that a pre-pack administration sale is the best course of action, that the assets have been professionally and independently valued and that the sale agreed is the most advantageous that could have been achieved under the circumstances.

Is it the Directors' decision to go down the Pre-Pack route?

Company directors can independently opt to implement a pre-pack sale, but the decision is usually made after receiving professional advice from a licensed insolvency practitioner.

It is important for the directors to understand all their options, however, because a pre-pack is not always the most suitable route. The IP will assess the company's situation and present a balanced assessment of all alternatives to the directors.

The IP must also be able to show that a pre-pack sale is the best option for creditors; for example, that it offers a better return to the creditors than liquidation.

If the directors choose pre-pack administration, they initiate the formal process by holding a board meeting and passing the requisite resolution approving the pre-pack and the sale.

What happens to Shareholders in a Pre-Pack?

In a pre-pack administration, shareholders will usually find that their shares in the original company will become worthless or be very significantly reduced in value. This is because there is often too little to pay the creditors in full, never mind there being any funds for shareholders, who cannot be paid until after the creditors have been paid in full.

What happens to supplier and other debt in a Pre-Pack Administration?

When the assets are sold in a pre-pack, the liabilities stay behind in the original company. The resulting sale proceeds (after the costs of the administration and any subsequent liquidation) will be used to pay as much as possible back to creditors in accordance with the statutory order of priority.

Contractual obligations may be terminated by the appointment of administrators, leaving suppliers with a potential claim for damages, which will be added to the amounts owed to creditors. The new owners of the business may choose to adopt the contract, but can't be forced to trade with the new owners on the same terms.

How is intellectual property dealt with in a Pre-Pack?

Intellectual property is a key asset class in a business sale. This category includes such items as patents, copyrights and trademarks, as well as domain names and internal databases of data such as customer information. There can also be an element of goodwill, being the difference between what a purchaser is willing to pay and the value of the assets.

All elements of intellectual property ownership have to be professionally valued to ensure that their true worth is reflected in the consideration for a pre-pack sale. The speed of this process can preserve the value of some intellectual property as a result of minimising the business disruption and negative publicity that normally surround other insolvency processes.

How is a Pre-Pack different from other Administrations?

The principal distinction between a pre-pack and a normal administration is that a pre-pack sale is negotiated and agreed before administrators are appointed. This is primarily because the company does not have the funds to allow for continued trading, even in the short term. In a pre-pack sale, a business can be sold to a trade buyer, third party, or the current directors.

The administrators complete the pre-pack sale quickly once they have been appointed, which can preserve the value of assets and prevent bad publicity. During a normal administration, the office-holder places the business on the open market after they take office, so the marketing, negotiation and agreement of the terms of the sale take place post-appointment.

The insolvency and sale becomes public knowledge, which can damage the business' reputation and diminish the value of its assets. This is why a quick sale through a pre-pack administration is preferable in some instances.



What is the difference between a Pre-Pack and a Company Voluntary Arrangement (CVA)?

A pre-pack administration means the existing company ends and a new one is formed to carry on its business. A CVA means the existing company carries on. A CVA is a formal agreement with creditors to pay a percentage of the outstanding debt over a period of time. This allows the existing company to keep trading.

How long does a Pre-Pack sale take?

Pre-pack administration is deliberately a very fast process, intended to find a buyer and negotiate a deal as quickly as possible away from the glare of potentially adverse publicity. The longer this process is allowed to take, the greater the chance of it becoming public knowledge. Pre-pack sales can be achieved in a matter of weeks, but the timescale will depend on the complexity of each business's situation.

If the existing company directors or shareholders, rather than a third party, are the buyers using their personal funds, this can accelerate the process. When the financial pressures are escalating and particularly if there is a threat of creditor enforcement action, speed is of the essence, and a successful pre-pack can save the some or all of the business and its related employment.

Professional Advice

If you are seeking professional advice about your business, Opus is here to help and discuss options with you. To speak to one of our divisions, call 0203 995 6380 or email support@opusllp.com and we will connect you with the best person to assist you with your needs.

About Opus

Opus Restructuring & Insolvency is part of Opus Business Advisory Group, an independent advisory firm that assists clients to achieve their objectives, enhance value and attain the best possible results. The Group provides fresh thinking combined with specialist skills to facilitate the next steps of the client's business journey.

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