

Pre Pack Administration: A Step by Step Guide



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A Guide to Pre Pack Administration (Pre-Packs)

What is a Pre Pack Administration?

A Pre Pack Administration (or “Pre-Pack”) is where a Company, which is unable to pay its debts when they fall due, is closed by using the Administration insolvency process, but its business and assets are sold immediately after the Company’s Administration is confirmed within a packaged sale of the business. This means that the sale negotiations typically take place before the Company is placed into Administration and any marketing of the business is done pre-liquidation so that a buyer can be found and the sale completed immediately upon appointment.

Can I Pre-Pack my business?

An Administration with a Pre Packaged sale is most suitable for businesses which need to be placed into an insolvency process but where there is interest from someone to buy back the business & assets seamlessly, allowing the good parts of the business to be taken forward without inheriting the Company’s liabilities.

Typically these assets, and in particular the Goodwill of the Company, are able to be sold for higher values than if the sales were made in alternative processes (such as Liquidation), this is because they better maintain their value as a result of better continuity of trading.

Another key indicator of a Company which is prime for a Pre Pack process is one which has contracts that are worth continuing, or when it is the intention to re-employ all the staff, as Pre-Packs are the ultimate insolvency process for a seamless transfer of employee and customer contracts.

What is the Pre Pack Administration Process?

The Pre-Pack process put simply is...

1. Assessment for suitability;
2. Valuation and Marketing
3. Negotiating a sale and assessing any offers received;
4. Appointing the Administrator; and then
5. Completion of the sale.
6. Statement of Affairs to creditors within 11 days from notice to the director
7. SIP 16 notice of any completed sales to creditors within 14 days of completion of the sale
8. Full report (called the administrator’s proposals) to creditors within 8 weeks of the Administrator’s proposals which contain details of a creditors decision which must be held within 10 weeks of the Administrator’s appointment (where resolutions are considered and approved including the basis of the Administrator fees).

As you can see, there are multiple steps and reporting requirements to this process which is why it is considered the most legislated process and often results in many directors choosing alternative insolvency processes where possible.

The above steps can also be further complicated by there being various methods to appoint the Administrator which change depending on the specific facts of the case. Some appointments are by a court hearing in court, whereas others are by paper filings at court with no hearing with set notice periods. Typically, where there is an outstanding winding up petition presented against the

company by a creditor, the in court process, with a hearing is followed, so a court judge can dismiss the petition, and if there is no petition, the out of court process is followed with paper filings.

In addition to the above complexities, there is now also a requirement to consult with a pool of independent specialists (called the pre-pack pool) if a sale is to be made to connected parties. The pre-pack pool is tasked with providing their recommendation to the connected party as to whether the sale is suitable and reasonable to proceed and this recommendation must be sought within 8 weeks of the sale. It is not mandatory to approach the pre-pack pool prior to completion of the sale, however, their approval would add weight to the suitability of the sale, so it is recommended to consult them early so that the Administrator can disclose that they were consulted early and that they recommended approval of the sale at the outset, within their proposals to creditors, sent later in the process.

If a Licensed Insolvency Practitioner confirms that a Pre-Pack is suitable for your company then the main factors that must be established to decide the exact process for appointing the Administrator are as follows:-

- What pressure is there from the Company's creditors?
- Does the Company have secured creditors? (if yes, appointment may take longer)
- Is there a proposed purchaser in place? If so, when is it most suitable for the Company to cease to trade and the purchasing company to start trading? (this is usually based on staff payment dates and upon certain works becoming complete);
- Is there funding available to the purchaser of the business to buy the business? & assets and to support the trading of the purchasing company?; and
- Whether a Winding up Petition has been presented against the Company.

Once each of the above are known, the Insolvency Practitioner will inform you of the exact procedure to be taken to appoint them as Administrator, however the key things to note are that typically an Administrator is appointed in no more than 2 weeks, by way of

- Initial forms being filed at court,
- Consents being requested to the Administration; and
- Then once either the consents are received or if 5 business days have elapsed, the second set of paperwork is filed at court appointing the Administrator.

The Administration is more complex if a Winding up Petition has been presented against the Company as a hearing is required (in front of a court judge) whereby detailed documents must be supplied which evidence that an Administration is a better process than a Compulsory Liquidation (which the Winding up Petition is attempting to do). As a result of this, appointing the Administrator can take longer often due to a delay in awaiting a hearing date.

It should also be noted however that if there is no outstanding Winding up Petition, no secured creditors and if the purchasing company is ready to go (with funding) then sometimes an Administration can be confirmed immediately upon the Director's approval to go ahead because all that is required is to file one set of documents at court which appoints the administrator instantly upon receipt.

Remember, the aim of the Pre-Pack process is to negotiate the sale prior to the appointment of the Administrator and once agreed, for the sale to complete immediately after the Administrator has

been appointed. This is done by way of a sale agreement which is drafted by the Insolvency Practitioner's solicitor who will get it agreed and signed by both sides and hold it in readiness to complete the sale as soon as the Administrator has been appointed. This way, the insolvent Company ceases to trade and the Purchasing Company starts trading almost simultaneously upon the Administrator being appointed.

For the specific process for your situation you should seek advice from a licensed Insolvency Practitioner.

How is an offer made and a sale agreed for the business?

The exact assets of the Company must be made known to the Insolvency Practitioner, and then reviewed by an independent Agent and Valuer, who will either confirm the amount that a purchaser must pay for the business or will use this info to consider any offers that are received for the purchase of the business (if this is the preferred route of the purchaser).

Without the Valuer's approval to the sale amounts, a sale cannot be agreed, as this independent view from a professional RCIS registered valuer on the purchase price, acts as a sign off that the sale value is fair and that the sale is in the best interests of the creditors.

Can my competitors bid against me to purchase my business?

The proposed Administrator has a duty to achieve the best outcome for the creditors of the Company and therefore must consider all offers for the business. However as the Pre-Pack process can often happen quickly to avoid the Goodwill value being diminished, the period of marketing is not extensive. The connected parties would also have a chance to view any offers received and match or better these within the process due to their close working relationship with the proposed administrator.

In reality, administrations often result in many interested parties but very few ever come up with the funds or pass the verification process when tasked with finalising their offers given that most would seek to take on aspects of the business without paying for them or awaiting to the last minute to bargain down the price so a pre packaged sale is not only a certain amount but results in the best outcome for creditors.

What are the typical sale terms or prices?

Given that a Pre Pack is a form of Administration, the objectives of ensuring rescue of the company or a better result for the creditors must still be achieved. Therefore, in order to evidence a better outcome in Administration than a Liquidation, Bridge Newland do not complete a Pre Pack sale unless it is for £25,000 or more. This can be a combination of tangible or intangible assets but must be supported by a personal guarantee if intangible. This sale value has been set as a result of our experience of Administration Application court hearings where judges are unlikely to accept any Pre-Pack sales which fall below this value as it is too comparable to sales that could be achieved in a Liquidation.

If money is tight (usually because the Purchasing Company is a new start up Company by the same management team) we can receive the sale price by way of an initial deposit of as little as 10% of the total sale price and 9 further monthly instalments. However if these deferred terms are required then the sale will be higher than if paid immediately and may need to be secured in some way.

What are the costs of a Pre Pack Administration?

The Administrator's costs will usually be paid on a time cost basis, whereby set hourly rates are charged (depending on the level of each staff). However, Administrators can also seek a set fee or a percentage of realisations (or a combination of all three basis).

The external expenses such as advertising, insurance, valuation etc are also all payable as an expense of the Administration from the realisations made during the case.

Internal expenses such as photocopying or telephone costs can be charged by the Administrator however it is not Bridge Newland's policy to charge this class of expense.

The Director of the Insolvent Company is never asked to settle these costs in addition to sale amounts as these costs are able to be drawn from the sale amounts or any other receipts (such as debtors or sundry refunds etc).

It is common for the Administrator's fees to be greater than a Liquidator's due to the additional works required to appoint the Insolvency Practitioner and reporting requirements. However as the realisations are greater, the outcome for creditors (their return) should still be better to meet the objectives of the process.

Can my Creditors reject my Pre Pack Administration?

As mentioned above, the creditors within Pre Pack Administration cases are usually not consulted with until after a Pre Pack sale is completed therefore the acceptance to the sale is not requested from them and this results in the decision regarding the suitability of a Pre-Pack being only made by either the proposed Administrator, the Court or the pre-pack pool. The Creditors are however requested to vote on a number of resolutions regarding the administration of the case which mainly involve certain proposals for costs, exit routes from Administration and controls which if consent cannot be obtained, can result in a court application being required, for a court judge to provide the consents not obtained from creditors, which can of course be rejected.

Is my Pre Pack Administration advertised?

Insolvency Practitioners now have the discretion as to whether to advertise locally to where the insolvent businesses trade from therefore most choose not to unless there are doubts as to whether the full creditor information has been received. However, adverts are always required to be placed in the London Gazette which is a London based insolvency paper which most people won't be familiar with (other than Banks who do check for notices on their clients and can freeze accounts if spotted).

Summary of Pre Pack Administrations

- It is a form of Administration where the sale is negotiated before the Administrator is appointed and completed immediately after the Administrator is appointed and therefore is the best process for continuity of trading.
- It is suitable for cases where there is interest in purchasing the business, re-employing the staff and continuing with existing contracts.
- There are various methods to appoint the Administrator based on a number of factors such as whether there are secured creditors, the pressure from creditors, the trading position, funding and whether a Winding up Petition has been presented.

- Typical sales range from £25,000 upwards and can be paid by instalments from the profits of the purchasing company providing at least a 10% deposit is paid.
- Often no open marketing of the business is done however the Insolvency Practitioner has a duty to accept the best offer for the creditors.
- The costs can be higher but are payable from the realisations and should still result in a better return for creditors.
- Creditors are not asked to approve the sale but do have a say in many other matters.
- Pre-Packs are no generally advertised locally but are advertised in the London Gazette.