

PPF Restructuring & Insolvency Team – Guidance Note 2

Pre-packaged Administrations

1. Background

- 1.1. This guidance sets out the approach adopted by the PPF to pre-packaged administrations (“pre-packs”) where the same insolvency practitioner(s) (“IP”) intends to continue as the office holder in the subsequent liquidation or company voluntary arrangement.
- 1.2. Pre-packs are used to effect the immediate transfer of the business and assets of a company to new ownership free of the liabilities of the old company. This may be for good commercial reasons and 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/investors of the old company that have 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 the pension scheme.
- 1.5. To an extent, the insolvency profession has recognised and gone some way to address this problem through the Statement of Insolvency Practice 16 (SIP16), as revised.
- 1.6. SIP16 requires the IP to provide information on the transaction and to justify why an immediate sale rather a sale with a proper post administration marketing period was required. It also requires reporting on consultation with the major creditors which are most likely to include the pension scheme where one exists.
- 1.7. Further scrutiny may also be provided through the implementation of the recommendations contained in “The Graham Report” in due course, including a review by the “Pre-pack Pool” although this will not be mandatory.

2. Issue

- 2.1. The PPF is concerned that meaningful consultation with the pension trustees / PPF is not taking place at an early stage and that transactions are presented as a “given”.
- 2.2. Scrutiny by the “Pre-pack Pool” is not mandatory and they will have very little time to fully consider and challenge the issues.
- 2.3. The administrator is appointed by the directors/debenture holder with the unsecured creditors having no say.

- 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. In the case of an administrative receivership this would not be the situation as the receiver cannot become the liquidator. The liquidator will 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 or CVA supervisor, the new IP will be able to independently review the background to the pre-pack administration and the actions of the directors & administrators.
- 2.7. The advantages of the PPF approach are:
 - Greater transparency to the process
 - Encourage early and effective consultation with the trustees & PPF
 - Help to control fees & costs
 - Act to enhance returns to unsecured creditors

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 administrators' appointment
 - Assess whether the consultation has been effective and the views of the trustees/PPF have been properly taken into account, including consideration of the costs of the process
 - Resolve to appoint an alternative IP to act as CVA supervisor or liquidator of the company (in the short term if necessary) as the exit route where there has been no or ineffective consultation and there remain concerns over the process, providing the opportunity to examine the conduct of the directors & administrators
 - 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 undertaken 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 conduct of the scheme and of the company/directors) and the rationale for the pre-pack
 - Any interaction with the Pensions Regulator
 - The method used to market the business and the outcome achieved
 - The ongoing involvement of the original shareholders, management in the business post administration

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