## STATEMENT OF INSOLVENCY PRACTICE 16

# 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, appointment.
2. The particular nature of an insolvency practitioner’s position in these circumstances renders transparency in all dealings of primary importance. Administration is a collective insolvency proceeding - 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 insolvency practitioner and the profession into disrepute.
3. An insolvency practitioner should recognise the high level interest the public and the business community have in pre-packaged sales in administration. The insolvency practitioner should assume, and plan for, greater interest in and possible scrutiny of such sales where the directors and/or shareholders of the purchasing entity are the same as, or are connected parties of, the insolvent entity.
4. It is equally important that the insolvency practitioner is seen to be acting in the interests of the company’s creditors as a whole and is able to demonstrate this clearly.

## PRINCIPLES

5. 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 following appointment. The roles are to be explained to the directors and the creditors. For the purposes of this statement of insolvency practice only, the role of "insolvency practitioner" is to be read as relating to the advisory engagement that an insolvency practitioner may have with a company in the period prior to the company entering administration. The role of "administrator" is to be read as the formal appointment as administrator after the company has entered administration. An insolvency practitioner should be mindful that a different insolvency practitioner may be the eventual administrator.
6. The administrator should provide creditors with sufficient information ("the SIP 16 statement") such that a reasonable and informed third party would conclude that the pre pack was appropriate and that the administrator has acted with due regard for the creditors’ interests. In a connected party transaction the level of detail may need to be greater.

## KEY COMPLIANCE STANDARDS

*Preparatory work*

7. 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 or any connected parties, who should be encouraged to take independent advice. This is particularly important if there is a possibility that the directors may acquire an interest in the business or assets in a pre-packaged sale.
8. An insolvency practitioner should bear in mind the duties and obligations which are owed to creditors in the pre-appointment period. The insolvency practitioner 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.
9. An insolvency practitioner should keep a detailed record of the reasoning behind both the decision to undertake a pre-packaged sale and all alternatives considered. The insolvency practitioner should advise the company that any valuations obtained are carried out by an appropriate independent valuers and/or advisors carrying adequate professional indemnity insurance for the valuation performed. If the administrator relies on a valuation or advice other than by an appropriate independent valuer and/or advisor with adequate professional indemnity insurance this should be disclosed and with the reason for doing so and the reasons that the administrator was satisfied with the valuation, explained.

*Marketing*

10. Marketing a business is an important element in ensuring that the best available price is obtained for it in the interests of the company's creditors as a whole, and will be a key factor in providing reassurance to creditors. Any marketing should conform to the marketing essentials as set out in the appendix of this statement of insolvency practice. Where there has been deviation from any of the marketing essentials, the administrator is to explain how a different strategy has delivered the best available price.

*After appointment*

11. When considering the manner of disposal of the business or assets the administrator should be able to demonstrate that the duties of an administrator under the legislation have been met.

*Disclosure*

12. An administrator should provide creditors with a detailed narrative explanation and justification of why a pre-packaged sale was undertaken and all alternatives considered, to demonstrate that the administrator has acted with due regard for their interests. The administrator should include a statement explaining the statutory purpose pursued, 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. The information disclosure requirements in the appendix should be included in the SIP 16 statement unless there are exceptional circumstances, in which case the administrator should explain why the information has not been provided. In any sale involving a connected party, it is very unlikely that considerations of commercial confidentiality alone would outweigh the need for creditors to be provided with this information.

13. 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 will provide a reasonable explanation for the delay. The SIP 16 statement together with the statement provided by any pre-pack pool member approached by the purchasing entity and any viability review prepared by that party should also be included in the administrator's statement of proposals filed at Companies House.

14. The administrator should be mindful that, if creditors have had to wait until, or near, the statutory deadline for the proposals to be issued there may be some confusion on the part of creditors when they do receive them, the sale having been completed some time before. Accordingly, when a pre-packaged sale has been undertaken, the administrator should seek the requisite approval of the proposals as soon as practicable after appointment and, ideally, the proposals should be sent with the notification of the sale. If the administrator has been unable to meet this requirement the proposals should include an explanation for the delay.

15. 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.

**Effective from 1 XX 2015**

**Marketing essentials**

Marketing a business is an important element in ensuring that the best available price is obtained for it in the interests of creditors, and will be a key factor in providing reassurance to creditors. Any marketing should conform to the following:

- **Broadcast rather than narrowcast** – the business should be marketed as widely as possible proportionate to the nature and size of the business – the purpose of the marketing is to make the business's availability known to the widest group of potential purchasers in the time available, using whatever media is likely to achieve this outcome.
- **Justify the media used –** the statement to creditors should not simply be a list of what marketing has been undertaken. It should explain the reasons underpinning the marketing and media strategy adopted.
- **Independence** - where the business has been marketed by the company prior to the insolvency practitioner being instructed, this must not be used as a justification in itself to avoid further marketing. The administrator should be satisfied as to the adequacy of the marketing undertaken.
- **Publicise rather than simply publish -** marketing should have been undertaken for an appropriate length of time to satisfy the administrator that the best deal has been sought. Creditors should be informed of the reason for the length of time settled upon.
- **Connectivity -** include online communication alongside other media by default. The internet offers one of the widest populations of any medium. If the business *isn't* marketed via the internet, this should be justified.
- **Comply or explain –** particularly with sales to connected parties where the level of interest by the public and the business community is at its highest, the administrator needs to explain how the marketing strategy has achieved the best outcome for creditors.



**Information disclosure requirements in the SIP 16 statement**

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 appointment.

The alternative options considered, both prior to and within formal insolvency by the insolvency practitioner and the company with an explanation of possible financial outcomes.

Whether efforts were made to consult with major creditors and the outcome of any consultations. If no consultation took place, the administrator should explain the reasons.

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. If no such requests were made, explain why.

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*

The marketing activities conducted by the company and/or the administrator and the outcome of those activities. Reference should be made to the marketing essentials above. Any divergence from these essentials is to be highlighted to creditors, with the reasons for such divergence, together with an explanation as to why the administrator relied upon the marketing conducted.

*Valuation of the business and assets*

The names and professional qualifications of any valuers and /or advisors and confirmation that they have confirmed their independence and that they carry appropriate levels of professional indemnity insurance. Where valuers and or advisers who do not meet these criteria have been employed, the reasons for doing so should be explained.

The valuations obtained of the business or its underlying assets. Where goodwill has been valued, an explanation and basis for the value given.

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

The rationale for the basis of the valuations obtained and an explanation of the value achieved 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 (or their associates), of the company who are involved in the management or ownership of the purchasing entity, 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 (where applicable) and the method by which this allocation of consideration was applied.
- Any options, buy-back agreements, deferred consideration or other conditions attached to the transaction.
- Details of any security taken by the administrator in respect of any deferred consideration. Where no such security has been taken, the administrator's reasons for this and the basis for his decision that none was required.
- If the sale is part of a wider transaction, a description of the other aspects of the transaction.

**Connected Party transactions only**

Where the sale has been undertaken to a party connected with the insolvent company the following additional details should be included in the statement

**Pre-pack pool**

The administrator should include one of the following in the statement –

- Whether the pre-pack pool has been approached and the opinion given by the pool member and the date of that opinion, or
- Whether the pre-pack pool has been approached and its opinion disregarded by the connected party, or
- Whether the pre-pack pool was not approached.

**Viability review**

- The insolvency practitioner should ask the connected party to provide a copy of the viability review
- Where completed, it should be attached to the SIP 16 statement.

- Where this has been requested but not received, the administrator should notify creditors of this in the SIP 16 statement.