

New rules on pre-pack sales to connected parties from 30 April 2021

From 29 March 2021, new rules come into effect which will apply to pre-pack administration sales to connected parties, commencing on or after 30 April 2021.

The Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021 (**Regulations**) apply to pre-packs, where the administrator intends to dispose of a substantial part of the company's business or assets to a connected person within 8 weeks of the start of the administration.

What is a pre-pack?

A "pre-pack" is a planned insolvency procedure where the sale of the company's business and assets is negotiated with a buyer prior to the appointment of an administrator. The sale then completes immediately or shortly after the administrator's appointment. They are an important and useful tool to achieve a rescue of a business as a going concern.

Why are they controversial?

They have been labelled as controversial over the years, when the business and assets are sold to a connected party, because creditors do not find out about the arrangement until after the event.

In order to tackle this perceived lack of transparency and criticism by creditors, the "Pre-pack Pool" was set up in 2015 to allow proposed pre-pack sales to connected parties to be considered by an independent person from the Pre-pack Pool and a view given as to whether the proposed transaction was appropriate. Referral to the Pre-Pack Pool was voluntary and consequently take up was low.

What are the new rules?

The introduction of the Regulations means that it is now mandatory for either:

- an administrator to obtain prior creditor approval to the proposed sale; or
- the buyer to obtain a report from an "Evaluator" on whether the grounds and consideration for the sale are reasonable

Whenever an administrator proposes to sell a substantial part of the company's business or assets to a connected person within 8 weeks of the start of the administration.

A summary of the requirements is set out below.

Statement of Insolvency Practice 16 (SIP16) has been updated and issued to insolvency practitioners accordingly.

'Substantial Disposal' prohibited

No substantial disposal (disposal, hiring out, or sale) of "all or a substantial part of the company's business or assets" to one or more connected persons, within first 8 weeks of administration (beginning on the day the company enters into administration) without either:

(1) creditor approval

(2) independent written opinion (qualifying report)

Qualifying report

Creditor approval

- Must be obtained by the connected party wishing to purchase assets (Purchaser)
- Report must be in writing (can be in electronic format) and state the date it was made, and be authenticated by an "Evaluator"
- Report must be provided to Administrator and Administrator must be satisfied that Evaluator had sufficient relevant knowledge and experience to make the report.
- Report must contain prescribed content, including: Evaluator's knowledge and experience; insurance details; details of relevant property; statement regarding nature of consideration; details of Purchaser's connection to the company, statement that satisfied/not satisfied that substantial disposal is reasonable; evaluator's principal reasons.
- Cannot be any changes to the asset or terms of the disposal since report made.

The Administrator must make proposals for making the disposal in statement of administrator's proposals (para 49, Schedule B1, Insolvency Act 1986)

The company's creditors must approve the proposal either: (1) without modification or (2) with modifications to which the Administrator consents.

- The Evaluator must be independent of Purchaser, Company, or administrator and must have sufficient relevant knowledge and experience for the purpose of making the report and must have professional indemnity insurance

- The Evaluator must be independent of Purchaser, Company, or administrator and must have sufficient relevant knowledge and experience for the purpose of making the report and must have professional indemnity insurance

For more information, please get in touch



Kelly Jordan
Partner

T: 0191 211 7899

M: 07711 003 800

kelly.jordan@muckle-llp.com

Muckle LLP

Time Central, 32 Gallowgate, Newcastle upon Tyne, NE1 4BF | DX 61011

Tel: 0191 211 7777 | **E:** advice@muckle-llp.com | muckle-llp.com