

## Pre Pack Administration Factsheet

<p><b>What is a Pre Pack Administration?</b></p>	<p>Essentially a pre pack administration follows the same rules and procedures as that of a conventional administration, see our information on the Administration process for further details.</p> <p>The principal difference between a conventional administration process and that of a pre pack is that the sale of the business and assets of the company, LLP or partnership is agreed with the</p>	<p>purchasing party prior to the formalities of the appointment of the Administrator actually occurring.</p> <p>Only at such time as the terms of the sale have been agreed by the relevant parties is the appointment of the Administrator actually filed in Court and immediately thereafter the sale and purchase agreement formally executed by the now duly appointed Administrator.</p>
<p><b>Who can benefit from it?</b></p>	<p>A diverse range of parties can benefit from the pre pack process such as the company, LLP or partnership, to the directors, employees and creditors.</p>	<p>The particular benefits are covered in more detail later, under the heading, 'Advantages of a pre pack administration'.</p>
<p><b>Reasons for a Pre Pack Administration</b></p>	<p>Following a review of the business by a licensed insolvency practitioner, it may be concluded, for a number of reasons, some of which are stated below, that it is in the interests of all parties to conduct a pre-packaged sale of the business:-</p> <ul style="list-style-type: none"> <li>• There is a lack of funding to enable the Administrator to be able to meet the costs associated with the continued trading of the business following the appointment of the Administrator.</li> <li>• Certain risks can be identified with continued trading of the business following the appointment of the Administrator, such as the costs associated with continued trading, the erosion of the value of the goodwill and customer base of the business and consequently the impact of this on the potential value and sale price achievable in respect of the</li> </ul>	<p>business and assets and therefore the anticipated return to creditors be they secured, preferential or unsecured.</p> <ul style="list-style-type: none"> <li>• The requirement for the immediate continuity of the business to preserve the value of the book debts due to the company from its customers, particularly in contractually based businesses.</li> <li>• Preservation of jobs and the consequent reduction in the liabilities of the company, employee contracts being transferred to the purchasing party thereby limiting claims in respect of redundancy, pay in lieu of notice, arrears of wages and holiday pay.</li> <li>• To enable the novation of potentially onerous contracts, such as contract hire and lease agreements and leases on premises.</li> </ul>

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<p>The Procedure in Brief</p>	<p>The procedure of placing the company, LLP or partnership into Administration is entirely consistent with that detailed within the Administration web pages / factsheet.</p>	<p>The key difference however being that a marketing and sales process will have been undertaken and a sale of the business and assets agreed by the relevant parties prior to appointment formally taking place.</p>
<p>Marketing &amp; Sale and the Pre Pack Pool</p>	<p><i>Marketing &amp; Sale</i></p> <p>Unless severe exceptional circumstances occur, the proposed Administrator will ensure a thorough marketing exercise has been undertaken. This will usually include a sales memorandum being circulated to a database of potential interested parties, by both the proposed Administrator and valuation agents to gauge external interest and ultimately test the market. Potential interested parties will usually be required to sign Non-Disclosure Agreements and afforded the opportunity to undertake some due diligence. In the instances where an offer is being made by the incumbent management team / directors then there is usually no requirement to carry out due diligence unless it is to satisfy external funders who are financing the acquisition.</p> <p>The amount of time afforded to the marketing process will largely depend on the circumstances of each company. It is not always viable to undertake a lengthy marketing process over a number of weeks due to the financial constraints of a business which will shortly enter into Administration. The proposed Administrator will use professional judgement and rely on the advice of valuation professionals regarding the marketing period and ultimately the agreement to the purchase price and payment terms.</p>	<p><i>Pre Pack Pool</i></p> <p>The Pre Pack Pool (the <b>Pool</b>) was introduced in November 2015 following the recommendations of an independent review into the Pre Pack process carried out for the Government.</p> <p>The aims of the Pool are to increase transparency of the pre pack process in cases involving sales of businesses and assets to connected parties (e.g. existing directors / shareholders) and provide assurance for creditors that independent business experts have reviewed the proposed transaction.</p> <p>Making an application to the Pool is voluntary and is submitted via a secure online portal at <a href="http://www.prepackpool.co.uk">www.prepackpool.co.uk</a>. The cost of making an application is £800 plus VAT, which is paid by the applicant (i.e. the connected party). Following review of the application, the Pool will issue one of three opinions: -</p> <ul style="list-style-type: none"> <li>• Nothing found to suggest the grounds of the proposed pre-packaged sale are unreasonable</li> <li>• Evidence provided has been limited in some areas, but otherwise nothing has been found to suggest that the grounds for the proposed pre-packaged sale are unreasonable</li> <li>• There is a lack of evidence to support a statement that the grounds for the proposed pre-packaged sale are reasonable</li> </ul>

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<p><b>Key Components for a Successful Administration</b></p>	<p>A number of key components to enable a successful pre pack administration procedure to be undertaken are detailed below:-</p> <ul style="list-style-type: none"> <li>• A willing purchaser in a position to be able to complete a purchase of the business and assets quickly supported by available funding.</li> <li>• Valuation of the business and assets by a qualified chartered surveyor in order to establish an acceptable sale price.</li> <li>• The cooperation of the incumbent management and employees of the business.</li> </ul>	<ul style="list-style-type: none"> <li>• Cooperation of the secured creditor, otherwise known as the qualifying floating charge holder, 'QFCH' should there be one.</li> <li>• Continued funding of the business in the short period whilst negotiations are on-going regarding a sale of the business.</li> <li>• Support of key suppliers.</li> <li>• If applicable, the continued support of the landlord of the premises.</li> </ul>
<p><b>Advantages of a Pre Pack Administration</b></p>	<p><i>The Company</i> Following the filing of a notice of intention to appoint an Administrator, see information on Administrations, creditors are precluded from taking enforcement action against the company, thus providing breathing space in which to identify and pursue a pre-packaged sale of the business and assets.</p> <p>Survival of the business as a going concern, more often than not preservation of employees' jobs and enhanced realisations for the business and assets than could otherwise be expected in the event of liquidation.</p> <p><i>Directors</i> Enhanced realisations in respect of the business and assets and, in particular, the realisation of debts due to the company from its customers in light of the continuation of the business.</p>	<p>This will provide a better prospect of repayment in full or at the very least an improved prospect of the reduction in any personal guarantees that may have been provided by the directors or other stakeholders in the business.</p> <p>Subject to certain criteria, the potential to successfully purchase the business and assets back from the duly appointed Administrator. This will provide not only survival of the business and job preservation, but will also provide a future means of income.</p> <p>It is likely to reduce the scope for S213 and 214, fraudulent or wrongful trading actions being brought against the directors.</p>

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Continued...	<p><i>Creditors</i> A better realisation of the business and assets than could otherwise be expected in a liquidation and consequently an improved prospect of a dividend becoming payable.</p> <p>A reduction in the liabilities of the company through the transfer of employment contracts to the purchasing party and onerous lease agreements including those relating to the company's premises.</p>	<p>The Administrator is required to investigate and report on the conduct of the directors.</p> <p>The Administrator can bring various actions in respect of antecedent recoveries such as actions pursuant to S238 and S239, transactions at an undervalue and preferences.</p>
Disadvantages of Administration	<p><i>Directors</i> The directors may be unsuccessful in acquiring the business, as they are outbid by an alternative party.</p>	<p><i>Creditors</i> Administration (as like in Liquidation), crystallises creditors positions in respect of amounts owed, meaning that creditors will have a claim in the Administration and are prevented from taking enforcement action to recover their individual debts against the company. All unsecured creditors rank equally in Administration and behind secured and preferential creditors.</p>

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