

Pre-Pack: a legitimate means to phoenix an insolvent company?

Using pre-packs to resurrect struggling businesses is far from being illegal and may offer significant advantages.

A pre-pack sale is a process co-ordinated by the existing management of an insolvent company where the business and assets are sold at market value to a new or related company or to the existing directors, who then re-employs the existing staff and produces the same goods or services often from the same premises. While you may think 'that is a Phoenix and is illegal' it is widely accepted as an effective process to preserve an insolvent business. In the UK there are now over 100 pre-pack sales per month, two recent examples making headlines are national retailers Officers Club and Whittard of Chelsea.

The UK Insolvency Act 1986 was revamped by the Enterprise Act in 2002, which permitted a company to appoint an administrator without judicial scrutiny. Involved at the outset the administrator will assist management in undertaking the pre-pack sale prior to their formal appointment. After terms are agreed the administrator is appointed and will then immediately sign the contract for sale.

The main advantage of a pre-pack is continuity of the "business" and when the plan is ready and a contract of purchase is drawn up, the company is quickly protected by the Court while the administrator sells the "business and assets" to the new owners. Of course, pre-packs have generated some negative publicity particularly if the former directors are seen to be simply getting rid of debts and unwanted or onerous contracts.

It should be remembered that the business was already insolvent prior to any appointment and a protracted process ending in liquidation could have been the alternative with the loss of many more jobs. Also a creditor's position can be enhanced with the preservation of the business with future contracts secured and terms re-negotiated.

If you have any questions or would like to discuss financial issues affecting your business please contact us on 0800 046 8297