

In praise of pre-packs

By Alan Meek, Head of Corporate Recovery Group, MacRoberts

If some elements of the business press are to be believed, pre-packs are even more damaging to the economy than Robert Peston.

However, I would argue that sales effected through pre-packs can be part of an economic solution rather than part of the problem.

While creditors may perceive that pre-pack arrangements are being carried out behind closed doors and with little transparency, I do believe that it is important to look at the end result that is achieved rather than simply the process that is used. For the avoidance of doubt, I do accept that pre-packs are capable of abuse. Hopefully the new SIP 16 requirements will temper the worst instances of these. However for once, let us look at the positive aspects.

The first thing to note is that these arrangements are not really new. In the past, many similar arrangements were carried out through receiverships. What is new, is that pre-packs are now carried out mainly by administrators and the additional protections available in administrations compared to receiverships can give rise to a perception that the interests of creditors are now more at risk. In truth, the rights of stakeholders (and in particular unsecured creditors) were considerably less well protected in receiverships than in administrations. Now, as a result of the prescribed part provisions of the Enterprise Act 2002, unsecured creditors will usually have a real pecuniary interest in the outcome of the pre-pack process. In addition, administrators owe duties to creditors that are far more extensive than was ever the case with receivers. Indeed, it is my belief that it is the enhanced position of ordinary creditors that is driving the current scrutiny of pre-packs.

The very speed with which pre-packs take place can be a positive benefit. If pre-packs cannot be achieved, the alternative may be that many businesses would simply close. Where funding is not available [and it is considerably less likely to be available now than in the past) it will be a brave administrator who is prepared to trade a business indefinitely in the hope of finding a potential purchaser. In these circumstances, the comparison that can be made is not between a "quick and nasty" pre-pack on the one hand and a leisurely marketing and sale process subsequently achieving optimum value for stakeholders on the other. Rather the contrast is between a successful pre-pack on the one hand and complete failure and loss of the economic entity on the other.

By saving businesses, there are significant social and economic benefits:- (i) landlords may retain a tenant (albeit it may have been persuaded to accept a lower rent going forward); (ii) suppliers may not lose significant customers completely; and (not least) (iii) many jobs may be protected. In the current economic climate, none of these benefits should be disregarded lightly.

Much of the adverse press coverage attaching to pre-packs has ignored one very fundamental point - it is not the pre-pack that creates the loss for creditors. That loss has been created by the insolvency. It is an inevitable fact of insolvency that some

parties will lose out, but I believe that the benefits that can be achieved through pre-packs mean that we should not rush to condemn or criticise those who enter into and facilitate such arrangements.

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