

## Pre-Packaged Administrations

### A Guide for Landlords

Pre-packaged administrations are highly topical at the moment and seem to be increasingly used.

A 'pre-pack' is where a company negotiates a sale of all or part of the company's business or assets, often to a related company, prior to entering administration. The administrator then effects the sale on or shortly after his appointment often leaving creditors bemused and uninformed and a landlord faced with the new company in occupation of the premises without warning.

**If you would like more information**

**please contact David Stevens**

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### Statement of Insolvency Practice

In recognition of the potential difficulties caused by "pre-pack" administrations, a new Statement of Insolvency Practice 16 ("SIP 16") came into force on 1 January 2009. The SIP 16 deals with the issue of pre-packaged sales and is designed to ensure greater transparency. It sets out the basic principles and procedures with which insolvency practitioners are required to comply.

### What does this mean for the landlords?

- The administrator must make enquiries and disclose information to creditors including:
  - Identity of the buyer
  - Any valuations obtained
  - Alternative courses of action considered
  - Consideration for the sale
  - Any connection between the buyer and the company or its directors and shareholders.
- Any creditor who feels it has been disadvantaged by misuse of the administration process can contact the Insolvency Service.
- Directors of a company who are guilty of misconduct can be disqualified and the administrator may face disciplinary action.



The SIP 16 should assist landlords in clarifying the situation. However, as previously advised in our recent Newsletter, if a landlord is concerned about a tenant's solvency, they should always:

- Check whether the tenant has entered into administration – if not, the landlord may be able to distrain for rent or forfeit the lease
- If the tenant has entered into administration, check the purpose of the administration – is it to preserve the business or sell its assets? This will enable informed decisions.
- Decide whether the landlord's aim is to preserve rental income or recover possession – steps to preserve rental income may waive the right to forfeit
- Take care when dealing with an administrator as any action which indicates an ongoing landlord and tenant relationship (such as consent to assign) is likely to waive any right to forfeit. Also acceptance of the keys for instance may amount to a surrender.
- Consider whether rent should be paid as "a necessary disbursement of the administration" or whether a notice can be served on any subtenant to divert the rent to the landlord rather than the tenant in administration.