PRE-PACKS AND COMPANY DIRECTORS' CONDUCT – SPOT THE DIFFERENCE

WELL, have you noticed? The Pre-pack Pool has been open for business for five months or so. Can you tell? Have you detected any change in approach, any shift in emphasis, since the launch in November?

I would be surprised if you have. There have been around 20 applications in those first five months, from around a dozen IP firms. That represents less than one in five of cases where there has been a sale to a connected party through a pre-pack process. So what happened in the other 80 percent of cases, where there might have been an application to the Pool, but wasn't?

The short answer to that question is that nothing happened. Those sales were completed, and the Insolvency Practitioners (IPs) reported that there was no referral to the Pool by the prospective purchaser. We can see that the reports by the IP under Statement of Insolvency Practice 16 are compliant, in that they state whether or not the Pool was consulted, and in due course we will be able to check IPs' files to verify the records relating to the dialogue with those purchasers.

But how has this affected your decision making? Is your willingness to trade with the new company affected by whether or not the Pool has opined of the merits of the pre-pack transaction?

The Pool and the professional bodies involved in the oversight group will be encouraging greater take up, but what role can creditors play in this?

That is not to suggest for one minute that new companies arising from non-Pool cases are not worthy of support. There may be very good reasons why the purchasers in those cases chose not to use the Pool, but where the reasons for not approaching the Pool are not clear or not stated, how keen will you be to support the new company? You will not have the benefit of an independent review of the pre-pack transaction – just the certainty that the purchaser made a conscious decision not to seek such a review.

Regulators can check that the IP has made the purchaser aware of the Pool and its potential benefits, but it is the buyer of the business (where there is a connected party – the connection usually being a director of the insolvency company involved in the new one) who has to spend the time and money on a Pool application. You may have a part to play in increasing take up of a procedure that has been designed and put in place to protect creditors' interests.

Directors' conduct and the disqualification regime have been brought back into sharper focus with some new measures introduced in April to streamline the reporting process by IPs. In cases commencing after 6 April, the IP will have to submit conduct reports via an online portal, providing the Insolvency Service (IS) with factual information on which it will base a decision on whether to instigate disqualification proceedings. The old legislation and SIP4 will be withdrawn in October (to allow time for reporting under old rules on cases pre-April), and a new SIP2 covering IPs' investigation and reporting requirements has been issued. The principal aim here is to give the IS the maximum opportunity to seek banning orders or undertakings where directors have acted inappropriately.

David Kerr MCICM is the Chief Executive of the Insolvency Practitioners Association (IPA).

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