

Newman & Partners

Licensed Insolvency Practitioners

RECOVERY & REVIVAL BULLETIN

Welcome to the latest issue of our Recovery and Revival Bulletin, designed to keep you up-to-date on insolvency matters that may be of interest to you. If you have any feedback on this bulletin, or would like to know more about our services or how we can help you, please contact us on **020 8357 2727** or at insolvency@newmanandpartners.co.uk

What happens to intellectual property belonging to an insolvent company?

When your client's company becomes insolvent, its intellectual property (IP) assets, such as patents, trademarks, copyrights, and trade secrets, are treated similarly to its tangible assets.

These IP assets are included in the insolvency estate, which you, as the insolvency practitioner, will manage. Within this task, your primary objective is to maximise the value of the estate for the benefit of creditors.

Ownership of the IP does not change immediately upon the company's insolvency, however. Instead, you'll step in to manage and possibly transfer these assets. Your role therefore involves assessing the IP's value and determining the best course of action, which could involve selling or licensing the IP to generate funds.

This process requires careful handling, especially in protecting the IP's value and ensuring that it remains a viable asset during the insolvency proceedings.

Valuation and sale of intellectual property

Valuing IP can be complex, as it is often a unique asset with no direct market comparison. You may need to engage specialist valuers to ascertain the fair market value of the IP as a result. This valuation considers factors such as the IP's current and potential future income, its market position, and its legal status.

Once valued, the IP can be sold as part of the asset realisation process either through a private treaty, auction, or direct negotiation with interested parties. Selling IP requires a strategic approach to attract potential buyers who can utilise the IP effectively, ensuring the highest possible return for creditors. You may also need to navigate any legal or contractual restrictions associated

with the IP, such as existing licenses or encumbrances that might affect its transferability.

Impact on ongoing business operations

For businesses relying heavily on their IP, insolvency can significantly impact their operations. If the IP is critical to the business's core activities, you'll need to carefully balance the need to realise value with the necessity of maintaining business continuity. In some cases, licensing the IP to third parties can provide an ongoing revenue stream while allowing the business to continue operating.

As an accountant, you should be aware that an insolvency situation might necessitate renegotiating existing IP licenses or service agreements. You may need to explore restructuring options that preserve the business as a going concern, which could involve retaining some or all of the IP within a reorganised entity.

Of course, during the insolvency process, your job is to guide your clients through the complexities of insolvency, ensuring that they are prepared for potential impacts on their IP assets and overall business operations.

You'll need to provide clear, strategic advice, while helping them maximise the value of their IP assets. For help with this, we strongly recommend you speak to a qualified and experienced insolvency practitioner.



For more information, please **get in touch** with our team.

Voluntary insolvency – A valid option for your client?

Voluntary insolvency is a process where a company's directors or shareholders decide to place the company into insolvency, rather than being forced into it by creditors. There are two primary types of voluntary insolvency: Creditors' Voluntary Liquidation (CVL) and Members' Voluntary Liquidation (MVL).

Creditors' Voluntary Liquidation (CVL) is initiated when a company is insolvent and can no longer pay its debts. The directors call a meeting with shareholders, where they agree to liquidate the company and appoint an insolvency practitioner to manage the process. The goal is to sell the company's assets and distribute the proceeds to creditors.

Members' Voluntary Liquidation (MVL) is used when a company is solvent, but the directors and shareholders decide to close the business. This might be due to retirement, a shift in business direction, or other strategic reasons. An MVL requires a statutory declaration of solvency from the directors, stating that the company can pay its debts in full within 12 months.

Understanding the differences between CVL and MVL is crucial for advising your clients on the right course of action, as each serves distinct purposes and has different implications for the business and its stakeholders.

Benefits of voluntary insolvency

Voluntary insolvency offers several benefits, particularly in terms of control and strategic planning.

- **Control:** Directors retain a level of control over the process, unlike compulsory liquidation, which is court-driven and often leaves directors with minimal input.
- **Creditor relations:** Initiating voluntary insolvency can demonstrate a proactive approach, potentially preserving relationships with creditors by showing a willingness to address financial difficulties responsibly.
- **Cost-effective:** Voluntary procedures tend to be less costly than compulsory liquidation, as they avoid court involvement and associated fees.
- **Employee support:** Employees may receive redundancy pay and other entitlements from the Government's Redundancy Payments Service, providing some financial security.
- **Future business prospects:** Directors of companies that undergo voluntary liquidation are not automatically disqualified from starting new businesses, allowing for future entrepreneurial activities.

Fundamentally, many of these advantages relate directly to business strategy and, as a business adviser, it's your responsibility to convey these accurately and determine which applies to your client directly.



Assessing the best course of action

Determining whether voluntary insolvency is the right option for your client requires a thorough assessment of their financial situation and business goals. As an accountant, you'll need to consider the following steps:

- **Financial analysis:** Conduct a detailed review of the company's financial statements, cash flow, and debt obligations. This analysis will help determine whether the company is insolvent, and which type of voluntary insolvency might be appropriate.
- **Alternative solutions:** Explore other options, such as restructuring, refinancing, or negotiating with creditors, before deciding on voluntary insolvency. These alternatives might provide a more favourable outcome for the business and its stakeholders.
- **Insolvency practitioner consultation:** Engage an experienced insolvency practitioner early in the process to provide expert advice and guide the company through the complexities of voluntary insolvency. Their expertise will be invaluable in ensuring a smooth and compliant process.

By carefully evaluating these factors, you can provide your clients with informed and personalised advice on whether voluntary insolvency is the best course of action. Understanding the benefits, along with a strategic assessment, will enable your clients to make decisions that align with their long-term business objectives and financial health.

For help determining whether insolvency is the best move for your client, an insolvency practitioner can be the best port of call. We'll be able to determine which option works best based on years of experience dealing with similar issues.

 For guidance in this matter, please **contact one of our insolvency practitioners.**

Key issues for purchasers in pre-pack sales

A pre-pack sale is a process in which a company arranges to sell its business or assets before the appointment of an administrator, with the sale completed immediately or shortly after the appointment. This approach maximises the value of the business, preserves jobs, and minimises disruption.

In a pre-pack sale, negotiations and arrangements for the sale occur behind the scenes, allowing for a swift transition once the company enters administration. However, there are compliance and operational risks to this approach.

Key issues in pre-pack sales

One of the primary concerns in pre-pack sales is ensuring that the assets are sold at a fair value. The Insolvency Act 1986 and the Statement of Insolvency Practice (SIP) 16 require that the administrator provides a detailed explanation and justification of the sale process to creditors. This includes the methods used to value the business and the assets, as well as the rationale for choosing the purchaser. Transparency in valuation is crucial to avoid allegations of undervaluing assets or favouring connected parties.

Administrators also have a duty to act in the best interests of creditors as a whole. A pre-pack sale may be scrutinised for perceived preferential treatment of certain creditors, particularly if the purchaser is connected to the original owners or directors of the insolvent company. SIP 16 mandates full disclosure of any such relationships and a thorough explanation of why the pre-pack sale was deemed the best option for all creditors.

Compliance with regulatory requirements is essential in pre-pack sales. This includes adherence to SIP 16, which outlines the information that must be disclosed to creditors. The administrator must also ensure compliance with the Insolvency (England and Wales) Rules 2016, which govern the conduct of administrations. Failure to comply with these regulations can result in sanctions and undermine the legitimacy of the sale.



Advantages of pre-pack sales

Having said this, pre-pack sales offer several advantages, particularly in terms of business continuity. They can provide seamless business operations, preserving the value of the business, maintaining customer relationships, and securing jobs. This is often more advantageous than a traditional administration process, which can be lengthy and disruptive.

By arranging the sale prior to entering administration, the company can avoid the fire-sale scenario often associated with insolvency proceedings. This can lead to higher realisations for the assets, which is beneficial for the creditors. The speed of the transaction can be critical in maintaining the goodwill and value of the business. The confidential nature of the negotiations can also help prevent the loss of key clients and employees, which might occur if the insolvency becomes public knowledge before the sale is arranged.

As an accountant, you should evaluate whether a pre-pack sale aligns with the specific needs and circumstances of your client's business. This involves a thorough analysis of the financial health of the company, the value of its assets, and the potential impact on stakeholders. It's essential to consider all available options, such as traditional administration, voluntary arrangements, or informal restructuring. Each option has its own implications and should be weighed against the benefits of a pre-pack sale.

Engaging with insolvency practitioners early in the process can provide you with valuable insights and guidance. An experienced practitioner can help navigate the complexities of the pre-pack process, ensuring compliance with all regulatory requirements and maximising the chances of a successful outcome for the client. The insolvency practitioner will ensure that the pre-pack sale is conducted ethically, with full transparency and fairness to all parties involved. This includes making sure that the interests of unsecured creditors are adequately considered and that the process does not unduly favour connected parties.

By carefully considering these factors, you'll be able to help your clients determine whether a pre-pack sale is the most appropriate course of action in times of financial distress.



For guidance and help in pre-pack sales, please **get in touch.**

CAREFUL CONSIDERATION IS NEEDED BEFORE TAKING OUT ANY FORM OF FINANCE AND SPECIALIST ADVICE SHOULD BE SOUGHT. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT US.

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