

“Pre-packed administrations blamed for all ills”

The UK’s insolvency regime has been blamed for allowing several well-known businesses to undergo a pre-packed Administration. A pre-packed Administration means that a sale agreement and price is agreed prior to an Administrator being appointed. This is done on the basis of valuation evidence. The business and key assets are then sold to a purchaser, who often has the same investors and management as the seller. The fact that this procedure happens quickly and with no consultation with creditors has led to suspicion that the process is designed to ‘stitch up’ the unsecured creditors, who are left with nothing.

“With certain businesses, a pre-packed Administration can actually save both company and jobs whilst avoiding any necessity to negotiate funding for the period of Administration. However, that is not to say that all pre-packed Administrations can be justified,” said Gerald Irwin of Sutton Coldfield based licensed insolvency practitioners, Irwin & Company.

In order to attempt to redress the balance and introduce greater transparency and accountability, a new code of conduct and guidance was introduced on 1 January 2009. The code requires the Administrator to provide detailed information to creditors as soon as possible after their appointment to explain why the business was sold by way of a pre-pack process. Although the changes are not legally enforceable, they are positive and should persuade insolvency practitioners to consider the appropriateness of a pre-pack, as well as minimising the risk of being sued.