Oury Clark Quick Guides:

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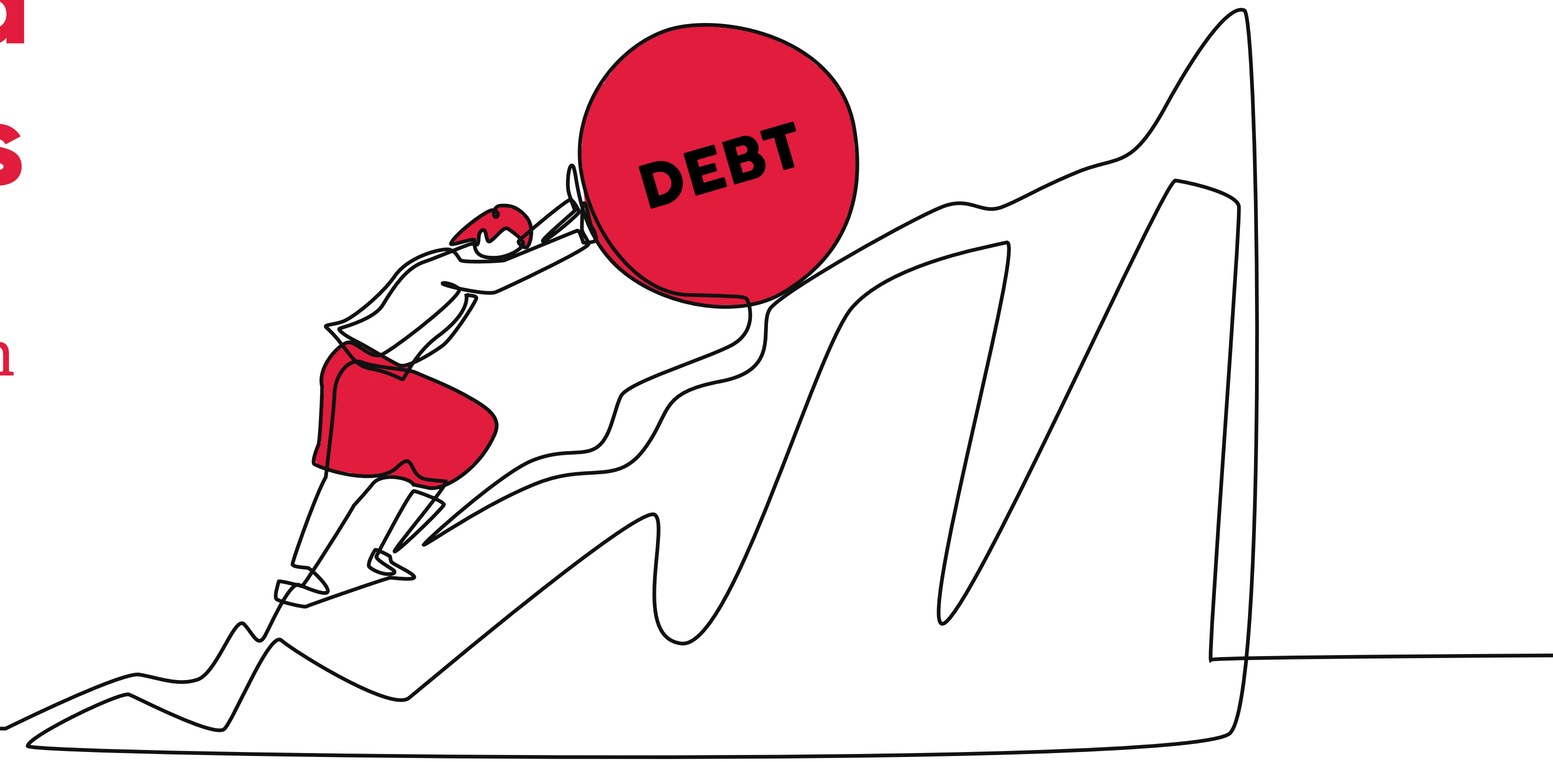
Buying a Business

Via a Pre-pack Administration



Insolvency: A23

As a result of the pandemic, a number of businesses in the UK are carrying higher levels of debt on their balance sheets. This can be as a result of loans and other support they received during the pandemic that needs to be repaid.

With inflation and interest rates rising, a number of businesses are struggling to service their debt. This leaves business owners faced with difficult decisions as creditors start to take enforcement action to recover the amounts they are owed.

After other informal remedies fail, one option considered by business owners is to buy the business and assets via a pre-pack Administration

What is a pre-pack Administration?

Broadly, a pre-pack Administration is a pre-arranged sale of the company's business and assets as a going concern.

The buyer can be a third party, trade buyer or the current directors/ owners can purchase the business via a new company.

The buyer agrees the terms of the sale with the proposed Administrator, and they complete the sale at the same time as the company enters Administration.

What is the typical process of a pre-pack Administration?

- The business and assets are valued by an independent valuer.
- The independent valuer then markets the business and assets for sale on the open market.
- Following a marketing period (where interested parties that return a non-disclosure agreement are permitted access to a data-room of company information), a deadline is set for best and final offers.
- The proposed Administrator accepts the best offer received and then instructs solicitors to prepare a sale agreement.
- The proposed Administrator may need to seek consent from any secured creditors.
- Once the terms of the sale are agreed, the sale completes at the same time as the company enters Administration.

Advantages of a pre-pack

- Speed – the process is quick and can be completed within a few weeks from the date of the first meeting with an Insolvency Practitioner.
- Higher return for creditors – the process will achieve an enhanced value for the business and assets, this will generally lead to greater returns for creditors.
- The business continues without interruption – the sale of the business will ensure continuity of trade.
- The directors may be the successful bidder – due to their knowledge of the company, often the directors of the insolvent company are best placed to purchase it.

Disadvantages of a pre-pack

- Company may be sold to a competitor – the directors of the insolvent company may get out-bid.
- Employees are protected under TUPE regulations – there is no mechanism to reduce employee costs cheaply.
- Evaluator report – new rules mean that a sale to a connected party requires an evaluator to provide a report which increases the cost.
- Any R&D tax credits are lost as the company enters a formal insolvency procedure.

FAQs

Does the buyer take on the liabilities of the insolvent business?

No, the liabilities remain with the insolvent company.

Is the buyer able to use a similar name to the insolvent company?

Yes, but there are strict rules regarding the re-use of a similar name when a company enters a formal insolvency procedure, so independent legal advice should be obtained on this point.

Do employees transfer as part of the sale?

Yes, typically employees will transfer under TUPE regulations.

How long is the business marketed for sale by the agents?

Typically for a minimum of 2 weeks but this is subject to the ability of the business to carry on trading.

When do creditors find out?

It is difficult to balance everything as the ultimate goal is to preserve the business as a going concern. This is why a number of creditors will only find out when the company enters Administration and the sale is completed.

What happens if there are no offers for the business?

The company will likely be wound-up via a liquidation.

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