SQUIRE PATTON BOGGS

Pre-pack Sales to Connected Parties

The Evaluator Process

Considerations for Administrators and Purchasers

UK – 2026

An administrator is unable to complete a sale of a substantial part of a company's property to a connected person within the first eight weeks of the administration without either:

- The approval of creditors
- An independent written opinion (positive or negative)

This alert considers the impact of obtaining an evaluator's report, which apply to both pre-packs and post-packs that take place within eight weeks of an administrator's appointment.

When is an evaluator's report required?

An administrator needs an evaluator's report (or creditor approval) **before** a substantial disposal of the company's business or assets to a connected person. The report can be obtained before an administrator is appointed but not after completion of the sale.

The alternative to obtaining a report is to seek the approval of creditors prior to completion of the sale or waiting eight weeks. However, in most cases, where the administrator is trying to enhance value for creditors through either a pre-pack or a post-pack sale, waiting eight weeks or seeking creditor approval (which is likely to take the best part of eight weeks anyway) simply will not be a realistic alternative.

How does an administrator get creditor approval?

The administrator will need to include a statement in their proposals that they are required to send to creditors in accordance with paragraph 49 of Schedule B1. The sale can then be completed once (and assuming) creditor approval is obtained.

Who is a connected party?

This is defined in paragraph 60A(3) of Schedule B1 to the Insolvency Act 1986 and covers the typical pre-pack where an administrator sells the business back to existing management/shareholders even if there is a new financial backer of the buyer.

The definition of connected person includes directors, shadow directors or other officers of the company, as well as "connected companies".

If the administrator is in doubt about whether the purchaser is a connected person, the prudent approach is to ask the purchaser to obtain a report (see further below – consequences of not obtaining a report/creditor approval).

What is a substantial disposal?

This is not defined in the regulations, but practitioners will be familiar with the concept of "all or a substantial part of the company's business or assets", which is a term used elsewhere in the insolvency legislation. They are expected to apply the same considerations when determining whether the pre-pack sale is a substantial disposal and should consider the value of the business and/or assets involved, the percentage of the business/assets that are being sold as part of the disposal and whether goodwill is included as part of the disposal.

Again, if the administrator is in doubt about whether the sale amounts to a substantial disposal, the prudent approach is to ask the purchaser to obtain a report (see further below – consequences of not obtaining a report/creditor approval).

Who is responsible for obtaining the report?

The connected party purchaser is responsible, but the administrator cannot sell without it. The report can be obtained before the administrator is appointed.

Who selects the evaluator?

Although the obligation to obtain a report rests with the connected party purchaser, the administrator will also need to be satisfied that at the time of preparing the report, the evaluator had the relevant knowledge, experience and independence. The connected party can (and arguably should) consult with the insolvency practitioner about the suitability of the evaluator before instructing them.

Where an evaluator is a member of a regulated profession, when assessing whether they have sufficient independence, the individual should consider their regulatory body's ethical code and rules regarding conflicts of interest.

How does the administrator assess whether the evaluator has the relevant knowledge, experience and independence?

The evaluator is not required to hold any professional qualifications but must have professional indemnity insurance.

An administrator can rely on the evaluator's statement regarding their knowledge, experience and independence, and can (if they have concerns) request the evaluator provide further information to support their statements. However, an administrator does not have to independently verify the evaluator's knowledge and experience unless they are dissatisfied with the information given.

It was envisaged by Parliament that an evaluator would be a solicitor, accountant or another insolvency practitioner. However, that does not rule out a non-qualified person or someone without insolvency experience from acting.

It will largely be a matter for the insolvency practitioner's risk and compliance team to determine how the administrator can get comfortable that the report was prepared by someone suitably qualified to give it, and the level of information/ evidence that they might require from the evaluator to assess that.

Assessing knowledge and experience is likely to include considering how much experience the individual has and in what field, do they have specialist knowledge (which may be advisable depending on the nature of the disposal) and what qualifications (if any) do they hold.

Are there any other checks that an administrator can do to ensure that the evaluator meets the eligibility requirements under the regulations?

The regulations require the evaluator to be independent (i.e. not connected with the company or an associate of the connected person) and have no conflict of interest.

Individuals who have advised the company within the preceding 12 months in relation to restructuring or in anticipation of an insolvency are thought not to have sufficient independence.

Certain individuals (such as those convicted of dishonesty offences or those made bankrupt) are excluded from acting as an evaluator. The administrator should make enquiries of the evaluator to satisfy themselves that the evaluator meets the eligibility requirements set out in the regulations, which could include checking the insolvency register or an individual's professional qualifications.

What has happened to the pre-pack pool?

It is worth noting that those persons who were members of the pre-pack pool (created when referrals were voluntary) do provide evaluation services. Therefore, if the administrator is in any doubt about the purchaser's choice of evaluator, using the reformed "pre-pack pool" may help overcome any compliance hurdles.

The Insolvency Service and R3 also endorse the use of the pre-pack pool but it not compulsory to use them, and, for example, instructing an independent may be preferable if the subject matter of the sale requires specialist knowledge. If using the pre-pack pool, it may also be advisable for the connected party to use an intermediary to ensure the application proceeds smoothly and in a timely manner.

What does the report need to contain?

The regulations set out certain information that must be contained in the report, including details of the property that is to be disposed of; the consideration to be paid; whether (or not) the evaluator is satisfied that the consideration and grounds for the disposal are reasonable; and how and why they have reached that conclusion.

The report also has to be in writing (it does not have to be a hard copy), but the format and structure of the report is left to the evaluator. It must, however, be dated and authenticated by the evaluator, and the report must be provided by a named individual, not a company, if it is a company offering the service.

The Insolvency Service's guidance says that a report that does not comply with the requirements set out in the regulation will be invalid. While this is only guidance, this highlights the importance to insolvency practitioners of checking that the report complies with the regulation.

It is unclear what the position is if an administrator proceeds with a sale on the basis of a report that does not comply (even if there is only a minor non-material error) because in that case, the sale will have been completed based on an invalid report.

Who prepares the report?

Previously, it was common for a referral to the pre-pack pool to be made based on a professionally prepared submission that complied with all the pre-pack pool's guidelines, and upon which the pre-pack pool then provided an opinion. The evaluator process requires the evaluator to prepare the report.

The report is then provided to the administrator (who only needs to receive a copy, not the original). However, the administrator must be satisfied that the evaluator's report contains the information set out in the regulations.

How much will it cost to obtain a report?

This is a matter for the evaluator to agree with the purchaser, but this will be an additional cost that the purchaser will have to factor into its budget. Broadly speaking the costs are similar to the costs incurred when referrals to the pre-pack pool were voluntary.

The cost of a report prepared by a pre-pack pool evaluator is £1,500.00 plus VAT, although a connected party purchaser may find it beneficial, as noted above, to engage an intermediary to assist with the application process. If they do, they will need to factor that into their costs.

What should the administrator do if the evaluator's report is not favourable?

This does not prevent a pre-pack sale, but the administrator will need to provide a statement when sending a copy of the evaluator's report to creditors, setting out their reasons for proceeding with the sale despite the unfavourable report.

The requirement to provide a statement applies either when the evaluator's report contains a "case not made" opinion or a previous evaluator's report contained such an opinion.

Can the purchaser choose between evaluators and reports?

Whilst it is open to the purchaser to obtain more than one report, if the purchaser decides to do that, the existence of a previous report must be disclosed to any subsequently appointed evaluator. The subsequent evaluator must then disclose a copy of, or give details of, the previous report in their own report. Alternatively, if they have not been provided with a copy of the previous report, the evaluator must state that fact and explain why the previous report has not been obtained.

In theory at least, any previous reports should, therefore, be notified to a subsequently appointed evaluator. However, there is no way of finding out if a previous report has been obtained if a purchaser does not willingly disclose the existence of one.

Are there any circumstances where a report is not required?

No, a report (or the alternative process of creditor approval) is required in all cases where there is a substantial disposal of the company's business or assets to a connected party within the first eight weeks of the administrator's appointment.

What if there is more than one sale? Is creditor approval or an evaluator's report required for each sale?

In cases where there is more than one sale, a report or creditor approval is required for each sale that amounts to a substantial disposal, to a connected person within the first eight weeks of the administration. Where there are multiple sales to the same connected person, one report covering all sales will be sufficient.

What if the purchaser includes more than one connected party?

If there are a number of connected parties involved in the same purchase, i.e. two or more directors, only one report is required for that transaction. An administrator does not need a separate report for each connected party – they will only need separate reports if there are multiple substantial disposals.

What is the administrator's role in the evaluator process?

Whilst the administrator has to assess whether the evaluator had the relevant knowledge, experience and independence at the time of preparing the report, practically speaking, the connected party should engage with the administrator before instructing the evaluator, to ensure that the administrator is happy that the proposed evaluator meets the eligibility requirements.

It is unlikely that between instructing the evaluator and the evaluator preparing the report there will be any change to the administrator's assessment, but the regulations require the administrator to be satisfied that the evaluator had the relevant knowledge, experience and independence at the date of the report. The administrator should factor that into compliance checks once they receive the report. Once the report is provided, the administrator must also be satisfied that it includes the required content set out in the regulations.

Prior to obtaining the report, the insolvency practitioner can (if asked) assist the evaluator with their enquiries by providing information, provided they do so in accordance with their Code of Ethics, which requires the company's consent, although they are not obliged to provide information that is commercially sensitive.

What are the administrator's post-sale obligations?

Following the completion of the sale, the administrator must send a copy of the report(s) to every creditor of the company, other than an opted-out creditor and Companies House. The administrator must, however, exclude any information that, in the administrator's opinion, is confidential or commercially sensitive.

The report(s) (including any statement explaining why the administrator proceeded with the sale despite an unfavourable report) are sent at the same time as the administrator sends a copy of their proposals.

Can the report be obtained before the administrator is appointed?

Yes, but determining when to press the button and request a report will be important because any material change to the proposed terms of purchase may necessitate a further report.

Are there any circumstances where another report might be necessary?

Yes, if there has been a material change since the date of the report to the terms or circumstances relating to the proposed substantial disposal or material change to the relevant property. What amounts to material is assessed on a case-by-case basis, but if the amount of consideration has decreased, terms of payment have altered or the percentage of assets included within the sale has increased then this might necessitate the need for a new report to ensure that the administrator is satisfied that the report is a qualifying report. Depending on the change, the evaluator might be prepared to re-issue and amend a previous report based on the changed circumstance.

Are there any other points that an administrator should consider from a compliance or regulation point of view?

As well as checking internal compliance, practitioners should ensure that they follow any guidance from their relevant professional body (RPB) and any requirements set out in SIP 16 and SIP 13. The Insolvency Service also issued guidance that helps explain the insolvency practitioners' role in the process.

Will this new process negatively impact the timing of a pre-pack sale?

In our experience the need to obtain an evaluator's report has not unnecessarily delayed completion of a sale. Previously, referrals to the pre-pack pool were dealt with in 24 to 48 and in our experience the turnaround time for preparing an evaluator report is similar.

What is the administrator's liability for breach of the regulations?

The administrator cannot make a substantial disposal of the company's business or assets to a connected person without an evaluator's report or creditor approval, but what if the administrator sells the company's property or assets having wrongly determined that the sale was not a substantial disposal or the purchaser was not connected?

The regulations do not set out a penalty for non-compliance and it is unclear what the sanction might be. However, it is likely to be considered by the practitioners RPB, and could potentially form the basis for a claim for misfeasance against the administrator. Connected person is defined in the legislation, but substantial disposal is not and is left to the administrator to assess. If in doubt, the pragmatic approach is to ask the purchaser to obtain a report.

The administrator is also required to be satisfied that the evaluator had sufficient relevant knowledge, independence and experience to make a report. There is nothing in the regulations setting out the sanction for getting that wrong, but if the administrator, acting reasonably, determines that the evaluator has the requisite knowledge, it is doubtful that the administrator could be criticised.

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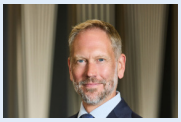

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