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Sent: 20 November 2020 08:30

To: Paul.Bannister@insolvency.gov.uk

Subject: **RE: Pre-packs!**

Dear Paul and team

I am writing in my capacity as Chair of the Insolvency Sub-Committee of the City of London Law Society. We had our quarterly meeting yesterday and one of the things that we discussed were the Draft Regulations (as defined below). Our Sub-Committee fully endorses the points made below on behalf of the ILA Technical Committee. We would be very happy to make ourselves available to discuss.

Kind regards

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Restructuring Across Borders

From: Inga.West@ashurst.com <Inga.West@ashurst.com>

Sent: 19 October 2020 12:37

To: Paul.Bannister@insolvency.gov.uk

Subject: RE: Pre-packs!

Dear Paul and team

Proposed Draft Regulations to Require Scrutiny of Pre-Pack Sales to Connected Parties ("Draft Regulations")

The ILA Technical Committee has reviewed the Draft Regulations and would like to feed back some high level comments and questions, which we hope the Insolvency Service will find useful. We have kept our comments at a high level, rather than at the detailed drafting level, on the assumption that it is intended to lay these Draft Regulations before Parliament in fairly short order and therefore there is likely to be little opportunity to take in detailed comments. If you would like further input, please let us know.

1. General: We are pleased that connected party pre-pack sales are not to be prohibited entirely, thus preserving a useful business rescue tool.
2. Purpose: Is it intended that these Draft Regulations will supplant the Pre-Pack Pool or is it to remain in existence as an evaluator (in addition to other individuals who satisfy the criteria in the Draft Regulations)?
3. Guidance: Will the proposed guidance be available in draft? If so we should be grateful for an opportunity to comment on the draft. We see the guidance as critical to the success of the evaluation process, for example limiting the impact of additional time and cost in order to ensure pre-pack transactions remain viable, particularly for SMEs.
4. Definition of "connected person"/ secured lender point: the definition of "connected person" in the Draft Regulations, which is a cross-reference from the definition in paragraph 60A Schedule B1 Insolvency Act 1986, differs from the definition of "connected party" in SIP 16. At present SIP 16 provides for voluntary reference to the pre-pack pool and the production of a viability statement in cases concerning connected parties. For good commercial reasons, the connected party provisions of SIP16 do not apply to secured lenders who hold security for the granting of the loan with related voting rights of a third or more as part of the secured lender's normal business activities, which are expressly outside of the voluntary referral regime. Will this exemption be replicated in the new Regulations by including wording along the same lines as currently appears in SIP 16? Please also confirm that steps are being taken to ensure that SIP 16 and the Draft Regulations will be consistent in this and other respects?
5. Scope for confusion between the definitions of "connected", "connected person" and "connected party": applying two different meanings to the word "connected", depending on whether it is used separately, or in the phrase "connected person", is not user-friendly drafting. When you also take into account that the phrase "connected party" in the current version of SIP16 means something different again, but is also used in the title to the Draft Regulations, this could easily lead to confusion.
6. Evaluator: The qualifications for the evaluator seem lightweight. If their opinion is to carry weight and provide confidence in the process, it is important that they are suitably qualified.
7. Liability: Consideration should be given to the potential liability of the evaluator because this will affect likely take-up of the role. The contract between the evaluator and the connected person applicant will regulate the liability as between those two parties, but the greater concern will likely be in relation to the potential for a wider duty of care to creditors of the insolvent company, and the extent to which affordable insurance in relation to this type of risk can be obtained.
8. Timing: is there any provisional timetable when these Draft Regulations are expected to become law? Will there be sufficient notice to enable pending transactions to take them into account?

If you would like to discuss any of the above points, we would be happy to arrange a virtual meeting with a sub-group of technical committee members. Meanwhile, we are grateful for the responses that you are able to give to our questions above.

Yours sincerely,

Inga West

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