

A GUIDE TO PRE-PACK ADMINISTRATIONS

What is a pre-pack?

A pre-pack administration is an arrangement under which the sale of all or part of a company's business or assets is negotiated with a buyer prior to the appointment of an administrator with the administrator effecting the sale immediately on, or shortly after, his appointment.

Practical advice - what can you do when faced with a pre-pack?

1. Keep an eye on your tenants – if you hear they have any financial problems be proactive so you may achieve a better result in the event an administrator is appointed.
2. Contact the administrator – you need to know the identity of any unauthorised occupier in your property.
3. Don't prejudice yourself – whatever happens do not waive any breach of the lease by accepting rent or otherwise acknowledging an ongoing landlord/tenant relationship. Make sure all rent demands go to the existing legal tenant.
4. Put yourself in a strong bargaining position – consider gathering evidence to assess any damage to your reversion. For example, where there is unlawful occupation by the pre-pack buyer you should assess the likely cost you will incur in recovering vacant possession.
5. If you want to forfeit the lease then try to establish the proportion of the price paid for the company that was attributable to your property. If the property was an important property in the pre-pack then this may give you some extra leverage to negotiate albeit that it may make getting an order from the court for forfeiture more difficult.
6. Consider using any rent deposit or other remedies available.
7. If you require any further advice on these issues, please contact your usual contact at Russell-Cooke.

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A LANDLORD'S OPTIONS ON CORPORATE TENANT INSOLVENCY

| | | Administration | Administrative receivership | Liquidation | Company voluntary arrangement (CVA) |
|---|------------------------------|--|--|---|--|
| Forfeiture | By peaceable re-entry | Not without the court's permission or administrator's consent | Yes | Compulsory – yes but may be challenged Voluntary – yes but may be challenged | Depends on the terms of the lease and CVA |
| | By court proceedings | Not without the court's permission or administrator's consent | Yes | Compulsory – not without the court's permission Voluntary – yes but liquidator may apply to stay proceedings | Depends on the terms of the lease and CVA |
| Drawdown on rent deposit (where held by landlord) | | Yes, subject to the terms of the rent deposit – bear in mind that this could be challenged | Yes subject to the terms of rent deposit deed | Yes subject to the terms of rent deposit deed | Yes depending on the terms of the CVA and rent deposit deed |
| Require undertenant to pay rent directly to landlord | | Yes | Yes | Yes | Yes before the CVA is approved. After CVA approved depends on the terms of the CVA |
| Can the lease be disclaimed? | | No | No | Yes | No |
| Levy distress | | Not without the court's permission or administrator's consent | Yes but the terms of the charge may permit a challenge | Compulsory – no but the court has a discretion to allow distraint to continue Voluntary – yes but liquidator can apply to stay distraint | Depends on the terms of the lease and CVA |

This table simplifies what is a complex area. We suggest you contact our Head of Insolvency, [Lee Ranford](#), to discuss any specific cases.