

Crackdown on scrutiny of pre-packs

Independent checks after creditors suffer losses

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The government is to update laws for controversial pre-pack administrations by ensuring that deals with connected parties face independent scrutiny.

Planned new legislation is designed to improve transparency after a series of high-profile pre-pack deals this year, which involved industry moguls and private equity firms buying back assets and left creditors nursing heavy losses.

An increasing number of distressed companies are expected to turn to the fast-track insolvency process in the fallout from the coronavirus pandemic.

Companies that have used pre-packs this year include Monsoon Accessorize, the fashion business founded by Peter Simon, Quiz, the Aim-listed retailer, and Bensons for Beds, which was sold back to Alteri Investors.

The move also comes in the wake of warnings from the Pre-Pack Pool, a voluntary body set up in 2015 to provide independent oversight of connected pre-packs, that it is at risk of collapse because it is being shunned. Referrals to the Pool fell to only 8 per cent of connected-party pre-packs last year, the lowest rate since its launch. Voluntary referrals are the responsibility of the connected party buyer, not the insolvency practitioner or creditors.

Pre-packs are a fast-track insolvency process in which the sale of a business is negotiated with a purchaser before the appointment of administrators, who effect the sale after their appointment. Supporters say that pre-packs rescue struggling businesses, save jobs and maximise returns to creditors. Critics

argue that they can be abused to offload debts, particularly when assets are sold to a connected party, such as a director of the failed business.

The planned legislation will require mandatory independent scrutiny of pre-pack sales to connected parties.

Lord Callanan, minister for corporate responsibility, said that the economic downturn made it “more important now than ever that people have confidence in the insolvency process. This new law will ensure all sales to connected parties are properly scrutinised, protecting the interests of creditors and the general public, as well as the distressed company.”

It is unclear who will provide the mandatory independent oversight of connected-party pre-packs, leaving the future of the Pool uncertain.

The Pool warned the Insolvency Service, part of the business department, last month that delays to the government’s report and recommendations on the future regulation of pre-packs “may serve to ensure its demise”.

Ion Fletcher, director of finance policy at the British Property Federation, whose landlord members are struggling with retailers using pre-packs to offload stores, said the changes would provide much-needed “transparency and reassurance that a sale has been completed in a fair manner”.

Colin Haig, president of R3, the trade association for insolvency professionals, which has supported mandatory referrals, said: “There is a careful balance to strike between transparency, protecting creditor value and business rescue, which these proposals support.”

