

**The transparency principle:  
“the Phoenix must be disclosed”**

**SIP 16, para. 9**

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**Introducing the cornerstones of SIP 16**

Para. 9 disclosure requirements have three obvious purposes; they are to ensure:

- Transparency;
- Demonstrable compliance with Sch. B1, para. 3;
- Demonstrable compliance with SIP 16 para. 8:
  - (i) “why a pre-packaged sale was undertaken”;
  - (ii) did the administrator act with due regard to creditors’ interests.




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**The cornerstones at a glance**

- The creditors must be provided with “a detailed explanation and justification” (SIP 16, para. 8)
- Para. 9 identifies information which “should be disclosed to creditors” in all pre-packs.
- Administrator must disclose information “of which he is aware after making appropriate enquiries” (SIP 16, para. 9)




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### 17 Areas of Disclosure

- Disclosure requirements of SIP 16 para. 9 are precise and detailed.
- Each step in the life of a pre-pack is included within the 17 categories of Para 9.
- Less is definitely not more.



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### Have we met before?

*"The source of the administrator's initial introduction"*

- the source, but not the date?
- referrals?
- is the administrator on a bank panel?
- the initial introduction, but not the most recent?



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### How well do we know each other?

*"The extent of the administrator's involvement prior to appointment"*

- who was the administrator advising: the company, the QFC or the directors?
- Meetings – how specific?
- how much information did the administrator receive?



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### What's it worth?

*"Any marketing activities conducted by the company and / or the administrator"*

- Did the company/administrator market the business?
- If so, did it receive interest from any 3<sup>rd</sup> parties?
- Not limited to formal marketing.
- If not must be able to justify decision?
- If he did, what steps did he take?



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### How much?

*"Any valuations obtained of the business or the underlying assets"*

- Should the administrator obtain more than one valuation? If he does, he must disclose all of them.
- In each case, is it necessary to set out what was valued?
- On what basis was it valued?



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### Surely there were other options?

*"The alternative courses of action that were considered by the administrator, with an explanation of financial outcomes"*

- cross-refer to Sch. B1 para. 3.
- explanation of financial outcomes = estimated outcome statement?
- this does not explicitly require an explanation of the administrator's choice of course of action.



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## Couldn't you trade it?

*"Why it was not appropriate to trade the business, and offer it for sale as a going concern, during the administration"*

*"Details of requests made to potential funders to fund working capital requirements"*

- The administrator must be able to justify his decision not to trade the business.
- What attempts were made to secure funding? By whom (the administrator / the directors) To whom (banks / other creditors / the directors)?
- Is it necessary to disclose documents sent to / received from funders, or simply that a request was made and denied?



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## I'm a creditor. Did you consult me?

*"Whether efforts were made to consult with major creditors"*

- Identifying the major creditors.
- Consulting major creditors is commercially difficult – there is a danger of destroying value (e.g. if the creditor is a supplier with ROT rights, urgency).
- The wording does not appear to impose an obligation to consult.
- The administrator must be able to justify his reasons for not consulting.



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## What did you sell?

*"Details of the assets involved, and the nature of the transaction"*

- Intangibles.
- Must detail assets involved and excluded assets.



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### How much did you get for it?

*"The consideration for the transaction, terms of payment, and any condition of the contract that could materially affect the consideration"*

- Total value.
- Not literal must reflect a reduction or increase in the monetary value of consideration.
- Not limited to monetary consideration e.g. waiver of right to prove in liquidation.



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### Is there a Phoenix?

*"The identity of the purchaser" and "Any connection between the purchaser and the directors, shareholders or secured creditors of the company"*

- How close the connection.
- Family, professional, personal.
- Extent of IP's knowledge.



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### Is there a Phoenix?

*"The names of any directors, or former directors, of the company who are involved in the management or ownership of the purchaser, or of any other entity into which any of the assets are transferred"*



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## Likely Impact of SIP 16 Para 9

What will be the impact of SIP 16, para. 9? Will it:

- lead to greater uniformity?
- measurably increase administration costs?
- erode value for creditors?
- increase the likelihood of challenges to administrators?



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