

PRE-PACKAGED APPLICATIONS IN BUSINESS REORGANISATIONS: INTERNATIONAL GUIDELINES FOR PRINCIPLES, PATTERNS AND ANTECEDENTS

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Many regimes over the world have adopted plans of reorganisations in order to better aid financially distressed businesses, rather than allowing them to run the course of liquidations or bankruptcies. Financial distress is often a consequence of severe cash-flow constraints in the businesses, resulting in inability to service debt in the ordinary course of business.

The mechanisms of the plans of reorganisations have allowed the flow of funds into distressed businesses, with pre-packaged financing being established as one such flow of funds. It is essentially an arrangement under which the sale of all or part of a company's business or assets is negotiated with a purchaser prior to the appointment of an administrator, who then effects the transaction immediately after his appointment. It has widely been adopted in regimes across Europe, Asia and the Americas. This study aims to gain a better understanding of the application of pre-packaging in select established regimes, namely the USA, UK, Canada and Australia. It is hoped that the insights would be used to build a theoretical framework on pre-packaging, thereby helping to lay the foundations for the development of the concept in other less developed regimes.

The authors aimed to firstly define or identify a set standard or principle by which pre-packaging is applied in each regime, the context under which they apply, and the nature of the regulation overseeing the application. Content analysis and comparative analysis methods were then applied to develop schematic themes by identifying common and divergent elements, for further discussion under conclusions. To begin with, the legislative literature on business reorganisations or turnarounds in the above-mentioned four regimes was studied. This literature was available in standard search engines. Secondly, scientific literature on reorganisations and turnarounds, and especially pre-packaging was searched to provide background and analysis on the given subject.

The key findings indicate that pre-packaging has different contextual applications in each regime; it developed largely through evolutionary practice, often forcing the hand of the legislators to adapt. Apart from general rescue legislation, no other legislation was found to have been passed specifically for introducing pre-packaging. Lastly, the presence of a distress-funding culture appears to play a significant role in the establishment of a pre-packaged financing market. The expectation for new business rescue regimes is the likely appearance of creeping prepacks in one form or another, and for legislators to therefore anticipate and accommodate this pattern in a sustainable manner.