

TABLE OF CONTENTS

Introduction	1
Chapter 1. Types of Cases	3
I. A Conventional Chapter 11 Case	3
II. A Prepackaged Chapter 11 Case.....	4
III. A Prenegotiated Chapter 11 Case.....	7
Chapter 2. Overview of Prepacks	9
I. Advantages of a Prepack over a Conventional Filing.....	9
A. Plan Negotiation and Solicitation Process.....	9
B. Duration of a Chapter 11 Case	10
C. Operational Impact	11
D. Oversight	12
II. Advantages of a Prepack over an Out-of-Court Restructuring...	12
A. Binding Dissenters and Hold-outs Through a Prepack.....	12
B. Treatment of Rejected Leases and Employment Contracts in a Prepack.....	14
C. Cancellation of Stock in a Prepack.....	15
D. Bankruptcy Court Approval and Finality of a Prepack Plan	16
E. Asset Sale Benefits of a Prepack.....	17
F. Other Tax Benefits of a Prepack	18
III. The Challenge of, and Drawbacks to, a Prepack	19
A. Limited Utility Other than for Financial Restructuring	19
B. Process and Execution Challenges	20
IV. Advantages of an Out-of-Court Restructuring over a Prepack...	22
A. Timing and Process.....	22

B.	Stigma of Bankruptcy and Impact on Operations	23
V.	When a Prepack May Not Be the Right Solution	23
A.	Exigent or Changed Circumstances.....	23
B.	Disparate Groups of Impaired Creditors	24
C.	Operational Restructuring Needed.....	24
Chapter 3.	The Bankruptcy Code Applied to Prepacks (and the Effect of BAPCPA).....	25
I.	New § 1125(g) of the Bankruptcy Code.....	25
II.	New § 341(e) of the Bankruptcy Code.....	29
Chapter 4.	Historical Perspective on Prepackaged Bankruptcies.....	35
I.	Prepackaged Bankruptcy Statistics	35
II.	Formalization of Prepackaged Bankruptcies.....	37
A.	Southern District of New York	38
B.	Other Jurisdictions	40
Chapter 5.	Process and Procedure in Prepackaged Bankruptcies	45
I.	Timeline Comparison	45
A.	Timeline for a Conventional Chapter 11 Case	45
B.	Timeline for a Prepackaged Chapter 11 Case	48
C.	Timeline for a Prenegotiated Chapter 11 Case.....	50
II.	Prepack Disclosure and Timing Requirements.....	50
A.	Disclosure Materials Must Contain Adequate Information.....	51
B.	“Reasonable Time” to Review Disclosure Materials	51
C.	Disclosure to Beneficial Owners.....	52
III.	Key Elements to a Prepackaged Plan	53
A.	Scheduling Motion	53
B.	Other First-Day Motions	54
C.	Creditors’ Committee Not Required.....	55

IV.	Gift Plans in Prepacks	56
	A. Origins of the Gift Plan	57
	B. Gift Plans Used in a Prepackaged Context— <i>In re DJK Residential LLC (SIRVA)</i>	58
 Chapter 6. Solicitation and Voting in Prepacks		61
I.	Overview of Solicitation of Prepackaged Plans of Reorganization	61
	A. Parties Entitled to Vote	62
	B. Disclosure Requirements	62
	C. Whom to Solicit	63
	D. Interplay with Securities Laws	63
	E. Length of Solicitation	64
II.	Disclosure Requirements as Part of a Prepetition Solicitation Process	65
	A. Adequate Information under Securities Laws	66
	B. “Adequate Disclosure” under the Bankruptcy Code	68
	C. Interplay between Subsections (b)(1) and (b)(2) of § 1126 of the Bankruptcy Code	70
III.	Solicitation and Voting Procedures in Prepackaged Chapter 11 Cases	71
	A. The Solicitation Package and Notice Requirements	72
	B. Solicitation to Beneficial Holders and Time to Consider a Plan	73
IV.	Registration Exemptions in Prepackaged Chapter 11 Cases	78
	A. Registration Exemption Pursuant to § 1145 of the Bankruptcy Code	79
	B. Registration Exemptions under the Securities Act	81
	C. Registered Offerings	88

Chapter 7. Failed Prepacks and Attempts to Prevent Failure.....	89
I. Why Do Prepacks Fail?	89
A. Perceived Unfairness among Creditor Classes.....	89
B. Trying to Do Too Much.....	90
C. Possibility of Creditor Action.....	90
II. Plan Support Agreements: Do They Really Work?	91
A. Structure of a Plan Support Agreement	91
B. How Prepackaged and Prenegotiated Plans Fail	96
C. Prepetition Plan Support Agreements in the Prenegotiated Plan Context	103
III. Launch and File, or “Straddle”	105
 Chapter 8. Summaries of Recent Significant and Instructive Prepacks.....	 107
I. Shortest Period from Filing to Confirmation.....	107
II. Largest Prepackaged Bankruptcy to Date.....	109
III. Expedited and Hotly Contested Cramdown of Unsecured Creditors	111
IV. Rejection of Proposed Disparate Treatment of Unsecured Claims and Illustration of Prepetition Marketing Process.....	114
V. Select Recent Prepackaged Bankruptcy Cases by Industry.....	119
A. Media/Entertainment	119
B. Financial Services	120
C. Energy.....	121
D. Real Estate	121
E. Retail/Manufacturing.....	121
 Appendix: Sample Plan Support Agreement	 123