
Pre-pack insolvency proceedings: The continuity of the insolvent company through express sale



It is expected that next March in Spain, once the moratorium period to file for insolvency proceedings ends (if it is not extended), an avalanche of insolvency proceedings will most likely collapse the Commercial Courts in Barcelona. Therefore, the aforementioned situation will also have a strong impact on the assets of the bankrupted companies as they will be devalued due to the resulting delay that this will entail. This situation will have detrimental consequences for everyone: less income to pay creditors, less interest in acquiring productive assets or loss of employment, among others.

Although the Spanish Insolvency Law¹ does not expressly provide it, the Commercial Judges in Barcelona are already implementing a measure which agrees with the purpose of the Directive (EU) 2019/1023 regarding precautionary restructuring framework. The aforementioned measure has been created in order to avoid the temporary and economic inconveniences that insolvency proceedings entail and to be able to sell, in an express manner and at a reasonable

¹ Also known as “Real Decreto Legislativo 1/2020, de 5 de mayo, por el que se aprueba el texto refundido de la Ley Concursal”.

price, the productive unit of a company in insolvency proceedings. This is also known as "*pre-bankruptcy package*" procedure, which is part of the pre-bankruptcy phase.

What does this procedure consist of? Essentially, it allows to carry out the sales process that consists of searching for providers and investors before the company is declared bankrupt under the supervision of an independent expert or a restructuring administrator appointed by the competent Spanish judge of the future insolvency proceeding.

This expert is the person who guarantees the transparency and regularity of the sales procedure which ensures that the insolvency judge can authorize it immediately after the declaration of insolvency. Thus, avoiding the temporary inconveniences to initiate this type of transactions that lead to the loss of value of assets and jobs.

It is, therefore, the debtor itself who, in the statement communicating the opening of negotiations with its creditors, may request the appointment of the independent expert as long as it provides proof. Such request can only be made as long as: (i) the debtor provides proof of the completed questionnaire that its published on the "*Canal Empresa*" website²; (ii) a list of representative associations, sectoral and territorial, competing companies or companies in the same value chain; (iii) as well as financial funds or investors with which the debtor has had contact or undertakes to contact, in the search for potential bidders.

The appointed expert - who will acquire the status of insolvency administrator in the future insolvency proceeding - will then issue a formal statement on the entire process. Specifically, the expert will make a report on the publicity of the process, equal opportunities for the interested parties, fair competition, the final price of the production unit, the forecast of the evolution of the valuation of the assets once the insolvency proceeding has been declared and the proposal for the implementation of one or several purchase offers. The aforementioned report is one that must attach the debtor in its request for the declaration of bankruptcy together with the final binding purchase proposals. Once the insolvency proceeding has been declared and the creditors have been notified so that they can submit their allegations on the expert's report, the judge will issue a resolution authorizing or denying the sales operation previously prepared.

What are the advantages of the "*insolvency pre-pack*"? It offers the possibility of anticipating the sales procedure without devaluing the assets and with full guarantees before the insolvency judge. This entails a greater revenue in the liquidation, a lower cost in the bankruptcy proceeding and the continuity of the productive unit that benefits suppliers, clients and the workers themselves.

² "*Canal Empresa*" Website is owned by the Catalan Government, also known as "*la Generalitat de Catalunya*". For more information, see the official website: <http://canalempresa.gencat.cat/ca/inici>.

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