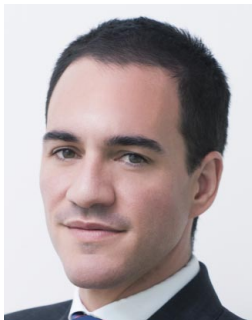


Welcome to Spain, prepacks!



JOSÉ CARLES
Founding partner
CARLES | CUESTA Abogados



CARLOS CUESTA
Founding partner
CARLES | CUESTA Abogados

José Carles and Carlos Cuesta comment on the recent ruling of a Commercial Court of Barcelona approving the first pre-packaged sale in Spain as well as on the brand-new guidelines for prepacks issued by the Commercial Courts of Barcelona

Until October 2020, prepacks were not part of the Spanish Insolvency landscape. However, the Commercial Courts of Barcelona have creatively introduced pre-packaged sales in order to allow the viability of Spanish businesses, while also preserving the formalities of sales under insolvency and duly protecting creditors.

The earliest solution available until now in Spain was to attach a binding offer to the insolvency petition. However, the sale procedure within the formal insolvency proceedings were not agile and took too much time. Thus, the binding offers expired and the value of the company severely decreased.

In July 2020, in *In re Crail Linguistics, S.L. and Linguistics Systems Institute, S.L.*, the Commercial Courts of Barcelona had to rule on an unprecedented request. In this case, the reputation (and consequent value) of the business unit (three language schools) was going to decrease rapidly because of negative comments on social media and saving the business required an agile solution. Waiting until the insolvency petition was approved, therefore, was not an option.

In such cases, Commercial Courts nr. 7 and 9 of Barcelona allowed the Spanish pre-insolvency procedure to assume a new use that was neither expressly regulated, nor forbidden under the Spanish Insolvency Law¹: to prepare a **pre-packaged sale** during the four-month pre-insolvency period under the supervision of a Court-appointed *silent trustee*.



Spanish Law does not provide for the appointment of a trustee or an insolvency receiver during this pre-insolvency period (not even for monitoring purposes) and therefore this solution was considered very disruptive. The Barcelona Courts creatively appointed an independent expert economist as a silent trustee to (i) help prepare the sale of the business **during the four months of the pre-insolvency period** and to (ii) make sure that the procedure replicates, when possible, the principles of the sale procedure within insolvency proceedings.

During the pre-insolvency period, the companies prepared the sale of the productive unit complying with certain relevant formalities. Then, they requested the opening of formal insolvency proceedings.

The *silent trustee* (who became the insolvency receiver upon the opening of the *concurso de acreedores* on 6 October 2020) filed a final report on how the sale preparation had been conducted

and included a proposal of sale. After granting a term for creditors to file their allegations, the Commercial Court no.7 of Barcelona authorised the sale, on 30 October 2020, only 24 days after the insolvency opening.

This first prepack has been the quickest sale of a productive unit under insolvency proceedings in Spain.

A couple of months later, on 20 January 2021, the Commercial Courts of Barcelona agreed on a set of standard guidelines to be applied to prepacks in Barcelona, which mainly systematise the criteria of the referred rulings.

Although these guidelines do not bind the Commercial Courts in other Spanish provinces, we expect the Spanish legislator to consider them when transposing the Directive on Restructuring and Insolvency (EU) 2019/1023). ■

Footnote:

- ¹ Pre-insolvency proceeding in Spain are mainly initiated by a formal communication filed before the Commercial Court and grant an extra three-month period to negotiate an anticipated arrangement with creditors or a refinancing agreement.



This first prepack has been the quickest sale of a productive unit under insolvency proceedings in Spain

