

The expected positive impact of (future) pre-packs on Portuguese companies



With the Proposal for a Directive (Com (2022) 702 final) dated 7 December 2022, the European Commission has presented yet another exercise in harmonising insolvency legislation. The European legislator intends to increase the efficiency of liquidation proceedings by maximising the recovery of claims in a fairer and more predictable manner, notably through pre-pack sales.

In the legal framework established by the Proposal for a Directive, pre-pack procedures are seen as a (more advantageous) alternative to insolvency procedures and, possibly, to pre-insolvency procedures. In a situation of current insolvency or probable insolvency, pre-pack procedures allow the debtor company to be sold, in whole or in part, as a going concern to the best bidder, with a view to better satisfying the interests of creditors. Pre-pack sales have become increasingly important in restructuring and insolvency proceedings in various jurisdictions.

Pre-packs are an agile and strategic alternative for companies facing financial difficulties, particularly Portuguese companies, especially in the current economic context (inflation crisis). If the company is insolvent, pre-packs are more advantageous than traditional insolvency proceedings, which usually end in a piecemeal liquidation of the company's assets, with low recovery rates. If the company is likely to be insolvent, pre-insolvency instruments tend to be more advantageous for creditors, compared to what they would receive if the company's assets were liquidated piecemeal.

However, if the sale of the active company is the most advantageous situation, the pre-pack seems to offer greater advantages compared to pre-insolvency proceedings.

In Portugal, the business fabric does include big companies, but is mostly made up of micro-, small- and medium-sized companies. Therefore, the pre-pack regime should not only be thought of with reference to large commercial transactions, but should be adapted to the economic circumstances of all companies. Pre-pack sales could be very positive in terms of the following issues:

Preserving operational viability

When a company faces financial difficulties, the interruption of its operations could have significant consequences. The quick and efficient sale of the company's assets and business allows it to continue operating under new management. This is crucial for the continuation of services provided to customers and for maintaining the trust of suppliers.

Valuation of assets

Interested buyers would be able to establish the value of the company and its assets before the sale. This would allow the assets to be valued fairly and competitively. Many companies have specialised assets, such as patented technology, trademarks, or loyal customer bases. Pre-pack sales allow the value created by the company to be preserved and reinvested in future endeavours.

Agility and efficiency

Pre-pack sales could be faster than traditional insolvency proceedings. The sale is completed quickly, minimising uncertainty, and allowing the

company to continue operating without major interruptions.

With pre-packs, companies could sell their assets quickly, so they could restructure and fulfil customer orders without delays.

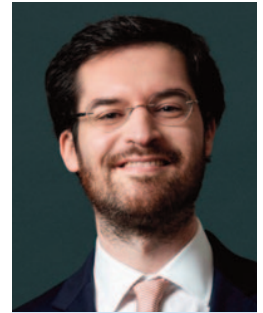
Reduced impact on creditors and employees

In pre-pack sales, the sale is pre-agreed between the company and the buyer, so it involves less intervention from creditors and stakeholders. This reduces the impact on creditors, who often face delays and uncertainty in protracted insolvency proceedings. In addition, maintaining jobs is crucial for social and economic stability. Employees can continue to work for the company under new management, avoiding mass redundancies. This is especially important in sectors where employee expertise is key (such as technology companies or specialised consultancies).

Flexibility in restructuring

During the pre-pack procedure, companies could evaluate their business strategy and make necessary adjustments: redefining objectives, identifying new markets and eliminating unprofitable areas.

If these or similar requirements are maintained in the future Directive, a significant reform/revision of Portuguese insolvency law is expected. ■



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