

The Belgian insolvency publication and registration requirements under Article 21 and Article 22 of the European Insolvency Regulation

The Belgian insolvency proceedings as referred to in article 2 (a) of the European Insolvency Regulation (hereafter referred to as EIR) are:

- bankruptcy (*het faillissement / la faillite*), regulated by the Bankruptcy Act of 8 August 1997;
- judicial composition proceedings (*het gerechtelijk akkoord / le concordat judiciaire*), regulated by the Judicial Composition Act of 17 July 1997;
- collective debt settlement (*de collectieve schuldenregeling / le régime collectif de dettes*), regulated by the Collective Debt Settlement Act of 5 July 1998.

The Belgian winding-up proceeding as referred to in article 2 (c) of the EIR is:

- bankruptcy (*het faillissement / la faillite*)

This contribution concentrates on corporate insolvency proceedings, i.e. bankruptcy and judicial composition. As the collective debt settlement applies only to individuals who are not traders, we will not elaborate on this point.

Bankruptcy is a liquidation procedure for traders (individuals or companies) who have ceased paying their debts and who are unable to obtain credit. Judicial composition is a trading reorganisation procedure. This procedure is aimed at enabling a trader in financial difficulties to reorganise and restructure in order to continue activities and pay back its creditors.

Note: Traditionally Belgian insolvency legislation adheres to the universality approach. On the one hand, if insolvency proceedings are initiated or insolvency has been pronounced in another country, this decision will be complied with in Belgium. On the other hand, the Belgian proceedings extend to the whole of the trader's assets. The liquidator has the power to collect the trader's assets wherever they may be located, in Belgium or abroad.

1 What are the publication procedures in the Belgian jurisdiction for notice of the opening of insolvency proceedings?

Bankruptcy

Belgian legislation requires publication upon the Commercial Court's decision, declaring the trader bankrupt. In accordance with article 38 of the Bankruptcy Act, the court's decision is published in the Belgian Official Gazette (*Belgisch Staatsblad* www.staatsblad.be / *Moniteur Belge* www.moniteur.be) and in at least two daily newspapers or periodicals distributed regionally.

The court's clerk is in charge of the publication of the judgement in the Belgian Official Gazette. The liquidator is responsible for the publication in the newspapers or periodicals.

Judicial composition

Pursuant to article 17 of the Judicial Composition Act, the court's decision granting a provisional composition is published in the Belgian Official Gazette and in two daily newspapers or periodicals distributed regionally.

The court's clerk is in charge of publication in the Belgian Official Gazette and in the daily newspapers or periodicals.

Pursuant to article 33 of the Judicial Composition Act, the court's decision granting the final composition is published in the Belgian Official Gazette.

The court's clerk is responsible for the publication in the Belgian Official Gazette.

2 What should a liquidator from another Member State do in practice to arrange publication in the Belgian jurisdiction of notice under Article 21 (1)?

No specific Belgian legislation has been promulgated in order to implement article 21 (1) of the EIR. The liquidator from another Member State should therefore proceed in the same way as a Belgian liquidator and act through the services of the Belgian Official Gazette directly as no local commercial court will be competent. The necessary forms can be downloaded on http://www.ejustice.just.fgov.be/tsv_pub/form_n.htm and have to be send directly to the Belgian Official Gazette.

3 If a debtor has an establishment in the Belgian jurisdiction, is it mandatory to publish there notice of the opening of insolvency proceedings in another Member State, in accordance with Article 21 (2), and if so do the procedures vary from those described in 1) and 2) above?

Article 21 (2) of the EIR was transposed by article 3 (2) of the Bankruptcy Act. The Belgian legislator introduced mandatory publication in the Belgian Official Gazette. If the debtor has an establishment in Belgium, the notice of the judgement opening insolvency proceedings in another EU country and the liquidator's identity must be published in the Belgian Official Gazette. In this particular case, the publication request should be addressed to the Commercial Court of the place of establishment.

4 In what public registers in the Belgian Jurisdiction may a judgement opening main insolvency proceedings be registered?

The judgement of a Belgian insolvency proceeding is registered in the Belgian Official Gazette and in the Crossroads Bank for Enterprises (*Kruispuntbank voor Ondernemingen / Banque-carrefour des Entreprises* <http://kbo-bce-ps.mineco.fgov.be>). The Crossroads Bank for Enterprises is an official register which collects all basic data regarding Belgian traders and their establishments, such as: name, address, legal form and legal status (i.e. result of a merger, subject to insolvency proceedings, ...).

5 What should a liquidator from another Member State do in practice to register in the Belgian jurisdiction a judgement opening main insolvency proceedings under Article 22 (1)?

No specific legislation has been promulgated in order to implement article 22 (1) of the EIR. There is no official register where this foreign judgement can be registered.

6 If a debtor has an establishment in Belgium, is it mandatory to register there notice of the opening of main insolvency proceedings in another Member State, in accordance with Art. 22 (2), and if so do the procedures vary from those described in 4) and 5) above?

Under Belgian law there is no legal text transposing Article 22 (2) and imposing registration. However, as the insolvency proceedings will be published in the Belgian

Official Gazette through the Commercial Court of the place of establishment in Belgium, the insolvency proceedings will be registered with the Court and the Crossroads Bank for Enterprises.