

The Czech Insolvency Publication and Registration Requirements under Article 21 and Article 22 of the European Insolvency Regulation

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Applicable Law:

- (a) Council regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings (the "EIR"); and
- (b) Act No. 182/2006 Coll., insolvency act, as amended (the "IA").

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

Czech insolvency proceedings start with the filing of an insolvency petition (S. 97(1) IA). The court announces the commencement of the proceedings by a decree published, within 2 hours of the receipt of the petition, both on the official notice board of the court and in the on-line insolvency register provided that if the insolvency petition is delivered to the court less than 2 hours before the end of its office hours or on non-working days, the insolvency court publishes the decree within 2 hours of the beginning of the next office hours (S. 101(1) IA). This stage of the insolvency proceedings (whose length is dependent on whether the petition is filed by the debtor or a creditor and if the latter, whether the debtor opposes it or not), ends with the issuance of the court's decision in which the court either dismisses the petition or declares the debtor insolvent. This decision is published on the official notice board of the court and in the on-line insolvency register (S. 71(1) IA).

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

Assuming it is within the powers of the liquidator from the other Member State, he should deliver the judgment opening the insolvency proceedings and the decision appointing him to the competent Czech insolvency court. Either the original decisions in question or certified copies must be submitted (if the latter, further legalisation could also be required depending on the Member State where the decision has been issued).

As regards the competency of the Czech courts, the IA is explicit only with regard to a debtor who has an establishment in the Czech Republic. In such a case, the competent court is the regional court within the jurisdiction of which such establishment is located (S. 429 IA). However, it is unclear which court would be competent in the case of a debtor who has no establishment in the Czech Republic. According to one of the Czech legal commentaries, the competency of the court in such cases should be determined with regard to the location of the

debtor's property, or the location of the registered office or habitual residence/domicile of any of the creditors, provided that the latter location is in the Czech Republic¹.

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

It is mandatory under the Czech insolvency law to publish not only the judgment opening the insolvency proceedings but also the decision on the appointment of the liquidator in the case of a debtor who has an establishment in the Czech Republic (S. 429 IA). The IA does not specify any obligation of the Czech court to arrange for the translation of the judgment opening insolvency proceedings. Although the court should arrange for the translation, it cannot be guaranteed that it will do so. As regards the publication of the decision appointing the liquidator, the court may require the translation thereof as proof of the liquidator's power to act as specified in Art 19 of the EIR. Moreover, the IA goes beyond what is stated in Art 19 of the EIR and sets out that the liquidator may be requested to provide an official translation, i.e. the translation by a translator listed in the register of translators kept by the court (S. 428 IA).

The Czech insolvency court shall publish the judgment opening the insolvency proceedings and the decision appointing the liquidator by decree on the official notice board of the court and in the on-line insolvency register immediately after the receipt thereof (S. 71(3), 429 IA).

4) In what public registers (e.g. land register, trade register) in your jurisdiction may a judgement opening main insolvency proceedings be registered?

The judgment opening main insolvency proceedings may be registered in various public registers in the Czech Republic depending on the type of property, including the Commercial Register, the Land Register, the Pledges Register, etc. As regards the proof of the liquidator's appointment, please see our answers to questions 2 and 3.

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

The IA does not provide any uniform procedural rules regarding the registration of the judgment opening the main insolvency proceedings in a public register. The rules for registration set out in special acts governing the relevant public registers will apply.

6) If a debtor has an establishment in your jurisdiction, 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?

¹ Kozák, J., Budín, P., Dadam, A., Páchl, L. *Insolvenční zákon a předpisy související* (ASPI, Praha, 2008), p. 703-704.

Czech law does not require any mandatory registration save for publication in the insolvency register as regards a debtor who has an establishment in the Czech Republic (see our answer to question 3 above).