

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

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

All publications in German insolvency proceedings required by the German Insolvency Code (InsO) are dealt with via internet only and are accessible on www.insolvenzbekanntmachungen.de, cf. art. 9 InsO. There is the possibility that states can pass regional rules for additional publication requirements, but so far none of the German states (Länder) has taken action. Only insolvency courts have access to post publications on the website.

On certain older cases, other publication requirements exist.

The need to publish a court decisions covers inter alia and above all the decision to open an insolvency proceeding, the refusal to open a proceeding for lack of funds and during the preliminary phase of the proceeding, decisions to restrict the powers of the debtor.

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

The rules are:

a) If foreign insolvency proceedings may be recognized in Germany under the EIR, the competent German court (Art. 102 § 1 EGINsO) must at the request of the foreign administrator publish the essential provisions of the foreign decision opening the case and the decision on the appointment of the foreign administrator in Germany (Art. 102 § 5 EGINsO).

If a decision opening a case has been published, the decision to close or end a case must also be published. The internet is the only option for publication (cf. 1 above).

b) If a foreign debtor has a "Niederlassung" (in terms of Art. 2 lit. h EIR) in Germany, the competent German court (Art 102 § 1 EGINsO) has an ex officio duty to publish the foreign decision opening the case and the decision on the appointment of the foreign administrator as well as any decision to close or end a case (Art. 102 § 5 para. 2 EGINsO).

c) Any foreign administrator should simply apply to the competent German court (Art 102 § 1 EGInsO) in writing in the German language. He/She may be represented by a lawyer, but there is no need to. He/She must send (i) a certified copy of the foreign court order as well as (ii) a certified copy of the foreign decision appointing him/her and (iii) if requested by the German court, a German translation of each of them (Art 19 EIR, Art 102 § 5 para. 1 EGInsO).

Under the law, no further information regarding recognition of the foreign proceedings is required. In practice, however, it is useful to provide information that the foreign court has claimed international competence under Art 3 para. 1 EIR.

Restrictions in preliminary insolvency proceedings by court order under the local insolvency law may have the effect that they will be qualified as a judgment opening insolvency proceedings in terms of Art. 16 EIR (ECJ - Eurofood). If this is the case, such judgment can be published in Germany as well.

Despite of the ex officio duty, the foreign administrator should in case of b) inform the German court if there is an establishment in Germany. If the debtor has a branch registered in the Commercial Register, the registration details will be sufficient. Otherwise information on address, lease arrangements, assets, employees and the like should be provided.

d) If the German court refuses to publish, the foreign administrator may appeal such decision (Art 102 § 7 EGInsO).

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?

See above 2) b) and c)

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

There are several registers: the commercial register (Handelsregister), land register (Grundbuch - concerning real estate), the maritime register (Schiffsregister - concerning naval vessels), the maritime construction register (Schiffsbauregister - concerning naval vessels in construction) and the register for encumbrances on aircraft (Register für Pfandrechte an Luftfahrzeugen - concerning aircraft).

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 entry of the decision on the opening of a foreign insolvency proceeding into a German public register may only be made at the request of the German court which is competent under Art 102 § 1 EGInsO. Therefore, the foreign administrator has to apply to the competent

court requesting the publication in the appropriate register (Art 102 § 6 para 1 EGInsO). The preconditions and the process are mutatis mutandis identical to 2 above.

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?

Registration under Art 22 EIR is not mandatory under German law, even in case of a German establishment.