

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

Prof. Catarina Serra

Faculty of Law - University of Minho (Braga-Portugal)

Campus de Gualtar

4710-057 BRAGA

Portugal

cssserra@gmail.com

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

Despite referring (also) to "a publication procedure", the Portuguese Insolvency Law considers, mainly, public registers.

Those registers vary according to the nature of the debtor:

- (a) a trade register if the debtor is a corporation or a trader;
- (b) a civil register if the debtor is not a corporation nor a trader and in addition to the trade register if the debtor is a trader;
- (c) a special register if the debtor lacks legal personality (v.g. a heritage) - which can be a land register or a vehicle register or any other that suits the nature of the asset, when available.

Nonetheless, the Portuguese Insolvency Law also refers to the possibility of "additional means of publicity that might be considered relevant by the Court" being adopted.

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

To arrange for the publication in Portugal, the liquidator should address any Portuguese Court located in the area of one of the establishments or, in any other case, the Lisbon Commercial Court or the Lisbon Civil Court, depending on whether the insolvency concerns a corporation or not.

The Court may ask for a translation by a certified professional according to any Member-State's Law.

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?

If the debtor owns an establishment located in Portugal, it is, indeed, mandatory.

The Portuguese Insolvency Law says the Court will provide for the publication ex officio, but this doesn't mean that the liquidator (or any other public authority of the origin Member-State) is exempted from taking the necessary action described in 2).

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

As I said before, according to the nature of the debtor:

- (a) a trade register if the debtor is a corporation or a trader;
- (b) a civil register if the debtor is not a corporation nor a merchant and in addition to the trade register if the debtor is a trader;
- (c) a special register if the debtor lacks legal personality - which can be a land register, a vehicle register, a ship register or an aircraft register.

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)?

To register in Portugal, the liquidator should also address any Portuguese Court located in the area of one of the establishments or, in any other case, the Lisbon Commercial Court or the Lisbon Civil Court, depending on whether the insolvency concerns a corporation or not.

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?

No. The Portuguese Insolvency Law only refers to the (mandatory) publication.