

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

Spanish Insolvency Act establishes a minimum publicity system without prejudice to the fact that the judge may adopt, either “ex officio”, or on request by a party, any other additional publicity measure it deems to be fitting, through official or private means, when he passes the insolvency order or at a later date.

The publication of the order through public notices is obligatory. The public notices should contain the data necessary to identify the proceedings (parties, court, record number, date of the order) and the manner in which the creditors should appear in the proceedings.

Public notices should be published, with the maximum urgency, in the Official State Gazette and in a newspaper of wide circulation in the place where the debtor has its principal center of interest and, if such center is located in a place other than its registered office, in a newspaper of the province where it has its registered office.

Additionally, the opening of insolvency proceedings must be published in the recently created telematic Register of Insolvency Resolutions (<http://www.publicidadconcursal.es>).

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

Spanish Courts have had very few occasions to resolve this matter. However, the Commercial Court of Malaga, Decision dated 2005, September 2nd, has settled a few criteria in order to get the recognition of the insolvency commencement. This decision establishes that the Court has to recognize without any formality or hearing to the parties the petition from a liquidator who has proved to be duly empowered in another Member State whenever the liquidator attaches to his petition all the documents referring to the judgment opening the insolvency proceeding he wants to be published.

In that case, the Judge should issue the writs and orders necessary for such publicity and for the registration of the insolvency order pursuant to articles 23.1, 23.2 and 24.5 of Spanish Insolvency Act (see question 1). The publicity and registration expenses are attributed to the main proceedings (recognition of which is in progress) and should be paid by the foreign liquidator.

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?

Yes, Spanish Insolvency Act establishes that the foreign procedure should be published in Spain if the debtor has an establishment in our country (article 221.3.1). The publication and registration requirements, which have the purpose of protecting eventual creditors and third parties in general, should be considered to apply to all foreign proceedings, regardless of the Member State in which they are opened. The requirements and procedure for publicity and registration are mentioned in parts 1) and 2) above.

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

Spanish Insolvency Act specifies the procedure and contents of the entries on the registers that should be made according to the circumstances of the debtor.

If the debtor is an individual, the insolvency order should be entered at the Civil Registry, recording the effects of the order on his power of management and disposal and the appointment of the insolvency administrators.

If the debtor is a legal person, the fact that it is insolvent should be entered at the Commercial Registry (companies) or the responsible public registry (e.g. association, cooperative). The entry will be preventative (until the order is made final) or ordinary (when the insolvency order is final).

According to what referred in question 1, a judgment opening an insolvency proceeding has to be registered in the telematic register of Insolvency Resolutions (<http://www.publicidadconcursal.es>).

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

Spanish Insolvency Act obliges foreign proceedings to be published in Spain if the debtor has an establishment in Spain (article 221.3.1). The liquidator should request their entry at the responsible registries from judge, for him to issue the necessary writs to make the entry at the registry. The procedure in order to get the registration of a judgment opening an insolvency proceeding fits with described in question 2.

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?

Spanish Insolvency Act obliges the insolvency proceedings to be entered at the responsible Spanish registries if the debtor has an establishment in Spain (article 221.3.2). The entry at the Spanish registries is conditional upon recognition. If recognition of the foreign insolvency proceedings has been refused, the proceedings may not be publicized through this procedure in Spain, even for informative purposes. To obtain entry of the foreign insolvency proceedings at any Spanish public registry, the foreign liquidator will have to request Commercial Court to issue the appropriate orders apt for entry at the respective registries.

Publishing and registration (Appropriate local court to petition)

Mercantile Courts are fully empowered to publish notice of the opening of insolvency proceedings and other relevant decisions. The appropriate local court to petition will depend on the location of the debtor's establishment. A directory of Spanish Mercantile Courts and the areas they cover is available through www.mju.es.

Publishing and registration (contact details)

Commercial and Civil Registries (in case of individuals) will publicity all entries they receive from Court. The appropriate local Registry will depend also on the location of the debtor's establishment. A directory of Commercial Registries can be found at www.registradores.org. Civil Registry Directory is available through http://www.justicia.es/portal/public/_s.155/253.

Official State Gazette ("BOE") is published daily and has an easy and free access through www.boe.es. Finally, the most usual newspapers used for advertising are EL PAIS, EL MUNDO, ABC, EXPANSION and CINCO DÍAS. Their respective details contact are available through their sites at www.elpais.es, www.elmundo.es, www.abc, www.expansion.com and www.cincodias.com.