

EUROPEAN INSOLVENCY REGULATION – Publication and registration requirements

Luxembourg

Preliminary note

Under Council Regulation EC n° 1346/2000 of 29 May 2000 on Insolvency proceedings (hereafter referred to as “**the Regulation**”), insolvency proceedings in Luxembourg referred to in article 2 (a) are the following :

- Bankruptcy (“faillite”)
- Controlled management (“gestion contrôlée”)
- Composition in order to avoid bankruptcy (“concordat préventif de faillite”)
- Special regulations for the liquidation of a public notary (“régime spécial de liquidation du notariat”).

Under article 2 (c) of the Regulation, proceedings concerned are :

- Bankruptcy, (“faillite”)
- Special regulations for the liquidation of a public notary (“régime spécial de liquidation du notariat”).

We will focus on the rules applicable to bankruptcy which is the main insolvency procedure in Luxembourg.

1. WHAT ARE THE PUBLICATION PROCEDURES IN YOUR JURISDICTION FOR NOTICE OF THE OPENING OF INSOLVENCY PROCEEDINGS?

Creditors are notified of the bankruptcy order by its publication in two local newspapers within three days of the bankruptcy judgement in accordance with article 472 of the Luxembourg Commercial Code. They are informed of the time-scale of the proceedings.

The Court also sends a circular to all public administrations in Luxembourg (Social security, tax authorities, trade register...). The trade register, on the basis of the information of the Court, publishes each month in Memorial B (Part B of the official bulletin giving details of laws and official announcements) a list of all bankruptcies ordered during the month and the names of the trustees.

2. WHAT SHOULD A LIQUIDATOR FROM ANOTHER MEMBER STATE DO IN PRACTICE TO ARRANGE PUBLICATION IN YOUR JURISDICTION OF NOTICE UNDER ART. 21 (1)?

A liquidator should proceed in the same way. However, in practice, we noticed that liquidators from other member states usually publish notice of the opening of insolvency proceedings in Memorial C (Part C of the official bulletin giving details of laws and official announcements).

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?

Under Luxembourg law, there is currently no legal text stating that it is mandatory to publish in Luxembourg notice of the opening of insolvency proceedings in another member state. A bill has been brought in to introduce such an obligation under Luxembourg Law (*Projet de loi portant des mesures ponctuelles en matière de prévention des faillites et de lutte contre les faillites organisées*, n° 5157). However, this bill has not been voted yet.

4. IN WHAT PUBLIC REGISTERS (E.G. LAND REGISTER, TRADE REGISTER) IN YOUR JURISDICTION MAY A JUDGEMENT OPENING MAIN INSOLVENCY PROCEEDINGS BE REGISTERED?

It is not mandatory to register a judgement opening main insolvency proceedings. However, this judgement may be registered in the Trade Register. In that case, the document should be filed with “Administration de l’Enregistrement” and then registered with the Trade register (“registre du commerce et des sociétés”)

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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)?

In order to register a judgement opening main insolvency proceedings in the trade register in Luxembourg, the following procedure shall be applied:

- Filing of the documents to be published with the “Administration de l’Enregistrement”
- Filing of the documents with the trade register “Registre de commerce et des sociétés”
- The trade register is then in charge of the publication in Memorial C (Part C of the official bulletin giving details of laws and official announcements).

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?

Under Luxembourg law, there is currently no legal text stating that it is mandatory to publish in Luxembourg notice of the opening of main insolvency proceedings in another member state. However, in practice, we noticed that liquidators from other member states usually publish notice of the opening of insolvency proceedings in Memorial C (Part C of the official bulletin giving details of laws and official announcements). The procedures will in that case, not vary from those described in 4) and 5) above.