

The Maltese Insolvency Publication Requirements under Article 21 and 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?

Under Maltese law, the Regulation covers three different types of insolvency proceedings as per Annex B of the Regulation. These are voluntary winding up, court winding up and bankruptcy proceedings. While the first two regard limited liability companies, bankruptcy proceedings are the insolvency proceedings which regard traders. The law also provides that the same proceedings apply to partnerships *en nom collectif*, partnerships *en commandite* and the limited partnerships.

Regarding publication proceedings, a voluntary winding up requires:

- 1) An extraordinary resolution for the dissolution and winding up of the company duly registered in the Registrar of Companies.
- 2) The resolution must be accompanied by the Form B(1) signed by one of the company directors or the company secretary.
- 3) If the directors issue a solvency declaration stating that the company will be able to pay its debts, the proceedings will be called a member of whole voluntary winding up. If no such declaration is issued, the proceedings will be known as a creditor's voluntary winding up.
- 4) The declaration of solvency is to be made on the form B(2) and it must be accompanied by a statement of assets and liabilities showing the situation as it was during the three months prior to the dissolution date or as it was on dissolution date.

Also of relevance is article 265 of the Companies Act:

“(1) When a company has passed a resolution for dissolution and consequential voluntary winding up, it shall, within fourteen days after the date of dissolution of the company, deliver a notice of the resolution to the Registrar for registration.

(2) If default is made by the company in complying with this article, every liquidator or officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.”

A court winding up requires:

A request to the court, called the winding up application by the company, the board of directors, debenture holders, creditors contributories, shareholders, directors or the official receiver. Such application will be registered in the Registrar of Companies.

Article 218 (1) and (8) of the Companies Act are relevant in this regard:

“(1) A request to the court (hereinafter referred to as the “winding up application”) for the (a) winding up of a company by the court in accordance with article 214(1)(a); or (b) dissolution and winding up of a company by the court in accordance with article 214(2)(a); or (c) dissolution and winding up of a company in accordance with article 214(2)(b), shall be made by means of an application which may be made either by the company following a decision of the general meeting or by its board of directors, or by any debenture holder, creditor or creditors, or by any contributory or contributories; provided that an application in terms of paragraphs (b) or (c) may also be made by any shareholder or director of the company.

(8) On the making of a winding up application, a copy thereof shall forthwith be forwarded by the Registrar of Courts to the Registrar for registration.”

Bankruptcy proceedings require:

1) That the trader makes a voluntary declaration of bankruptcy. This declaration must contain his details, details of his creditors and the nature of the debts due by him.

2) He must also file in court all his books and documents.

3) The declaration will be published in the Government Gazette by the court and also in one newspaper.

Articles 478-482 of the Commercial Code are relevant in this regard:

“478(1) The trader or his lawful representative can, on the suspension of payments, make a declaration thereof in the Civil Court, First Hall.

478(2) In case of the bankruptcy of a partnership *en nom collectif* the declaration must contain the name and the place of residence of each of the partners jointly and severally liable.

479. The declaration of the trader must contain his name and surname, and must state the nature of the business carried on by him, the name, surname and other particulars of each of his creditors together with their place of residence, and the quality and nature of the debts.

480. On making the declaration mentioned in the foregoing articles, the trader shall, at the same time, file in the Civil Court, First Hall, all his commercial books and papers.

481. Where a trader has presented any such declaration, the registrar shall, by letter, call upon the creditors mentioned in the declaration to appear before the Civil Court, First Hall, there to

show cause why their debtor should not be declared to be in a state of bankruptcy, and in order that curators may be appointed. The registrar shall cause the declaration to be published, by means of a notice containing an abstract of the same, in the Government Gazette and in one or more newspapers.

482(1) It shall also be lawful for any creditor, whether the debt owing to him is a commercial debt or otherwise, and even though such debt has not yet fallen due, to proceed summarily before the Civil Court, First Hall, against the debtor or his lawful representative, demanding a declaration that such debtor is in a state of bankruptcy.”

Regarding commercial partnerships the Companies Act states that:

“36(1) On the dissolution of a partnership, and in no case later than fourteen days after such dissolution, the partners having the administration or the representation thereof shall deliver to the Registrar for registration a notice of the dissolution:

Provided that, where a partnership is adjudged bankrupt or dissolved by order of the court, notice of the dissolution shall be given as aforesaid by the Registrar of Courts.

36(2) The following provisions of this Part shall apply to the dissolution of a partnership except where the partnership is adjudged bankrupt, in which case the provisions of the Commercial Code relating to bankruptcy shall apply.”

And thus the rules in the Commercial Code which apply for traders also apply to commercial partnerships when they are declared bankrupt or are dissolved by the court. However in other specific scenarios where the partnership is dissolved but it is not bankrupt or no dissolution order was given by the court, the dissolution will take place in the method agreed by the parties. A liquidator shall be appointed and not a curator. Such liquidator must cause a notice to be presented to the Registrar of Companies stating his name and residence.

This is found in article 37 of the Companies Act:

“37(1) Where the manner in which the partnership is to be wound up is not provided for in the deed of partnership or is not determined by agreement between the partners, the partnership shall be wound up by one or more liquidators.

37(2) If the partners do not agree as to the person who is to be appointed liquidator, the appointment shall be made by the court, on the application of any partner, creditor of the partnership or the Registrar.

37(3) The liquidator shall, within fourteen days after his appointment, deliver to the Registrar for registration a notice of his appointment stating his name and residence.”

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

Regarding companies, the Companies Act in article 290 states that:

“290(1) The liquidator shall, within fourteen days after his appointment, deliver to the Registrar for Registration a notice of his appointment stating his name and residence.

290(2) If the liquidator fails to comply with the requirements of this article, he shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.”

Regarding traders and commercial partnerships which are dissolved by the court or declared bankrupt, the Commercial Code in Article 490 states that:

“490. The curators shall cause a notice containing an abstract of the judgment declaring the bankruptcy to be published in the Government Gazette and in one or more newspapers.”

Regarding commercial partnerships which are not dissolved by the court or declared bankrupt and where no agreement was reached between the parties on the method of dissolution, Article 37(3) states that:

“37(3) The liquidator shall, within fourteen days after his appointment, deliver to the Registrar for Registration a notice of his appointment stating his name and residence.”

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 Article 21(2), and if so do the procedures vary from those described in 1 and 2 above?

If the debtor’s centre of the main interests is situated in Malta, then Maltese courts will have jurisdiction to open any of the above mentioned insolvency proceedings as the main insolvency proceedings. Judgments given should then be effective across the EU. When the registered office of a company is in Malta, it shall be presumed that the company’s centre of main interest is here and that therefore Maltese courts have jurisdiction.

Even if the main proceedings are opened outside Malta, where the debtor has an establishment in Malta, i.e. a place of operations where the debtor carries out a non-economic activity with human means and goods, then it may also be possible for secondary proceedings to be opened in Malta. The effects of these (secondary) winding up proceedings shall however be restricted to the assets of the debtor situated in Malta. Regarding such an obligation, there isn't a mandatory obligation of such a publication in another member state.

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

Voluntary and court winding up are registered in the Registrar of Companies. Also commercial partnerships which are not dissolved by the court or declared bankrupt and where no agreement was reached between the parties on the method of dissolution, a notice by the liquidator has to be registered in the Registrar of Companies.

Bankruptcy of traders or when a commercial partnership is declared bankrupt or dissolved by the court, registration is performed in the Court Registry.

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

A judgment in an EU member state can be enforced without excess formalities and without hearing the case again.

Article 826 of the Code of Organisation and Civil Procedure states that:

“Saving the provisions of the British Judgments (Reciprocal Enforcement) Act, any judgment delivered by a competent court outside Malta and constituting a *res judicata* may be enforced by the competent court in Malta, in the same manner as judgments delivered in Malta, upon an application containing a demand that the enforcement of such judgment be ordered.”

Thus a simple application with the court demanding the enforcement of a judgment has to be filed for enforcement of a foreign judgment.

6. If a debtor has an establishment in your jurisdiction is it mandatory to register there notice of the opening of the main insolvency proceedings in another Member state, in accordance with Article 22(2) and if so do the procedures vary from those described in 4) and 5) above?

Regarding what are the obligations of a foreign company, Legal notice 386.05 regarding the Continuation of Companies Regulations states that:

“7. With effect from the date of the Provisional Certificate of Continuation issued by the Registrar in accordance with regulation 6:

(a) the company to which the provisional certificate of continuation relates

(i) shall continue to be a body corporate incorporated under the Act under the name designated in the declaration referred to in regulation 4(d), and shall be deemed as provisionally registered in Malta for all purposes of law;

(ii) is subject to all the obligations and capable of exercising all the powers of a company registered under the Act.”

Thus the law imposes identical obligations on foreign companies which have a place of operation in Malta.