

PUBLICATION AND REGISTRATION REQUIREMENTS UNDER DUTCH INSOLVENCY LAW AND THE EUROPEAN INSOLVENCY REGULATION

1. What are the publication procedures in the Netherlands for notice of the opening of insolvency proceedings?

Under Dutch law the clerk of the court:

- i) notifies the postal administration of the bankruptcy order, and
- ii) publishes an extract of the bankruptcy order in the *Official Gazette*.

In local insolvency proceedings the trustee has no tasks regarding publication.

2. What should a liquidator from another Member State do in practice to arrange publication in the Netherlands for notice of insolvency proceedings?

The liquidator should send a letter to the clerk of the District Court of The Hague, preferably also by fax and/or email, containing:

- i) the following information ("the Relevant Information"):
 - the details of the natural or legal person subject to the insolvency proceedings;
 - the name of the court that opened the insolvency proceedings, the date of the court order, and, if applicable, the date the court order came into effect (retrospective effect);
 - the name and contact details of the appointed liquidator(s);
 - the provisions of local law on which the insolvency proceedings are based and the terminology used to refer to the proceedings and the appointed liquidator (e.g. "*Administration*" and "*administrators*");
 - whether the insolvency proceedings are based on Article 3(1) or Article 3(2) of the EIR (*main or secondary proceedings*)

It may also be helpful to provide a (very) brief description of the nature and main characteristics of the insolvency proceedings, to mention the period of appeal and to specify the persons who have the right to lodge an appeal.
- ii) a copy of the bankruptcy order (including all annexes) and, if applicable, the decision appointing the liquidator;
- iii) a Dutch translation of the bankruptcy order and the order appointing the liquidators;

- iv) an original extract on the insolvent company from the trade register. The extract may not be older than one month. The court refuses print-outs of online extracts;
- v) a request to publish the Relevant Information pursuant to and in accordance with Article 14(4) of the Dutch Insolvency Act (*artikel 14 lid 4 Fw*);
- vi) a request to enter the Relevant Information into:
 - the public register as referred to in Article 19 and 19b of the Dutch Insolvency Act (*artikel 19/19b Fw*);
 - the central register as referred to in Article 19a of the Dutch Insolvency Act (*artikel 19a Fw*)
 - and to procure that the Relevant Information is entered into the trade register.
- vii) a request for written confirmation that publication and registration according to the above has taken place.

The letter should be addressed to:

District Court of The Hague
Insolvency Department, office P2-1501
Prins Clauslaan 60
PB 20302
2500 EH The Hague, the Netherlands
Email: insolventiekamer@sgarr.drp.minjus.nl

Contact person: Mrs. N.B.H. Oosterveer-Doorneveld
Direct phone: +31 (0)70 381 3199
Direct fax: +31 (0)70 381 1954
Direct email: n.oosterveer-doorneveld@rechtspraak.nl

Under Dutch law, the information referred to in Article 21 EIR may be submitted to the court in English, German, French or Dutch.

3. If the debtor has an establishment in the Netherlands, is it mandatory to publish there notice of the opening of insolvency proceedings in another Member State, in accordance with Article 21(2) EIR, and if so, do the procedures vary from those described above.

If the debtor has an establishment in the Netherlands, publication of the insolvency proceedings in the Netherlands is mandatory. A foreign liquidator should follow the procedure outlined in 2 above.

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

- public register (as referred to in Article 19 and 19b of the Dutch Insolvency Act);
- central register (as referred to in Article 19a of the Dutch Insolvency Act);
- trade register.

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) EIR?

Regarding registration in the public and central register. The foreign liquidator should send a letter to the District Court of the Hague as described under 2. If a foreign liquidator requests the District Court of the Hague to publish the opening of foreign insolvency proceedings, the clerk of the court is automatically obliged to enter the insolvency proceedings into the public register and the central register (Articles 19-19b of the Dutch Insolvency Act).

Regarding registration in the trade register. If the debtor is a natural person or a legal entity incorporated under Dutch law, the clerk of the District court is responsible for registration of the insolvency proceedings in the trade register (*artikel 27, lid 2, Handelsregisterbesluit 1996*).

If the debtor, however, is a legal entity incorporated under foreign law, the liquidator himself is responsible for giving notice of the opening of the insolvency proceedings to the trade register (*artikel 27 lid 3 Handelsregisterbesluit*). The liquidator should send a letter, with a request to enter the opening of the insolvency proceedings (and other relevant information) into the trade register, to the office of the trade register where the company is registered (see *mutatis mutandis* under 2 above). The (officers of the) company should know at which office the company is registered and have the contact and address details (see also – in Dutch – www.kvk.nl). Trade registers have limited experience with foreign insolvency proceedings and it is advisable to seek local assistance in communicating with and instructing the trade register.

6. If a debtor has an establishment in the Netherlands, is it mandatory to register there notice of main 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.

Pursuant to Article 19b of the Dutch Insolvency Act, if a foreign liquidator requests publication of the opening of the insolvency proceedings (according to the procedure outlined under 2), the court is automatically required to enter the Relevant Information into the public register and central register. No further action by the liquidator regarding registration in the *public register* and the *central register* is required.

If the debtor is registered in the Dutch trade register, action by the liquidator regarding notification of the insolvency in the *trade register* may be required as outlined under 5) above.
