

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

Pursuant to Sec 218 of the Austrian Bankruptcy Act, the application for notice of the opening of foreign insolvency proceedings, as provided by the EIR, shall be filled-in at the Commercial Court Vienna. Then, it is the duty of the Commercial court Vienna to enter the notice of the opening and the available data of the respective insolvency proceedings into the edicts database (“Ediktsdatei”).

The edicts database is an official, publicly accessible database provided by the Austrian Ministry of Justice for the publishing of court announcements. It can be reached under www.edikte.justiz.gv.at. With its entering into the database, the announcement is considered as being published. Inter alia, the edicts database contains the insolvency database in which openings and closings of insolvency proceedings as well as court resolutions passed by insolvency courts during the insolvency procedure are published.

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

As already described above, a liquidator from another Member State should fill-in an application for the notice of the opening of the insolvency proceedings at the Commercial Court Vienna. Contact details for Commercial Court Vienna are the following:

Handelsgericht Wien
Justizzentrum Wien Mitte
Marxergasse 1a, 1030 Wien
Tel: +43 1 515 28, Fax: 515 28 576

Furthermore, in the application, the following data shall be contained:

- notation of the opening court and its address;
- names (firm) of the debtor, address of the debtor, the seat of the enterprise (of the establishment), the number under which the debtor is registered in the Commercial Register - if applicable - or, respectively, the birth date of the debtor;
- the main contents of the opening judgement, in particular the specification if the jurisdiction rule applies to Article 3(1) or Article 3(2) EIR;
- names, address, telephone and fax number, e-mail address of the liquidator and, if a liquidator is a legal person, the person who represents the liquidator in exercising the powers;
- call for creditors to lodge their claims within a specified period of time.

After the application has been filled-in, the Commercial Court shall, together with the notice of the opening of insolvency proceedings, enter the above mentioned data into the edicts database. With the entering into the edicts database, the notice is regarded as being published. Thus, no further actions of liquidator are required.

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 a debtor has an establishment in inland, and, in accordance to the EIR, a main insolvency proceeding has been opened abroad, the publishing of the notice of the opening of insolvency proceedings is mandatory pursuant to Sec 219 of the Austrian Bankruptcy Act. The procedure in order to get the opening of the proceedings published does not differ from the procedure described under point 2).

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

Beside the edicts database, the judgement opening main insolvency proceedings may be registered in the Commercial register and in the land register. In case that a debtor possesses immovable property or an establishment in inland, the liquidator of the main proceedings or the authority empowered to that effect in the Member State where the proceedings have been opened, is obliged to notice the opening of the proceedings at the competent land register court or, respectively, at the competent commercial register court.

The competent court for land register is the district court (Bezirksgericht) in the parish of which the immovable property is situated. For the entry in the commercial register, however, the land court (Landesgericht) in the parish of which the establishment is situated, is competent. For the foreign administrator, the easiest way to determine which court in the particular case is competent is to search in the online court database of the Austrian Ministry of Justice. The database is available in German, English and French and can be reached under <http://www.bmj.gv.at/>.

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)?

As described above, a liquidator shall notice the competent land register court or, respectively, commercial register court of the opening of the main proceedings. Given the case, the law stipulates the duty of the respective court to enter the opening of the proceedings into the register.

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?

If a debtor has an establishment in the Austrian jurisdiction, it is mandatory to register the opening of main procedures in another Member State in the Austrian commercial register. Furthermore, the law explicitly stipulates that the liquidator is liable to any involved party for property detriments arisen due to the breach of these duties. The procedure concerning the notice does not differ from the procedure described under points 4) and 5).