

**PUBLICATION AND REGISTRATION REQUIREMENTS UNDER ENGLISH
INSOLVENCY LAW AND THE EUROPEAN INSOLVENCY REGULATION
(RESPONSE TO CHRIS LAUGHTON EMAIL SENT 16 MARCH 2006 – 9:54 HRS)**

TO: CHRIS LAUGHTON

Please find below my responses to the six questions raised in your email of 16 March 2006, 9:54hrs.

Please note: (i) this note deals only with the publication and registration requirements in relation to the commencement of formal insolvency processes under English insolvency law, and not in relation to events beyond this that may happen in the insolvency; (ii) the term “liquidator” has the wide meaning given to it the European Insolvency Regulation; and (iii) the various requirements to report to court that exist in relation to some of the English formal insolvency processes are not included in what follows.

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

1.1 The place and time limits for publication vary depending on the type of insolvency process, as the summary table at **schedule 1** illustrates in some detail. However as general guidance on place for publication, for both corporate and non-corporate debtors, notice should be published in:

1.1.1 the **London Gazette** (an official newspaper for filing public notices of this kind); and

1.1.2 such **newspaper** as the liquidator thinks appropriate to ensure that it comes to the attention of the debtor’s creditors and members. Depending on the particular facts in the case, in practice this may involve publishing in: (i) one or more newspaper(s) local to where the debtor has its registered office and/or operates; and/or (ii) one or more national newspaper(s); and/or (iii) one or more international newspaper(s).

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

2.1 A foreign liquidator wishing to exercise his discretion to publish, may arrange for publication as follows, for both corporate and non-corporate debtors:

2.1.1 in the **London Gazette**. Relevant contact details are: The London Gazette, PO Box 7923, London SE1 5ZH; web-site: www.gazette-online.co.uk; email london.gazette@tso.co.uk; telephone: +44(0) 20 7394 4517. The typical cost is in the region of £30-80; and

2.1.2 in one or more of the following **newspapers** as he thinks appropriate to bring the notice to the attention of the debtor’s creditors and members

(a) a newspaper local to where the debtor has its registered office and/or operates. The typical cost is in the region of £150-200;

(b) a national newspaper, e.g: The Times (web-site: www.timesonline.co.uk); The Telegraph (web-site: www.telegraph.co.uk). The typical cost is in the region of £250-400;

(c) an international newspaper.

2.2 When publishing, the liquidator should note the requirements under Article 21(1) that the publication should specify: (i) the liquidator appointed; and (ii) whether the jurisdiction rule applied is that pursuant to Article 3(1) (main insolvency proceedings) or Article 3(2) (territorial insolvency proceedings).

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?

3.1 No legislation has been enacted in England and Wales requiring mandatory publication under Article 21(2), and no special forms have been prescribed. A foreign liquidator wishing to exercise his discretion to publish, should in so far as is possible, follow the procedures outlined above.

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

Corporate debtor

4.1 In respect of a corporate debtor, the judgment may be registered at the **registrar of companies**, known also as Companies House. The time limits and forms vary depending on the type of insolvency process, as the summary table at **schedule 1** illustrates in some detail.

Non-corporate (individual) debtor

4.2 In respect of a non-corporate (individual) debtor, as the summary table at **schedule 1** illustrates in more detail, the judgment may be registered

4.2.1 with the **Secretary of State**, for inclusion on the **Individual Insolvency Register**; and if it is a bankruptcy proceeding,

4.2.2 with the **Chief Land Registrar**, at the Land 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)?

Corporate debtor

5.1 In respect of a corporate debtor, a foreign liquidator wishing to exercise his discretion to register a judgment opening main insolvency proceedings, may register it with the **registrar of companies** at Companies House. Relevant contact details are: Companies House (Liquidation Team), Crown Way, Maindy, Cardiff, CF 14 3UZ; website: www.companieshouse.gov.uk; email: enquiries@companies-house.gov.uk; telephone

+44(0) 870 33 33 636. There is no fee. Companies House has advised by telephone that it requires: (i) a copy of the judgment; (ii) an English translation of the judgment; and (iii) an explanatory covering letter, following which it will register the judgment as a miscellaneous item on the company's filing history and send a confirmatory letter to the person filing. Unlike where an English insolvency process is registered, if the company fails to meet its filing obligations (e.g. the obligation to file annual accounts) Companies House will not automatically halt a penalty dissolution process. The foreign liquidator would need to raise an express objection to halt this process.

Non-corporate (individual) debtor

- 5.2 In respect of a non-corporate (individual) debtor, a foreign liquidator wishing to exercise his discretion to register a judgment opening main insolvency proceedings, may try to register it
- 5.2.1 with the **Secretary of State** through **The Insolvency Service** (part of the **Department for Trade & Industry**), for inclusion on the **Individual Insolvency Register**. Relevant contact details are: The Insolvency Service, Room 409, 21 Bloomsbury Street, London WC1B 3SS (DX 120875 Bloomsbury 6DX); website: www.insolvency.gov.uk; telephone +44(0)207 291 6895; and if it is akin to a bankruptcy proceeding,
- 5.2.2 with the **Chief Land Registrar** at the **Land Charges Department**. Relevant contact details are: The Land Charges Department, Plumer House, Tailour Road, Plymouth PL6 5HY (DX 8249 Plymouth 3); telephone: +44(0)1752 636616. The fee is £1.
- 5.3 It is uncertain how successful such applications to register would be, not least because both of the above registrations are usually effected by communications from the court and/or the official receiver (a government employee – typically the first liquidator in a compulsory winding-up by the court). It may be necessary to enlist the help of the court and/or the official receiver to achieve the registration. Even then it may not prove possible in practice.
6. **IF A DEBTOR HAS AN ESTABLISHMENT IN YOUR JURISDICTION, IS IT MANDATORY TO REGISTER THERE NOTICE OF THE OPENING OF 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?**
- 6.1 No legislation has been enacted in England and Wales requiring mandatory registration under Article 22(2), and no special forms have been prescribed. A foreign liquidator wishing to exercise his discretion to register, should in so far as is possible follow the procedures outlined above.

Glen Flannery, Nabarro Nathanson

28 March 2006

Schedule
SUMMARY TABLE
PUBLICATION AND REGISTRATION REQUIREMENTS
IN RELATION TO COMMENCEMENT OF ENGLISH INSOLVENCY PROCESSES

“IA 1986” means the Insolvency Act 1986
“IR 1986” means the Insolvency Rules 1986
“CA 1985” means the Companies Act 1985
“Companies House” means the registrar of companies
“Gazette” means the London Gazette

CORPORATE DEBTORS

Type of Formal Insolvency Process		Requirement	Within what time frame	Under what provision
Winding-up	members voluntary (i.e. solvent)	File copy of the resolution to wind-up the company at Companies House	Within 15 days of the resolution to wind-up	s84(3) IA 1986
		File notice of the liquidator’s appointment at Companies House	Within 14 days of the liquidator’s appointment	s109(1) IA 1986 Form 600
		Publish notice of the resolution to wind-up the company in the Gazette	Within 14 days of the resolution to wind-up	s85 (1) IA 1986
		Publish notice of the liquidator’s appointment in the Gazette	Within 14 days of the liquidator’s appointment	s109(1) IA 1986 Form 600a
		Publish notice of appointment in such newspaper as the liquidator thinks appropriate to ensure that it comes to the attention of the company’s creditors and members	On the liquidator receiving his certificate of appointment	r4.106(1) IR 1986
	creditors voluntary (i.e. insolvent)	File copy of the resolution to wind-up the company at Companies House	Within 15 days of the resolution to wind-up	s84(3) IA 1986
		File notice of the liquidator’s appointment at Companies House	Within 14 days of the liquidator’s appointment	s109(1) IA 1986 Form 600
		Publish notice of the resolution to wind-up the company in the Gazette	Within 14 days of the resolution to wind-up	s85 (1) IA 1986 Form 600a
		Publish notice of the liquidator’s appointment in the Gazette	Within 14 days of the liquidator’s appointment	s109(1) IA 1986
		Publish notice of appointment in such newspaper as the liquidator	On the liquidator receiving his certificate of appointment	r4.106(1) IR 1986

		thinks appropriate to ensure that it comes to the attention of the company's creditors and members		
	Compulsory	Publish notice of petition to wind-up in Gazette File copy of the winding-up order at Companies House Publish notice of the winding-up order at the Gazette and newspaper the official receiver shall select File notice of appointment of liquidator at Companies House Publish notice of appointment in such newspaper as the liquidator thinks appropriate to ensure that it comes to the attention of the company's creditors and members	If the Company is the petitioner, not less than 7 business days before the day appointed for the hearing of the petition and otherwise, not less than 7 business days after service of the petition on the company nor less than 7 business days before the day appointed for the hearing Forthwith on the winding-up order being made Forthwith on the winding-up order being made Forthwith on the appointment being made On the liquidator receiving his certificate of appointment	r4.11(1) IR 1986 Form 4.6 s130 IA 1986 r4.21(4)(a)&(b) IR 1986 r4.106(4) IR 1986 Form 4.31 r4.106(1) IR 1986
Administration	Old style administration (ie commencing pre 15.09.2003)	File notice of order at Companies House	Forthwith after the administration order is made	s21(2) IA 1986 and r2.10(3) IR 1986 Form 2.6
		File sealed/office copy of administration order at Companies House	Within 14 days of the making of the order	s21(2) IA 1986 and r2.10(4) IR 1986 Form 2.7
		Publish notice of appointment in the Gazette and once in a newspaper which the administrator thinks fit to ensure the order comes to the attention of the creditors	Forthwith after the administration order is made	r2.10(2) IR 1986 Form 2.5
	New style administration (ie commencing)	File notice of the appointment of the administrator at Companies House	Within seven days of the point at which the administrator receives notice of his appointment, or if appointed by an administration order,	Para 46(4)&(6) Sch B1 IA 1986 Form 2.12B

	g post 15.09.2003)	Publish notice of appointment in the Gazette and once in any newspaper the administrator thinks appropriate to ensure that notice of the appointments comes to the creditors	within seven days of the making of that order As soon as reasonably practicable	r2.27(1) IR 1986 Form 2.11B
Company voluntary arrangement		File Chairman's report of the creditors' meeting at Companies House To the extent that a special/extraordinary resolution is required by the articles to approve the CVA, file copy of the resolution at Companies House File notice of commencement of a moratorium at Companies House Publish notice of commencement of a moratorium* in the Gazette and once in any newspaper the nominee thinks appropriate to ensure the notice of the commencement of the moratorium comes to the attention of the company's creditors	Forthwith Within 15 days of the passing of the resolution Forthwith on the commencement of the moratorium Forthwith on the commencement of the moratorium	r1.24(5) IR 1986 Form 1.1 s380(1) CA 1985 r1.40(3) IR 1986 Form 1.11 r1.40(2) IR 1986 Form 1.10
Administrative receivership		File notice of the appointment to Companies House A report at Companies House Publish notice of the administrative receiver's appointment in the Gazette and once in any newspaper the administrative receiver thinks fit to ensure his appointment comes to the attention of the company's creditors	Within 7 days of the appointment Within 3 months of the administrative receiver's appointment Forthwith on the appointment of the receiver	s405(1) CA 1985 s48 IA 1986 r3.2(3) IR 1986 Form 3.1A

NON-CORPORATE (INDIVIDUAL) DEBTORS

Type of Formal Insolvency Process	Requirement	Within what time frame	Under what provision
Bankruptcy	Notice of petition:- To the extent that prompt personal service of the bankruptcy petition cannot be effected, the court may direct that notice of the petition be placed in the Gazette	No time frame, but the petition can only be deemed served once the notice is in the Gazette, if not personally served	r6.14(2) IR 1986, Sch 4 para 6.16 IR 1986
	Notice of petition:- Court to notify the Chief Land Registrar with request that it be registered in the register of pending actions	Forthwith	r6.13 IR 1986 and r6.43 IR1986 Form 6.14
	Once a bankruptcy order is made, the official receiver should place notice of the order in the Gazette, in any newspaper as the official receiver thinks fit, and send to the Chief Land Registrar, for registration in the register of writs and orders affecting land	Not specified	r6.34(2) IR 1986 and r6.46 IR 1986 Form 6.26
	If the official receiver applies to the Secretary of State to have another person appointed as trustee or if the court appoints such other person, if the court allows, the trustee shall advertise his appointment in accordance with the court's directions	In accordance with court's directions	s296(4) IA 1986 s297(7) IA 1986
	If at a meeting of creditors a trustee other than the official receiver is appointed, he shall publish his appointment in such newspaper as he thinks most appropriate to bring the appointment to the attention of creditors	Forthwith after receiving certificate of appointment	r6.124(1) IR 1986
	The Secretary of State is required to maintain a register of individual insolvencies, open to public inspection, containing details of bankruptcy orders and individual voluntary arrangements		r6A IA 1986
Individual voluntary arrangement	Report details of arrangement to the Secretary of State	Immediately after Chairman of creditors' meeting has filed his report at court	r5.29(1) IR 1986

	Notify appointment of supervisor of arrangement to Secretary of State The Secretary of State is required to maintain a register of individual insolvencies, open to public inspection, containing details of bankruptcy orders and individual voluntary arrangements	Forthwith	r5.29(2) IR 1986 r6A IA 1986
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