

Application of Articles 21 and 22 of the European Insolvency Regulation in Estonia

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

The publication procedures for notice of opening of insolvency proceedings are provided for in Bankruptcy Act (hereinafter BA) (in Estonian: *pankrotiseadus*)². Section 7 of the BA stipulates that if Bankruptcy Act prescribes publication of a notice or procedural document, the notice or procedural document shall be published in the official publication *Ametlikud Teadaanded*³. A notice or procedural document may be published as an extract. A court hearing an insolvency matter may publish a notice or procedural document several times. A repeated notice shall indicate the date of the publication of the first notice.

According to section 17 subsection 2 of the BA in preparation of insolvency matter for hearing a court empowered to open insolvency proceedings *may* publish a notice concerning the time and place of the hearing of an insolvency petition in the official publication *Ametlikud Teadaanded*. In addition, if court decides to prohibit a debtor from disposal of assets without the consent of the temporary administrator as preservation measure, this decision *shall* be published in the official publication *Ametlikud Teadaanded* according to section 21 subsection 1 of the BA.

According to section 33 of the BA a court empowered to open insolvency proceedings *shall* immediately publish a notice of judgment opening insolvency proceedings in the official publication *Ametlikud Teadaanded*. If necessary, the notice shall be repeated. A repeated notice shall contain the date of publication of the first notice. A notice shall set out the name of the court which opened the insolvency proceedings, the date and time of the judgment, information concerning the debtor and the liquidator appointed, a proposal for the creditors to file their claims, the term for filing the claims, and the time and place of the first general meeting of creditors. A notice shall set out the consequences of failure to file a claim within the specified term and that performance of obligations to the benefit of the debtor shall be accepted only by the liquidator.

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² Bankruptcy Act (RT I 2003, 17, 95), passed 22 January 2003, entered into force 1 January 2004, amended by the following Acts: passed 09.12.2009 entered into force 01.01.2010 - RT I 2009, 68, 463; passed 28.01.2009 entered into force 01.05.2009 - RT I 2009, 11, 67; passed 10.12.2008 entered into force 01.01.2009 - RT I 2008, 59, 330; passed 21.11.2007 entered into force 28.12.2007 - RT I 2007, 67, 413; passed 06.12.2006 entered into force 01.01.2007 - RT I 2006, 61, 456; passed 26.01.06 entered into force 04.02.06 - RT I 2006, 7, 42; passed 15.06.05 entered into force 01.01.06 - RT I 2005, 39, 308; passed 22.04.2004 entered into force 01.05.2004 - RT I 2004, 37, 255.

³ Note: Since 1 July 2003 all the official notices in Estonia are available only in electronic format, please see: <http://www.ametlikudteadaanded.ee/>; additional information is available at European E-Justice portal: <https://e-justice.europa.eu/home.do>

If a higher court annuls a judgment by which opening of insolvency proceedings was refused and issues a new judgment on opening, the higher court shall publish the notice. The higher court shall publish a notice concerning any other judgment in the official publication *Avalikud Teadaanded*.

If insolvency proceedings are opened on the basis of the Council Regulation (EC) No 1346/2000 on Insolvency proceedings with regard to a debtor who has been entered in the commercial register or the non-profit associations and foundations register in Estonia or has an establishment in Estonia, the notice *shall* be published by the liquidator or a court which opened the insolvency proceedings. A notice *shall* set out the name of the court which opened the insolvency proceedings, the date and time of the judgment, information concerning the debtor and the liquidator appointed, a proposal for the creditors to file their claims, the term for filing the claims, and the time and place of the first general meeting of creditors. A notice *shall* set out the consequences of failure to file a claim within the specified term. In addition, the notice *shall* set out whether the insolvency proceeding are opened on the basis of Article 3 (1) or Article 3 (2) of the European Insolvency Regulation, and law applicable to insolvency proceedings opened.

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

The liquidator may request that notice of the judgment opening insolvency proceedings and, where appropriate, the decision appointing him, be published in Estonia in accordance with the publication procedures provided for in Riigi Teataja Act.⁴ In practice, currently it means that a liquidator may submit a notice for publication by choosing one from the three following options:⁵

- 1) submitting the notice directly into the electronic system in electronic format guided in: www.ametlikudteadaanded.ee
- 2) sending the notice, digitally signed, by e-mail to the following address: ametlik.teade@just.ee
- 3) sending (ordinary) mail to the following address: „AMETLIK TEADAANNE“, 4 Lõkke, 19081 Tallinn, Estonia

The notice for publication⁶ should consist of the following information:

- 1) Type of the notice⁷ (in Estonian „PANKROTITEATED“)
- 2) Content of the notice i.e information to be published
- 3) Submission date of the notice

A liquidator shall supplement a notice for publication sent *by e-mail or mail* by the compulsory additional page⁸ which should consist of the following information:

- 1) the liquidator's contact information, including name, ID code, phone number, e-mail address, organisation, powers of attorney etc;⁹

⁴ Riigi Teataja Act (RT I 2010, 19, 101), passed 22 April 2010, entered into force 1 June 2010.

⁵ Instructions are provided for at: <http://www.ametlikudteadaanded.ee/index.php?act=3#levi> Note: the publication procedure may be changed as of year 2011.

⁶ Example notice is available at: http://www.ametlikudteadaanded.ee/style/teadaande_blankett.pdf

⁷ Types of notices are available at: <http://www.ametlikudteadaanded.ee/style/teadaandeliigid.pdf>

⁸ Example of appendix to the notice is available at: http://www.ametlikudteadaanded.ee/style/esitajaandmete_blankett.pdf

- 2) confirmation that state fee for publication¹⁰ has been paid, including date of payment, sum and bank account from which payment was made.

The liquidator is being liable for the content of the notice for publication. The notice shall be published within 1 (one) working day as of its submission with relevant documents.

In addition to official publication, liquidators *may* consider also *non-official, legally non-binding* publication in the local (electronic) newspaper, for example Eesti Päevaleht, Postimees, Äripäev. In this case, the publication requires direct contact with the relevant publisher of a suitable local newspaper.

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?*

Indeed, according to Section 33 of the BA it is mandatory to publish notice of the opening of insolvency proceedings in Estonia if a debtor has an establishment in Estonia. Procedures don't differ from those described in 1) and 2) above.

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

In general, there are three public registers to register judgments in Estonia: Commercial Register (http://www.rik.ee/commercial_register), Land Register¹¹ (http://www.rik.ee/land_register) and Estonian Central Register of Securities (<https://www.e-register.ee/en>).

Usually, if a debtor is entered in the business register or the non-profit associations and foundations register in Estonia, the Estonian court which opens the insolvency proceedings shall immediately forward copies of the judgments made by the court or a higher court on the basis of BA to the registration department of the court of the residence or seat of the debtor. An entry is made in the register immediately after a ruling is forwarded to the registration department.¹²

If insolvency proceedings are opened on the basis of Article 3 (1) of the Council Regulation (EC) No 1346/2000 on Insolvency proceedings with regard to a debtor who has been entered in the commercial register or the non-profit associations and foundations register in Estonia, the liquidator or a court which opened the insolvency proceedings *is required* to give notification to registers.¹³

⁹ If a notice is obviously incorrect or incomplete or state fee for publication has not paid, the person responsible for publishing the notice from the Centre of Registries and Information Systems shall immediately contact with the liquidator.

¹⁰ State fee for publishing the notice is currently 100 Estonian kroons. State fee for year 2011 and the following years is not fixed, but maximum ceiling according to section 13 subsection 4 of the Riigi Teataja Act is 6 (six) euros. **In practice, due to the rather complicated payment procedure (mainly because of different reference numbers and case ID-s) at the moment, it is strongly recommended that you contact with Information Centre (e-mail: rik.info@just.ee or tel: +372 680 3160) in Centre of Registries and Information Systems before starting submission of notices and any payments.**

¹¹ Includes register for ships also.

¹² Section 39 subsection 1 of the BA.

¹³ Section 39 subsection 2 of the BA.

Notations shall be made in the land register concerning opening of insolvency proceedings¹⁴:

- 1) next to the entries concerning the immovables owned by the debtor according to the land register;
- 2) next to the entries concerning the limited real rights held by the debtor or the rights on such rights if it may be presumed that failure to make such notations would damage the interests of the creditors.

A notation shall be made on the basis of the court judgement opened the insolvency proceedings. The ruling shall be forwarded to the registrar by the court.

If insolvency proceedings are opened on the basis of Article 3 (1) of the Council Regulation (EC) No 1346/2000, such application *may be* submitted also by any other competent authority of the Member State opened insolvency proceedings in another Member State.¹⁵

Securities or securities accounts entered in the Estonian Central Register of Securities shall be frozen on the basis of a judgment opened the insolvency proceedings. The application for freezing securities or a securities account entered in the Estonian Central Register of Securities shall be submitted by the liquidator on the basis of the court judgment.

If insolvency proceedings are opened on the basis of Article 3 (1) of the Council Regulation (EC) No 1346/2000, such application *may be* submitted also by any other competent authority of the Member State opened insolvency proceedings in another Member State.¹⁶

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)?

Relevant guidance is available: <http://www.rik.ee/> or <https://www.e-register.ee/en>.

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?

Indeed, according to Section 39 of the BA it is mandatory to register notice of the opening of insolvency proceedings in Estonia if a debtor has an establishment in Estonia. Procedures don't differ from those described in 4) and 5) above.

¹⁴ Section 40 of the BA.

¹⁵ Applicable also in case of ships.

¹⁶ Section 41 subsection 1 of BA.