

**PUBLICATION AND REGISTRATION REQUIREMENTS UNDER ITALIAN LAW
AND THE EUROPEAN INSOLVENCY REGULATION**

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

- 1.1 Pursuant to Section 17.2 of Royal Decree 16 March 1942 no. 267, as amended (the Italian Insolvency Law), the judgment opening an insolvency proceeding shall be registered with the competent office of the Enterprises Registry, i.e., that of the place where the undertaking has its registered office. Should the procedure be pending in a different place (the court where the administrative office is located is also competent for the insolvency proceedings), the judgement shall be registered with the office of the Enterprises Registry of this place too.
- 1.2 Such publication is made at the care of the clerk, who shall forward an excerpt of the judgment to office of the Enterprises Registry by electronic means.
- 1.3 The clerk shall perform the step above within the next day following the judgment.

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 request publication of the opening of a foreign insolvency proceedings to the office of the Enterprises Registry where the insolvent company/undertaking has a branch/administrative office already registered.
 - 2.1.1 Filing can only take place by electronic means. Form S2 must be filled in and sent to the office through an authorised intermediary.
 - 2.1.2 The foreign liquidator shall therefore instruct a local agent, who holds an electronic signature certified by the Enterprises Registry.
 - 2.1.3 A sealed copy of the foreign judgment and sworn translation into Italian shall also be sent to the office of the Enterprises Registry.
 - 2.1.4 We are unofficially informed that, due to the constraints of the current system in use, the Enterprises Registry shall only indicate the identity, capacity and professional address of the liquidator as legal representative of the undertaking and the essential datas of the judgment, as stated in the documents submitted to the office. It is unlikely that the office of the Enterprises Registry will allow further information to be included in their system, like the indication of whether the jurisdiction rule applied by the foreign court is that pursuant to Article 3(1) (main insolvency proceedings) or Article 3(2) (territorial insolvency proceedings).

- 2.1.5 Apparently, no indication can be given at this stage as to where and how a foreign liquidator may request to the Italian Enterprises Registry the publication of the opening of the insolvency proceeding regarding a foreign company who is still unknown to the Enterprises Registry. As a matter of speculation, we assume that, if he wants to do that, he should first satisfy the office of the Enterprises Registry that the insolvent company has an operation within the Italian territory and apply for a fresh registration. The procedure is obviously a little more burdensome than that described under 2.1 above.

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 Italy requiring mandatory publication under Article 21(2), and no special forms have been prescribed. In so far as it is possible, the procedure outlined above shall be followed.

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

Section 17.2 of Royal Decree 16 March 1942 no. 267 only establishes that the judgment opening an insolvency proceeding must be registered with the Enterprises Registry. Under Section 88.2 of Royal Decree 16 March 1942 no. 267, the appointed liquidator shall give formal notice of the insolvency proceedings to the competent offices, whenever the insolvent undertaking owns immovable goods or registered goods.

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)?

- 5.1 Before the entry into force of the EIR, registration of a foreign judgment in the public registries was carried out after the ordinary exequatur procedure had been performed, with limited exceptions. We believe that this should not be the case anymore, in accordance with the principles clearly stated in articles 16 and 17 of the EIR.

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 specific legislation has been enacted following the entry into force of the EIR.
- 6.2 Pursuant to Section 88.2 of Royal Decree 16 March 1942 no. 267, the liquidator shall give formal notice of the insolvency proceedings to the competent offices, whenever the insolvent undertaking owns immovable goods or registered goods. The competent office in case of real estate is the local branch of the *Conservatoria dei Registri Immobiliari*; motorvehicles are registered in the *Pubblico Registro Automobilistico*, boats in the *Registro Italiano Navale*, etc. Failure by the Italian liquidator to arrange for entries' amendments may involve personal financial liability.
- 6.3 A foreign liquidator is advised to require the assistance of a local agent in order to identify the competent office and to arrange for the formalities required.

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