



EURAVOCAT LAW HANDBOOK

DEBT COLLECTION IN LUXEMBOURG

From our member in Luxembourg



1. Preliminary step: letter of formal notice

Although there is no legal obligation to send a formal notice to a debtor before proceeding with the judicial recovery of a debt, unless this obligation has been contractually agreed, it is still customary to first send a formal notice to the debtor.

The creditor may :

- ✓ serve formal notice by bailiff; or
- ✓ send a formal notice by registered letter with acknowledgement of receipt directly to the debtor.

In the case of a debt secured by a guarantee, the formal notice must also be sent to the person who has acted as guarantor.

In the formal notice, the creditor should indicate the reasons for the debt, the amount, any interest as well as the period within which the creditor wishes the payment to be made. Any document that establishes the debt (written agreement, contract, invoices, etc.) should be attached to the formal notice.

If the formal notice remains unanswered, the creditor may initiate legal proceedings to recover the debt.

If the debtor is a company domiciled in Luxembourg, information on the company (management, balance sheets etc.) can be found on the official website of the Luxembourg Business Registers: www.lbr.lu

2. Judicial debt collection

In matters of debt recovery, the jurisdiction of the courts in the Grand-Duchy of Luxembourg is determined by the principal amount of the claim.

The Justice of the Peace (in French: “Justice de Paix”) has jurisdiction for claims of less than EUR 15,000.

The District Court (in French: “Tribunal d’arrondissement”) has jurisdiction for claims exceeding EUR 15,000.

Before both the Justice of the Peace and the District Court, there are simplified collection procedures under which proceedings can be initiated by simple application lodged with the Courts. It should be noted that the simplified collection procedures are reserved for easily verifiable debts and require the debtor to be domiciled in Luxembourg.

If the simplified procedures are not possible or rejected by the Courts, the creditor may proceed by way of summons before the Justice of the Peace or summons before the District Court.

In order to determine which court has territorial jurisdiction, it should be noted that there are three justices of the peace and two district courts in Luxembourg. Each justice of the peace and each court has jurisdiction over a certain part of the territory. The general rule, although there are many exceptions, is that the court with territorial jurisdiction is that of the debtor's domicile.

3. Claims of less than EUR 15,000

- a. Simplified collection procedure: Application for payment order (“Requête en matière d’ordonnance de paiement”)

The application can be drawn up or made using a pre-printed form that can be downloaded from the official website of the Luxembourg Courts. The request must be accompanied by the supporting documents listed in order to prove the existence and

amount of the claim and to establish its validity (e.g. invoice, reminder, etc.). The application must then be sent to the competent Justice of the Peace, which is normally that of the defendant's domicile.

If the claim appears justified, the Justice of the Peace orders the debtor to pay the amount claimed into the hands of the creditor. A conditional payment order is served on the debtor by the court clerk, which also forwards a copy of it to the creditor. This notification causes interest to accrue for the debtor.

If the claim does not appear to be justified, the Justice of the Peace rejects it by means of a rejection order, which is not subject to appeal. However, the creditor retains the right to take action against the debtor by way of summons before the Justice of the Peace.

Within 30 days of notification of the conditional payment order, the debtor may :

- ✓ either pay the amount claimed into the hands of the creditor, if he considers that it is due,
- ✓ file a statement with the court clerk's office contesting all or part of the claim, if the debtor believes that the amount claimed is not due

The objection is made by a simple written or oral statement made at the registry of the Justice of the Peace who made the conditional order for payment. It should a summary of the debtor's arguments.

Once the objection is lodged, either the creditor or the debtor may request that the parties be summoned to a public hearing to discuss the merits of the claim.

If the debtor does not pay and does not contest the order for payment, the creditor has six months from notification of the conditional payment order to the debtor to request that the conditional payment order be made enforceable. This can be done by a simple written or verbal declaration to the clerk of the Justice of the Peace who issued the conditional payment order.

If one of the parties requests a public hearing, each party will receive a summons and must either attend in person or be represented at the hearing. The parties are not obliged to be represented by a lawyer before the Justice of the Peace.

Although the procedure is oral, detailed accounts must be submitted in writing. The parties may also submit a pleading to set out their case in writing.

- If the objection is well-founded, the conditional order for payment is considered null and void.
- If the objection is partially founded, the Justice of the Peace condemns the debtor for the part of the claim that is found to be founded.
- If the objection is rejected, the Justice of the Peace orders the debtor to pay.

If the debtor is convicted, the judgment serves as a writ of execution. Enforcement of the judgment depends on the creditor, who must take the necessary steps and advance the costs if the debtor refuses to pay.

- b. Common procedure: Summons before the Justice of the Peace
(“*Citation en justice*”)

In principle, actions in civil and commercial matters are brought before the Justice of the Peace by a summons issued by a bailiff (articles 101 et seq. of the New Code of Civil Procedure).

The creditor will then have to set out the causes and origins as well as the amount of his claim in the summons and formulate his demands at the address of the Justice of the Peace. The summons must then be sent to a bailiff, who will serve it to the debtor.

Once the served version has been returned to the creditor, the case must be registered with the Justice of the Peace, who will set the matter down for a public hearing.

It is not compulsory to be represented by a lawyer before the Justice of the Peace, and the parties must either attend the hearing in person or be represented by a lawyer or other legally authorised person.

4. Claims of more than EUR 15,000

- a. Simplified collection procedures: Application for a provisional order (“*Requête en matière d’ordonnance de provision*”) & summary procedure (“*Référé provision*”)

Proceedings instituted by way of application for a provisional order are only possible where the debtor is domiciled or resident in the Grand Duchy of Luxembourg. If the debtor is not domiciled or does not reside in the Grand Duchy of Luxembourg, it is

necessary to proceed by way of a writ of summons in the context of a summary procedure.

- **Application for a provisional order (articles 919 et seq. of the New Code of Civil Procedure)**

The application for a provisional order can be drawn up or made using a pre-printed form that can be downloaded from the official website of the Luxembourg Courts. The application must be accompanied by all the documents required to prove the existence and amount of the claim and to establish its validity (e.g. order form, invoice, reminder, etc.).

The application and supporting documents should be sent by post or lodged with the relevant District Court. If the creditor is acting against several debtors domiciled at different addresses, the application must be submitted by separate request (including supporting documents) for each debtor.

The President of the District Court with jurisdiction in personal matters relating to a claim is that of the:

- ✓ the defendant's domicile, if the debtor is officially registered there,
- ✓ the place of residence, if the debtor is present there without being officially registered.

The President of the District Court with jurisdiction in contractual matters is that of the place where the obligation has been or must be performed.

The President of the competent District Court examines the merits of the claim on the basis of the documents submitted.

If the application appears justified, the President of the District Court orders the debtor to pay the amount claimed into the hands of the creditor. The court registry notifies the debtor of a conditional order for advance payment and a copy of the application. A copy of the order is also served on the creditor.

If the application does not appear to be justified, the President of the District Court rejects it by means of a rejection order, which is not subject to appeal. However, the creditor still has the option of bringing an action against the debtor by way of a writ of summons before the President of the District Court (see below - summary procedure - article 933 paragraph 2 of the New Code of Civil Procedure).

Within 30 days of notification of the conditional advance payment order, the debtor may :

- ✓ either pay the amount claimed into the hands of the creditor, if he considers that it is due,

- ✓ contest the claim, in whole or in part, by filing a statement with the court registry, if the debtor believes that the amount claimed is not due.

The objection is made by a simple written declaration made to the registry of the District Court that made the provisional payment order. The objection must state the grounds on which it is based and must be accompanied by any document supporting it.

Following the debtor's objection, the parties are summoned by the court registry to attend an ordinary summary proceedings public hearing to discuss the merits of the claim.

It is not compulsory to be represented by a lawyer under this specific procedure, and the parties must either attend the hearing in person or be represented by a lawyer or other legally authorised person.

If the debtor has not lodged an objection after the thirty-day period, the creditor may apply for the order to be declared enforceable at the registry of the District Court.

The order issued by the President is provisionally enforceable which means that it may be amended or revoked in summary proceedings in the event of new circumstances.

- **Summary procedure (article 933 para. 2 of the New Code of Civil Procedure)**

Another simplified procedure is the summary procedure under which the creditor must make his claim by means of a writ served by a bailiff at the debtor's address, and it is brought to a hearing held for this purpose on the usual day and time for summary proceedings.

Proceedings based on a writ of summons require the services of a lawyer, as the writ of summons includes an election of domicile at the lawyer's address.

If the defendant has received the writ of summons and does not appear at the hearing, the case shall be decided with contradictory effect.

If the defendant appears at the hearing, either in person, through a lawyer or through a duly authorised representative, the case shall be decided after each of the parties has presented their case orally.

If the claim asserted by the creditor is seriously disputable (i.e. if the creditor does not prove the existence of a claim that is certain, liquid and due), the President of the District Court declares the application for payment inadmissible.

If the claim is partially founded, the President of the District Court makes an order for the part of the claim that is not seriously disputable.

If the claim is not seriously disputable, the President of the District Court shall order the debtor to pay.

An appeal may be lodged against the order within 30 days of service. If it is established that the summons was not delivered directly to the debtor or a representative of the debtor, the debtor also has the option of lodging an objection within 8 days of service. The opposition period runs concurrently with the appeal period.

Both the opposition and the appeal must be lodged by a lawyer.

b. Common procedure: Summons before the District Court
(“Assignment en justice”)

Since the simplified collection procedures are reserved for easily verifiable debts, the creditor may have to use the common procedure, i.e. summon the debtor before the District Court by having a bailiff serve them a writ of summons.

The procedural rules differ depending on whether or not the two parties pursue commercial activities. Litigation before the commercial divisions of the District Court is in principle heard under the commercial procedure, which means that cases are

brought to court by summons with a fixed date, i.e. they contain the place, date and time of the hearing at which the case will be heard. Barring exceptions, a period of 15 days must elapse between the date of the summons and the hearing at which the case is to be heard.

The parties must appear in person or through a lawyer. They may, however, be assisted or represented by a duly authorized person.

Disputes before the civil divisions of the District Court, on the other hand, are tried under the civil procedure, which is a written procedure requiring the parties to be represented by a lawyer.

A writ of summons is served on the debtor and once the case has been filed with the court, the parties exchange written submissions until the case can be closed and the Court can reach a verdict. In support of their arguments, the parties are required to submit all relevant documents.

5. Interests

The starting date of the interest rate depends on the facts of the case and, where applicable, on what has been contractually agreed. Generally speaking, however, it should be noted that a distinction is made between claims arising from commercial transactions and claims arising from contracts concluded between a professional and a consumer.

In commercial relationships, the legal payment period is set at one month whereas, in consumer relationships, the statutory payment period is three months.

The legal interest rate for late payment applicable to commercial transactions is currently 12%. This rate is adjusted every six months.

The general legal interest rate, apart from that applicable to commercial transactions, is currently 2.25%. This rate is adjusted annually.

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