



Luxembourg

Narrative National Report

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PART I: LEGAL FRAMEWORK

I.1 Legislation affecting civil enforcement

The civil enforcement procedure in Luxembourg is primarily contained in the '*Nouveau code de procédure civile*'¹ (hereinafter, "the NCPC").

The NCPC originates from the French *Code de procédure civile* of 1806 and got modernized in the 90'ies with a new law, largely inspired by French law. In 1998, the new Code of Civil Procedure was published. Nevertheless, despite the term 'New', Civil Procedure did not change dramatically and still maintains large sections from the Code of 1806.

The NCPC is divided into 2 parts, and includes enforcement legislation in both parts:

- Conservatory measures.
- Enforcement procedures.

Various legal provisions concerning civil enforcement procedure are found in other legal texts, for example:

- Collective settlement of debts².
- Attachment on the salary or other periodic incomes of the debtor.

There is no consolidated version of enforcement procedures and legislations.

I.2 Enforceable titles

The following titles are enforceable in the Grand-Duchy of Luxembourg:

- Court decision.
- Payment order (court decision).
- Notarial agreement.
- Administrative order.
- National Arbitration award.
- Foreign arbitration award.
- Foreign courts decisions.
- Foreign court settlement.

Generally, court decisions are enforceable when the case is unappealable. Some court decisions, for example interim orders, are provisionally enforceable. These are enforced by the creditor at their own risk as the interim order may be amended or subject of a new summary judgment should new circumstances arise.

¹ Nouveau Code de Procédure Civile, available on:

http://legilux.public.lu/eli/etat/leg/code/procedure_civile/20190824

² Loi du 8 janvier 2013 concernant le surendettement (Law of 8 January 2013 on overindebtness), available on: <http://legilux.public.lu/eli/etat/leg/loi/2013/01/08/n1/jo>

To be enforceable Luxemburgish court titles and notarial agreements must include an enforcement clause and must have been duly served or notified. Administrative orders do not have an enforcement clause and are enforceable after being duly served or notified.

Foreign titles must satisfy the following conditions (Art 678 NCPC, Art 2123, 2128 Civil Code):

- Enforceable in the origin's jurisdiction.
- Not being contrary to Luxemburgish public policy (*ordre public*).
- Not being contrary to a title of a local court which has been issued in the same case between the same parties.
- Issued by a jurisdiction recognized by Luxembourg.
- The defendant was not deprived of the right of defense.

I.3 Service of documents to parties and third parties

I.3.1 Legal basis

The service of documents by a judicial officer is regulated by Articles 155 et seq NCPC³.

Documents can be served by a judicial officer from Monday till Saturday from 06:30 to 20:00. Outside the legal hours, on Sundays, or on legal holidays, a special authorization by the Court must be produced (Art. 1264 NCPC).

I.3.2 The legal capacity to serve documents

Judicial officers serve extrajudicial and/or judicial documents in civil and/or criminal matters. This is a monopoly, except in criminal matters where service can be done by police and post (notification). In some cases ("*Justice de Paix*"), service of documents is done by clerk and post (notification).

The service of documents must be personally exerted by the judicial officer himself/herself. A deputy can also proceed to service of documents in the absence of the judicial officer.

The following judicial documents are regularly served:

- Documents initiating proceedings.
- Summons.
- Subpoena to appear in court.
- Judgments.
- Court titles.
- Lawyers' acts.
- Oppositions, appeals.

³ Art. 155 et seq. NCPC, available on: http://legilux.lu/eli/etat/leg/code/procedure_civile/20190824#

- Enforcement procedure.

The following extra-judicial documents can also be served:

- Authentic act, authenticated deed.
- Private deed, private document, private agreement.

In criminal matters or in some few other cases, documents can be served by clerk or police (criminal matters). In this case the term 'notification' is used instead of 'signification'.

Notification is done by the clerk at the court. The document is not delivered by a judicial officer but sent by post by registered mail. A second copy of the document to be notified is also sent by simple mail.

Luxemburgish law regulates in which cases documents have to be served by a judicial officer or notified by clerk. The applicant cannot choose between both systems.

The judicial officer enjoys a delegation of public power that specially enables him/her to serve documents and enforce judgments, if necessary, with the police. This dual capacity, owner of a parcel of public authority under the status of a liberal profession, is a guarantee of independence, accountability and efficiency. This is the reason why the service of documents has to be done personally by the judicial officer or his/her deputy.

Luxembourg is divided into 2 jurisdictions:

- Jurisdiction of Luxembourg.
- Jurisdiction of Diekirch.



Source: <https://justice.public.lu/fr/organisation-justice/juridictions->



judiciaires/tribunaux-arrondissement.html

Judicial officers can act in the fullest extent of the judicial district for which they are appointed. Within this jurisdiction, the choice of the judicial officer belongs to the applicant. To choose a judicial officer, it is advisable to check the list at the homepage of the National Chamber of Judicial Officers⁴.

The geographical jurisdiction of the judicial officer is the same regarding service of documents and with regard to enforcement of court decisions.

Documents can be served by a judicial officer from Monday till Saturday from 06:30 to 20:00. Outside legal hours, on Sundays, or on legal holidays, special authorization by the Court must be produced (art. 1264 NCPC).

Judicial officers have access to information on how to locate the addressee in the framework of their mission of service of documents, whatever the document has to be served and as long the service of document is done in his/her legal framework by the judicial officer.

Luxembourg runs a national database with legal addresses of citizens. Judicial officers have to consult this database before each service in order to serve the document at the legal official address. If the addressee is a company, judicial officers have to check the *Luxemburgish Business Register (LBR)*, a database containing all the information about companies. This database is public⁵.

Any public administration can deliver information (ex. employer) about the addressee. Thus, this has to be authorized by the court.

1.3.3 The contents of the documents to be served

Documents being served do not comply with a special common format, but the judicial officer has to inform the addressee about the document being served.

To be valid, served documents have to include the following elements:

- Date of service to the addressee (time is not mandatory).
- Name, first name(s), address and registration of the judicial officer.
- Signature of the judicial officer.
- Applicant: name, first name(s), address, profession, if company (form, designation, head office, legal representative, identification number in commercial matters).
- Addressee: name, first name(s), address, profession, if company (form, designation, head office, legal representative).
- Cost of service and detail of this cost.

In addition, the following mentions are compulsory for the validity of the document:

- Details of the jurisdiction (name, address).

⁴ www.huissier.lu/members.php

⁵ www.lbr.lu



- If the court hearing is at a fixed date, the date, time and place of the court hearing.
- Details on who can assist and/or represent the addressee at the court hearing.
- The consequences for the addressee in case of non-appearance of valid representation at the court hearing (Art 80 NCPC).
- Object of the claim.
- Factual and legal elements on which the claim is based.
- Amount of the claimed debt.
- Interest rate and period for which interests are owed.
- Mention and copy of the documents on which the claim is based.

Documents can be served to any other person met at the domicile of the addressee if this person accepts to give his/her name, first name(s), address, relation to the addressee and signature. In this case the person will be handed over a closed envelope with the document. A second closed envelope with the document will be left at the same address.

Documents can be served personally to the addressee at any place (domicile, workplace, or any other place, including private places open to the public, etc.).

For legal companies, documents can be directly handed over to any person empowered to receive the document.

1.3.4. Service upon the addressee of other persons

If the document cannot be served directly to the addressee or to another person met at the domicile, the document and a notice of information are left in a closed envelope in the letter box or any other place. A second copy of the document, and a notice of information are sent by post mail the same day or the next working day.

If the addressee has no longer a known domicile, the judicial officer has to precisely relate in a report the accomplished steps to locate the addressee. A copy of the document to be served, and a copy of the report are sent by registered mail and by normal mail to the last known address. The judicial officer keeps the document at the disposal of the addressee for three months.

1.3.5. The use of new technologies

Documents cannot be served electronically. Thus, there are ongoing discussions to introduce this type of service. The "paperless justice" project has been adopted, which is a multi-year project currently covering five years and whose aim is to establish digital justice.

1.3.6. Probative value of the service of documents

The service of judicial or extrajudicial documents is considered as an authentic act and thus is considered authoritative until inscription of forgery.

1.4 Legal remedies, appeal and objection



An objection stated and supported by appropriate evidence can be presented at any time against the enforcement decision before the court that issued the decision in the proceedings.

For example:

- In case the document, based on which the enforcement decision or enforcement writ has been issued does not have an enforceable title, or if it does not have any feature of enforceability.
- In case the enforcement decision in another way has lost its effect or it is concluded that it is without legal effect.
- In case the parties have agreed not to require, for a limited time or permanently, the enforcement based on the enforcement document.
- In case the deadline by when, according to the law, enforcement may be requested, has expired.
- In case the enforcement is assigned for items which are excluded from compulsory enforcement, resulting in possible limitation of enforcement.
- In case the enforcement creditor is not authorized to request enforcement based on the enforcement document, respectively he/she is not authorized to request the enforcement against the debtor.
- In case the condition given in the enforcement document has not been met, unless foreseen by the law.
- In case the claim ceases to exist as a result of a fact that occurred at a time when debtor could no longer submit evidence of such fact in the procedure from which the decision has derived, that is, after the conclusion or a court settlement or an administrative settlement or in some other way.
- If the judicial officer who issued the enforcement writ is not competent.
- Other reasons.

Third parties' proceedings provide to contest a court decision prejudicial to the rights of third parties and where in the course of proceedings they had not been heard.

A condition is that third parties have an interest in taking legal action.

There is no time limit for courts to decide on the objection.

1.5 Postponement, suspension and termination of enforcement

Courts can postpone or terminate any enforcement procedure.

1.5.1 Request for postponement by the creditor

Judicial officers can do the same upon request by the creditor, unless the enforcement legislation provides otherwise.

1.5.2 Request for postponement by the debtor

The debtor cannot request postponement of the enforcement.



I.5.3 Request for postponement by the third party

Third parties cannot request postponement of the enforcement.

I.5.4 Suspension of enforcement

Enforcement can be suspended at any time, if the address of the debtor is proved to be incorrect and when debtor's assets cannot be located for purposes of sequestration of assets.

I.5.5 Termination of enforcement proceedings

Enforcement procedures are generally terminated after settling of the creditor's credit, or when a third person fulfils the obligation in benefit of the creditor instead of the debtor.

Enforcement procedures can also be terminated when it has become impossible for the enforcing title to be enforced.

Examples:

- The value of the debtor's property is not sufficient to cover the cost of organizing an auction.
- Impossibility to find property belonging to the debtor
- The debtor left without giving an address and cannot be found.

In the event the debtor files for bankruptcy and from the judgement declaring bankruptcy, any action against movable or immovable property is not possible.

I.6 Counter enforcement

Counter enforcement is not applicable in the Grand-Duchy of Luxembourg.

I.7 Objects and exemptions on enforcement

I.7.1 Exemptions

The debtor is liable for obligations through all his/her assets, insofar as these are not exempt from seizure.

The following objects are exempted from enforcement (Art. 744 NCPC):

- *Beds needed by the debtor and his/her family.*
- *Clothes and linen for personal needs.*
- *Furniture needed to store them in.*
- *A washing machine and iron.*
- *Appliances needed to heat the family home.*
- *Tables and chairs enabling the family to have a meal together.*
- *Dinnerware and household utensils necessary for the family.*
- *A piece of furniture to store the dinnerware and household utensils.*
- *A cooker.*

- *A refrigerator.*
- *A lighting fixture per inhabited room.*
- *Items needed by disabled members of the family.*
- *Items intended for use by children who are dependent on those who live under the same roof.*
- *Pets.*
- *Items and products needed for personal hygiene and for keeping the rooms clean and tidy.*
- *Tools needed for maintaining the garden, excluding luxury furniture and items.*
- *Books and other items needed so that the judgment debtor or dependent children who live under the same roof can pursue their studies.*
- *Property needed for the debtor's profession, up to the value of 2478,94 € at the time of the attachment, and as chosen by the debtor, as long as this property is not for the payment of their prices.*
- *Items needed for worship.*
- *Food and fuel needed by the debtor and his/her family for a month.*
- *A cow, or twelve ewes or goats as chosen by the debtor.*
- *A pig.*
- *24 farmyard animals, with the necessary straw, fodder and grain needed for bedding and the feeding of these animals for a month.*

These items may not be attached, regardless of the capacity of the creditor, even if it is the State, with the exception of certain debts listed exhaustively in law.

To prevent the creditor from attaching all of the debtor's means of subsistence, a regulation sets the rates for assignment and attachment of salaries, pensions and annuities. The law has provided for the attachment of protected regular income (salaries, annuities, pensions). These types of regular income may not be attached in full, but only up to a certain limit, which is determined according to brackets fixed by a Grand-Ducal regulation. Debtors therefore retain a minimum subsistence income.

1.7.2 Enforcement on property of a foreign country

Sovereign immunity from execution precludes authorities of one State from taking measures of constraint against the property of Luxembourg to satisfy the demands of creditors under court decisions.

1.8 (Court) penalties and fines

A pecuniary sanction intended to force the debtor of an obligation to perform can be pronounced and imposed through a court decision. This pecuniary penalty can be imposed repeatedly. This sanction is independent of compensation for the non-performance of the obligation in question. The debtor may be obliged to pay the

amount of the penalty payment, in addition to any damages (s)he may be ordered to pay.

Periodic penalties imposed through court decision have to be an accessory to the main sentence. The creditor has thus to request periodic penalty payment. Judges are not bound by the proposal and can lower or increase the amount to be paid by the debtor.

Once the penalty payment has been incurred, the creditor does not need any new title. Indeed, (s)he can be satisfied with the principal sentence to obtain payment of the penalty payment.

The court may set a maximum amount to be paid and it should be noted that the penalty payment is prescribed by the expiry of a period of six months from the date on which it is incurred.

Judicial officers are not able to impose periodic penalties.

I.9 Access to information on the domicile and assets of the debtor

I.9.1 Access to information

Judicial officers in charge of enforcement proceedings have access to certain information on the debtor's assets and also under certain conditions.

Creditors, having an enforcement claim, have access to certain information on the debtor's assets and also under certain conditions.

Some information is available, only to the judicial officer via internet, through secure access.

	Creditor	Judicial Officer
Address(es)		
Date and place of birth		
Telephone number		
Nationality		
E-Mail address(es)	No register	No register
Workplace and employer		
Social security number		
ID number for legal persons		
Amount of the debtor's salaries		
Information on the debtor's bank accounts		
Position of the debtor's bank accounts		
Amount of tax paid		

Movable tangible goods		
Movable intangible goods		
Real estate rights		
Specific goods such as vehicles, ships, airplanes, etc.		
Other (please specify):		

In general, State bodies which administer databases with information required for efficient enforcement, debtors' employers, social security services, bodies which administer public registries, land registries services and car registries services must provide the judicial officer with information relating to debtors in the framework of enforcement proceedings.

Banks are not allowed to provide any information about the debtor's assets.

The required information can be accessed by letter, telefax, internet, through an official request and always with the relevant justification, as, for example, an enforcement title.

The judicial officer has to maintain confidentiality when secret, confidential or sensitive information comes to his/her attention in the course of enforcement proceedings.

In case the judicial officer breaches his/her duty of confidentiality or abuses his/her prerogatives, measures of disciplinary liability are applicable, possibly along with civil and/or criminal sanctions.

I.9.2 Statement of assets

The debtor does not have to declare his/her assets as part of the enforcement process.

PART II: ORGANIZATION OF ENFORCEMENT

II.1 The status of the judicial officer

II.1.1 The jurisdiction and competences of the judicial officer

Actually, there is no shortage of judicial officers in the Grand-Duchy of Luxembourg. Every judicial officer is competent, in competition with one or several other judicial officers only on a part of the national territory (jurisdiction).

Luxembourg is divided into 2 jurisdictions:

- 1) Luxembourg -> 16 judicial officers
- 2) Diekirch -> 3 judicial officers

II.1.2. The obligations of the judicial officer

Judicial officers bear obligations relating to their activities. These obligations are legal, statutory, ethic and deontological.

The object of these obligations is the compulsory service of the judicial officer, with



possible cases of exemptions of service. For example, service is prohibited in certain cases of relationship or union.

Judicial officers have to keep archives for 30 years and bookkeeping papers for 10 years. Furthermore, they are obliged to have an account specifically intended for depositing collected funds, to counsel citizens in the framework of their activities. They have to respect the fees, they are subject to professional secrecy and have to take out professional and civil liability insurance (basic and minimum insurance on National Chamber of Judicial Officers level: liability 500.000 €).

II.1.3 Inconsistencies and conflict of interest

Service of the judicial officer is compulsory, but restrictions remain in case (s)he is charged against family members.

II.1.4 Ethics and deontology

Specific deontological rules to the profession of a judicial officer have been assembled in a single document by the National Chamber of Judicial Officers in Luxembourg. This document has yet to be validated by the Ministry of Justice.

These rules concern:

II.1.5 Disciplinary proceedings against judicial officers

Common competent jurisdictions deal with questions relating to the discipline of judicial officers. The rules are specific to the profession.

The disciplinary rules apply to violations of professional, ethical, deontological rules, to the law relating to the professional exercise and violations of probity, honour or tactfulness to professional facts.

The sanctions are listed from the lowest to the highest:

- 1) Warning.
- 2) Reprimand.
- 3) Deprivation of voting rights at the general assembly of the National Chamber of Judicial Officers and prohibition to serve in the board of the National Chamber of Judicial Officers during a period of maximum six years.
- 4) Fine (500 € - 5.000 €).
- 5) Suspension as judicial officer (four days to three years).
- 6) Dismissal.

A judicial officer can challenge the disciplinary sanction pronounced against him/her. The time limit for appeal is one month after the court decision has been notified.

II.2 Supervision over enforcement

Wrong doings of the judicial officer while carrying out his/her activities are controlled. These controls are firstly carried out by the National Chamber of Judicial Officers. In

some cases, after a control has been done, the case can be transmitted to the public prosecutor.

Mainly, all statutory professional activities can be controlled, but particularly mistakes or abuses perpetrated during his/her activities, unlawful practices, excessive costs or fees and finally the accountancy of the judicial officer.

There is no specific procedure to respect for a demand so that a control can be carried out. Requests can be made by a citizen on a detailed and motivated manner. These demands have to be addressed to the National Chamber of Judicial Officers, which will do a first check.

If the judicial officer challenges this control, the National Chamber of Judicial Officers will transmit the file to the public prosecutor.

II.3 Access to the premises

When enforcing a judgment, judicial officers have to enter premises in order to seize items or to fulfil the eviction of a tenant.

If premises are locked, the debtor or any other person is absent or if the debtor refuses entrance, the judicial officer has to request and appeal a judicial police officer. In presence of a police officer, and if needed a locksmith, the judicial officer accesses the debtor's premises.

II.4 Obstructing the judicial officer from carrying out enforcement

See II.3.

II.5 Time of enforcement

Enforcement can only be conducted from Monday to Saturday between 06:30 to 20:00.

Outside these legal hours, the judicial officer needs an approval of the court to enforce a judgement or to proceed to service of documents (Art. 1264 NCPC).

II.6 Mediation

The law does not forbid judicial officers to exert the activity of mediation, however in practice this activity is non-existent among the activities exerted by judicial officers.

In order to enforce mediated settlement agreements, a homologation of the agreement has to be requested.⁶

PART III: ENFORCEMENT PROCEDURES

III.1 Initiation and end of the enforcement procedure

If one or more parties do not comply with a court decision, they may be compelled to do so by the compulsory enforcement of the enforceable title.

The enforceable title must have been previously served by a judicial officer or notified by the clerk of the court.

⁶ <http://data.legilux.public.lu/file/eli-etat-leg-memorial-2012-37-fr-pdf.pdf>

Enforcement is the responsibility of the judicial officer, who has to take adequate measures in order to enforce efficiently.

The transmission of the original court decision by the creditor to the judicial officer automatically means an official mandate to enforce. The creditor can withdraw the request for enforcement at any time by simply giving this order to the judicial officer.

To be enforceable, the court decision has to be served to the debtor. The time limit for lodging an appeal is 40 days after the service of the document. In the event of a default judgement, the time limit is increased by 15 days.

In some cases, and in urgent cases, the court can decide that their title is provisionally enforceable. In this case, there is no need to respect the time limits for lodging an appeal.

Automatic provisional enforcement is provided in the following cases:

- Summary proceedings.
- Urgent cases.
- Salary arrears.
- In commercial matters (if costs security is provided).
- Providing an authentic instrument.
- Previous conviction.

III.2 Enforcement against movable assets to settle pecuniary claims

III.2.1 General

Civil enforcement proceedings, and notably attachments of movable property, are governed by article 719 et seq. NCPC.

A creditor who has an enforceable title and who wishes to recover the sum that is owed by the debtor may implement an attachment order on his/her movable property.

Generally, the court where the debtor is domiciled is competent to decide on the enforcement. Meanwhile, in contractual matters, it depends on the place where the obligation was or will be enforced.

Seizure of movable procedure, as regulated by the NCPC, is characterized by its simplicity and rapidity:

Simplicity: it consists of only four acts:

- The command (payment order).
- Seizure.
- The publicity of the public auction.
- Public auction.

Speed: the procedure can be completed in just over a month.

- The seizure can take place one day after the command.
- The public auction can take place eight days after the seizure.

III.2.2 The inventory

Prior to the inventory of the movables, the enforcement decision has to be delivered to the debtor. If lawyer assistance is compulsory (for instance, in civil matters superior than 10.000 €) the enforcement first has to be served to the lawyer and then to the debtor.

As soon as the appeal periods have expired, enforcement can start with a payment order served by the judicial officer to the debtor.

The seizure can take place one day after the payment order has been served to the debtor. The judicial officer must be accompanied by two witnesses (adults, of Luxemburgish nationality, not related with the judicial officer) (Art. 721 NCPC).

In addition to the ordinary mentions of the deeds provided in Article 153 NCPC, the report of seizure must contain the following mentions:

- The creditor's election of domicile in the municipality where enforcement will take place, if the creditor is not living there. The debtor may serve any documents to this elected domicile.
- Reiteration of the payment order (Art 722. NCPC).
- An indication of the sum claimed and the title under which the seizure is made.
- Names, surnames, occupancy, domicile, signature of the two witnesses.
- A precise and detailed description of the objects seized with an indication of their main characteristics to avoid evasion or misappropriation (Art. 724 NCPC)
- Indication of the day of the auction (Art. 731 NCPC) (delay 8 days).
- In the event of application of the access procedure provided for by Article 723 NCPC, the signature of the judicial police officer.

In case third parties have a right on the items that are in possession of the debtor and have been seized, they have to serve a summons in court before the auction takes place, where they have to prove their rights on the seized items. This summons has to be notified to the judicial officer in order to stop the auction procedure (Art. 744 NCPC).

III.2.3 Valuation of the movable items

The judicial officer values the value of the movable items.

III.2.4 Method of sale

The announcement of the auction is regulated by Articles 753 to 757 NCPC.

The auction is announced at least one day before the date set:

- By a document (placard) displayed in a manner visible from the outside, at the place where the sale will take place; an additional copy of this placard shall be

displayed, within the same period of one day, by the judicial officer at the municipality, at the Court and at the auction's place. The judicial officer shall record the accomplishment of this formality in a single report.

- Through newspapers.

The auction can take place after a period of eight days after the seizure of the items to be sold (Art. 749 NCPC).

The auction is public and is organized by the judicial officer who is exempted from buying the attached and seized items.

Auctions can be held in any place, for instance at the debtor's place. In certain situations, the attached movables are taken over to an auction house.

The sale is made to the highest bidder. If the bidder is not able to pay, the item is sold again ("folle enchère") and in the event of difference in the price, the first bidder has to pay this amount.

In the event the proceeds of the auction are not sufficient to pay all the creditors and the fees, the funds have to be distributed.

This procedure has to be done by the judicial officer in the delay of one month.

Order of priority:

- Expenses of the enforcement procedure.
- Privileged creditors.
- Unsecured creditors.

Between the same level of priority, funds are distributed proportionally ("*au marc le franc*").

This settlement of the creditors can be disputed in court.

III.3 Attachment on the bank account of the debtor

III.3.1 Definition

The attachment on bank accounts is a procedure by means of which a creditor intercepts sums or effects due to his/her debtor and consequently still in the hands of a third party.

The same attachment procedure can be followed in order to attach every sum that has to be paid by the debtor's debtor to the debtor. For instance, the rent paid by the tenant can be attached in the hands of the tenant, when the owner is a debtor (other examples: notaries, lawyers, etc.).

III.3.2 Procedure

The attachment on bank accounts procedure continues against both the seized debtor and the seized third party (bank). It involves three phases:

1. Service of the writ of attachment in the hands of the bank.

The attachment shall take the form of a judicial officer's writ served on the seized third



party.

2. Denunciation of the attachment to the distrained debtor.

Denunciation of the attachment to the distrained debtor shall be made by a served document by the judicial officer.

The denunciation officially informs the debtor concerned of the measure and puts him/her in a position to react. This documents also contains summons to court in order to validate the attachment on bank accounts.

This service of documents must be done in a delay of eight days after the first service (sub 1).

3. Denunciation of the denunciation to debtor.

This document is to be served by a judicial officer to the bank in a delay of eight days after the second service (sub 2).

III.3.3 Conditions and effects

The garnishment means that the sums seized cannot be disposed of, and they cannot be used to make any other payment.

This garnishment procedure is regulated by the provisions of Articles 693 to 718 NCP.

The creditor must hold a public or private document of entitlement. In default, the creditor may seek permission to garnish from the competent court. This is done by way of an *ex parte* application.

III.3.4 Payment

After the attachment of bank accounts has been validated by a court judgement, the latest decision must be served to the bank with an order to make a positive or negative declaration of the issue of the attachment.

In the event the declaration is positive, the attached and blocked amounts are paid by the bank.

III.4 Enforcement against savings deposits and current accounts

See III.3.

III.5 Enforcement on immovable property

III.5.1 Definition of immovable property

Article 517 of the Civil Code states that:

"Property is immovable either due to its nature or purpose, or by the end use for which it is intended."

III.5.2 Definition of seizure on immovable property

The attachment of real estate is defined as the procedure by which a creditor proceeds to the sale of real estate held by his/her debtor to obtain the repayment of his/her debt.

This procedure can only be carried out through legal action. It therefore takes shape following a judgment that makes it possible.

The attachment of real estate is subject to a strictly supervised procedure. It is regulated by Articles 809 et seq. of the NCPC.

III.5.3 Procedure

The seizure of real estate is to be preceded by a payment order served by a judicial officer (Art. 809 NCPC). The seizure can only be done fifteen days after the payment order (Art. 811 NCPC).

The report of attachment of real estate must contain the following mentions (Art. 812 NCPC), in addition to the ordinary mentions of the deeds provided in Article 153 NCPC:

- Statement of the title under which the seizure is made.
- A precise and detailed description of the objects seized.
- Indication of the competent court.
- The creditor's election of domicile at a lawyer's place, where the debtor may make any service of documents.

The report of attachment of real estate by which the creditor notifies the debtor that (s)he has seized the immovable will be transcribed, at the latest, within fifteen days following the service, in the register intended for the mortgage office of the situation of the property. The seized party cannot, from the day of the transcription of the seizure, alienate the seized immovable.

Nevertheless, the alienation thus made will be executed if, before the day fixed for the auction, the purchaser deposits a sufficient sum to pay, in principal, interest and costs, what is due to all the registered creditors, as well as to the main creditor (Art. 823 and 824 NCPC).

Within fifteen days after the transcription, the creditor will file a request at the court. Within eight days, a summons will be served to the debtor to take communication of the request, to provide his/her statements and observations and to attend the reading and publication that will be made, as well as the appointment of the notary before whom the auction will be carried out.

In Luxembourg, only notaries can organize auctions of real estate.

On the day indicated by the summons, the court, by giving notice to the creditor of the publication of the request, will rule on the statements and observations which will have been inserted therein, as well as on the validity of the seizure, and will appoint a notary (Art. 832 NCPC).

The auction date will be determined by the notary within thirty days at the earliest and forty days at the latest from the date of the latest judgment.

At least fifteen days before the auction, the notary will publish information in a Luxembourgish newspaper (date of the seizure, the designation of the building, appointed notary and the day, place and time at which the auction will take place -

Art. 833 NCPC).

The auction may be postponed at the request of the creditor, or of one of the other registered creditors, or of the debtor, but only for serious and duly justified causes (Art. 839 and 840 NCPC).

Anyone capable of bidding may, within eight days of the auction, bid up one or more lots awarded, provided that they amount to at least one sixth of the price of the overbid lots, in addition to the costs.

The minutes of the auction will mention that the sale took place under the terms and conditions of the general specifications and it will be completed by the order made by the notary to the debtor to leave after the service of the document (Art. 849 NCPC).

The successful buyer at the auction will be required to have his/her title transcribed within one month of its date at the mortgage office, and the registrar will have to make a summary mention of the auction in addition to the seizure transcription (Art. 850 NCPC).

III.6 Enforcement against wages and other permanent pecuniary income

III.6.1 Definition

This chapter refers to the attachment on the salary or other periodic incomes of the debtor. It is a procedure that enables the creditor to seize “at source” the sums owed to the debtor.

This procedure enables the seizing creditor (*person who is owed the money by the salaried worker and who initiates the attachment of earnings procedure*) to seize a legally determined part of the sums of money owed by the seized debtor (*salaried worker*) directly from the debtor's employer (*seized third party*).

The attachment of earnings procedure is governed by the Law of 11 November 1970 on assignments, attachments of earnings, pensions and rents.

III.6.2 Procedure

The creditor submits an application for an attachment of earnings before the competent court. The competent court is the small claims court (*“justice de paix”*). It has exclusive jurisdiction on the matter.

Normally the competent court will be the one of the attached debtor's residence. If the debtor lives abroad, but works in Luxembourg, the small claims court of the address of the attached third party (employer) has jurisdiction.

An attachment of earnings can be made on the basis of a public or private document of entitlement or on the basis of an enforcement order.

Notice of the order authorizing an attachment of earnings is served by the clerk of the court on the attached third party, and this notice is considered as the attachment of earnings order.

The clerk of the court will inform the debtor and the creditor that the order authorizing the attachment of earnings has been served.



The employer is obliged to provide a positive or negative declaration within a period of eight days. This declaration indicates the monthly net remuneration paid, any assignments of salaries.

In default of such a declaration, the employer is simply declared to be subject to the attachment.

From the moment the attachment of earnings has been served to the employer, he/she has to:

- 1) Deduct the seized legal amount from the salaried worker's net salary.
- 2) Retain the seized amount whilst awaiting final validation of the judgement.

It is important to note that, before being able to receive payment of all or part of the attached sums, the attaching creditor must assess whether the attachment of earnings sought is properly founded and valid and set out the exact amount of the debt against the attached part.

After validation of the judgement (the judge confirms that the salaried worker owes the requested amounts), the employer must:

- 1) Continue to deduct the seized amounts from the worker's salary.
- 2) Transfer the seized amounts to the creditor until the debt is fully paid.

Any employer who does not send a declaration to the court and/or does not seize the legal deductions may be convicted purely and simply as the debtor to repay the amount of debt.

III.6.3 Legally seizable share of salary

The seizable part of a salary is determined on the basis of the net monthly salary divided into 5 levels. For each salary level, a seizable share is defined by law as shown in the table below:

Level	salary level	Attachable part	Non-attachable part
1	< 722 €	0 %	100 %
2	722,01 € - 1.115,00 €	10 %	90 %
3	1.115,01 € - 1.378,00 €	20 %	80 %
4	1.378,01 € - 2.296,00 €	25 %	75 %
5	> 2.296.01 €	100 %	0 %

If there is more than one claim, the attachable part is distributed proportionally between the creditors.

III.6.4 Maintenance claims

Current maintenance claims are paid within non-attachable part, whereas old and due maintenance claims are paid within attachable part in competition with other claims.

III.7 Attachment under the debtor's debtor



See III.3 (same procedure).

III.8 Enforcement against shares

See III.2 (same procedure, there is no specific procedure for enforcement against shares).

III.9 Other attachment procedures

Not applicable.

III.10 Handing over movable assets

III.10.1 Definition

The seizure under a lien ("*saisie-revendication*") is governed by Articles 963 to 968 NCP. This special form of seizure is a temporary measure on movable assets over which the plaintiff claims to have property or pledge rights.

III.10.2 Procedure

A request has to be filled before the court (president of the court of first instance), in order to get an authorization to proceed to the seizure under the lien.

Only judicial officers may enforce the judge's order. The seizure under a lien is done in the same form as the standard seizure of movables. The writ of seizure has to contain a copy of the judge's order. This temporary procedure has to be validated by the court.

Nevertheless, if the third person is not willing to hand over the movables, or refuses entrance to the judicial officer, the enforcement of the judge's order is suspended, and the case is submitted to the judge.

III.11 Enforcement in reinstatement of employee to work

Not applicable.

III.12 Eviction

III.12.1 Definition

Eviction is the action of forcing someone to move out of a property. The eviction of a tenant can only take place following an enforceable judgment of the justice of peace.

III.12.2 Procedure

The request must be submitted on paper to the clerk of the justice of peace. There is no requirement to engage a lawyer. Jurisdiction is determined by the location of the building. The request has to summarize the grounds in support of the request and specify its object.

The clerk will then summon the parties by registered letter.

At the end of the hearing and the oral arguments, a judgement will be issued. This judgement is notified to the parties by the clerk.

After the timeframe for appeal (40 days from the notice of the judgement, 55 days in case of a default judgement), enforcement can start.

Only judicial officers can enforce judgments. The first step will be to inform the tenant when he/she has to leave at the latest. In the event the tenant does not voluntarily leave the property, the judicial officer proceeds to the eviction.

The judicial officer draws up a list of the furniture, which is transported, at the tenant's expense, to the place indicated by the tenant.

If the tenant does not indicate a place, where the furniture has to be transported, or if he/she does not pay immediately the expenses (in general), the municipality removes and keeps the furniture for a maximum period of 6 months. The tenant can recover the furniture after paying the municipality costs of collection. Generally, the furniture has no monetary value, and the tenants do not recover the furniture. In this case, the municipality can sell the furniture after six months and after summoning the tenant twice to recover his/her furniture.

III.12.3 Wintertime

The law does not prohibit evictions during winter, as for example in France between November 1st and March 31st.

III.12.4 Application for stay

A tenant may apply to the justice of peace for a stay. This is done by submitting a request (no lawyer is needed) to the clerk of the court, who summons the tenant and the owner to the first hearing. The judge can allow a stay of up to three more months to the tenant. The stay can be extended, but not more than two times and each time not more than three months.

The stay is a favour left to the judge's appreciation. The stay will only be granted if the tenant appears to deserve this favour and he/she proves that he/she has taken useful and extensive steps to find new accommodation, unless the stay is incompatible with the personal needs of the owner.

III.13 Enforcement of obligations to act, refrain from acting or suffer action

Not applicable.

III.14 Sequestration of goods

III.14.1 Definition

Sequestration is the deposit of disputed assets for safekeeping until a final judgment is given (Art. 1955 et seq. Civil Code).

Sequestration can be agreed between the parties ("*séquestre conventionnel*") or ordered by the court ("*séquestre judiciaire*"). In contrast to ordinary deposits, sequestrations can also apply to immovable assets (Art. 1959 Civil Code).

Sequestration of goods does not constitute a major mission of the judicial officer. Nevertheless, some judges designate a judicial officer to carry out this mission.

III.4.2 Sequestration by agreement

In the case of sequestration by agreement, a valid agreement between the parties is sufficient, and no court order is required.

The agreement mentions a depositary (sequester), who must exercise all due care with regard to the assets entrusted to him/her. The depositary (sequester) must return the assets when the sequestration ends. The depositary (sequester) is entitled to receive a salary determined by law (Art. 1962, third paragraph, of the Civil Code).

III.4.3 Judicial sequestration

Sequestration can also be ordered by a court. In this case, a depositary (sequester) is also appointed, but this time by the court. Again, the judicial depositary (sequester) must exercise all due care with regard to the assets entrusted to him/her and must return the assets when the judicial sequestration ends.

A court can order the sequestration of (Art. 1961 Civil Code):

- Movable assets that have been attached, seized.
- Movable or immovable property whose ownership or possession is in dispute between two or more persons.
- Goods that a debtor is offering to settle a debt.

Sequestration means that material possession of an asset is transferred to the depositary (sequester). The only measures the depositary (sequester) can take are measures intended to preserve the asset.

The law does not impose any time limit on sequestration.

III.15 Enforcement of foreign enforceable documents from non-EU States

Enforceable and non-enforceable decisions made in another non-EU State cannot be enforced directly in Luxembourg without any recognition proceedings.

There is no special court or jurisdiction for recognition proceedings. The intervention of a lawyer is always compulsory. Recognition proceedings concern all kinds of foreign court decisions:

- Judgment.
- Order in an urgent matter.
- Order issued on motion.
- Order for payment.
- Judgment of the Court of Appeal.
- Judgment of the Supreme Court.

To recognize foreign non-EU enforceable titles the Luxemburgish courts will check:

- The competence of the foreign judge.
- The conformity or the legality of the court decision with domestic law.

- Absence of fraud to the applicable law.
- The conformity with the international order in force in the foreign country.
- The regularity of the procedure carried out abroad.
- The authenticity of the court decision.
- Material facts such as names and signatures of judges and/or clerks having participated in the foreign decision.

Nevertheless, the initial foreign court decision cannot be changed by the Luxemburgish court.

Enforcement of exequatur decisions of a non-EU enforceable title is done in the same way as in the case of Luxemburgish court decisions.

PART IV: ENFORCEMENT COSTS

IV.1 The costs of enforcement

Enforcement fees are fixed by a Grand-Ducal regulation of 24 January 1991 («*Règlement grand-ducal portant fixation du tarif des huissiers de justice du 24 janvier 1991*»)⁷.

Fixed fees are mandatory as a maximum and as a minimum.

Fees have to be mentioned in every judicial officer writ, both at the bottom of the original and at the copy of each document.

The amount of **fixed fee** for each deed is 60 €.

Moreover, the judicial officer can claim:

- Charges corresponding to transportation (0,60 € / km).
- A fee by copy served (1/4th of the fixed fee).
- A fee for address retrieval (1/10th of the fixed fee).
- A fee for each down payment (1/10th of the fixed fee).

When the judicial officer has received mandate to recover or receive the amounts payable by the debtor by virtue of a legal decision, a deed or an enforceable title, an *ad valorem* duty is allocated calculated as per the following brackets:

- 3 % up to 2.500 €.
- 2 % from 2.501 to 5.000 €.
- 1 % from 5.001 € to 10.000 €.
- 0,5 % beyond 10.001 €.

This duty is calculated on the sums effectively received or recovered.

⁷ http://data.legilux.public.lu/file/eli-etat-leg-recueil-lois_speciales_6-fr-pdf.pdf (page 23)

The fees above are submitted to Luxemburgish VAT at 17 %.

Moreover, each page of every deed/writ is subject to stamp duty of 2 €. Each writ is subject to a registration fee of 12 €.

Generally, the standard fee per writ is on average 110-140 €.

Fixed fees are replaced for seizures, evictions, statements of facts (time consuming) by a 'vacation' fee. The vacation fee is fixed at 60 €/hour.

Judicial officers are entitled to reimbursement of their costs.

- Translation of documents.
- Removal.
- Post, DHL, UPS, etc.

PART V: LINKS, LITERATURE AND SOURCES

LINKS

www.huissier.lu

www.guichet.lu

www.justice.lu

www.legilux.lu

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