Insolvency - Luxembourg

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1 Who may insolvency proceedings be brought against?

The Grand Duchy of Luxembourg has eight types of insolvency proceedings.

Three apply only to traders (natural and legal persons):

1. Bankruptcy proceedings, which are provided for by the Commercial Code (*Code de Commerce*), aim to liquidate the assets of a trader who has become insolvent and uncreditworthy.
2. Composition with creditors to prevent bankruptcy, which is provided for by the Law of 14 April 1886 on composition with creditors to prevent bankruptcy (*loi du 14 avril 1886 concernant le concordat préventif de la faillite*), is a procedure that is open, under certain conditions, to debtors who meet the criteria for bankruptcy. Where this composition involves the

surrender of assets, its purpose, like bankruptcy, is to liquidate the assets of the trader concerned. However, it differs from bankruptcy in that the trader avoids the effects of bankruptcy proceedings.

3. Administration proceedings, which are provided for by the Grand-Ducal Order of 24 May 1935 establishing administration (*arrêté grand-ducal du 24 mai 1935 instituant la gestion contrôlée*), aim to reorganise the affairs of traders who request this. However, these proceedings can also be used where traders want their assets to be realised in the best possible way.

In addition to these proceedings, Luxembourg law (Article 593 *et seq.* of the Commercial Code) provides for a procedure whereby traders can obtain the suspension of payments under certain conditions.

4. A fourth procedure is open only to natural persons who are not traders: this is the over-indebtedness procedure, provided for by the Law of 8 January 2013 on overindebtedness (*loi du 8 janvier 2013 sur le surendettement*), which aims to enable applicants to improve their financial situation by establishing a debt repayment plan.

There are also insolvency procedures specifically for notaries, credit institutions, insurance companies and collective investment undertakings (as these are specific to a professional category or business sector, they will not be described in this fact sheet).

2 What are the conditions for opening insolvency proceedings?

1. Bankruptcy

Bankruptcy proceedings are opened by the debtor filing for bankruptcy, by one or more creditors applying for the debtor's bankruptcy or by a court.

Traders must file for bankruptcy with the registry of the district court (*tribunal d'arrondissement*) responsible for commercial cases for the trader's domicile or registered office. This must occur within one month of the date when the bankruptcy conditions are met.

Where one or more creditors of the debtor decide to apply for the trader to be declared bankrupt, they must use a court officer who, through a writ, orders the trader to appear before the district court responsible for commercial cases within eight days (fixed-date writ) so that a decision can be made on the merits of the bankruptcy application.

Bankruptcy proceedings can also be opened by a court based on the information available to it. In this case, the court must summon the bankrupt, through the court registry, to explain their situation to the court sitting in chambers.

Before declaring a trader bankrupt, the district court responsible for commercial cases (hereinafter 'the commercial court' – *tribunal de commerce*) must check whether the person or company in question meets the following three conditions:

- status of trader: a natural person who carries out, as their usual profession (main or supplementary), acts described as commercial by law (e.g. the acts listed in Article 2 of the Commercial Code), or a legal person incorporated in one of the forms provided for by the amended Law of 10 August 1915 on commercial companies (*loi modifiée du 10 août 1915 concernant les sociétés commerciales*) (e.g. *société anonyme* (public limited company), *société à responsabilité limitée* (private limited company), cooperative, etc.);
- cessation of payments: this means that unquestionable debts due for payment (e.g. wages, social security, etc.) are unpaid, with term or contingent debts and natural obligations not being sufficient; and
- loss of creditworthiness: the trader can no longer obtain credit from banks, suppliers or creditors.

Although the refusal or inability to pay a single debt (regardless of the amount) that is unquestionable and due for payment is sufficient, in principle, to establish the state of cessation of payments, a simple cash flow problem does not imply the state of bankruptcy, provided that the trader can obtain the credit needed to continue trading and honour commitments.

2. Composition with creditors to prevent bankruptcy

Composition with creditors to prevent bankruptcy is reserved for 'unfortunate debtors acting in good faith'. These qualities are assessed by the court based on the circumstances of the case.

When the application is made, the commercial court appoints one of its judges to examine the applicant's situation and draw up a report.

Based on this report, the court may, or may not, agree a grace period to allow the trader to make composition proposals to the creditors.

3. Administration

Debtors must submit a reasoned application to the commercial court for the district where they have their main place of business or registered office in the case of a company.

Traders can only go into administration if they have become uncreditworthy or cannot meet all their commitments. In addition, the application must seek either to reorganise the debtor's business or realise their assets in the best possible way. Lastly, case-law requires debtors to act in good faith. In this context, the court has the discretion to assess whether or not, according to the facts and circumstances of the case, the trader has acted in good faith as required in order to benefit from this procedure.

4. Over-indebtedness

Over-indebtedness of natural persons is described as the situation where the debtor domiciled in the Grand Duchy of Luxembourg is clearly unable to meet all his/her non-professional debts that are due and falling due for payment and to honour the commitment that he/she has made to jointly and severally guarantee or pay the debt of a sole trader or a company, provided that he/she has not been a director, in fact or in law, of that company.

The collective debt settlement procedure involves three stages as follows:

- agreed settlement stage, which occurs before the Mediation Commission for OverIndebtedness (*Commission de médiation en matière de surendettement*);
- court-supervised reorganisation stage, which occurs before the magistrate's court (*juge de paix*) for the domicile of the over-indebted debtor;
- personal recovery stage, also known as 'personal bankruptcy' (*faillite civile*), which occurs before the magistrate's court for the domicile of the over-indebted debtor.

It should be noted that the personal recovery stage, which is subsidiary to the other two stages in the collective debt settlement procedure, can be triggered only where the over-indebted debtor is in an irreparably compromised situation, which is described as the situation where the debtor cannot implement:

- the measures of the agreed settlement plan, or
- the measures proposed by the Mediation Commission as part of the agreed settlement, and
- the measures determined in the court-supervised reorganisation proceedings.

It should also be noted that applications for the agreed settlement procedure must be sent to the chair of the Mediation Commission.

An application form for the agreed settlement procedure can be downloaded here.

In addition, creditors of the over-indebted debtor must file their claims with the OverIndebtedness Information and Advice Service (*Service d'information et de conseil en matière de surendettement*). A form for filing claims can be downloaded from the following address.

3 Which assets form part of the insolvency estate? How are the assets treated which are acquired by or which devolve on the debtor after the opening of the insolvency proceedings?

1. Bankruptcy

Once the bankruptcy order has been made, bankrupts are automatically divested of the right to administer any of their assets, even those that may devolve on the bankrupt following the bankruptcy order.

This divestment covers all the bankrupt's movable and immovable assets. This mechanism aims to protect the interests of the body of creditors.

Generally speaking, the trustee goes to the bankrupt's premises to draw up an inventory of the assets located there. In this respect, the trustee must differentiate between those assets that fully belong to the bankrupt and those over which third parties may assert various property rights.

When realising the movable and immovable assets, the trustee ensures that any assets of the bankrupt are sold in the best interests of the body of creditors. In order to sell those assets, the trustee needs authorisation from the court. The movable and immovable assets must be sold as laid down by the Commercial Code. The proceeds must be deposited in the bank account opened in the name of the insolvency proceedings.

2. Over-indebtedness

The court arranges for the debtor's financial and social situation to be assessed in order to verify the claims and value the assets and liabilities.

Having decided to open the personal recovery proceedings and having determined that there are assets to be liquidated, the court then proceeds with the liquidation of the debtor's assets.

The court decides on any disputed claims and orders liquidation of the debtor's personal assets. Only furnishings needed for everyday life and non-professional assets essential for carrying out a professional activity are excluded. The assets of the over-indebted debtor are liquidated in the personal recovery proceedings in accordance with the objective of the law, which is to improve the debtor's financial situation by allowing him/her and his/her household to lead a life in keeping with human dignity.

The debtor's rights and actions in relation to his/her assets are exercised throughout the liquidation by a court-appointed liquidator.

The liquidator has six months to sell the debtor's assets on an amicable basis or to organise a forced sale.

Effects of the personal recovery proceedings:

1. Where the proceeds from the liquidation of assets are sufficient to satisfy the creditors, the court orders closure of the proceedings.
2. Where the proceeds from the liquidation of assets are insufficient to satisfy the creditors, the court orders closure due to insufficient assets.
3. Where the debtor has nothing other than the furnishings needed for everyday life and non-professional assets essential for carrying out a professional activity, the court orders closure due to insufficient assets.
4. Where the assets have no market value or would cost a disproportionate amount to sell in relation to their market value, the court orders closure due to insufficient assets.

Closure due to insufficient assets has the effect of cancelling all the debtor's non-professional debts.

However, the following are excluded from the cancellation of the debtor's non-professional debts:

- debts that a guarantor or co-obligant has paid instead of the debtor;
- debts referred to in Article 46 of the Law, i.e. current payments of maintenance debts and monetary amounts awarded to victims of intentional acts of violence due to bodily injury suffered.

However, debts referred to in Article 46 of the Law can be cancelled where the creditor concerned has agreed to the remission, rescheduling or cancellation of the debts in question.

4 What powers do the debtor and the insolvency practitioner have, respectively?

1. Bankruptcy

Once the bankruptcy order has been made, bankrupts are automatically divested of the right to administer any of their assets, even those that may devolve on the bankrupt.

Following this order, administration of the debtor's assets is entrusted to a trustee.

Where the bankrupt is a legal person, the insolvency estate consists of all the company's assets and liabilities, not including rights that partners may have in that capacity.

Trustees are chosen from among those people who can offer the best guarantees in terms of the intelligence and accuracy of their management.

In practice, judges at the district court responsible for commercial cases choose trustees from the list of lawyers. However, in cases where this is required in the bankrupt's interests, the court can also appoint notaries or accountants/auditors.

As with all proceedings involving traders, the commercial court has jurisdiction in terms of bankruptcy.

It is therefore the commercial court that makes the bankruptcy order, determines the date of cessation of payments, appoints the various participants (official receiver, trustee), sets the date for claims to be filed and the date for the claim verification report to be completed, and orders closure of the bankruptcy proceedings.

Administration of the assets is entrusted to a court-appointed trustee who is responsible for realising the debtor's assets and distributing the proceeds between the various creditors, in accordance with the rules on preferential claims and charges on property.

The official receiver is responsible for supervising the bankruptcy operations, management and liquidation. During a hearing, he /she reports on any disputes that may arise and orders any urgent measures needed to secure and preserve the insolvency estate. He/she also chairs any meetings of the bankrupt's creditors.

Once bankruptcy has been ordered, bankrupt traders are divested of the right to administer their assets and can no longer make any payments or carry out any transactions or other acts in relation to those assets.

2. Over-indebtedness

As regards the debtor's obligations and the effect on the debtor's assets of opening the collective debt settlement procedure, it should be noted that the debtor is subject to a duty of good behaviour.

During the good behaviour period, the debtor must:

- cooperate with the authorities and bodies involved in the procedure by agreeing to provide spontaneously any information on his/her assets, income and debts, and any changes occurring in his/her situation;
- carry out, insofar as this is possible, a paid activity in line with his/her abilities;
- not worsen his/her insolvency and act dutifully to reduce his/her debts;
- not favour a particular creditor, except for maintenance creditors for current payments, landlords for current rent payments for housing meeting the debtor's basic needs, suppliers of goods and services essential for a dignified life, and creditors for current payments in relation to enforcement of the debtor's payment of damages awarded following intentional acts of violence due to bodily injury suffered; – honour the commitments made as part of the procedure.

Two types of body are involved depending on whether the procedure is at the **agreed or court stage**.

The **agreed settlement stage** occurs before the Mediation Commission. The Mediation Commission's members are appointed by the Minister. It has a chair and a secretary, and it meets at least once a quarter. In order to be eligible for the Mediation Commission, applicants must submit a criminal record certificate, among other documents. Once appointed, members are under a legal obligation to inform the Minister of any criminal proceedings or convictions against them so that they can be replaced. The Mediation Commission's members receive an allowance of EUR 10 per session and its chair receives an allowance of EUR 20 per session.

The Mediation Commission decides in particular whether to accept applications for the procedure and whether claims filed are admissible. It also approves or amends draft agreed settlement plans that are submitted to it following investigation by the Over-Indebtedness Information and Advice Service (hereinafter 'the Service').

If, within six months of the Commission agreeing to the procedure, the proposed plan has not been accepted by the interested parties, the Commission draws up a report recording the failure of the agreed settlement procedure. Within two months of the date when this report is published in the register, the debtor can initiate court-supervised reorganisation proceedings before the magistrate's court for his/her domicile. If the debtor does not make this application within the time-limit indicated, he/she can initiate a new collective debt settlement procedure only after two years have passed from the date when the report was published in the register.

If the **court-supervised reorganisation stage** is initiated, the parties will be summoned before the magistrate's court, which can require them to provide all the documents or information allowing the debtor's assets and/or liabilities to be established.

Based on the information submitted, the court draws up a reorganisation plan, which will include measures enabling the debtor to honour his/her commitments.

The reorganisation plan drawn up by the court applies for a maximum of seven years and may lapse in a limited number of cases (in particular where the debtor has not fulfilled his/her obligations under the reorganisation plan).

3. Administration

In administration proceedings, debtors forfeit their decision-making powers to the administrators, who are entrusted with drawing up an inventory and producing either a reorganisation plan or an asset realisation and distribution plan. Debtors are also prohibited from acting in a way that may hinder the work of the administrators appointed in these proceedings.

4. Composition with creditors

During the composition with creditors procedure, the debtor cannot sell or mortgage anything or commit to anything without authorisation from the delegated judge. The delegated judge draws up the inventory and analyses the state of the business, and may, if necessary, obtain the assistance of experts.

5 Under which conditions may set-offs be invoked?

The various proceedings referred to above do not put paid to the preferential claims of creditors, except for the composition with creditors procedure.

1. Composition with creditors

Creditors benefiting from charges over property who take part in the vote lose their status as preferential creditors (Article 10 of the Law of 14 April 1886).

2. Bankruptcy

'In terms of bankruptcy, it is settled case-law that, after the bankruptcy order has been made, no legal, court-ordered or agreed set-off is possible any longer, even between pre-existing claims, if they lacked, up to that point, one of the three qualities of liquidity, payability and fungibility. Although the bankruptcy order can therefore prevent any legal set-off, it should not be inferred that this is absolute or retroactive. The bankruptcy order does not affect **legal set-off** where the conditions for this were met before the bankruptcy proceedings were opened. The Court of Appeal (*Cour d'appel*) has ruled that "*the suspect period does not prevent this type of set-off. Legal set-off is possible despite the cessation of payments. It is not an act of the debtor, as it occurs without his knowledge; Article 445 of the Commercial Code does not cover this.*"

With regard to **court-ordered set-off**, this cannot be ordered after collective proceedings have been opened. However, this can occur during the suspect period, provided that the relevant order has become final (not open to appeal). In this case, set-off can have an effect only from the date of the order.

With regard to **agreed set-off**, this quite clearly cannot occur after collective proceedings have been opened. Moreover, it cannot occur during the suspect period, because it is regarded by Article 445 of the Commercial Code as an abnormal method of payment that is sanctioned by invalidity [1].'

However, it should be noted that the Law of 5 August 2005 on financial guarantees (*loi du 5 août 2005 sur les garanties financières*) provides for specific exceptions to the rules described above with regard, for example, to set-off agreements that may be concluded between parties on the day when insolvency proceedings are opened (or even after this – see Article 18 *et seq.* of the Law of 5 August 2005 on financial guarantees).

3. Administration

As regards administration, composition with creditors or suspension of payments, set-off cannot be carried out after debtors have lost the freedom to dispose of their rights and assets.

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[1] '*La compensation comme garantie d'une créance sur un débiteur en faillite*', Pierre HURT, J.T., 2010, p. 30.

6 What effect do insolvency proceedings have on current contracts the debtor is a party to?

One of the main difficulties that arises for trustees after bankruptcy proceedings have been opened concerns current contracts concluded before the bankruptcy was ordered. Excluding employment contracts that automatically end on the date when the bankruptcy is ordered (Article 121 of the Labour Code (*Code du travail*)), it is traditionally accepted that current contracts continue until they are terminated by the trustee.

The trustee must weigh up the interests involved when deciding whether or not these contracts should temporarily continue. If there are clauses in the contract that terminate it if one of the parties is declared bankrupt, it should be decided whether or not the trustee intends to dispute the applicability of these clauses (bearing in mind that the validity of these clauses is debatable; for example, these clauses are regarded as invalid in Belgium in the context of commercial leases).

In any event, in principle, the trustee is solely responsible for choosing between performance or termination of these contracts. If disputed by the other contracting party which invokes the automatic termination of the contract due to bankruptcy, the trustee exposes himself/herself to legal proceedings with an uncertain outcome, and to the creation of new costs for the insolvency estate [1].

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[1] Sources: ‘Les procédures collectives au Luxembourg’, Yvette HAMILIUS and Brice HELLINCKX (authors of Chapter 3), Editions Larcier, 2014, p. 86.

7 What effect does an insolvency proceeding have on proceedings brought by individual creditors (with the exception of pending lawsuits)?

1. Composition with creditors, bankruptcy, suspension of payment and administration proceedings

In composition with creditors, bankruptcy, suspension of payment and administration proceedings, enforcement measures against traders and their assets are suspended. However, no legal text applicable in the Grand Duchy prevents creditors from taking measures designed to preserve the integrity of their debtor’s assets.

In all these proceedings, debtors no longer have the freedom to dispose of their assets. ‘From the bankruptcy order until closure of the proceedings, no legal action can be validly brought against the bankrupt alone, with regard to assets that form part of the insolvency estate’ (Lux. 12 January 1935, Pas. 14, p. 27). ‘Unsecured creditors and those with a general preferential claim cannot, during the bankruptcy, seek an order against the bankrupt or even the trustee, but can only act by filing their claim or bringing an action for their claim to be recognised’ (Cass. 13 November 1997, Pas. 3030, p. 265).

In certain cases, however, acts of disposal may be carried out with the backing of the person delegated by the commercial court (with regard to suspension of payments or administration).

Moreover, the bankruptcy order renders debts not due as payable and interrupts the application of interest.

2. Over-indebtedness

In terms of collective debt settlement, the Mediation Commission’s decision to accept the debtor’s application automatically suspends any enforcement measures against the debtor’s assets, except for measures relating to maintenance obligations, interrupts the application of interest and renders debts not due as payable.

If the agreed settlement stage fails, the magistrate’s court before which the court stage will be heard can suspend any enforcement measures under the same conditions as indicated above.

8 What effect does an insolvency proceeding have on the continuation of lawsuits pending at the moment of the opening of the insolvency proceeding?

Litigation already in progress when the insolvency proceedings are opened can be validly continued by the trustee acting in that capacity. However, applicants in such cases must regularise the proceedings by involving the trustee who alone has the power to represent validly the bankrupt debtor.

Where the case goes against the debtor, the creditors who brought the proceedings prior to the bankruptcy obtain a security that they can use in the liquidation. However, this security cannot be enforced as the bankruptcy order results in the debtor being divested of the right to administer any assets.

9 What are the main features of the participation of the creditors in the insolvency proceeding?

1. Bankruptcy

Publication of the bankruptcy notice in one or more newspapers distributed in Luxembourg informs creditors that their debtor has gone bankrupt. They must then file their claims, together with their securities, with the registry of the district court responsible for commercial cases, within the time-limit set in the bankruptcy order. The court clerk records the claims and provides a receipt.

Claim declarations must be signed and must include the surname, forename, profession and address of creditors, as well as the amount of the claim, reasons for the claim, and any guarantees or securities associated with the claim. The various claims filed are then verified in the presence of the trustee, bankrupt debtor and official receiver.

During this procedure, if there are any disputes, creditors may be summoned to explain the details of their claim and its merits or exact amount during cross-examination.

If the trustee has been able to identify assets that can be distributed between the creditors, he/she summons the latter to a presentation of accounts meeting during which the creditors can give an opinion on the distribution plan.

If there are insufficient assets, closure of the bankruptcy is ordered.

If the trustee does not fulfil his/her duties to the satisfaction of the creditors, the latter can send their complaints to the official receiver who, as necessary, may replace the trustee.

2. Administration

In administration proceedings, the administrators must provide the creditors with details of the reorganisation or asset realisation plan.

In this case, the creditors may be invited to make comments. Within 15 days of the creditors being informed, they must tell the registry whether they accept or oppose the plan, which cannot be implemented unless over half of the creditors whose claims represent over half of the liabilities accept this plan.

3. Composition with creditors

In the composition with creditors procedure, a meeting of creditors is convened to allow them to discuss the composition proposals made by the delegated judge. The creditors must therefore declare their claims and also state whether or not they accept the composition proposals.

The creditors may then also make comments during the composition approval hearing. They may also lodge an appeal against the order approving the composition where they were not invited to the meeting of creditors or where they voted against the composition proposals.

4. Over-indebtedness

In the first instance, during the agreed settlement stage, creditors must file their claims with the Over-Indebtedness Information and Advice Service. Creditors can then take an active part in the adoption of an agreed settlement plan by said Service.

The Mediation Commission for Over-Indebtedness then convenes the creditors and sets out the proposals made in the agreed settlement plan. At least 60 % of the creditors whose claims represent 60 % of the body of claims must then state that they accept the agreed settlement plan in order for it to be regarded as accepted. No response from creditors is deemed to mean that they agree.

10 In which manner may the insolvency practitioner use or dispose of assets of the estate?

Trustees in a bankruptcy represent both the bankrupt person and the body of their creditors. In this dual capacity, they not only are responsible for administering the bankrupt’s assets, but are also authorised to monitor, as claimants or defendants, all actions that seek to preserve the assets that must be used as security for the creditors, and also to recover or increase those assets in the common interests of the latter (Court of Appeal, 2 July 1880, Pas. 2, p. 49).

The trustee may bring any actions in respect of the common security for the creditors, consisting of the bankrupt’s assets, i.e. that seek to recover, protect or liquidate those assets (Court of Appeal, 25 February 2015, Pas. 37, p. 483).

As regards current contracts following the bankruptcy order, the trustee must decide whether these should be terminated or whether it would be better, where they may release assets, to continue their performance with a view to subsequently meeting the bankrupt’s liabilities.

11 Which claims are to be lodged against the debtor's insolvency estate and how are claims arising after the opening of insolvency proceedings treated?

All creditors must declare their claims, regardless of the nature of the claim and whether or not they have a preferential claim. However, the exception to this procedure is claims arising from the estate, i.e. those claims arising subsequently and in the interests of the bankruptcy proceedings (e.g. trustee’s costs, rent falling due after the bankruptcy order, etc.).

As regards claims that arise from the estate after the opening of the insolvency proceedings and that result from the administration of the bankruptcy or the continuation of certain activities of the bankrupt business, these are honoured first before the rest of the assets are distributed among the body of creditors. Claims arising from the estate are therefore honoured in all cases before those of other creditors.

12 What are the rules governing the lodging, verification and admission of claims?

1. Bankruptcy

In bankruptcy proceedings, the bankruptcy order will be published in various ways (press, registration with the commercial court) so that the situation is brought to the attention of the bankrupt debtor’s creditors, who can then can make themselves known (Article 472 of the Commercial Code).

Creditors must then file their claim with the registry of the commercial court and submit their supporting documents (Article 496 of the Commercial Code).

A form enabling creditors to make this claim declaration is available online at the following address.

Claims are verified by the trustee responsible for the liquidation and may be disputed by the latter (Article 500 of the Commercial Code).

Any claim filed that is disputed is referred to the court.

However, if there are any disputes that, due to their subject-matter, do not fall within the jurisdiction of the district court responsible for commercial cases, they are referred to the competent court for a decision to be made on their merits. They are also referred to the district court responsible for commercial cases for an order to be made on them in accordance with Article 504, on the amounts that may be claimed by the creditors concerned within the context of the composition discussions (Article 502).

2. Composition with creditors

In the composition with creditors procedure, the debtor applying for composition must specify, in the application, the identities and addresses of the creditors and the amounts of their claims (Article 3 of the Law of 14 April 1886).

The creditors are notified by registered letter (Article 8 of the Law of 14 April 1886) inviting them to take part in the composition meeting.

The invitation will also be published in the press.

During the composition meeting, the creditors declare the amounts of their claims.

As indicated above, creditors with claims secured by charges over property who take part in the vote lose their status as preferential creditors (Article 10 of the Law of 14 April 1886).

3. Suspension of payments

In the suspension of payments procedure, the debtor must also submit a list of creditors, indicating their names, the amount of their claims and their addresses.

Creditors are invited to a meeting by registered letter (Article 596 of the Commercial Code) and in the press.

During the meeting, they must declare the amounts of their claims (Article 597 of the Commercial Code).

4. Administration

In administration proceedings, there is no procedure for the filing and acceptance of claims. Debtors must inform the court of the identities of their creditors in their application.

These creditors are subsequently informed by the court of the reorganisation or asset realisation plan drawn up by the administrators appointed by the court.

5. Over-indebtedness procedure

Within one month of the publication of the collective debt settlement notice in the register, creditors of the over-indebted debtor must file **their claims with the OverIndebtedness Information and Advice Service**.

The claim declaration must comply with Articles 6 and 7 of the Grand Ducal Regulation of 17 January 2014 implementing the Law of 8 January 2013 on over-indebtedness (*règlement grand-ducal du 17 janvier 2014 portant exécution de la loi du 8 janvier 2013 concernant le surendettement*).

A declaration form is available for creditors to use.

The Mediation Commission analyses whether the claims are admissible.

13 What are the rules governing the distribution of proceeds? How are claims and the rights of creditors ranked?

The basic principle in bankruptcy law is that each creditor must receive an identical share proportional to the amount of their claim.

Some creditors with a security or preferential claim are paid first.

Preferential creditors are ranked in a legal order that is public policy (property landlords, mortgagees, creditors with securities over the business capital and, in particular, the public treasury in the broadest sense).

In general, the trustee refers to Articles 2096 to 2098, 2101 and 2102 of the Civil Code (*Code civil*).

The trustee must verify each claim by referring to the law and case-law.

The net assets available to unsecured creditors must be distributed on a pro rata basis in accordance with Article 561, first paragraph, of the Commercial Code.

Once the trustee knows the amount of the fees set by the court, has ranked the preferential creditors and knows the amount left to be distributed between the unsecured creditors, he/she draws up an asset distribution plan that is submitted in the first instance to the official receiver. In accordance with Article 533 of the Commercial Code, the trustee invites all creditors to the presentation of accounts meeting by registered letter, to which he/she attaches a copy of the asset distribution plan.

The bankrupt must be served notice of the meeting by a court officer, or by publication in a Luxembourg newspaper.

Unless the presentation of accounts by the trustee is disputed by a creditor, the trustee submits the minutes of the presentation meeting, based on the asset distribution plan, to the official receiver and the court clerk for signature.

Following the presentation of accounts, the trustee pays the creditors.

14 What are the conditions for, and the effects of closure of insolvency proceedings (in particular by composition)?

1. Bankruptcy

In bankruptcy proceedings, when the payments have been made, the trustee can apply for the proceedings to be closed, which is followed by the closure order that, as its name suggests, ends the bankruptcy proceedings.

Under Article 536 of the Commercial Code, bankrupts who have not been declared criminally bankrupt on a negligent or fraudulent basis can no longer be pursued by their creditors, unless their fortunes improve within seven years of the order closing the proceedings due to insufficient assets.

Under Article 586 of the Commercial Code, bankrupts who pay in full all sums owed in terms of principal, interest and costs can be discharged by submitting an application in this respect to the Supreme Court of Justice (*Cour supérieure de justice*).

2. Composition with creditors, suspension of payments, administration

In composition with creditors, suspension of payments and administration proceedings, the court’s decision approving the relevant measure ends the proceedings.

The court can impose civil or criminal penalties on the bankrupt debtor.

If the court finds that the bankruptcy was caused by serious and blatant misconduct on the part of the bankrupt, it can prohibit the latter from carrying out a business activity either directly or through another person. This prohibition also applies to holding a position involving decisionmaking powers within a company.

Other civil penalties include, for bankruptcies of commercial companies, the possibility of extending the bankruptcy to their directors and the possibility of actions based on Articles 1382 and 1383 of the Civil Code (general legal liability) and on Articles 59 and 192 of the Commercial Companies Law (*loi sur les sociétés commerciales*).

Criminal penalties (criminal bankruptcies) can also be imposed on the bankrupt.

In compositions with creditors, persons benefiting from this procedure must reimburse their creditors if their fortunes improve (Article 25 of the Law of 14 April 1886 on composition with creditors to prevent bankruptcy).

Composition with creditors has no effect on the following debts:

- taxes and other government duties;
- claims guaranteed by preferential rights, mortgages or collateral;
- claims in respect of maintenance.

15 What are the creditors' rights after the closure of insolvency proceedings?

Following closure of the insolvency proceedings, if there are any assets, creditors receive the full amounts or a proportion of the amounts of their claims in accordance with the distribution conditions accepted in the closure order.

If bankrupts have not been declared criminally bankrupt on a negligent or fraudulent basis, they can no longer be pursued by their creditors, unless their fortunes improve within seven years of the order closing the bankruptcy proceedings.

Creditors can also bring an action based on Articles 1382 and 1383 of the Civil Code in order to invoke the general legal liability of directors of the bankrupt, or an action based on Articles 59 and 192 of the Commercial Companies Law (liability of administrators and managers in the performance of their mandate).

16 Who is to bear the costs and expenses incurred in the insolvency proceedings?

The costs of the bankruptcy application are included in the costs of the insolvency estate.

As these are costs that arise in the interests of the bankruptcy proceedings, they are paid from the bankruptcy assets before the trustee distributes the remainder of the assets to the various creditors.

The Law of 29 March 1893 on legal aid and deficit proceedings (*loi du 29 mars 1893 concernant l'assistance judiciaire et la procédure en débet*) sets out, in Articles 1 and 2, the various costs that may result from formalities required by insolvency proceedings and determines the order of their payment where there are insufficient assets.

The competent district court sets the trustee's fees based on the Grand Ducal Regulation of 18 July 2003 (*règlement grand-ducal du 18 juillet 2003*).

The trustee must submit, to the district court responsible for commercial cases, a statement of costs and fees based on the assets recovered.

Article 536-1 of the Commercial Code provides, in its second paragraph, that the costs and fees of bankruptcies closed due to insufficient assets will be advanced by the Office of Indirect Taxes (*Administration de l'Enregistrement*) under the conditions laid down by the Law of 29 March 1893 on legal aid and deficit proceedings.

17 What are the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors?

1. Bankruptcy

The bankruptcy order can set the date of cessation of payments by the bankrupt at a date prior to that of the order. However, this date cannot precede the order by more than six months.

To protect the interests of creditors, the period between the cessation of payments and the order is regarded as the '**suspect period**' .

Certain acts carried out during this period, where they may be detrimental to the rights of creditors, will be **null and void**. These involve in particular:

- any acts in relation to movable or immovable property that the bankrupt has sold at no cost or in return for payment where the sale price is clearly much lower than the value of the property in question;
- all payments made in cash or by transfer, sale, offsetting or otherwise for debts that have not yet fallen due;
- all payments made other than in cash or using commercial instruments for debts falling due;
- any mortgage or any other property rights granted by the debtor for debts contracted before the cessation of payments.

For other acts, however, the principle of nullity is not automatic.

As a result, certain **payments made by the bankrupt** for debts falling due and any other acts carried out in return for payment during the suspect period may be voided if it is proven that the third parties who received the payments or who negotiated with the bankrupt **were aware of the cessation of payments**.

When a creditor knows that a debtor is unable to honour commitments, that creditor must not seek to be treated preferentially to the detriment of the general body of creditors.

Mortgage and preferential rights that have been validly acquired may be registered up to the date of the bankruptcy order. However, rights registered in the **10 days preceding the date of cessation of payments** or thereafter may be declared null and void if more than 15 days have passed between the date of the mortgage deed and the date of registration.

Lastly, any **acts carried out or payments made in fraud of creditors**, i.e. where done by the debtor in full knowledge of the detriment that this will cause to the creditor (i.e. by reducing the insolvency estate, not respecting the ranking of claims, etc.) are deemed null and void, whatever the date on which they occurred.

The suspect period concept does not apply to **financial guarantee contracts** or in cases of **future claims transferred to a securitisation body**.

2. Composition with creditors

During the procedure to obtain composition with creditors, debtors may not transfer, mortgage or commit anything without authorisation from the delegated judge.

3. Administration

From the date of the decision appointing a delegated judge to produce the inventory of the business, the trader cannot, under threat of nullity, transfer, establish securities or mortgages over, commit or receive movable capital assets without written authorisation from the delegated judge.

It should also be noted that the law on administration provides for criminal penalties for traders who have concealed part of their assets, exaggerated the amount of their liabilities or involved creditors whose claims have been exaggerated.

4. Over-indebtedness

The judge can, where applicable, appoint persons responsible for providing social, educational or financial management assistance to ensure that the part of the debtor's income that is not allocated to repay debts is used for the purposes for which it is intended.

In carrying out their work, these persons are authorised to take any measures designed to prevent this part of the income from being diverted from its natural purpose or the interests of the debtor's household being harmed.

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