

DEBT RECOVERY IN LUXEMBOURG

Etude Neu & Unsen

Prior to initiating legal action

Essential information

- if either the creditor or the debtor is a physical person: full name, profession, address;
- if either the creditor or the debtor is incorporated: firm name, firm's legal form; registration number of the creditor with Registre de Commerce, or a similar institution;
- copies of invoices, reminders, notices, copies of important correspondence between the creditor and the debtor, copies of contracts;
- any applicable general provisions.

Reminders of invoices should be sent by registered letter to prevent the debtor from pleading that he or she has not received any invoices or reminders. According to Luxembourg law, a registered reminder causes legal interest to accrue, the rate of which changes every year. For 2002, the rate is 5%.

General provisions are only applicable if they have been accepted by the debtor, or if the creditor can provide evidence that, in the past, general provisions have always governed the relationship between the parties.

Furthermore, according to Luxembourg law, for any invoice sent to a merchant or any commercial correspondence between two parties containing a statement, the receiver is considered to have accepted it if he or she does not lodge a protest against it within a reasonable period of time.

Extrajudicial Phase

First of all, the statutory prescription must be checked. Between merchants (merchant firms and companies included) the statutory term of prescription is 10 years, if there is not a special, shorter one. The general prescription term between private individuals, or between private individuals and merchants, is 30 years. However, there is a statutory prescription term of one year for goods delivered by merchants, or commercial firms to private persons. For transport matters, the limit is generally two years, but it may be shorter.

Generally, a registered reminder is addressed to the debtor. This is not necessary, but when a registered reminder is sent, the absence of any reaction from the debtor will

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permit the creditor to plead that the invoice has been accepted. Later, the debtor will not be allowed by the court to raise the issue.

The debtor can also ask that he or she be granted a period of time for payment. This is considered an acceptance of the invoice as well.

If payment is not executed within the term allowed, judicial procedure follows

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