

Law of 8 January 2013 on over-indebtedness

**and amending**

- 1. Article 2016 of the Civil Code;**
- 2. Article 536 of the Commercial Code and repealing**
  - 1. the Law of 8 December 2000 on over-indebtedness, as amended;**
  - 2. Article 41 of the Law of 21 December 2001 on the budget of public receipts and expenditure for the 2002 fiscal year;**
  - 3. Article 4.6 of the New Code of Civil Procedure.**

(Mém A 2013, No 26)

We Henri, Grand-Duke of Luxembourg, Duke of Nassau,  
Having heard our State Council;  
With the consent of the Chamber of Deputies;  
Having regard to the decision of the Chamber of Deputies of 12 December 2012 and that of the State Council of 21 December 2012 that a second vote is not required;  
*Ordered and order:*

**Title 1 - Procedure for collective debt settlement**

**Chapter 1. Introductory provisions**

**Article 1.** A procedure for collective debt settlement shall be established which aims at addressing the financial situation of the debtor allowing him/her to pay his/her debts and ensuring for himself/herself and his/her household, a dignified human existence.

The procedure for collective debt settlement shall include:

- the agreed settlement stage, the proceedings of which are held before the Mediation Committee for Over-Indebtedness (Commission de médiation en matière de surendettement);
- the court-supervised reorganisation stage, the proceedings of which are held before the Court's Magistrate (*juge de paix*);
- and the personal recovery stage, the proceedings of which are held before the Court's Magistrate.

**Article 2.** The over-indebtedness of natural persons is characterised by the clear inability for debtors domiciled in the Grand Duchy of Luxembourg to meet the whole of their non-professional debts due or falling due, and to uphold their commitment to jointly and severally guarantee or pay the debts of an individual entrepreneur or a company insofar as s/he has not been, in fact or in law, the head of such company.

Debtors acting as traders within the meaning of Article 1 of the Commercial Code shall be excluded from the procedure for collective debt settlement. However, the procedure shall be available to them where they have ceased their trade/business activities for at least six months or, in case of bankruptcy, where the closure of operations was ordered.

**Article 3.** (1) As from the filing of the application for admission to the agreed debt settlement procedure in accordance with Article 4 and during the procedure for collective debt settlement and its implementing measures, the over-indebted debtor shall be subject to the obligation of good conduct.

(2) During the period of good conduct, the debtor is required to:

- cooperate with the authorities and bodies involved in the procedure, agreeing to voluntarily communicate any information on his/her assets, income, debts and changes which have occurred in his/her situation;
- carry out, where possible, a remunerated activity which matches his/her capabilities;
- not increase his/her insolvency and to act fairly with a view to reduce his/her debts;
- not favour a creditor, with the exception of the maintenance creditors for the current instalments, the lessors for the current rent instalments relating to an accommodation that meets the basic needs of the debtor, the providers of services and products essential to a dignified life and the creditors for the current instalment relating to an enforcement procedure against the debtor for the payment of damages for the bodily harm suffered following wilful acts of violence;
- meet the commitments made under the procedure.

(3) In case of breach of the period of good conduct by the debtor, the provisions of Article 44 below shall apply.

## **Chapter 2. Agreed settlement**

**Article 4.** The agreed settlement procedure shall occur before the Mediation Committee for Over-Indebtedness, hereinafter the “Committee”. The application for admission to the agreed settlement procedure shall be filed in writing supported by proper documentation and in accordance with the procedures to be laid down by means of grand-ducal regulation, with the Committee, which shall pass it onto the Over-Indebtedness Information and Advice Office, hereinafter the “Office”, for examination purposes. Upon completion of the examination, the Committee shall rule on its admission.

**Article 5.** (1) The decision of the Committee shall be notified to the applicant by registered letter at his/her home address. The Committee shall inform the Office and the known creditors, sureties, joint debtors and garnishees of the decision made and shall publish a notice of collective debt settlement in the register provided for in Article 23, hereinafter the “register”.

(2) Within one month of the date of publication of the notice of collective debt settlement in the register, the creditors of the over-indebted debtor shall file their claims with the Office in the manner prescribed by grand-ducal regulation.

The Committee shall rule on the admissibility of the claim declarations issued.

Only the claims that qualify as unquestionable and liquid shall be taken into account.

(3) The decision of admission of the introductory application for the agreed settlement shall have the effect of:

- initiating the collective debt settlement procedure under which debts not due become claimable on the over-indebted debtor;
- suspending the enforcement procedures and the wage assignments contractually agreed for the payment of an amount of money with the exception of the enforcement procedures conducted against the debtor for the current instalment of the maintenance debts and the damages for the bodily harm suffered as a result of wilful acts of violence, and those conducted against the debtor with the purpose of forcibly evicting a person from the place where s/he is living;
- suspending the interest rates.

The effects of the decision of admission shall commence on the first day following the date of publication of the notice of collective debt settlement in the register and shall be maintained, in the event of a challenge under the collective debt settlement procedure, up to the judgment to be delivered.

However, the attachments already ordered shall retain their preventive nature.

If, prior to the filing of the formal request deemed made, the day of the forced sale of the movable or immovable property attached has already been set and published in accordance with the law, this sale shall take place in accordance with the creditors' rights as regards the forced sale of the movable property and shall take place in accordance with the *procedure d'ordre*<sup>1</sup> in respect of the sale of immovable property.

**Article 6.** Upon admission of the request by the Committee, the Office shall prepare, in cooperation with the debtor, his/her creditors and, where relevant, other offices providing services for the debtor, a draft agreed settlement plan. The debtor must submit all the documents relating to his/her situation of over-indebtedness.

Notwithstanding any provision to the contrary, the Committee may obtain from public administrations, credit institutions, social security bodies, any information likely to give it an exact picture of the assets and liabilities and the income situation of the debtor.

<sup>1</sup> Procedure for distributing the proceeds of sale of real property among the preferential and secured creditors, according to the priority of their liens, preferential rights and mortgages.

**Article 7.** (1) The Committee shall propose to the debtor, the creditors and, where appropriate, to the other interested parties, an agreed settlement plan which may, in particular, include:

- measures of deferment or rescheduling of the debt payment;
- a social, educational or financial management assistance;
- public or private funding support;
- a partial or total cancellation of debts;
- a reduction of the interest rates.

The plan shall define the methods for its implementation and the mutual obligations of the relevant parties.

In this respect, the Committee may summon all the interested parties and hear them.

If the proposed agreed settlement plan is accepted, it shall be dated and signed by the debtor and by the chairperson of the Committee. The Committee shall ensure the publication of the agreed settlement plan accepted by way of a notice to be published in the register.

In this respect, the plan shall include the minutes signed by the chairperson of the Committee comprising:

- the names and capacities of the creditors having formally approved the plan and their claims;
- the names and the capacities of the creditors who have opposed the plan and their claims;
- the names and capacities of the creditors, who have not come forward, and their claims.

The terms of the plan may be amended if there are new elements to justify it.

(2) If at least sixty per cent of the number of creditors accounting for sixty per cent of the collective claims against the over-indebted debtor have agreed to the plan proposed by the Committee, the latter shall be deemed to be accepted by all the creditors that are parties to the plan.

The creditors who have been duly informed of the proposal for the agreed settlement plan, prepared by the Committee, and who did not express their disagreement shall be presumed to accede to it.

Acceptance of the plan shall entail the lifting of the attachments ordered and the amounts withheld for the assignments of claims authorising the garnishee to divest the amounts frozen in accordance with the provisions adopted in the framework of the agreed settlement plan.

(3) The total duration of the agreed debt settlement plan, including where it is subject to a review or renewal, shall not exceed seven years. The measures of the plan may exceed this period where they relate to the repayment of the loans taken

out to purchase an immovable property being the primary residence and whose plan helps prevent the assignment by the debtor.

(4) Where, without considering the irremediable nature of the compromised situation, the Committee finds the insolvency of the debtor characterised by the absence of resources or attachable assets that would enable the over-indebted debtor to pay all or part of his/her debt and that would render the measures referred to in paragraph 1 above inapplicable, the Committee may recommend, without prejudice to the measures provided for in Article 3(2), the suspension of the payability of the claims other than those referred to in Article 46 for no longer than a period of one year. Unless otherwise proposed by the Committee, the suspension of the claim shall result in the suspension of payment of the interests due thereon. During this period, only the amounts due in respect of the capital may also, as of right, bear interests whose rate cannot exceed the legal rate.

In its recommendation, the Committee shall specify the treatment of the current debts necessary for a decent life such as, in particular, maintenance debts, rent debts relating to an accommodation, debts relating to the provision of essential services and products corresponding to the debtor's basic needs. The Committee's recommendation shall be accepted in accordance with the majority conditions of paragraph 2. Once accepted, the suspension shall be notified to the known creditors and be published by way of notice in the register.

Upon expiry of the moratorium period, the Committee shall review the debtor's situation. If this situation allows, it shall recommend all or part of the measures provided for in paragraph 1 above. In the case where, after the moratorium has elapsed, the Committee finds the debtor insolvent, it may draw up a report of default and shall proceed in accordance with Article 8 below without prior consultation with the creditors.

**Article 8.** (1) If, within a maximum period of six months from the decision of admission by the Committee, the proposed plan has not been accepted by the interested parties, the Committee shall draw up a report of default establishing the failure of the agreed settlement procedure. This report shall be transmitted to the relevant parties and shall be published in the register.

(2) Unless review by the Court's Magistrate is sought, the suspensive effects of the decision of admission to the agreed debt settlement procedure shall cease after the two-month period expired as from the date of publication of the report of default in the register.

### **Chapter 3. Court-supervised reorganisation (*redressement judiciaire*)**

**Article 9.** (1) In case the agreed settlement procedure fails, a court-supervised reorganisation procedure may be initiated by the debtor before the Court's Magistrate of the debtor's domicile. In case of filing of an action before the Court's Magistrate in the agreed settlement phase, the request for court-supervised reorganisation shall be filed before this Magistrate. The request shall be lodged

within two months from the date of publication of the report of default in the register. A copy of the report of default referred to in Article 8 shall be attached to the request. Furthermore, the court-supervised reorganisation procedure shall be initiated, examined and adjudicated in accordance with Articles 36 to 40.

(2) The debtor who did not file a request for the admission to the court-supervised reorganisation procedure can only initiate a new agreed debt settlement procedure after a two-year period has elapsed. This period shall start to run as from the date of publication of the report of default in the register.

**Article 10.** The Court's Magistrate may, in any case, impose any investigative measures legally permissible and order the parties and third parties to communicate information or produce trade books or accounting documents that could justify the amount of income, claims and work proceeds of the debtor as well as his/her debts.

The requested information shall be communicated to the Court's Magistrate in writing. Notwithstanding anything to the contrary, the public administrations and social security bodies are required to provide the information they have on the amount of income, claims and work proceeds of the debtor.

If the third parties do not act in response to the requisitions of the Court's Magistrate within the period that s/he determines, or if the provided information appears incomplete or inaccurate to him/her, the Court's Magistrate may, by a reasoned decision, order that the third party appear in person on the day and time that s/he determines. A certified copy of the order shall be attached to the summons of the third party.

The third party that defaults or refuses to provide the requested information shall be subject to penalties provided for in Article 407 of the New Code of Civil Procedure.

The summons of the third parties shall, on pain of nullity, reproduce the text of the previous subparagraph.

**Article 11.** After having heard the parties, the Court's Magistrate shall verify whether the claims are unquestionable, liquid and due.

Where the existence or the amount of a claim, whose knowledge is outside of his/her subject matter jurisdiction, is challenged, the Court's Magistrate shall provisionally set the amount to consider within the reorganisation plan.

**Article 12.** The Court's Magistrate shall render a judgment in which s/he adopts a court-supervised reorganisation plan which may include the following measures:

- 1) the suspension of payment of all or part of the debts;
- 2) the interest rate reduction;
- 3) the suspension of the effect of a security interest with no loss of preferential rights and without compromising the secured assets;
- 4) the debt cancellation on ancillary sums;

5) the exemption of the over-indebted debtor's primary residence, under certain conditions, from the liquidation.

The Court's Magistrate may, where appropriate, designate the persons in charge of social, educational or financial management assistance, for the purposes of ensuring that the part of the debtor's income, which is not allocated to the debt reimbursement, is used for its intended purpose.

In the performance of their mission, these people shall be entitled to take any measure aimed to avoid that this part of the income is diverted from its initial aim or that the interests of the members of the household are harmed.

As regards the measure referred to in point (5) above, the Court's Magistrate may exempt the primary residence of the over-indebted debtor from the liquidation, provided that it is used as a domicile by the children and their custodial father and/or mother or is used as a domicile by the people living at risk of poverty or is used as a domicile by people who, because of their age or disability, would be exposed to social distress due to the loss of their domicile and that the loans made for its purchase may be repaid within the context of the court-supervised reorganisation plan to avoid the sale by the debtor.

The judgment which establishes the plan shall make the plan binding on all the creditors that are parties to the procedure.

In case of non-implementation of the plan, the Court's Magistrate may order its termination.

The Court's Magistrate shall determine the period within which the court-supervised reorganisation must be achieved.

This period may, in no case, exceed seven years. The measures of the court-supervised reorganisation plan may exceed this period where they relate to the repayment of the loans taken out to purchase an immovable property being the primary residence and where the plan avoids its sale by the debtor.

The Court's Magistrate shall also set the dates on which compliance with the terms of the reorganisation plan is verified.

However, where after having reviewed the situation of the over-indebted debtor, the Court's Magistrate finds that the measures proposed in the context of the court-supervised reorganisation do not lead to a recovery of his/her situation by the end of the maximum period of seven years, the Court's Magistrate may impose a plan, for probationary purposes, for a maximum duration of five years.

**Article 13.** The Court's Magistrate shall take a decision within one month after the date of closure of the proceedings.

The judgment shall be delivered in public hearing, as indicated by the Court's Magistrate.

The judgment shall be notified by the registrar to the debtor, the creditors that are parties to the proceedings and the Mediation Committee in the form provided for in Article 170 of the New Code of Civil Procedure.

The judgment shall be enforced as from its notification, except in emergency situation, when the Court's Magistrate may order the enforcement to be executed as from its delivery and upon simple presentation of the original.

**Article 14.** The terms of the court-supervised reorganisation plan may be amended by the Court's Magistrate dealing with the case if new elements justify it. In this case, the application shall be filed, examined and adjudicated in accordance with the provisions of Chapter 4 of Title 2.

**Article 15.** The orders, judgments, minutes, copies, summons and notifications that can be issued in execution of the procedure provided for above as well as documents of all kinds produced in the course of proceedings shall be exempt from stamp duties and registration taxes.

#### **Chapter 4. Personal recovery**

**Article 16.** (1) Where the debtor as defined in Article 2 above is in a situation that is irremediably compromised, s/he may request the opening of a personal recovery procedure under the conditions provided for by this law.

The irremediably compromised situation is characterised by the clear impossibility to implement:

- the measures of the agreed settlement plan approved by the parties within the framework of the agreed settlement plan or
- the measures proposed by the Committee within the framework of the agreed settlement plan and
- the measures provided for under the court-supervised reorganisation procedure.

(2) The personal recovery procedure shall be subsidiary to the two other stages of the collective debt settlement procedure.

(3) The written request shall be filed with the registry of the Magistrate's Court in as many copies as there are parties involved.

It shall include, in addition to the facts on which the request is based, the first and last names, the date of birth, occupation, domicile or residence of the debtor as well as the first and last names, business or legal name and domicile or residence of his/her known creditors.

It shall be signed by the applicant or his/her legal representative.

(4) The parties including the Office and, where appropriate, the person in charge of the debtor(s) social, educational or financial management assistance shall be summoned to appear before the Court's Magistrate by registered letter of the registry within fifteen days of the request's filing.

For each party other than the requesting party, the registry shall attach a copy of the request.

After having heard the debtor, if s/he appears, and the other parties present or represented at the hearing, the Court's Magistrate shall be free to assess whether or not the debtor's situation is irremediably compromised. S/he renders either a judgment ordering the opening of the personal recovery procedure or a judgment in which s/he finds that the conditions for opening a personal recovery procedure have not been fulfilled. A notice of judgment shall be published by the registry in the register provided for in Article 23.

However, where the over-indebted debtor has already been subject to a court-supervised reorganisation for probationary purposes within the meaning of the last subparagraph of Article 12 of the law, access to the personal recovery procedure shall be subject to the implementation of said plan.

In the case where the debtor has not been subject to a court-supervised reorganisation plan for probationary purposes within the framework of a court-supervised reorganisation procedure, the Court's Magistrate dealing with the case is entitled to make the access to the personal recovery procedure subject to the implementation of such a plan whose maximum duration cannot exceed five years.

(5) The effects of the judgment opening the personal recovery procedure shall become effective from the first day following the publication of the judgment in the register.

(6) Where s/he deems it necessary, the Court's Magistrate may order a social investigation and a social monitoring of the debtor.

Notwithstanding any provision to the contrary, the Court's Magistrate may obtain any information and any document enabling him/her to assess the debtor's situation and its possible development

**Article 17.** The Court's Magistrate shall have a report on the debtor's economic and social situation drawn up, the claims verified and the assets and liabilities assessed.

In this respect, the Court's Magistrate may be assisted by the Office or other social services. In case of need, the Court's Magistrate may appoint one or more experts registered on the list of certified experts. The remuneration of the expert shall be fixed in accordance with the legal and regulatory provisions applicable to certified experts.

**Article 18.** (1) Without prejudice to the provisions of the first subparagraph of Article 1 of the law, the Court's Magistrate shall rule on any claims that may be challenged and order the judicial liquidation of the debtor's personal assets, from which are excluded: the movable property necessary for everyday living and non-professional assets essential for carrying out his/her professional activity.

(2) The Court's Magistrate shall rule on the liquidation of the debtor's assets. In this respect, s/he may be assisted by the Office or other social services. In case of need,

the Court's Magistrate may appoint one or more liquidators selected in accordance with the arrangements set out in Article 456 of the Commercial Code. The remuneration of the liquidator shall be fixed in accordance with the legal and regulatory provisions applicable to the receivers of a commercial bankruptcy.

The judgment ordering the liquidation shall automatically give rise to the debtor's divestment of his/her assets. The rights and actions of the debtor over his/her personal assets shall be exercised throughout the liquidation process by the liquidator. A notice of the judgment ordering the liquidation shall be published by the registry in the register.

The liquidator has a period of six months to sell the debtor's assets amicably or, if this is not possible, organise a forced sale under the conditions relating to the civil enforcement procedures.

In the event of a forced sale, where a foreclosure, which has been initiated before the opening judgment, has been suspended by operation of the latter, the actions taken by the executing creditor shall be deemed performed on behalf of the liquidator who proceeds with the sale of the immovable property. The foreclosure may resume its course at the stage where the opening judgment suspended it.

The liquidator shall distribute the proceeds of the assets and pay off the creditors according to the priority rank of the securities securing their claims.

Within three months of the liquidation of the debtor's assets, the liquidator shall file a report with the registry in which s/he specifies the transactions to realise assets and allocate the price.

**Article 19.** Where the asset realised is sufficient to pay off the creditors, the Court's Magistrate shall declare the procedure closed. Where the asset realised is insufficient to pay off the creditors, where the debtor does not possess anything else than movable property necessary for everyday living and non-professional assets essential for carrying out his/her professional activity, or where the assets are entirely made up of property with no market value or for which the sales costs would be clearly disproportionate with regard to their fair market value, the Court's Magistrate shall pronounce the closure for inadequacy of assets.

The closure for inadequacy of assets shall entail the writing-off of all the non-professional debts of the debtor, except for 1. the debts which the guarantor or co-obligant paid in the place and stead of the debtor and 2. the debts referred to in Article 46 of the law.

However, where the creditor concerned by the debts referred to in Article 46 agreed to the cancellation, rescheduling or write-off of the debts, they can be subject to the measures in question.

**Article 20.** If, by way of an exception, s/he considers that the judicial liquidation can be avoided, the Court's Magistrate shall, where appropriate upon a proposal

from the proxyholder, draw up a plan including the measures referred to in Article 12 above.

**Article 21.** (1) The over-indebted debtors who have benefited from the personal recovery procedure shall, in this respect, be the subject of an entry in the register for a period of seven years from the date of the judgment closing the personal recovery procedure, which has acquired the force of *res judicata*.

Without prejudice to the legal provisions of Article 47 below, the deregistration of the over-indebted debtor from the register shall be automatic and carried out, as of right, by the Chief Public Prosecutor or by a judge of the Public Prosecutor delegated in this respect, after expiry of this seven-year period.

(2) The over-indebted debtor having benefited from the write-off of his/her non-professional debts following a judgment closing the personal recovery procedure for inadequacy of assets, which has acquired force of *res judicata*, shall be excluded from the access to the personal recovery procedure during the period of registration with the register and his/her request is to be declared inadmissible.

**Article 22.** Debt cancellation shall be granted unless there was a return to better fortunes within seven years of the decision.

In such event, the Court's Magistrate of the debtor's domicile seized of the case by means of a request, on the initiative of the debtor, any creditor, co-obligant or guarantor of the over-indebted debtor, may refer the file to the Committee for the purposes of proposing an agreed settlement plan, which shall be drawn up in accordance with Article 7 et seq. of the law.

## **Chapter 5. The register**

**Article 23.** (1) A register shall be created at the Chief Public Prosecutor which centralises the notices and information established in respect of the collective debt settlement procedure. The register is intended to provide creditors, guarantors and co-obligants of the over-indebted debtor with information on the state of progress of the procedure of collective debt settlement provided for in this law.

The Chief Public Prosecutor shall be considered as regards the processing of judicial data within the meaning of Article 8 of the Law of 2 August 2002 on the protection of persons with regard to the processing of personal data, as amended, as controller within the meaning of the said law.

The Minister responsible for Family shall be considered, as regards the processing of personal data by the Committee within the framework of the collective debt settlement procedure, as controller within the meaning of the Law of 2 August 2002 on the protection of persons with regard to the processing of personal data, as amended.

The secretary of the Committee shall provide the Chief Public Prosecutor with the notices drawn up within the framework of the agreed settlement. The chief registrar of the Court hearing the case shall do the same as regards the judicial phases.

(2) The notices kept in the register shall be advertised by way of an entry in the IT file, in the name of the protected person. This entry shall include the number under which the record or information was entered, as well as the date of their publication in the register.

Any natural person proving his/her identity shall be entitled to consult the register via an IT system in order to seek confirmation or denial of the entry in the register of a specified person. Only the persons referred to in Articles 23(3) and 43 of the law shall have access to the notices published in the register.

All the persons registered in the register shall have an access right and a right of rectification of the data that concern them in accordance with the provisions of Chapter 6 of the Law of 2 August 2002 on the protection of persons with regard to the processing of personal data, as amended.

(3) The secretary of the Committee, the persons authorised to collect, register, manage or communicate the data registered in the register, the registrars and the Court's Magistrates involved in the collective debt settlement procedure are required to respect the confidentiality of this information, except for the exchange between them of information on this debtor or on those who share a common property or a joint ownership with him/her. Article 458 of the Penal Code shall apply to them.

The persons referred to in the previous subparagraph and those referred to in Article 43 of this law shall have a direct IT access to the notices in the register within the framework of the collective debt settlement procedure.

(4) Without prejudice to Article 21(1), the duration of the entries in the register shall be fixed as follows:

- a. the agreed settlement plans, court-supervised reorganisation plans and plans drawn up for probationary purposes shall be registered in the register throughout their implementation without exceeding seven years as from the date of their establishment;
- b. the recommendations of the Committee that have been accepted and relate to the moratorium provided for in Article 7(4) of the law shall be kept for a duration that cannot exceed seven years as from the acceptance of the recommendation by the Committee.

Except for the case aiming to implement a personal recovery procedure, the over-indebted debtor may request the early deregistration from the register by way of a request to be made to the Chief Public Prosecutor provided that s/he can justify the entire settlement of his/her debts to all the creditors referred to in the plan or judgment. In this respect, the debtor shall deliver a certificate of payment from each of the relevant creditors. This certificate shall unambiguously indicate full repayment of the claim.

(5) The manner in which the register shall operate and the notices and information referred to in paragraph 1 above shall be published is determined by means of grand-ducal regulation.

**Title 2 - The bodies, rights of appeal and provisions common to the three stages of the collective debt settlement**

**Chapter 1. The Over-Indebtedness Information and Advice Office**

**Article 24.** An over-indebtedness information and advice office shall be created under the authority of the Minister responsible for Family, whose mission shall be:

- to provide the public with information about indebtedness and over-indebtedness;
- to participate in prevention initiatives;
- to participate in the training of professionals of educational and social work facing over-indebtedness situations;
- to draw up draft agreed settlement plans;
- to participate in debt settlement procedures;
- to participate in the work of the Committee and the Court's Magistrate;
- to monitor the execution of the commitments made;
- to establish exchange and cooperative relationships with similar bodies;
- to examine the developments in the indebtedness and over-indebtedness of the households in Luxembourg, to evaluate the causes thereof, to assess their effects and consequences;
- to draw up proposals for combating over-indebtedness and to submit them to the government.

**Article 25.** The management of the Office shall be entrusted with bodies meeting the criteria provided for in the Law of 8 September 1998 governing the relations between the State and bodies operating in the social, family and therapeutic fields, as amended.

The organisation and operation of the Office shall be specified in a grand-ducal regulation.

The operation costs of the Office shall be borne by the State within the limits of the budget appropriations.

**Article 26.** With a view to managing the requests filed with the Mediation Committee, the Office may create and use a database in accordance with the conditions provided for in the Law of 2 August 2002 on the protection of persons with regard to the processing of personal data, as amended.

This database may be consulted by the responsible minister, the Committee or by the Court's Magistrate dealing with the case in the course of the collective debt settlement procedure. The Office is required to communicate, at the request of any of the latter, all the documents that are useful in establishing the situation of the over-indebted debtor.

## **Chapter 2. The Mediation Committee for Over-Indebtedness**

**Article 27.** The Committee shall comprise six members, i.e.:

- two State representatives, including one representative of the Minister responsible for Family who shall chair the Committee;
- two persons designated according to their competences for loans to individuals;
- two persons designated according to their competences for combating over-indebtedness.

Members shall be appointed by the Minister responsible for Family for renewable three-year terms.

The organisation and operation of the Committee as well as the compensation of its members shall be laid down in a grand-ducal regulation.

The operation costs of the Committee shall be borne by the State within the limits of the budget appropriations.

**Article 28.** The Committee shall be responsible for the following:

- deciding on the acceptance of the requests to the collective settlement procedure and managing these requests subsequently;
- studying and analysing the draft agreed settlement plans submitted to it;
- convening a hearing of the Office;
- convening, where appropriate, a hearing of all the interested parties;
- approving or amending the draft agreed settlement plans submitted to it;
- proposing agreed settlement plans;
- advising all the creditors and third parties involved of the progress of the procedure;
- carrying out the publications in the register;
- deciding on the admissibility of the claim declarations;
- requiring information from public administrations, credit institutions and social security bodies;
- proposing, where necessary, a social, educational or financial management assistance;
- setting the dates on which compliance with the terms of the agreed settlement plan is verified by the Office;
- acknowledging, after the Office informed it, the failure of an agreed settlement plan and notifying all the interested parties thereof;
- submitting, where necessary, to the Remediation Fund for Over-Indebtedness (Fonds d'assainissement en matière de surendettement) applications for debt consolidation loans;
- proposing to the parties any measures necessary to establish and implement an agreed settlement plan;
- acknowledging the withdrawal of the request by the over-indebted person.

## **Chapter 3. The Remediation Fund for Over-Indebtedness**

**Article 29.** A remediation fund for over-indebtedness shall be created for granting debt consolidation loans within the context of an agreed settlement or court-supervised reorganisation of debts.

The Fund shall be governed by the provisions of Articles 76 and 77 of the Law of 8 June 1999 on the State budget, accounts and treasury, as amended.

The Fund shall be under the authority of the Minister responsible for Family.

**Article 30.** The Fund shall be financed by:

- annual allocations from the State budget;
- donations;
- repayments of consolidation loans, including interest income, granted to the debtors.

**Article 31.** As part of the collective debt settlement procedure, the Minister may grant a consolidation loan to the over-indebted debtor on the initiative of the Committee, after the Office's opinion has been sought.

**Article 32.** The loan cannot exceed the amount of one thousand seven hundred and thirty-five (1,735) euros based on the number 100 of the weighted cost-of-living index as at 1 January 1948. Without prejudice to the exceptions provided for in the second subparagraph below, it shall be repayable in fixed instalments and the maximum repayment duration cannot exceed seven years. The interest rate shall be the legal interest rate and it shall be reset, from time to time, according to the development of the latter.

On the Committee's initiative, the Minister may, after the Office's opinion has been sought:

- abolish or reduce the interest rate;
- extend the duration of the loan;
- temporarily suspend the repayment of the loan;
- convert the re-outstanding balance of the loan into a non-refundable aid.

No new repayment can be made for a period of ten (10) years.

This procedure cannot be relied on for the repayment of claims payable to professionals of the financial sector.

**Article 33.** The Fund may be given any personal and tangible guarantees it deems necessary.

#### **Chapter 4. Rights of appeal and conditions for their implementation with respect to the three stages of the collective debt settlement procedure**

**Article 34.** (1) The decisions taken by the Committee within the context of the agreed debt settlement procedure shall be immediately enforceable, notwithstanding the filing of legal remedies and without security.

(2) An action might be brought before the Court's Magistrate of the debtor's domicile, adjudicating at last instance, against the Committee's decisions on the refusal of admission to the collective debt settlement procedure and on the inadmissibility of a claim declaration. The applicant and the creditors shall be informed of the refusal of admission to the procedure or the decision of inadmissibility of their claim declaration by registered letter. This action must be brought, on pain of expiry, within one month of the publication of the notice of collective debt settlement in the register. It shall be initiated, examined and adjudicated in accordance with the procedure provided for in Articles 36 to 39.

**Article 35.** In the absence of a claim declaration within the legal period, the creditor may declare his/her claim, at any stage of the debt settlement procedure, subject to the decisions already taken at the time of his/her declaration.

**Article 36.** The written request before the Court's Magistrate shall be filed with the registry of the Magistrate's Court of the debtor's domicile in as many copies as there are parties involved.

The request shall include the first and last names, occupation and domicile of the parties. It shall summarise the grounds relied upon in support of the request and specify the subject thereof.

The date of the filing of the request shall be recorded by the registrar in the register provided for in Article 23 above. The registrar shall also record the date of the registered letters provided for in this law.

Moreover, the registrar shall publish the document instituting the proceedings by way of a notice in the register.

**Article 37.** The registrar shall summon the parties, including the Office by registered letter with acknowledgement of receipt. S/he shall attach a copy of the request for each defendant. The letter shall include the first and last names, occupation and domicile of the applicant, the subject of the request, the day and time of the hearing set for the proceedings by the Court's Magistrate within a minimum period of eight days. The summons shall also include, under penalty of being declared void, the information provided for in Article 80 of the New Code of Civil Procedure.

**Article 38.** For the purposes of examining and adjudicating the cases, the ordinary procedure provided for in Magistrate's Court's matters shall be followed, subject to any derogations thereto under this law.

The Court's Magistrate may, either upon the request of the parties or automatically, summon any creditor to join the proceedings when his/her presence at the hearing is deemed necessary.

Where an investigation or an expertise is required, the registrar shall call the witnesses and the experts by registered letter with acknowledgement of receipt. The letter shall specify the purpose of the investigation or the expertise.

Within 15 days of the delivery of the decision, the registrar shall provide the parties with a plain copy of the judgment by registered letter and shall publish the judgment by way of a notice in the register.

**Article 39.** If one of the parties does not appear either in person or by virtue of a proxy, the Court's Magistrate shall rule on the case in accordance with the provisions of Articles 74 to 89 of the New Code of Civil Procedure. The party failing to appear may oppose the judgment, by declaration to the registry, within 15 days of the notification provided for in the fourth subparagraph of Article 38. In this case, s/he shall be summoned in accordance with Article 37.

**Article 40.** Only the following decisions of the Court's Magistrate shall be subject to appeal, i.e.:

1. the judgment in which the court-supervised reorganisation plan is adopted;
2. the judgment providing for the opening of the personal recovery procedure;
3. the judgment closing the personal recovery procedure;

The appeal shall be filed with the *Tribunal d'arrondissement* (District Court). To be admissible, it shall be filed 15 days of the notification of the judgment where it is rendered after due hearing of the parties and, where the judgment is rendered in absentia, within 15 days from the day on which the opposition is no longer admissible. The ordinary procedure provided for in commercial matters shall apply both to the filing of the appeal as well as the examination and adjudication of the case. Moreover, the registrar shall publish the outcome of the appeal judgment or the judgment delivered under appeal in cassation by way of a notice in the register.

### **Chapter 5. Provisions common to the three stages of the collective debt settlement procedure**

**Article 41.** (1) Creditors having secured their claims by means of a guarantor or a co-obligant are required to inform the Committee or the Court's Magistrate in their claim declaration whether or not they relied on the guarantors or co-obligants.

(2) Debt cancellation on the principal or the accessory amounts, the loan rescheduling measures, the interest rate reduction granted within the context of a plan or by a judgment under this law in favour of the over-indebted debtor shall also benefit guarantors having secured the liability of the over-indebted debtor as well as the co-obligants and joint debtors of the over-indebted debtor.

(3) In the case where the guarantors, co-obligants or joint debtors had to act in the place and stead of the principal debtor and intend to exercise their right to take

action against the principal debtor, the measures specified in paragraph 2 from which the principal debtor benefited under this law are enforceable against them.

(4) The provisions of this Article shall apply notwithstanding Articles 2036 and 2039 of the Civil Code.

**Article 42.** (1) The admission of the introductory application for the agreed settlement in the agreed settlement stage before the Committee or the filing of the request instituting proceedings or the notice of appeal in the court-supervised reorganisation stage or the filing of the request instituting a personal recovery procedure or a notice of appeal in the personal recovery stage entails a ban on the applicant from:

- taking any action other than the normal wealth management;
- taking any action likely to favour a creditor, with the exception of payment of the common instalments of maintenance debts, common rent instalment relating to accommodation corresponding to the basic needs of the debtor and the providers of services and products essential to a dignified life and the common instalment relating to an enforcement procedure against the debtor for the payment of the damages for the bodily harm suffered following wilful acts of violence;
- increasing his/her insolvency.

(2) The ban provided for in paragraph 1 may be waived in case of authorisation by the creditors within the framework of the agreed settlement plan and the decision of the Court's Magistrate in all other cases.

**Article 43.** The members of the Committee, the agents of the Office, as well as all the other social service practitioners involved in the collective debt settlement procedures, are bound by the obligation of professional secrecy vis-à-vis third parties that are not concerned by these procedures, subject to the sanctions provided for in Article 458 of the Penal Code.

**Article 44.** (1) The revocation of the admissibility decision or the agreed settlement plan or the court-supervised reorganisation plan or the judgment opening or closing the personal recovery procedure may be ordered by the Court's Magistrate of the over-indebted debtor's domicile before whom the case is brought upon request of the Committee's chairperson or the proxyholder or the liquidator or the interested creditor by means of a simple written statement filed with or sent to the registry, where the debtor:

1. either provided inaccurate documents in order to obtain or retain the benefit of the collective debt settlement procedure;
2. or wrongfully increased his/her liabilities or decreased his/her assets;
3. or knowingly made false statements;
4. or grossly failed to fulfil the obligations imposed on him/her within the framework of the collective debt settlement procedure.

The registrar shall inform the debtor and the creditors of the date on which the case will be brought before the Court's Magistrate.

The registrar shall ensure the publication of the revocation judgment by means of a notice in the register.

(2) For a period of five years after the end of the agreed settlement plan or the court-supervised reorganisation plan or after the date on which the judgment closing the personal recovery procedure acquired force of *res judicata*, including cancellation of principal debts or write-off of debts, any creditor may request the Court's Magistrate to revoke the admissibility decision, due to any act performed fraudulently by the debtor.

The application is to be filed by means of a request before the Court's Magistrate of the debtor's domicile.

(3) In the event of a revocation, the creditors regain the right to individually take an action over the debtor's assets for the recovery of the unpaid part of their claims.

The person whose agreed settlement plan or court-supervised reorganisation plan was revoked for the aforementioned reasons, cannot file a request aiming to obtain a collective debt settlement, during a period of five years from the revocation judgment.

The person whose debt cancellation or debt write-off has been revoked for the aforementioned reasons, shall be excluded from access to the personal recovery procedure and his/her application is to be declared inadmissible.

(4) The orders, judgments, minutes, copies, summons and notifications that may be issued in application of the collective debt settlement procedure as well as the documents of all kinds produced in the course of the said procedure shall be exempt from stamp duties and registration taxes.

**Article 45.** The periods of prescription shall be suspended for the duly declared creditors during the collective settlement procedure and for the period in which the respective plans shall be executed.

**Article 46.** Except with the creditor's agreement, the following shall be excluded from any cancellation, rescheduling or write-off:

- common instalments of maintenance debts;
- monetary compensation allocated to the victims of wilful acts of violence, for the bodily harm suffered.

**Article 47.** The following persons shall not be entitled to benefit from the provisions of the Law on over-indebtedness:

- any person having organised his/her insolvency;
- any person having embezzled or concealed, or attempted to embezzle or conceal all or part of his/her assets;
- any person who, without the agreement of his/her creditors, the Committee or the Court's Magistrate, increased his/her indebtedness by contracting new loans or by way of disposal of his/her assets during the collective debt settlement procedure.

### Title 3 – **Additional provisions**

**Article 48.** Any reference to this law shall be made in abbreviated form, using the following title: “Law on over-indebtedness”.

**Article 49.** The persons who signed an application for an agreed debt settlement or filed an application for a court-supervised reorganisation or were subject to a court-supervised reorganisation under the Law of 8 December 2000 on the over-indebtedness within six months prior to the date of entry into force of this law may benefit from the personal recovery procedure provided the applicable conditions are met.

### Title 4 – **Amendment of Article 2016 of the Civil Code**

**Article 50.** Article 2016 of the Civil Code shall be supplemented with two new subparagraphs which shall read as follows:

“Where the guarantee is contracted by a natural person, s/he shall be informed by the creditor of the changes in the amount of the secured claim and the ancillary costs related thereto at least annually at the date agreed between the parties or, failing that, at the anniversary date of the contract, under pain of forfeiture of all the ancillary costs in connection with the debt, fees and penalties.

A professional creditor cannot use the contract of guarantee entered into by a natural person whose commitment was, at its conclusion, clearly disproportionate to his/her property and income, unless the assets of such guarantor, at the time s/he is called upon, does not allow him/her to meet his/her obligation.”

### Title 5 - **Amendment of Article 536 of the Commercial Code**

**Article 51.** Article 536 of the Commercial Code shall be amended as follows:

1. The second sentence of the first subparagraph shall read as follows:

“In this case, the creditors shall start bringing their individual actions against the person and the property of the bankrupt who was found guilty of bankruptcy with irregularities deemed a breach of the law (*banqueroute simple*) or fraudulent bankruptcy (*banqueroute frauduleuse*).”

2. The following new second subparagraph shall be inserted:

“The bankrupt who was not found guilty of bankruptcy with irregularities deemed a breach of the law or fraudulent bankruptcy can no longer be sued by its creditors, unless the bankrupt’s fortunes improve within seven years of the closing judgment for inadequacy of assets.”

### Title 6 - **Repealing provisions and entry into force**

**Article 52.** The Law of 8 December 2000 on over-indebtedness, as amended, as well as Article 41 of the Law of 21 December 2001 on the budget of public receipts and expenditure for the 2002 fiscal year shall be repealed.

**Article 53.** Article 4.6 of the New Code of Civil Procedure shall be repealed.

**Article 54.** This Law shall enter into force on the first day of the twelfth month following its publication in the Mémorial.