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Luxembourg Insights

March 2022

Simmons & Simmons Luxembourg LLP

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Asset Management &
Investment Funds



Start of the joint supervisory action on the valuation of UCITS and open-ended AIFs

On 14 March 2022, the CSSF published a communiqué to announce the start of the joint supervisory action on the valuation of UCITS and open-ended AIFs.

As a reminder the CSSF issued a communiqué dated 24 January 2022 recalling that the European Securities and Markets Authority (“ESMA”) has launched a joint supervisory action (“JSA”) on the valuation of open-ended UCITS and AIFs. In this context, the CSSF launched the first phase of this JSA on 11 March 2022 by asking a sample of UCITS and

AIF investment fund managers to work on a dedicated questionnaire. UCITS and AIF investment fund managers who have not received an email from the CSSF on March 11, 2022 regarding this topic are not concerned by this exercise.

For more information, please click [here](#).



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Asset Management &
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FAQ on the AML/CFT RC REPORT for CSSF supervised Luxembourg investment funds and Luxembourg investment fund managers

On 18 March 2022, the CSSF published a FAQ in relation to the completion and transmission of the AML/CFT.

The FAQ published by the CSSF refers to a list of questions & answers in relation to the completion and transmission of the AML/CFT compliance officer's summary report as defined in Article 42 (6) and 42 (7) of the CSSF Regulation No 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing as amended.

This FAQ is of interest for all Luxembourg investment funds and Luxembourg Investment Fund Managers which are supervised by the CSSF for AML/CFT purposes.

For more information, please click [here](#).



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Asset Management &
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ESAs issue updated supervisory statement on the application of the sustainable finance disclosure regulation

On 25 March 2022, the European Supervisory Authorities (“ESAs”) has updated its Supervisory Statement on the application the application of the Sustainable Finance Disclosure Regulation (“SFDR”). This includes a new timeline, expectations about the explicit quantification of the product disclosures under Article 5 and 6 of the Taxonomy Regulation, and the use of estimates.

As a reminder, the supervisory statement aims to promote an effective and consistent application and national supervision of the SFDR, thus creating a level playing field and protecting investors.

The ESAs recommend that national competent authorities and market participants use the current interim period from 10 March 2021 until 1

January 2023 to prepare for the application of the forthcoming Commission Delegated Regulation containing the Regulatory Technical Standards (“RTS”) while also applying the relevant measures of SFDR and the Taxonomy Regulation according to the relevant application dates outlined in the supervisory statement.

For more information, please click [here](#).



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Reports of investment funds foreseen by Circular CSSF 21/790 now available in eDesk



Reminder: On 22 December 2021, the CSSF issued a communiqué on the publication of Circulars CSSF 21/788, 21/789 and 21/790. These circulars introduce new reports in order to improve the CSSF's risk-based supervision, for both prudential and AML/CFT purposes, concerning investment fund managers ("IFMs") and undertakings for collective investment ("UCIs"). The Circular CSSF 21/790 introduced the self-assessment questionnaire, the separate report and the management letter, which are applicable to UCITS, UCIs subject to Part II of the Law of 17 December 2010 ("UCIs Part II") Specialised Investment Funds ("SIFs") and Investment Companies in Risk Capital ("SICARs").

Since 31 March 2022, the reports introduced by Circular CSSF 21/790 are available in the Collective Investment Sector Reporting Tool ("CISERO") on the CSSF eDesk platform. At first, the self-assessment questionnaire, the separate report (only for UCITS and UCIs Part II) and the management letter for the regulated UCIs with a financial year ending between 30 June 2022 and 30 November 2022 are available in the module. Further information on the

availability of the reports for the subsequent financial year-ends will be given in due time by means of a dedicated FAQ related to the CISERO module.

In addition, specific information that regulated UCIs have to transmit to the CSSF in accordance with Section 2.2. of Circular CSSF 21/790, in case the approved statutory auditor issues a modified audit opinion for a regulated UCI, is also made available on the CSSF website in a dedicated section concerning the periodic transmission of information for the type of UCI falling within the scope of this circular. The letter, signed by the management of the fund, including the required information and all supporting documentation, has to be transmitted in accordance with that circular to the CSSF.

In the context of this communication, the CSSF reminds that the requirements introduced by Circular CSSF 21/790 will be applicable as of the financial years ending 30 June 2022, with a phased implementation for the separate report as further specified in the circular.

For more information, please click [here](#).



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Banking



Circular CSSF 22/803 semi-annual data collection

Circular CSSF 22/803 on the introduction of a semi-annual data collection on lending indicators related to commercial real estate

On 21 March 2022, the CSSF published a new Circular 22/803 introducing new reporting obligations on lending indicators for credit institutions granting commercial real estate loans. All credit institutions and all branches of EU and non-EU credit institutions granting commercial real estate (“CRE”) loans (i.e. loans aimed at acquiring a CRE property or

secured by a CRE property) are impacted.

In scope entities must submit their report through a template available on the CSSF website by 15 April and 15 October of each year.

For more information, please click [here](#).





Law of 25 February 2022 amending the law of 22 March 2004 on securitisation

On 4 March 2022, the Luxembourg Ministry of Finance published a new law modernising the law of 22 March 2004 on securitisation (“Securitisation Law”).

The major amendments introduced by the law of 9 February 2022 are the following:

- a securitisation vehicle will now be able to be **financed through the issue financial instruments** (previously only issue of securities) and loans;
- **active management of underlying assets is now permitted** (except when financial instruments are issued to the public);
- clarification of “offer to the public on a continuous basis” for the purpose of the CSSF authorisation requirement (i.e. securitisation vehicle issuing more than three times per year non-private placement with a denomination below €100,000 to non-professional investors will need to be authorised by the CSSF);
- new corporate forms available for securitisation companies (*société en nom collectif*, *société par actions simplifiée*, *société en commandite simple* and

société en commandite spéciale);

- introduction of a **statutory waterfall subordination** of different types of debt and equity instruments issued by a securitisation vehicle (this can still be determined by the issuance documents but a default scenario is now embedded in the Securitisation Law);
- a securitisation vehicle can now **grant security interest for the benefit of any third party** provided that this transaction relates to the securitisation transaction; and
- introduction of an obligation for securitisation funds to **register with the RCS**.

Access our newsflash on the matter [here](#) and access the new law [here](#).





Introduction of eRIIS

CSSF Communication on new platform on electronic Reporting of Information concerning Issuers of Securities (“eRIIS”)

On 4 March 2022, the CSSF published a communication on the launch of the [eRIIS](#) platform, a new web application enabling entities subject to the Law of 11 January 2008 on transparency requirements for issuers (the “Transparency Law”) as well as Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse to fulfil their filing obligations with the CSSF. The new platform is available as from 4 March 2022.

In order to take into account the changes introduced by the launch the eRIIS platform, the CSSF adopted new [Circular 22/800](#) and [Circular 22/799](#), amending respectively Circular CSSF 08/349 relating to details regarding the information to be notified with respect to major holdings in accordance with the Transparency Law and Circular CSSF 08/337 on the Transparency Law and Grand-ducal regulation of 11 January 2008 on transparency requirements for issuers, as amended.

Access the communication and CSSF dedicated page [here](#) and [here](#).



Access our newsflash on the matter [here](#).



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Regulatory



Circular CSSF 22/801 FATF statements

Circular CSSF 22/801 FATF statements concerning:

- 1) high-risk jurisdictions on which enhanced due diligence and, where appropriate, countermeasures are imposed**
- 2) jurisdictions under increased monitoring of the FATF**

On 11 March 2022, the CSSF published a new Circular 22/801 announcing the decisions taken during its March 2022 Plenary meeting concerning countries placed under increased monitoring.

In terms of deficiencies in their regimes to counter money laundering, terrorist financing, and proliferation financing, the Democratic People's Republic of Korea and Iran are considered high-risk jurisdictions on which

enhanced due diligence and, where appropriate, countermeasures are imposed.

While other countries have strategic deficiencies for which they have developed an action plan with the FATF with the ultimate aim to end the increased ongoing monitoring process such as Zimbabwe, who will instead continue working with the FATF style regional body.

For more information, please click [here](#).





CSSF Frequently asked questions regarding International Financial Sanctions

On 17 March 2022 (updated on 21 March 2022), the CSSF published a new FAQ addressing questions raised by the financial market in relation to international financial sanctions.

For your information, the present FAQ addresses the following enquiries:

- What is the applicable legal framework?
- Where are the documents relating to the various international financial sanctions available?
- What are professionals required to report to the Ministry of Finance, and in copy to the CSSF, without delay?
- Where shall the professional send the report regarding the financial restrictive measures?
- Does a form exist for notifying the freezing of funds to the Ministry of Finance?
- What are the roles of the CSSF and the Ministry of Finance regarding international

financial sanctions?

- What are the powers of the CSSF in the context of its supervision relating to international financial sanctions?
- What does the professional have to do in case of identifying a suspicion of money laundering or terrorism financing or an associated predicate offence, in addition to its client being subject to international financial sanctions?

For more information, please click [here](#).

In addition, FAQ on international financial sanctions focusing on AML/CFT aspects can be found [here](#).





Circular CSSF 22/802 on the application of European Banking Authority guidelines on the treatment of structural Fx under Article 352(2) of Regulation (EU) No 575/2013

On 21 March 2022, the CSSF published a new Circular 22/802 by which the CSSF informs that it will apply the [Guidelines](#) of the EBA on the treatment of structural FX under Article 352(2) of Regulation (EU) No 575/2013 published on 1 July 2020. The Guidelines set out the criteria under which competent authorities shall authorise the exclusion of a position in a foreign currency from the calculation of an entity net open currency positions. The Circular apply to less significant institutions, CRR investment firms and to Luxembourg branches of credit institutions or CRR investment firms incorporated in a third country.

For more information, please click [here](#).



Law of 30 March 2022 on inactive accounts, inactive safes and unclaimed insurance contracts

On 17 March 2022, the Luxembourg Parliament approved the Bill of Law No. 7348 on inactive accounts, inactive safes and unclaimed insurance contracts. The purpose of this law is to create a new legal framework, in view of strengthening the protection of clients by imposing professional obligations on banks as well as contributing to the fight against money laundering and the financing of terrorism. It sets out measures which impose an obligation on banks to consign unclaimed assets registered in the account to Luxembourg's Consignment office (*Caisse de Consignation*) after prolonged inactivity, as well as measures which provide for the subsequent restitution of the assets to any person with a right to them. The law was published in the Luxembourg Official Gazette on 1 April 2022 and will enter into force on 1 May 2022.

For more information, please read our article [here](#) and access the new law [here](#).



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Regulatory



Circular CSSF 22/804 Update of Circular CSSF 21/769 on governance and security requirements for Supervised Entities to perform tasks or activities through Telework

On 31 March 2022, the CSSF published a new Circular 22/804 amending the Circular 21/769 following the entry into force of the Law of 11 March 2022 amending the Law of 17 July 2020 on the measures to fight against the COVID-19 pandemic, as amended, and the abolishment of the general working condition limitations.

The purpose of the amendment is the implementation and application of the definitions established under Circular 21/769 concerning the governance and

security requirements for supervised entities that should be complied with when implementing and using work processes based on telework solutions.

In light of this amendment, the CSSF published a communiqué on the 30 March 2022 in which the CSSF sets out that the above mentioned Circular on teleworking will apply as from 1 July 2022.

For more information, please click [here](#) for the Circular and [here](#) for the communiqué.





Bill of law 7885/01 implementing EU regulation 2019/452 on the framework for the screening of FDI into the EU – Opinion of Conseil d'Etat

Regulation 2019/452 of the EU establishes a framework for the screening of Foreign Direct Investment (FDI) in the Union. The draft law, currently under notice, aims to implement the European provisions into Luxembourg national law by providing a three stages screening mechanism :

1. **Notification** : the foreign investor needs to notify his FDI when the investment concerns special or critical activities listed in Article 2 of the draft law
2. **Pre-assessment** : the Ministers of Economy and of Finance take the decision whether there should be a screening procedure or not
3. **Authorisation** : if such a screening procedure has been initiated, the FDI is subject to authorisation

or prohibition with respect to its potential impact on security and/or public order

On 22 March 2022, the Conseil d'Etat published its opinion pointing out objections regarding the inter-ministerial committee in charge of the screening and authorization. As the legislator directs on which matters and under which conditions the interministerial committee pronounces its authorisation, the Conseil d'Etat is of the opinion that such committee infringes the separation of powers and thus could be considered as unconstitutional.

For more information, please click [here](#).



New formalities relating to the Luxembourg Trade and Companies' Register

Further to the Luxembourg Business Register (LBR)'s public notice of 1 October 2021 announcing new filing formalities, it has now been communicated that the new formalities which should have come into effect as from 31 March 2022 will be postponed until further notice.

For more information, please click [here](#).





Bill of law n°6539B on the creation of a procedure of administrative dissolution without liquidation (1/2)

The Bill of law n°6539B from 22 July 2021 proposes to introduce a new procedure of administrative dissolution without liquidation under certain circumstances, as an alternative method to judicial liquidation, when dealing with inactive and empty companies.



Reminder: Article 1200-1 of the Company law of 1915 gives the possibility to the public prosecutor to request the district court to order the dissolution and liquidation of any Luxembourg company that :

- Pursues activities that contravene criminal law
- Seriously contravenes the provisions of the commercial code, the laws on commercial companies or the provisions governing business licences.

Currently, when a company falls within the scope of this Article, a liquidator is then designated and identifies all the company's assets and liabilities. The procedure is expensive and imposes a significant administrative burden on the courts. In order to limit the costs, the legislature introduced an alternative method when this procedure involves an inactive or dormant company with no assets : **the administrative dissolution without liquidation.**

To fall within the scope of application of the administrative dissolution procedure, 3 conditions need to be met :

- The company is in the scope of art 1200-1
- The company has no employees
- The company has no assets
- The new procedure will not apply to specific entities such as credit institutions, investment firms ...



Bill of law n°6539B on the creation of a procedure of administrative dissolution without liquidation (2/2)

On 9 February 2022, amendments to the Bill were introduced to better deal with the situation in which an asset appears after the closure of the dissolution procedure (please refer to our Legal Newsletter - February 2022)

On 1 April 2022, the Conseil d'Etat issued an additional opinion, regarding, amongst others, Article 18 of the Bill.

Article 18 states as follows:

"Companies whose bankruptcy proceedings were closed prior to the entry into force of this Act and which have not made a filing with the Luxembourg R.C.S for more than 2 years shall be automatically dissolved (de plein droit)"

This Article introduces a differentiation between :

- a commercial company which has not been subject to insolvency proceedings and which falls under Article 1200-1 of the companies law; and
- a commercial company subject to insolvency proceedings and which falls under Article 18 of the Bill.

In light of the above, the Conseil d'Etat would like to obtain clarifications as to why a commercial company subject to insolvency proceedings should be subject to this Article 18 rather than being subject to the aforementioned Article 1200-1. According to the Conseil d'Etat there is no sufficient explanations for this differentiation of treatment. Pending a response from the authors of the Act, the Conseil d'État, reserves its position.

For more information, please click [here](#).





Extension of agreements on taxing cross-border workers



GERMANY

On 23 March 2022, the agreement signed on 7 October 2020 between Luxembourg and Germany stating that working days during which cross-border workers work from home during the Covid-19 pandemic can be considered as working days in Luxembourg has been terminated, with effect from 30 June 2022.

For further details, please click [here](#).



Reminder for the other cross-border workers:



FRANCE

On 6 December 2021, the agreement signed on 16 July 2020 between Luxembourg and France stating that working days during which cross-border workers work from home during the Covid-19 pandemic can be considered as working days in Luxembourg had been extended until 31 March 2022 and tacitly extended until 30 June 2022.

For further details, please click [here](#).



BELGIUM

On 14 December 2021, the agreement signed on 19 May 2020 between Luxembourg and Belgium stating that working days during which cross-border workers work from home during the Covid-19 pandemic can be considered as working days in Luxembourg had been extended until 31 March 2022 and tacitly extended until 30 June 2022.

For further details, please click [here](#).





Interest limitation rule – Updates to the circular n°168bis/1

On 25 March 2022, the Luxembourg tax administration issued a new circular to provide clarifications on the interest limitation rule replacing the one published on 28 July 2021. The main update is the addition of a new section regarding the interaction between the interest limitation rule and the parent-subsidiary regime.

In addition, the circular states that any changes to a debt agreement because of the end of the London Interbank Offered Rate (LIBOR) should not be seen as a subsequent modification of the terms and conditions of such agreement. The last minor amendment relates to a precision on the determination of the fiscal Earnings Before Interest, Taxes, Depreciation and Amortization (EBIDTA).

For more information, please click [here](#).





Administrative Court Decision – Contributions to account 115 and Luxembourg participation exemption regime

On 31 March 2022, the Administrative Court upheld the judgment rendered on 11 May 2021 (n°42417) under which the Administrative Tribunal concluded that contributions made to account 115 are not to be considered as part of the acquisition price of a participation for the application of the Luxembourg participation exemption regime (LPER) regarding dividends and WHT exemptions. As a reminder, and amongst other conditions, a participation is eligible for the application of the LPER if the parent company holds at least 10% or EUR 1.2Mio in the share capital of the subsidiary.

In the decision, the Administrative Court confirms that contributions made to account 115 should not take part of this acquisition price as they do not lead neither to an increase of the share capital of the subsidiary nor to an increase of the nominal value of its shares or is a direct accessory linked to such an increase.

Recommendation is therefore to review structures where the application of the LPER lies on the EUR 1.2Mio acquisition threshold (i.e. where the 10% one is not met) to determine whether equity reorganisation may be needed in order to secure the application of this regime onwards.

For more information, please click [here](#).



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