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Luxembourg Insights

October 2022

Simmons & Simmons Luxembourg LLP

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Asset Management &
Investment Funds



Publication by the AED of an AML questionnaire, an RR/RC identification form for unregulated AIFs under its supervision

On October 2022, the *Administration de l'Enregistrement, des Domaines et de la TVA* (AED) published an AML questionnaire, an RR/RC identification form and guidelines for unregulated alternative investment funds (AIFs) under its supervision.

From now on, unregulated AIFs must submit the AML questionnaire and the RR/RC identification form to the AED.

The AML questionnaire, the RR/RC identification form and the guidelines are available [here](#).

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



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Asset Management &
Investment Funds



Clarification by the CSSF regarding eligible entities for the opening of cash accounts in relation to Luxembourg alternative investment funds

On 18 October 2022, the CSSF published a communiqué concerning eligible entities for the opening of cash accounts in relation to Luxembourg alternative investment funds (AIFs).

Pursuant to Article 19(7) of the Law of 12 July 2013 on alternative investment fund managers, the CSSF reminds that only central banks, EU authorised credit institutions as well as third country authorised banks (**Eligible Entities**) may qualify as Eligible Entities for the purpose of holding cash accounts in the relevant market where cash accounts are required for the purposes of the AIFs operations.

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



ESG: FinDatEx publishes EET V1.1

On 24 October 2022, FinDatEx issued the European ESG Template (EET) V1.1 which updates the initial version of the EET in view of the applicability of the Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 (the SFDR RTS or SFDR Level 2 Provisions), as of 1 January 2023.

For more information, please find the press release [here](#) and the template [here](#).



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Asset Management &
Investment Funds



Adoption by the European Commission of disclosures for fossil gas and nuclear energy investments proposed by ESAs

On **31 October 2022**, the European Commission has adopted amendments to the Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 to require financial market participants to disclose if their making investments into fossil gas and nuclear energy that are taxonomy aligned.

These specific disclosures were proposed on the 30 September 2022 by the three European supervisory authorities (the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority, collectively the **ESAs**).

The Commission is proposing that these amendments will come into effect from **1 January 2023**.

These amendments will now be subject to scrutiny by the European Parliament and the Council.

For more information, please find the adopted amendments [here](#) and for more information on the ESAs' Final Report in early September, please read our article [here](#).



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Regulatory



ICMA prudential treatment of crypto-assets exposures

On 4 October 2022, the International Capital Market Association (ICMA) announced that it has co-signed a joint trade association response to the Basel Committee on Banking Supervision's (BCBS) second consultation on the prudential treatment of crypto-assets exposures.

The key areas addressed in the joint response to be taken into account when setting up a prudential framework, are the following:

- Improve the mutual understanding of current and emerging risks of private digital assets that depend on cryptography and DLT or similar technology;
- Improve the mutual understanding of the role of existing processes and frameworks for regulated entities to manage such risks; and
- Identify balanced solutions for the design of a capital framework that supports enhancing financial stability while avoiding overly restrictive limits to innovation.

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



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Regulatory



Q4 2022 counter-cyclical buffer rate

On 6 October 2022, the CSSF announced the CSSF Regulation No 22-06 of 30 September 2022 which sets the countercyclical buffer rate for the fourth quarter of 2022 at 0,50%.

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



OECD presents new transparency framework for crypto-assets to G20

On 10 October 2022, the Organisation for Economic Co-operation and Development (OECD) delivered a Crypto-Asset Reporting Framework (CARF) in response to the G20 request to develop and automatic exchange of information on crypto-assets between countries.

Similarly to the Common Reporting Standard (**CRS**), the CARF will ensure transparency with respect to crypto-asset transactions through the automatic exchange of such information in a standardised manner with the jurisdictions of residence of taxpayers on an annual basis.

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





CSSF Revised long form report for credit institutions

On 25 October 2022, the CSSF published Circular CSSF 22/8021 for all Luxembourg credit institutions and Luxembourg branches of non-EU credit institutions setting out the revised long form report framework which will be applicable from 31 December 2022.

Following this revision, there will be four annual deliverables:

- A self-assessment questionnaire (**SAQ**) to be filled in by credit institutions;
- Agreed Upon Procedure (**AUP**) report(s) to be established by the *réviseur d'entreprises agréé* (**REA**);
- The separate report on the protection of financial instruments and funds belonging to clients as required under Article 7 of the Grand-ducal Regulation of 30 May 2018 to be established by the REA; and

- The separate report covering AML/CFT further to CSSF Regulation N° 12-02 to be established by the REA.

The online forms will have to be submitted through the online portal of the CSSF (**eDesk**) and will be accessible on the portal at the beginning of 2023.

In the meantime, the excel versions of the SAQ and AUP are available for consultation [here](#).

For more information, please click [here](#) and see the recording of the ABBL Webinar on CSSF Circular 22/8021 [here](#).



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Regulatory



CSSF Circular 22/822 on FATF statements

On 27 October 2022, the CSSF published an updated list of the jurisdictions that the Financial Action Task Force (FATF) qualifies as:

- high-risk jurisdictions subject to a call for action, or
- jurisdictions under increased monitoring by the FATF.

This follows the publication by the FATF of its [public statement](#) regarding high-risk jurisdictions subject to a call for action and jurisdictions under increased monitoring.

The concerned jurisdictions are listed in the annex to Circular 22/822 available [here](#).

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



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Banking

12 Oct.
2022

LMA published new and updated exposure draft term SOFR documentation

On 12 October 2022, the LMA has published a new exposure draft multicurrency term and revolving facilities agreement incorporating term SOFR for use in investment grade transactions.

The draft agreement illustrate some of the issues involved in structuring syndicated loans referencing CME Term SOFR.

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



13 Oct.
2022

Sanctions

On 13 October 2022, the CSSF announced that it has imposed an administrative penalty of EUR 356,000 on the credit institution BEMO EUROPE – Banque Privée S.A. dated 26 July 2022 for the non-compliance with certain professional AML/CFT obligations and inadequate management of conflicts of interest.

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



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Banking



ICMA publishes the first semi-annual report that provides detailed data on EU and UK bond market trading activity

On 24 October 2022, ICMA published the first semi-annual report providing detailed data on the EU and UK secondary bond market transactions (both corporate bonds and sovereign bonds).

The report covers the period of January through June 2022 and ICAMA intends to update it on a semi-annual basis. The report represent aggregated bond market data as reported under the MiFID II / MiFIR obligation. It covers data such as total value of bonds traded, trade count and trade sizes, distribution channels, etc.

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



Deadline for submission of the data reporting form under SRMR

On 25 October 2022, the CSSF published the Circular CSSF-CODERES 22/15 in relation to the determinations by the SRB of the *ex-ante* annual contributions of credit institutions.

The draft agreement illustrate some of the issues involved in structuring syndicated loans referencing CME Term SOFR. All credit institutions subject to Regulation (EU) No 806/2014 of the European Parliament and of the Council establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund (**SRMR**) must duly complete and submit the XBRL file has to be sent to the CSSF at the latest by **13 January 2023** at 24:00 CET.

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



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Banking

26 Oct.
2022

ICMA publishes report setting out a high-level categorisation relating to sustainability in the repo market

On 26 October 2022, ICMA's Repo & Sustainability Taskforce has published a paper which sets out observations and categorisations relating to sustainability in the repurchase transactions (Repo) market.

ICMA have identified the following categories of Repo which can contribute to firms sustainability objectives:

- I. Repo supporting sustainable financing, including:
 - Repo against sustainable collateral; and
 - Repo with sustainable counterparty.
- II. Repo providing sustainable financing, including:
 - Sustainable Use of Proceeds (UoP) Repo; and
 - Sustainability-Linked (SL) Repo.

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



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Corporate



Update on Draft Law number 8007

On 6 October 2022, the *Chambre des Métiers du Luxembourg* (Grand Duchy of Luxembourg Chamber of Trades) confirmed not having any comments on the Draft Law number 8007 (the Draft Law).

This Draft Law had been introduced to harmonise a number of legislations, including the amended Law of 10 August 1915 on Commercial Companies, and to modify drafting mistakes, incoherencies or outdated nomenclature.

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





A541 Law of 28 October 2022 (formerly Draft Law number 6539B)

The Draft Law was enacted by the Luxembourgish Parliament on 18 October 2022 and published on 4 November 2022 in the Official Journal of the Grand Duchy of Luxembourg (*Journal Officiel du Grand-Duché de Luxembourg*), *Mémorial A numéro 541, page 1* (the “Law”). It introduces a new administrative proceeding in virtue of which a company may be dissolved without prior liquidation by request of the *procureur d’état* (the “Public Prosecutor”).

The Law simplifies the dissolution process for those companies which do not comply with Luxembourg law (including but not limited to the law on commercial companies or the Commercial Code). It is the result of judicial observations in liquidation proceedings, which notably relate to companies existing without activities and/or assets (also known as “zombie companies”).

In order to shorten the dissolution process (and consequently reduce the costs incurred by the

state), the Law aims to allow such companies to be dissolved without the formal procedures set out in Article 1200-1 of the amended Law of 10 August 1915 on Commercial Companies.

This procedure consists of the Public Prosecutor requesting the *gestionnaire du Registre de commerce et des sociétés* (the administrator of the Luxembourg Trade and Companies Register, hereinafter the “**Administrator**”) to verify that the company in question meets the following three conditions:

Continued on next page ►►



A541 Law of 28 October 2022 (formerly Draft Law number 6539B) (Cont'd)

1. It does not have any assets;
2. It does not have any employees; and
3. It pursues activities in breach of criminal law, the Commercial Code and the law on commercial companies.

Once these conditions are fulfilled, the Administrator should notify the decision of opening such proceedings to the concerned company (such decision will also be published on the *Recueil électronique des sociétés et associations*, hereinafter the “**RESA**”).

There will then be two possible alternatives:

- (i) either all of the abovementioned conditions are met and the company will be dissolved;
- (ii) or just certain of the three conditions are met and the proceeding will therefore be stopped.

The Law will enter into force on 1 February 2023.

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





Reform of the tax property law

On 10 October 2022, the government released bill n°8082, aiming at revamping the existing Luxembourg property tax regime which was in place for decades (Draft Property Law Reform). This revamping aims at addressing the lack of housing in Luxembourg.

If the Draft Property Law Reform is enacted, the new regime would no longer apply the unitary values of 1941. This revised property tax will be due by the owner of built property (even for the primary residence of the owner with a right to deduct a lump sum of EUR 2,000 in this situation) and levied yearly by municipalities. It will be equal to the unitary value of the land and multiplied by a tax rate ranging between 9% and 11% depending on the municipalities. The revised property tax would remain deductible for tax purposes.

Two new taxes would also be added:

- A new tax on un-built land (*Impôt à la mobilisation des terrains*) : the tax will be due annually and would apply on all buildings land. This tax, which would be levied at national level, would be equal to the unitary value of the land

(after lump sum deduction, if any), multiplied by a progressive tax rate increasing with the number of years the land remaining unbuilt. The new tax on unbuilt land would be non-deductible for tax purposes.

- A new tax on un-occupied housing (*Impôt national sur la non-occupation de logements*) : this tax would be levied yearly at the national level, for an amount that would start at EUR 3,000 and would increase by EUR 900 per year of non-occupation of housing, to reach a maximum annual amount of EUR 7,500. This tax would not be deductible for tax purposes.

Once voted, the Draft Property Law Reform would not enter into force before a period of at least 2 years.

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





Issuance of the draft 2023 budget law

On 12 October 2022, the Luxembourg Minister of Finance presented the budget law for 2023 through the issuance of bill n°8080 (Draft 2023 Budget Law).

The Draft 2023 Budget Law focuses on a series of tax measures adopted for a crisis context, detailed as follows:

I. Purchasing power

- *Tax credit on the minimum base salary* («*Crédit d'impôt sur le salaire social minimum*») : the tranches for the determination of the tax credit on the minimum base salary will be increased to match with the increase of the minimum salary which will occur early 2023.
- *Single-parent tax credit* («*Crédit d'impôt monoparental*»): the maximum amount of the single-parent tax credit will increase from EUR 1,500 to EUR 2,505. In addition, the scope of beneficiaries of the single-parent tax credit will be extended to taxpayers earning up to EUR 60,000 (up to EUR 35,000 currently).

II. Housing

- *Accelerated amortisation*: limitation of the existing system to 2 buildings or parts of buildings used for rental housing, acquired or constituted after 31 December 2022 during the entire period of tax liability of the taxpayer in Luxembourg in order to reduce the pressure on the real estate market. The amortisation rate would also be reduced from 6% to 4%.
- Property tax reform – further detailed below in a separate section.



Issuance of the draft 2023 budget law (Cont'd)

III. Attractiveness

- Tax regime of inpatriates: the current threshold of minimum remuneration for the application of the tax regime of inpatriates would be decreased from EUR 100,000 to EUR 75,000 in view of maintaining the attractiveness of Luxembourg in a context of increased difficulties of recruitment of qualified manpower.
- Participative premium: it is proposed to extend the perimeter of computation of the limit of 5% positive result for the benefit of the participative premium to include the algebraic sum of positive results of the members of a tax integrated group under the meaning of article 164bis of the Luxembourg income tax law (**LITL**) instead of the positive tax result per company taken individually.

IV. Simplification

- Extension for filing deadlines for tax returns: it is proposed to change the yearly filing deadline for tax returns from 31 March to 31 December for all individual and corporation tax returns (i.e. regarding personal income tax, corporate income tax, municipal business tax and net wealth tax returns). This would apply for the first time for FY2022 for personal income tax, corporate income tax and municipal business tax, and for FY2023 for net wealth tax.

V. Green tax measures

- Promotion of soft mobility and circular economy: the reduced VAT rate of 8% would be extended to the repairing of household appliances and the sale/rental/repairing of electric bicycles.



Issuance of the draft 2023 budget law (Cont'd)

- Promotion of energetic transition: the super reduced rate of 3% would be applicable to the delivery of new photovoltaic installations for which the invoice is issued after 1 January 2023.

All of the above measures would apply as from 1 January 2023.

The Draft 2023 Budget Law also clarifies the scope of the reverse hybrid rules included in article 164quater LITL which was introduced as from 2022.

As a reminder, article 168quater LITL defines the conditions under which a tax transparent entity or arrangement incorporated or established in Luxembourg is considered as a resident taxpayer and is taxed on the net income to be attributed under the concept of tax transparency to some or all of its investors established in another jurisdiction.

One of the conditions is that the jurisdiction of the investor in the tax transparent entity or arrangement treats the entity or arrangement as opaque for tax purposes.

In this respect, the proposed amendment clarifies that the non-taxation of the net income that the shareholder realises through the tax transparent entity or arrangement must result from such difference in the qualification in order for the tax transparent entity to fall within the scope of the reverse hybrid rules. If a shareholder in a tax transparent entity benefits from a subjective exemption in its country of residence, the latter should not be taken into account for the assessment of the qualification of the Luxembourg transparent entity as reverse hybrid.

This modification of the reverse hybrid rules provisions would apply as from tax year 2022.

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



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