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Luxembourg Insights

February 2022

Simmons & Simmons Luxembourg LLP

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Asset Management &
Investment Funds



ESMA published a document on cross-border distribution of investment funds

On the 4 February 2022, ESMA published a document containing both hyperlinks and summaries of national rules governing marketing requirements which were provided by competent authorities.

As a reminder, Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings requires ESMA to publish on its website the hyperlinks to the websites of competent authorities where they publish complete and up-to-date information on the applicable national laws, regulations and administrative provisions governing marketing requirements for AIFS

and UCITS, as well as the summaries and the hyperlinks to the websites of competent authorities where they publish and maintain complete and up-to-date list of the fees and charges they levy for carrying out their duties in relation to the cross-border activities of fund managers.

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



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Asset Management &
Investment Funds



ESMA published its sustainable Finance Roadmap 2022-2024

On the 11 February 2022, ESMA published its Sustainable Finance Roadmap 2022-2024 setting three priorities for its sustainable finance work:

1. Tackling greenwashing and promoting transparency

The combination of growing demand for ESG investments and rapidly evolving markets creates room for greenwashing. In order to protect investors that look to make sustainable investments, ESMA will help by investigating this issue, defining its fundamental features and addressing it with coordinated action across multiple sectors, finding common solutions across the EU.

2. Building National Competent Authorities' (NCAs) and ESMA's capacities in the sustainable finance field

The growing importance of sustainable finance requires NCAs and ESMA to further develop skills beyond their traditional areas of focus to understand and address the supervisory implications of new regulation and of novel market practices in this area.

ESMA will help build its capacity on sustainable finance through a multi-year training programme and through facilitating the active sharing of supervisory experiences among NCAs.

These efforts will also contribute to creating effective and consistent supervision in the area of sustainable finance.

3. Monitoring, assessing and analysing ESG markets and risks

The objective is to identify emerging trends, risks and vulnerabilities that can have a high impact on investors protection and on financial markets stability.

ESMA will leverage on its data-analysis capabilities to support its, and NCAs', supervisory work and to promote a convergent approach among NCAs. ESMA will undertake specific activities such as climate scenario analysis for investment funds and establishment of common methodologies for climate-related risk analysis together with other public bodies.

ESMA will shortly launch a call for stakeholder candidates to join a new Consultative Working Group supporting ESMA's Coordination Network on Sustainability.

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



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Banking &
Capital Markets



ESMA consultation on the update of its MiFID II suitability guidelines

On 28 February 2022, the CSSF published a communication on ESMA consultation on the update of its MiFID II suitability guidelines. **Deadline is the 27 April 2022** and concerns in particular the changes to the guidelines that

include the integration of clients' sustainability preferences in the assessment of the suitability of investment advice and discretionary portfolio management decisions.

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



Vertical Risk Assessment on money laundering and terrorist financing

In February 2022, the Ministry of Justice published its Vertical Risk Assessment on money laundering and terrorist financing linked to legal persons and arrangements.

Professionals will be able to use this risk assessment to adapt their risk matrices and better understand the threats to which legal persons/arrangements are exposed.

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



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Corporate



Corporate case law – Overturning a judicial liquidation

On 14 December 2021, the Luxembourg court of appeal rendered a decision in which it considered that, since the appealing company remedied the committed irregularities and demonstrated its awareness of the seriousness of the deficiencies (*in casu*, lack of known registered office since 2015 as well as a lack of a regularly composed board of managers and failure to publish its financial statements since 2013), the breaches no longer justified the sanction of dissolution and liquidation and therefore overruled the decision of judicial liquidation.

This case law illustrates the possibility for a Luxembourg company to remedy serious breaches of the law, even after a judicial decision relating to the liquidation has been rendered. The grounds for the overturning of the decision are based on the right to an effective legal action ("*droit au recours effectif*"), as provided in the European Convention of Human Rights, the Charter of Fundamental Right of the European Union and the Luxembourgish Constitution.

The decision is available [here](#).



9 Feb
2022

Amendments to bill of law n°6539B on the creation of a procedure of administrative dissolution without liquidation



Short reminder: On 22 July 2021, bill of law n° 6539B was filed in Luxembourg (the “Bill”), issued from the split of bill n°6539 relating to business preservation and the modernisation of bankruptcy law. The current procedure of compulsory dissolution imposes a significant administrative burden on the courts as well as important costs that are considered disproportionate when the procedure involves inactive companies with no assets.

The Bill proposes to introduce a new procedure, administrative dissolution without liquidation, as an alternative method to judicial liquidation, which should eliminate "empty shells" in a short period of time and at a limited cost.

The Bill will modify (among others) the following:

1. the “Code de Commerce” ;
2. the “Nouveau Code de Procédure Civile”;
3. the amended Act of 19 December 2002 on the Trade and Companies Register and the accounting and annual accounts of undertakings;
4. the amended Act of 25 March 2020 establishing a central electronic data retrieval system for payment accounts and bank accounts identified by an IBAN number and safe deposit boxes.

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.

The Bill with the most recent amendments can be found [here](#).



15 Feb
2022

New bill of law n°7968 on the use of digital tools

On 15 February 2022, bill of law n°7968 was filed in Luxembourg (the “Bill”), the purpose of which is to transpose Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 on the use of digital tools and processes in company law. The main objective of the Bill is to facilitate the use of digital technologies throughout the life of a company.

The Bill will modify:

- i. the Civil Code,
- ii. the law of 9 December 1976 on the organisation of the notarial profession, as amended,
- iii. the law of 10 August 1915 on commercial companies, as amended as well as
- iv. the law of 19 December 2002 on the Trade

and Companies’ Register and accounting and annual accounts of companies.

This Bill contemplates the following (non-exhaustive) changes:

- Authentic instrument in electronic format;
- Incorporation of S.A., S.C.A. and S.à r.l. through authentic deed in electronic form;
- Branches established in a Member State by a Luxembourg S.A., S.C.A. and S.à r.l. should be registered on the RCS;
- Strengthening the exchange of information flow between Member States’ business registers (once-only principle).

The Bill is available [here](#).





Luxembourg real estate levy – A new circular

On 20 January 2022, the Luxembourg tax authorities published Circular PRE IMM n°1 (the Circular) regarding the real estate levy. The Circular provides further information in respect of compliance obligations for certain Luxembourg opaque funds.

Background

The [2020 Budget Law](#) (the **Law**) introduced, with effect from 1 January 2021, a real estate tax levy of 20% (**REL**) on:

- income from the rental of real estate assets located in Luxembourg;
- capital gains resulting from the alienation of real estate assets located in Luxembourg; and
- income from the alienation of units in entities listed under Article 175 of the Luxembourg Income Tax Law (**LITL**) (ie SCSs, SCSps, SNCs, etc.) or contractual funds (FCP) which hold - directly or indirectly through other tax transparent entities - real estate assets located in Luxembourg (together **Relevant Real Estate Income**).

The REL is payable by the following Luxembourg investment funds (**In Scope Luxembourg Funds**), which have a legal personality distinct from their shareholders, on Relevant Real Estate Income, either directly or indirectly

through entities listed under Article 175 of the LITL or contractual funds:

- undertakings for collective investment covered by Part II of the amended Law of 17 December 2010 on undertakings for collective investment;
- specialised investment funds referred to in the amended Law of 13 February 2007 on specialised investment funds; and
- the reserved alternative investment funds referred to in Article 1 of the amended Law of 23 July 2016 on reserved alternative investment funds.

In each case, however, funds constituted as limited partnerships (*société en commandite simple*) are excluded.

What's next?

In Scope Luxembourg Funds must declare the REL and Relevant Real Estate Income received or realised during a calendar year prior to 31 May of the following [...]

Read the full article [here](#)



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