ESG AND IMPACT INVESTING

Luxembourg

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ESG and Impact Investing

Consulting editors

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RP Legal & Tax

Quick reference guide enabling side-by-side comparison of local insights into the local legal and policy framework; duties, liabilities and best practices; ratings; incentives; formation and operation of purpose-driven companies; state supervision; public procurement; governmental, NGO and supranational support; sources of finance; and recent trends.

Generated 22 November 2021

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LEGAL AND POLICY FRAMEWORK

Legislation

Has your jurisdiction enacted any primary or secondary legislation addressing environmental, social and governance (ESG) factors in banking, finance and corporate law, or legislation addressing the pursuit of other non-financial objectives by companies and investors?

With the exception of a specific regime for companies pursuing a social or environmental purpose provided by the Law of 12 December 2016 establishing purpose-driven companies, no primary or secondary legislation has been enacted per se in Luxembourg in addressing those factors, other than the application of European regulations and the transposition of European directives into national law on this matter, in addition to guidelines and decisions issued by European authorities.

In this context, non-financial considerations by financial participants are governed by the Law of 23 July 2016 implementing the Non-Financial Reporting Directive (Directive 2014/95/EU of 22 October 2014). Disclosure requirements related to ESG factors are mostly governed by the Taxonomy Regulation (Regulation (EU) 2020/852 of 18 June 2020) and the Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088 of 27 November 2019 (SFDR)), requiring financial market participants and financial advisers to disclose whether they consider the principal adverse impact on sustainability factors of investment decisions.

In addition, the Commission de Surveillance du Secteur Financier or (CSSF), which is the Luxembourg supervisory authority for the financial sector, plays a proactive role in ensuring that the banking and financial sector takes into account the relevant ESG legislative framework, by issuing useful guidance and other informative material. In this context, the CSSF published a circular on 21 June 2021 on the management of climate-related and environmental risks by all credit institutions designated as less significant institutions under the Single Supervisory Mechanism and all branches of non-EU credit institutions (Circular CSSF 21/773).

Law stated - 05 October 2021

Policy guidance and development

How would you describe the general level of policy guidance and development regarding ESG, impact investing and purpose-driven companies in your jurisdiction?

In recent years, Luxembourg has developed into the ultimate sustainable finance centre in Europe. Several initiatives have been launched over the years by the government, the private sector, various non-profit institutions, agencies and other authorities, all of them aimed at enhancing and further consolidating the edge that Luxembourg's financial participants possess on ESG matters.

For instance, the government adopted the Luxembourg Sustainable Finance Roadmap in October 2018, drafted in partnership with the United Nations (UN) Environment Programme. This non-binding document sets Luxembourg's vision in developing policies and guidance to further consolidate its position in Europe as the leader in ESG action.

A key actor in the ESG landscape and promotion of impact investing is the Luxembourg Stock Exchange (LuxSE). In 2016, the LuxSE set up the first Luxembourg Green Exchange, a platform offering a variety of sustainable finance instruments, including green bonds and social bonds. Over 50 per cent of all green, social and sustainability bonds worldwide are listed on the Luxembourg Green Exchange. The LuxSE sets standards for issuers and issues guidelines such as the Guide to ESG Reporting to help issuers integrate ESG considerations into their financial activities.

Another recent contribution to the development of policies regarding sustainable finance is the launch of a sustainable bonds framework on 31 August 2020, which allowed the government to issue the first sovereign sustainability bond in

Europe.

Law stated - 05 October 2021

INVESTMENT

Regulatory and fiduciary duties

Are institutional investors and financial intermediaries legally required to consider ESG factors when making investment decisions? Must any additional non-financial principles and objectives be considered?

At this stage, institutional investors and financial intermediaries are not expressly required to consider ESG factors when making investment decisions.

Nevertheless, financial market participants and financial advisors – as defined in the SFDR, which has been directly applicable in Luxembourg since 10 March 2021 – are required to disclose whether they consider sustainability risks in their investment decisions and advice, and, if so, how they consider the principal adverse impact on sustainability factors of their investment decisions or advice.

Market participants may, on a voluntary basis, adhere (in addition to their statutory obligations further to the SFDR legislative package) to various types of relevant text that outline how they can take into consideration ESG factors in their investment activities, and generally incorporate ESG factors in their financial planning, such as the United Nations (UN) Principles of Responsible Investments (PRI) and the Principles of Responsible Banking.

Law stated - 05 October 2021

Voluntary standards and best practices

What voluntary standards and best practices are commonly followed in your jurisdiction with regard to integrating ESG factors and other non-financial principles into investment decisions?

Luxembourg financial actors usually refer to internationally recognised voluntary standards and best practices to integrate ESG factors and other non-financial principles into investment decisions, including those developed by development finance institutions such as the UN PRI (having 87 signatories in Luxembourg), the World Bank's International Finance Corporation (IFC) Performance Standards and the UN Social Development Goals.

Regarding the integration of governance factors, Luxembourg financial actors may refer to the 10 Corporate Governance Principles of the Luxembourg Stock Exchange or the codes of conduct published by financial associations and agencies.

Regarding social factors, the Ministry of Foreign Affairs, together with the National Institute for Sustainability and Corporate Social Responsibility, adopted the national pact Companies and Human Rights on 20 July 2021, which provides voluntary guidelines for the respect of human rights by corporations across their supply chain.

Law stated - 05 October 2021

Measurement, reporting and disclosure

What voluntary and statutory measurement, reporting and disclosure frameworks are followed in your jurisdiction with regard to ESG and other non-financial factors?

Mandatory measurements and reporting, set out by the applicable European legislative framework, are followed in

Luxembourg, including:

- the SFDR, with regard to requirements on measurements related to the principal adverse on sustainable factors of investment decisions; and
- the Non-Financial Reporting Directive on disclosure of non-financial and diversity information by certain large undertakings and groups, which was implemented in Luxembourg by the Law of 23 July 2016.

Voluntary frameworks for disclosures and measurements are also applied by the Luxembourg actors of the financial sector, including:

- the voluntary framework for ESG reporting published by the Luxembourg Stock Exchange; and
- the sustainability disclosure and measurement toolkits developed by development finance institutions, such as the IFC Performance Standards, recommendations by the Task Force on Climate-Related Financial Disclosures and the IRIS metrics tools, which provide a catalogue of metrics.

A European set of sustainability reporting standards are currently being prepared by the European Financial Reporting Advisory Group and are expected by 2022. The standards are expected to complement the existing framework, with a focus on European actors.

Law stated - 05 October 2021

Ratings, indices and guidelines

What ratings, indices and guidelines are used to benchmark adherence to ESG principles and other non-financial factors in your jurisdiction?

Financial participants may refer to the guidelines established by the UN Global Compact or by the UN Conference on Trade and Development's Guidance on Good Practices in Corporate Governance Disclosure to address the concerns of investors and other stakeholders in disclosures provided in various documents, including annual reports.

Regarding adherence to ESG and other non-financial factors, internationally recognised guidelines are used in Luxembourg, such as:

- The Operating Principles for Impact Management issued by the IFC, which has five signatories in Luxembourg;
- the PRI, which has 87 signatories in Luxembourg; and
- the guidelines of the Sustainability Accounting Standard Board, which sets standards for the disclosure of financially material sustainability information addressed to investors.

In addition, labels delivered by LuxFLAG and ESG ratings assessed by Morningstar are commonly applied to Luxembourg-domiciled funds.

Law stated - 05 October 2021

Incentives, benefits and financial support

Are any fiscal incentives or other benefits available in your jurisdiction to encourage institutional investors and financial intermediaries to integrate ESG and other non-financial factors into their investment decision-making?

The Luxembourg legal and regulatory framework does not provide per se fiscal incentives or benefits specifically encouraging institutional investors and financial intermediaries to integrate ESG and other non-financial factors into their decision-making.

However, the New Budget law 2021, adopted on 17 December 2020, reduces subscription tax rates for undertakings for collective investments (UCIs) or individual compartments of UCIs that invest a specific portion of their net asset value in determined sustainable economic activities, as defined in the EU Taxonomy Regulation, from 0.05 per cent gradually down to 0.01 per cent if 50 per cent of their net asset value is invested in qualifying sustainable economic activities.

In addition, since the tax year 2010, investment funds that have been granted the 'microfinance' label by the Luxembourg fund-labelling agency LuxFLAG are exempted from paying the subscription tax.

The Luxembourg Sustainable Finance Roadmap, published in October 2018, sets out the objective to redesign investment incentives in relation to the integration of sustainability considerations in finance activities and business models; therefore, the Luxembourg framework is expected to evolve over the next few years towards providing additional fiscal incentives and benefits in this sector.

Law stated - 05 October 2021

Impact investing

In addition to ESG factors, what considerations and practices are commonly integrated into impact investment strategies?

Impact investments have existed alongside ESG-focused investment for the past few years in Luxembourg and continue to grow, although no specific framework regulates impact investing.

Impact investment mechanisms and strategies are inspired by the traditional investment techniques. For instance, carried interest is also commonly used as a remuneration mechanism in social impact investing, but in addition to linking a portion of the remuneration of the managers to specific financials, it also tends to include the social performance metrics of investments.

In addition, the impact fund industry partially relies on blended finance models in which public investors usually take on a greater risk to attract private investors to the structure.

Finally, impact investment mechanisms also include responsible exit. Unlike a traditional exit strategy, which solely considers financial return to determine the right exit timing and counterparty, a responsible exit refers to the best time for a fund to exit a given investment to allow the investee to continue having access to the right resources and also considers the appropriate counterparty to ensure its sustainability.

To design their strategy, impact funds often refer to the impact investment norms of the Impact Management Project, which provide a framework to assess and measure the outcome of the investments underlying the impact funds (eg, using a classification of impact).

Law stated - 05 October 2021

PURPOSE-DRIVEN COMPANIES

Legal recognition and certification

What legal forms or statuses are used in your jurisdiction to establish purpose-driven companies?

The Law of 12 December 2016 establishes a type of purpose-driven company called the societal impact company (SIS) and lays down specific requirements in this respect. If those requirements are met, companies are eligible for SIS certification, delivered by the Minister of Labour, Employment and the Social and Solidarity Economy. Existing companies and companies in the process of incorporation may also apply for this certification.

A SIS, however, must be established exclusively in one of the following corporate forms, as provided by the Law of 10 August 1915 on commercial companies:

- public limited company;
- private limited liability company ;
- simplified private limited company; and
- cooperative company.

Therefore, a non-profit company in the form of a non-profit association, would not be eligible to qualify as a SIS.

The B Corporation certification is a private certification granted to Luxembourg companies pursuing social or environmental purposes and meeting specific requirements. At present, only three companies have been granted the B Corporation certification in Luxembourg.

With regard to investment structures in Luxembourg, funds or investment vehicles that have an environmental or social purpose tend to request one of the sustainability labels delivered by LuxFLAG. LuxFLAG grants recognisable labels to provide comfort to investors regarding the responsible investment objectives of the investment vehicle.

Law stated - 05 October 2021

Purpose and mission

What rules and standard practices govern the establishment of companies' social or environmental purposes and mission?

The purpose and mission of an SIS are regulated by the Law of 12 December 2016 and comprise:

- providing support to people in fragile situations, either because of their economic or social situation or because of their personal situation, particularly their state of health or their social or medico-social support needs; or
- contributing to:
  - the preservation and development of social ties;
  - the fight against exclusion and health, social, cultural and economic inequalities;
  - gender equality;
  - the maintenance and reinforcement of territorial cohesion;
  - the protection of the environment;
  - the development of cultural or creative activities; and
  - the development of initial or continuing education activities.

In addition, the articles of association of an SIS must include the listing of performance indicators that will make it possible to verify, in an effective and reliable way, the realisation of the corporate purpose.

The management body of an SIS is also required to prepare annually an extra-financial report to be presented at the general meeting. The report contains details on the implementation of performance indicators.

Law stated - 05 October 2021

Profit distribution, winding up and remuneration

What rules and restrictions govern profit distributions for purpose-driven companies in your jurisdiction?

The rules and restrictions on profit distributions for purpose-driven companies are governed by the Law of 12 December 2016 establishing SIS. In accordance with the Law, at least half of the profits made by any SIS must be reinvested in the maintenance and development of the company's activities.

A distinction is made between an SIS, whose capital is composed of impact shares, and those whose capital is composed of performance shares, it being understood that the share capital may be composed of both types of shares. Impact shares do not allow its holders to benefit from the SIS profits; therefore, the profit allocated to those shares is exclusively intended for the realisation of the social purpose and is fully reinvested in the maintenance and development of the activity of the SIS.

Unlike the impact shares, the performance shares allow its holders to benefit from the SIS profits as long as the corporate purpose of the SIS, assessed by the performance indicators provided for in the articles of association, has been effectively realised.

Law stated - 05 October 2021

What rules and restrictions govern the winding up of purpose-driven companies?

The general regime provided by Law of 10 August 1915 is also applicable to purpose-driven companies in terms of the procedure of dissolution or liquidation of the company.

However, the Law of 12 December 2016 provides a specific regime applicable to the liquidation surplus of an SIS, which must be allocated either to:

- a donation in favour of another SIS pursuing the same or a comparable purpose as the SIS in liquidation; or
- a Luxembourg foundation or a non-profit association recognised as being of public utility by grand-ducal decree.

Consequently, the aim is for the funds of an SIS to benefit similar structures.

Law stated - 05 October 2021

What rules and restrictions govern the remuneration of directors, officers, employees and third parties?

The Law of 12 December 2016 provides that the maximum annual remuneration paid to employees of an SIS must not exceed the threshold corresponding to six times the amount of the minimum social wage. On 1 January 2021, the minimum social wage was €2201.93, which means that the maximum annual remuneration paid to employees of a societal impact company cannot exceed €158,538.96.

With regard to the remuneration of the members of the management body of an SIS, the common regime provided by the Law of 10 August 1915 is applicable. The remuneration is fixed by the provisions of the articles of association of the company or by the general assembly.

Law stated - 05 October 2021

Measurement, benchmarking and reporting

Are purpose-driven companies legally required to measure, benchmark and report the social and environmental impact of their business?

In addition to a report on annual accounts, purpose-driven companies, governed by the Law of 12 December 2016, are required to issue annually an extra-financial impact report. The report must detail the implementation of the performance indicators used by the management body of the company to measure the impact and achievement of the purpose of the company. The report must be submitted to the Minister of Labour, Employment and the Social and Solidarity Economy within the two weeks of the annual general meeting of the company.

Purpose-driven companies are not required to use specific indicators or indices to measure and report on their impact and may use the benchmarks currently available internationally.

Law stated - 05 October 2021

What statutory and voluntary standards, guidelines and best practices are followed by purpose-driven companies in your jurisdiction with regard to the measurement and reporting of ESG and other non-financial factors?

Although purpose-driven companies governed by the Law of 12 December 2016 are required to report annually on their activity, no mandatory standards exist for the reporting of purpose-driven companies. Such companies are, therefore, free to refer to internationally recognised voluntary standards and best practices, including the Global Reporting Initiative sustainability standards; the Sustainability Accounting Standards Board guidelines; and the Task Force on Climate-Related Financial Disclosures.

B-Corp purpose-driven companies are required to report on their activity by answering specific disclosure questions provided by the B-Corp certification agency and make those answers available to the public.

Law stated - 05 October 2021

Director liability and private enforcement

What rules govern the liability of directors of purpose-driven companies for compliance with social and environmental standards and principles? In addition to shareholders, are stakeholders entitled to hold directors accountable through private enforcement action?

Luxembourg law does not include specific rules concerning liability of directors of purpose-driven companies for non-compliance with social and environmental standards and principles; therefore, provisions of the Law of 10 August 1915 apply in the event of the directors' failure to comply with the company's objects and articles of incorporation of the SIS.

The directors may be held personally or jointly liable, towards either the company or third parties, including shareholders.

Law stated - 05 October 2021

State supervision

Is there any form of state supervision of purpose-driven companies in relation to their social and environmental purposes?

An SIS is subject to strict supervision from the state in relation to its social and environmental purpose. It is specifically monitored by the Minister of Labour, Employment and the Social and Solidarity Economy through:

- the mandatory application for approval that must be filed with the Ministry; having this approval removed will, at any time, result in the dissolution and liquidation of the company;
- the annual audited statements and impact reports that must be issued by an approved auditor for each SIS; and
- specific surveillance since the Ministry must be informed of any change in the corporate purpose, the performance indicators or capital allocation of the SIS.

In addition, an SIS is also subject to additional strict requirements in terms of corporate governance. Its constitutive documents must provide for adherence to the principle of limited profitability of the company and enumeration of the performance indicators that will allow for the effective and reliable verification of adherence to the principle of limited profitability of the company.

Law stated - 05 October 2021

Incentives and benefits

Are any fiscal incentives or other benefits available for purpose-driven companies in your jurisdiction? What is the scope of these benefits and what requirements apply?

Luxembourg law provides for specific fiscal incentives and benefits for an SIS; however, in this respect, a distinction should be made between an SIS with a share capital of 100 per cent impact shares, which are shares that do not provide for the distribution of dividends and will therefore be subject to some tax benefits, and an SIS with a share capital of less than 100 per cent impact shares, which will not be subject to any tax benefits.

An SIS with a share capital composed of 100 per cent impact shares will be exempt from corporate income tax, municipal business tax and wealth tax. In addition, donations made to an SIS fulfilling this criterion may be deducted from the total net income of the donors.

Law stated - 05 October 2021

Public procurement

Do the public procurement rules and policies in your jurisdiction confer any advantages on companies for pursuing social or environmental purposes? If so, what conditions apply?

Unlike non-profit associations, an SIS is entitled to access public tenders at similar conditions as any other commercial companies.

Nonetheless, Luxembourg's public procurement rules contain specific advantages for entities promoting social and sustainable activities:

- in the assessment of the most economically advantageous application for a public tender, the contracting authorities are entitled to take into account the social and environmental impact of the offer; and
- the contracting authorities have the power to reserve the rights to apply to a specific tender to entities whose main corporate purpose is the social and professional integration of disabled or disadvantaged people.

Although this does not constitute a direct advantage in relation to tenders for purpose-driven companies, it does constitute encouragement for contracting authorities to make use of tender procedures to promote sustainable development and social objectives.

Law stated - 05 October 2021

Economic sustainability and market competition

How would you describe the level of economic sustainability and market competition of purpose-driven companies?

Although SIS benefit from some tax exemptions and tax benefits, those exemptions and benefits are limited to SIS with a share capital composed of 100 per cent impact shares.

SIS are subject to many restrictions:

- SIS are subject to the principle of the limited profitability of the company, meaning that the share capital must always comprise of at least 50 per cent impact shares, which are shares that do not provide for the distribution of dividends;
- the salary of the employees of an SIS cannot exceed six times Luxembourg's minimum social wage; and
- SIS are subject to the legal requirement to have their accounts audited to certify that they respect the 50 per cent impact share threshold and to issue annually a report detailing the implementation of the performance indicators.

The above restrictions contribute to the slow growth of the number of SIS established in Luxembourg.

Law stated - 05 October 2021

GOVERNMENT, NGO AND SUPRANATIONAL SUPPORT

Government support

Are there any governmental actors in your jurisdiction that are specifically dedicated to promoting and supporting socially and environmentally responsible investment practices, as well as purpose-driven companies? What purposes do they pursue and how do they do so?

Several initiatives from public actors are dedicated to promoting socially and environmentally responsible investment practices in the Luxembourg financial framework.

In 2015, the government created the Climate Finance Task Force, with the objective of developing initiatives related to sustainable finance to consolidate Luxembourg's position as a green finance hub.

In 2018, the government adopted the Luxembourg Sustainable Finance Roadmap to promote sustainable finance in

Luxembourg with concrete objectives. One of the recommendations of the roadmap was to create the Luxembourg Sustainable Finance Initiative, which was launched in 2020 and is co-chaired by the Ministry of Finance and the Ministry of Environment, Climate and Sustainable Development.

In 2018, the International Climate Finance Accelerator (IFCA) was created in the form a public–private partnership. The aim of the IFCA is to support innovation and high-impact investment strategy by accelerating climate funds managers. This involves financial and non-financial support (eg, training, workshop and networking).

Finally, together with the European Investment Bank, the government created the Luxembourg-EIB Climate Finance Platform to mobilise and support investment in international climate finance, focusing on climate change mitigation and adaptation.

Law stated - 05 October 2021

NGO support

Are there any non-governmental organisations (NGOs) operating in your jurisdiction that are specifically dedicated to promoting and supporting socially and environmentally responsible investment practices, as well as purpose-driven companies? What purposes do they pursue and how do they do so?

LuxFLAG is a major actor in the promotion and support of responsible investment. It is an independent non-profit association that aims to award recognisable labels to investment funds or companies. The different labels delivered by LuxFLAG are microfinance, environment, ESG, climate finance and green bonds. At the end of 2020, a total of 303 investment products had been granted a LuxFLAG label.

Inspiring More Sustainability (IMS) is the national representation for CSR Europe, the European leader for corporate social responsibility, in Luxembourg. IMS is focused on raising awareness and providing information about corporate social responsibility and sustainability, and proposes toolkits, best practices and training to Luxembourg actors on those matters.

In addition, associations such as the Luxembourg Bankers Association, which has an ESG risk task force, and the Association of the Luxembourg Fund Industry (ALFI) dedicate part of their activities to reporting, analysing and recommending the implementation of sustainable finance in Luxembourg. For instance, the ALFI issued, together with Morningstar and ZEB, the ‘European sustainable investment funds study 2021: Catalysts for a greener Europe’.

Law stated - 05 October 2021

Supranational support

Are there any supranational actors operating in your jurisdiction that are specifically dedicated to promoting and supporting socially and environmentally responsible investment practices, as well as purpose-driven companies? What purposes do they pursue and how do they do so?

Supranational actors acting in Luxembourg mostly come from European and international initiatives. For instance, the non-profit network esela aims to promote a better understanding of the law in impact investing, business and human rights or the response of businesses to the climate to financial actors wishing to focus on impact investment.

The European Venture Philanthropy Association also plays a key role in the impact investment landscape in Luxembourg. Its aim is to reinforce the organisation of investees with a societal purpose and provide them with financial (by ensuring capital flows into impact investing sectors) and non-financial (eg, research, data, tools on venture philanthropy and investing for impact and access to a free network) support.

Luxembourg financial actors may also benefit from the European Microfinance Platform, which aims to grant access to financial services that are affordable, sustainable and inclusive in the microfinance sector.

B Lab, a global non-profit organisation, delivers B Corporation certification of social and environmental performance to for-profit companies established in Luxembourg. More than a branding tool, the B Corporation certification allows investors and consumers to rely on the effort made by B corporations to maintain their environmental and social impact.

Law stated - 05 October 2021

FINANCIAL TOOLS

Equity funds and loans

Does your jurisdiction regulate equity funds or other financial tools such as loans designed to scale up companies with social or environmental objectives? Even if not expressly regulated, are there venture funds specifically focused on investing in purpose-driven companies?

Venture capital funds represent 10 per cent of the Luxembourg regulated and unregulated funds. Luxembourg venture capital funds are not specifically regulated, except from the application of the EuVECA Regulation (Regulation (EU) No. 345/2013 of 17 April 2013 on European venture capital funds), which does not specifically promote the social or environmental objective of the funds.

As venture capital funds invest in early-stage companies, they are more likely to invest in companies with ESG performance.

Social entrepreneurship funds domiciled in Luxembourg are regulated by the European Social Entrepreneurship Funds (EuSEF) Regulation (Regulation (EU) No. 346/2013 of 17 April 2013 on European social entrepreneurship funds), which provides a voluntary framework and sets requirements for funds wishing to use the EuSEF label. At present, one Luxembourg domiciled fund qualifies as a EuSEF.

Law stated - 05 October 2021

Outcomes funds

Does your jurisdiction regulate 'pay for success' investing models such as outcomes funds? Apart from specific regulation, are any of these mechanisms in force or in progress in your jurisdiction?

Pay-for-success investing models or outcomes funds are not regulated as such in Luxembourg.

Pioneer impact funds domiciled in Luxembourg provide a model in which some investors (usually public investors) bear more economic risks than others (usually private ones); however, these are not pay-for-success models as such.

Law stated - 05 October 2021

Social and development impact bonds

Does your jurisdiction regulate 'pay for success' investing models such as social impact bonds and development impact bonds? Apart from specific regulation, are any of these mechanisms in force or in progress in your jurisdiction?

Social impact bonds and development impact bonds are not regulated as such in Luxembourg; however, the Luxembourg Stock Exchange provides a framework to list specific purpose bonds that qualify under different categories: green bonds, social bonds, sustainability bonds, sustainability-linked bonds and Chinese domestic green bonds. Those bonds must meet specific requirements and may include pay-for-success models, such as the social impact bonds model.

Alongside common social impact bonds, with a pay-for-success mechanism, Luxembourg is developing its own framework of social and impact bonds. On 2 September 2020, the government launched a sustainability bond framework, which allows the issuance of social bonds in which an amount equal to the net proceeds will be exclusively used to finance eligible expenditures falling within the eligible social categories.

Law stated - 05 October 2021

Crowdfunding

Does your jurisdiction regulate crowdfunding initiatives aimed at scaling up companies with social or environmental objectives?

From 10 November 2021, crowdfunding initiatives in Luxembourg are regulated by Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business. At present, it does not specifically target crowdfunding initiatives aimed at scaling up companies with social or environmental objectives.

Law stated - 05 October 2021

UPDATE AND TRENDS

Update and trends

What are the key recent developments, hot topics and future trends in your jurisdiction relating to social finance, purpose-driven companies and the impact economy in general? Are there any recent studies and initiatives to identify or quantify these market sectors? Are there any new or proposed regulations or taxonomies in this regard?

Luxembourg already holds the leading position in Europe in terms of sustainable funds products, with almost one-third of the assets managed by sustainable funds being domiciled in Luxembourg at the end of 2020.

The Luxembourg Green Exchange, which was created in 2016, hosts the largest market share of listed green bonds worldwide and offers quality and transparency to different sustainable financial instruments.

On 27 October 2020, the Luxembourg Green Exchange marketed the first social bond issued by the European Commission for support to mitigate unemployment risks in an emergency. Currently, 90 social bonds are listed on the Luxembourg Green Exchange, and this number continues to increase.

In 2019, the government launched the Luxembourg Sustainable Finance Roadmap and the National Plan for Sustainable Development 2021–2030, with the objective of implementing the 17 Sustainable Development Goals and providing the framework to develop a legal structure to achieve sustainable and social impact goals in the near future.

As a financial hub of the European Union, Luxembourg aligns with most European and international initiatives related to ESG integration in the financial sector, impact and social investments. Luxembourg actors constantly research, analyse and contribute to the development of policies to orient the financial market towards more sustainability and impact financing.

Law stated - 05 October 2021

Recommendations

Do you have any recommendations for legal models, fiscal treatment and public procurement in your jurisdiction in relation to social finance and purpose-driven companies? Do you see a need for regulatory intervention or is the market capable of self-regulation in these sectors?

Although the Luxembourg legislative framework is already proactive in developing ESG, sustainable finance and impact investing initiatives, more concrete guidelines issued by the financial authorities would be welcome, especially in relation to reporting and disclosures of information.

For instance, more guidance should be provided by the government on the management of purpose-driven companies governed by the Law of 12 December 2016 in relation to the extra-financial report that is required to be published every year, especially on performance indicators.

To achieve concrete results in shifting finance towards sustainability and social impact, private players of the financial sector must be supported by public actors. The burden and costs of reporting on environmental and social objectives should not be borne by each company alone.

Concrete support must also come from public authorities and actors to provide the private sector with:

- concrete guidelines on reporting and disclosure of information; and
- affordable tools to collect the relevant data in relation to their social or environmental activities that would generate a harmonised assessment of ESG performance. This could include the establishment of easily accessible platforms where computer and financial tools would be exchanged.

In addition, specific benchmarks adapted to the local, social and environmental landscape must be developed to increase the accuracy of performance and the non-financial impact of financial products, as well as to reduce risk-margin factors.

In this context, tax incentives are also key to encourage the private sector to promote environmental and social objectives in their activities. Although tax incentives for purpose-driven companies are already in place, similar benefits should be created for companies, asset managers and investment funds, integrating ESG and social purposes to their business or investment strategy.

Impact investment is a self-regulated sector that should not be overly legally framed as innovation is still needed to improve social and environmental impact; however, more guidance and reports on concrete achievements from financial products designed with an environmental or social purpose should be developed to reassure those that are still on the fence in respect of impact and sustainable investments.

The authors wish to thank Gabriel Moulinec, Tristan Louet, Emmanuel Nze, Walid Sharara and Christoforos Soteriou for their contributions in the preparation of this chapter.

Law stated - 05 October 2021

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