ESG & Impact Investing 2022

LEXOLOGY
Getting The Deal Through

Portugal

Bruno Ferreira, Alexandre Norinho de Oliveira and Sara Asseiceiro

PLMJ

LEGAL AND POLICY FRAMEWORK

Legislation

1 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?

The following legislation addressing ESG factors has been adopted:

- Decree-Law no. 89/2017 of 28 July on the disclosure of non-financial information and information on diversity by large companies and groups, and which transposes the Non-Financial Reporting Directive (Directive 2014/95/EU). In particular, this decree law amended the Portuguese Securities Code and the Portuguese Commercial Companies Code by setting out, with respect to public interest companies (*entidades de interesse público*), certain information duties relating to non-financial information and to internal diversity policies:
  - on the one hand, the annual management report of these companies must include non-financial statements with sufficient information which allows an understanding of the evolution, performance, position and impact of the company's activities, including references to environmental, social and employees matters, as well as information relating to the balance between women and men, non-discrimination, respect for human rights, combating corruption and bribery attempts; and
  - on the other hand, these companies must now also include reference to internal diversity policies in the annual governance report. This report must include a description of the main objectives of such policies and the relevant measures applicable in this regard to the management and supervisory boards notably as regards age, gender, education and professional background. It must also include a description of how the policies have been applied and their results in a given reference period;
- Law no. 62/2017 of 1 August on the balanced gender representation in the management and supervisory bodies of public sector entities and of listed companies, setting out certain thresholds for the appointment of members of each gender for those corporate bodies.

Policy guidance and development

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

Although sustainability and environmental matters seem to be increasingly on the agenda of policy makers and regulators, the level of policy guidance implementation and development regarding ESG, impact investing and purpose-driven companies within the Portuguese jurisdiction is still embryonic, with limited legislation and regulations being enacted in this regard. The private sector, however, seems to be the driving force from an organisational perspective, for the implementation of common goals and policies throughout the sector. In this regard, associations such as the local chapter of the Business Council for Sustainable Development (BCSD Portugal) brings together some of the largest corporate players in the Portuguese market and it has set up different working groups with the goal to monitor and contribute to the development of ESG policies, develop knowledge, promote debate and impress companies with the importance of ESG matters.

INVESTMENT

Regulatory and fiduciary duties

3 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?

On 10 March 2021, Regulation (EU) 2019/2088 of the European Parliament and of the Council, of 27 November 2019, on sustainability-related disclosures in the financial services sector (Regulation), became, in its majority, directly applicable in the legal systems across the European Union, including in Portugal.

This Regulation establishes certain harmonised transparency rules applicable to financial market participants and financial advisers in relation to the management of the financial risks arising from climate change, resource depletion, environmental degradation and social issues. It thus imposes the consideration of ESG factors in their investment decisions.

In its scope, the Regulation sets out certain transparency duties in the way financial market players take into account sustainability risks in their investment decisions or in their investment advisory activities. Thus, with the entry into force of the Regulation, those involved in the financial market and financial advisers are bound by transparency duties relating to:

- integration of certain risks related to an event or condition of an environmental, social or governance nature whose occurrence is likely to cause an actual or potential significant negative impact on the value of the investment;

- consideration of the impacts of investment decisions and advice that result in negative effects on environmental, social and labour issues, and also on respect for human rights, the fight against corruption and bribery; and
- provision of information relating to sustainability in relation to financial products.

In fact, pursuant to the Regulation, financial market participants must not only provide on their websites information relating to their policies on integrating sustainability risks into their investment decision-making process, but also provide information on the negative entity-level impacts of investment decisions on sustainability factors.

Besides the above, there are no other specific legal obligations pursuant to Portuguese law that require institutional investors and financial intermediaries to consider ESG factors in their investment decisions. This, however, does not prevent them from considering ESG factors voluntarily.

Voluntary standards and best practices

4 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?

The most common voluntary standards and best practices used in the Portuguese market are the UN Principles for Responsible Investment (PRI), the Impact Management Project (IMP), IRIS metrics, the Task Force on Climate-related Financial Disclosures (TCFD), and the UN Sustainable Development Goals (SDGs).

Measurement, reporting and disclosure

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

The most common voluntary reporting and disclosure frameworks are the Global Reporting Initiative Standards, the Guidelines for integrated reports of the International Integrated Reporting Council and the Sustainability Accounting Standards Board (SASB).

Furthermore, although not a framework per se, the Portuguese Securities Market Comission (CMVM) has recently approved a reporting template for compliance with the duty to disclose non-financial information by companies issuing securities admitted to trading on a regulated market. In particular, these companies are subject to certain reporting obligations in relation to non-financial information. They also have to implement internal diversity policies under Decree-Law no. 89/2017 of 28 July, which transposes Directive 2014/95/EU into Portuguese law. This template is a voluntary model, which seeks to standardise information on existing legal duties and contribute to the existence of standardised information on matters relating to the integration of sustainability factors into Portuguese business activity.

Ratings, indices and guidelines

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

The most common ratings and indices used in the Portuguese market to benchmark adherence to ESG principles are the following:

- Climate Disclosure Project scoring, which scores a given company in accordance with its environmental impact;
- Sustainalytics, whose ratings are based on the ESG risks of companies; and
- MSCI ESG, which measures the company's resilience to long-term ESG risks.

Incentives, benefits and financial support

7 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?

Currently, there are no fiscal incentives or other benefits to encourage integrating ESG and other non-financial factors into investment decision making by institutional investors or financial intermediaries.

Impact investing

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

Besides ESG factors, standard considerations and practices usually accounted for in impact investment strategies are also integrated, in particular, to optimise the intended social and environmental impact of the investment, such as (1) determination of the goal, strategy and subject of the investment; (2) carrying out the due diligence for the investment, and (3) analysing not only the financing associated with the investment but also the return expectations. In fact, these considerations also comprise an assessment of the impact upside and how it relates to the revenue strategy of the company, how aligned the incentives of the management team towards impact considerations are, the contribution to the UN Sustainable Development Goals at the sub-indicator level and the assessment of the net impact, which takes into account negative impacts that occur as a result of the investment.

PURPOSE-DRIVEN COMPANIES

Legal recognition and certification

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

The following legal forms have been created in the Portuguese jurisdiction for the establishment of purpose-driven companies:

- Social entrepreneurship companies: these are regulated under Law no. 18/2015 of 4 March, which are for profit companies subject to the supervision of the Portuguese Securities Market Commission (CMVM) with the main corporate purpose of carrying out investment within social entrepreneurship, specifically by allocating the funds collected for investment in entities that develop appropriate solutions to social problems. The companies may also manage social entrepreneurship funds.
- Social entrepreneurship funds: these are collective investment schemes, also regulated under Law no. 18/2015 and subject to the supervision of the CMVM, regarding which the amounts collected from the investors are also aimed at investing in social entrepreneurship, through the acquisition of shares, bonds or other instruments issued or related to entities that develop appropriate solutions to social problems, in accordance with the investment policy defined for each fund. These funds may be managed by social entrepreneurship companies or other fund management companies.
- Foundations: defined as not for profit legal persons under Law no. 24/2012 of 9 July, which have a specific purpose relating to social interest In other words, they provide benefits to a group of people (other than to the founder of the foundation and other related persons). The applicable law sets out a non-comprehensive list of examples of what may be deemed social interest. The list includes

cooperation for development as well as promotion of environmental protection. The creation of the foundations is officially recognised by the Portuguese Presidency of the Council of Ministers, which has certain supervisory duties in relation to foundations.

In addition to the types of entities mentioned above, any commercial company may pursue ESG goals and objectives in accordance with its corporate purpose. In fact, this seems to be the most common type of purpose-driven entities as, even though Law 18/2015 of 4 March has been in force since 2015, as of today, there is only one social entrepreneurship company and one social entrepreneurship fund authorised and incorporated in Portugal.

There is no public certification of any of the companies above, but the B Corporation Certification is becoming increasingly relevant in Portugal. Under this certification, the corporate positive social or environmental impact is measured and certified by the American entity B Lab (through B Lab Portugal). In fact, while there are only a handful of B Corp companies in Portugal, these tend to be general commercial companies, which also pursue ESG-related corporate purposes, rather than any of the legal types of purpose-driven entities we have listed above.

Purpose and mission

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

Companies may pursue social or environmental purposes, in accordance with the purpose set out in their articles of association. However, under Portuguese law, commercial companies have as their main purpose the pursuit of commercial activities. They thus place shareholders' interests at the very heart of their corporate purpose. As such, any social or environmental purposes implemented by these companies should be ancillary to their mandatory profit-making objectives.

Conversely, foundations, regulated by Law no. 24/2012 of 9 July do not have as their mission the pursuit of commercial activities, but rather the pursuit of a given significant social interest duly identified from incorporation. In fact, these entities are subject to an official recognition by the Portuguese Presidency of the Council of Ministers (PCM) which not only initially analyses a memorandum describing the purposes of the foundation, but also has the capacity to determine the extinction of a given foundation when the activities carried out demonstrate that the real purpose of the foundation is not aligned with the purpose at the origin of its creation. Pursuant to this legal framework, any amendment to the aims and purposes of a foundation always requires approval by the PCM, as proposed by the foundation's board of directors.

Social entrepreneurship companies and social entrepreneurship funds are purpose-driven companies and their activity is intrinsically oriented towards the social or environmental purposes and missions as set out in their constitutional documents. The pursuit of social and environmental purposes by their management remains, however, subject to fiduciary duties towards investors and other stakeholders, without prejudice to their profit-making purpose.

Profit distribution, winding up and remuneration

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

Social entrepreneurship companies and social entrepreneurship funds do not have any restrictions in relation to profit distributions, except those that may be specifically agreed with their fund participants and set out in their corporate documentation or investment policy.

As regards foundations, given their specific legal nature under Portuguese law, notably the fact that they are not incorporated by shareholders but rather by a founder (or founders) which is not a stakeholder, any surplus amounts will not be distributed but rather reallocated to the foundation's social purposes.

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

Social entrepreneurship companies and social entrepreneurship funds are not subject to any restrictions in relation to their winding up with regard to an obligation to pass on its remaining assets to similar entities, except those that may be specifically set out in their corporate documentation or in the fund's rules of procedure.

However, Law no. 24/2012 of 9 July does determine specific rules in relation to the winding up of foundations, in particular relating to the allocation of the entity's assets upon its extinction, because these assets must be distributed to an association or foundation with similar social interest purposes and not, in any event, transfered back to the founder that set up the foundation.

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

No specific restrictions apply to the remuneration of directors, officers, employees and third parties of any social entrepreneurship companies, social entrepreneurship funds or foundations. Consequently, purpose-driven companies (and their shareholders) have ample discretion to set the remuneration of their directors, officers and employees.

Measurement, benchmarking and reporting

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

Law no. 24/2012 of 9 July requires foundations to draft and have available at all times on their websites the activity reports for the last three years.

There are no further requirements in this regard in relation to social entrepreneurship companies or social entrepreneurship funds. This is without prejudice to the undertaking agreed between social entrepreneurship companies, as management companies of social entrepreneurship funds, and investors, of ensuring the ongoing reporting based on pre-established metrics proposed by the management company and approved by an independent advisory board.

15 | 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?

The most common voluntary standards, guidelines and best practices considered by purpose-driven companies in Portugal are the Global Reporting Initiative Standards, the Task Force on Climate-related Financial Disclosures, IRIS metrics, the Guidelines for integrated reports of the International Integrated Reporting Council, SASB - Sustainability Accounting Standards Board and the UN Global Compact.

Director liability and private enforcement

16 | 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?

There is no general duty for directors to ensure socially responsible behaviour by companies. However, Portuguese law sets out a few obligations on directors to comply with legislation addressing environmental, social and governance factors in banking, finance and corporate law.

The Commercial Companies Code (CSC) does not have any rule that directly holds directors accountable for compliance with social and environmental standards and principles. However, the fiduciary duties determine that directors take into account 'the long-term interests of the shareholders' and to 'weigh the interests of other persons relevant to the sustainability of the company, such as its employees, clients and creditors'.

In other words, although the CSC determines a certain level of supremacy between the interests of shareholders and stakeholders, it is still necessary for directors to understand that the consideration of stakeholders' interests is often a necessary step to pursue the corporate interest. Directors should therefore favour the interests of stakeholders, whenever (and insofar as) these favour the corporate interest. Faced with two solutions with equal effects (equally beneficial) for the interests of shareholders, directors should adopt the one which is also beneficial (or more beneficial) for the interests of other stakeholders.

In addition, when directors breach their fiduciary duties, they are only contractually liable towards the company, given the circumstances, and not towards the stakeholders. Therefore, the stakeholders harmed by the breach of the directors' duties are in a situation of extra-contractual civil liability and consequently will further need to prove the existence of a culpable fact, the damage caused and the relationship between the director's conduct and the damage caused.

State supervision

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

In general, purpose-driven companies are not subject to state supervision, with the exception of certain aspects of the life of non-profit third sector entities (including the public interest recognition in the case of foundations) which are subject to state supervision.

As regards foundations specifically, there is also some level of supervision. In fact, these entities are required to provide information as regards their activities annually, including annual financial statements and activity reports, to the Portuguese Presidency of the Council of Ministers – the governmental department that officially recognises the creation of foundations. This governmental body is also able to determine the extinction of a given foundation in specific circumstances set out in Law no. 24/2012 of 9 July, notably when the activities carried out demonstrate that the real purpose of the foundation is not in line with the purpose provided for upon its creation.

Additionally, social entrepreneurship funds and companies specifically are subject to supervision by the Portuguese Securities Market Commission (CMVM). In fact, the CMVM's authorisation or registration, as applicable, is required as a prior condition to begin their activity, and their ongoing activity is subject to the CMVM's scrutiny. Nevertheless, the current regulatory framework applicable to such entities overlaps, in essence, with that of venture capital funds and companies. For this reason, it remains to be seen what level of intervention CMVM will apply in the future with regard to its supervision of the actual pursuit of social and environmental purposes and, in this respect, whether the CMVM will issue further implementing regulations capable of clearly detailing and ensuring ever-closer scrutiny of the pursuit of such objectives, including with regard to impact measurement and reporting.

Incentives and benefits

18 | 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?

There are no tax benefits specifically aimed at purpose-driven companies but rather a set of benefits which may be applied to such companies with social or environmental purposes and missions. An outline of the main tax benefits is provided below:

- 'SIFIDE II' is a beneficial tax regime, set out under the Investment Tax Code, providing for corporate income tax credits for expenditures incurred in R&D activities.
- 'RFAI' is another regime, also set out under the Investment Tax Code, according to which companies may deduct a percentage of their expenditures on investment in non-current assets.
- Several one-off and more environmentally focused benefits: for example, exemption from vehicle taxes for companies opting for an electric fleet, deduction of the VAT on its acquisition, advantages regarding depreciation, etc.
- Although the tax regime applicable to social entrepreneurship funds is not clear, the market approach is that the venture capital funds tax regime should apply (full exemption at the level of the fund with taxation being applied upon distribution or exit by investors).

Finally, it is also worth highlighting that certain tax benefits relevant for purpose-driven companies have recently expired or will expire next year (eg, the deduction of expenditure with car and bike sharing systems, expenditure on bike fleets, etc).

Public procurement

19 | 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?

The public procurement legal framework has been amended recently to also take into consideration the pursuit of social and environmental purposes. Specifically, under the new legal framework, the possibility of including social and environmental purposes in the tender documents, of considering their insufficient accomplishment as an excluding factor, or of taking social and environmental factors into account in the award decision itself, have all been expressly provided for.

In short, under this new mindset, contracting authorities have been granted ample room to consider the accomplishment of ESG purposes in their award decision, thus putting flesh on the bones of general ESG principles in a field that has considerable significance within the Portuguese economy. This breadth of action granted to awarding bodies when devising each public procurement procedure should be exercised bearing in mind the environmental commitments undertaken in the National Action Strategy on Green Public Procurement adopted back in 2016, which lays down ambitious milestones and objectives for the public administration.

Economic sustainability and market competition

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

Overall, purpose-driven companies are subject to the same economic sustainability and market competition conditions as non-purpose-driven companies.

For instance, purpose-driven companies do not benefit from a more favourable tax environment, as the existing tax benefits are not specifically targeted to them. Although there was a green tax reform in Portugal in 2015, the steps taken fall short of current demands and further action is required. Furthermore, no specific rules currently apply to purpose-driven companies with regard to distribution of profits, to measurements or to the reporting costs, or both.

Based on the foregoing, it remains to be seen whether, due to the absence of adequate incentives, the current level of economic sustainability will ensure a true level playing field between purpose-driven and non-purpose-driven companies. In any event, it is perceived that purpose-driven companies draw enhanced economic sustainability from their ability to (1) attract better talent, which results in less staff turnover and more productivity, (2) have better consumer engagement, which represents a lower customer acquisition cost and a higher lifetime value, and (3) have lower costs of capital given the transition in asset allocation towards sustainable assets.

GOVERNMENT, NGO AND SUPRANATIONAL SUPPORT

Government support

21 | 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?

Within the Portuguese government, the main duties of several ministries include the promotion of socially and environmentally responsible investment practices. These ministries include the ministry of economy, the ministry of employment and social security, and the ministry of environment and climate change.

In addition to these ministerial departments, several public agencies play a pivotal role in the promotion of socially and environmental investment practices. Former PME Investimentos, which has recently been merged by incorporation into the Portuguese development bank (BPF), a publicly-held financial institution subject to the Bank of Portugal's supervision, has as its corporate purpose the promotion of entrepreneurship, innovation, competitiveness and internationalisation within the Portuguese business fabric, by developing equity, quasi-equity and debt instruments, aimed also at leveraging private investment in key areas and thus multiplying its reach and economic impact. Among the several funds created, we would highlight the Social Innovation Fund (FIS), which promotes innovative and sustainable practices, through both equity and debt instruments, including through the issuance of social impact bonds and the Coinvestment Fund (which is a coinvestment fund, matching private investment in high potential innovative start-ups). Furthermore, one of the key roles of the BPF is to promote, and overcome shortcomings with regard to, green finance within the Portuguese economy. Finally, while the IGCP (the public agency that issues and manages Portuguese sovereign debt) is yet to perform its inaugural green sovereign bonds issuance, this could prove to be a key milestone and turning point regarding the adherence by private and public entities to sustainable green finance.

In addition to an overall strong presence of public resources in this sector, and to the growing private interest for impact investment, traditional organisations (including non-profit associations, religious charity and co-operatives) continue to play a fundamental role within the third sector.

NGO support

22 | 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?

There are several NGOs operating in Portugal that are specifically dedicated to promoting socially and environmentally responsible investment practices. Associations such as the local chapter of the Business Council for Sustainable Development (BCSD Portugal) bring together some of the largest corporate players in the Portuguese market and have set up different working groups with the goal to monitor and contribute to the development of ESG policies, develop knowledge, promote debate and sensitise companies to the importance of ESG matters.

B Corporation Certification, through B Lab Portugal, measures companies' entire social and environmental performance and is another example of an NGO that continues to play a key role in the support of socially and environmentally responsibly investment practices.

Other relevant players – although not NGOs – in the promotion in Portugal of socially and environmentally responsible investments include IES Social Business School (a post-graduate school providing impact investment-driven programmes), Stone Soup (an international impact-investment consultancy firm), Fundação Calouste Gulbenkian (a Lisbon-based foundation whose purpose is to improve quality of life through art, charity, science and education), Mustard Seed Maze – Sociedade de Empreendorismo Social, S.A. (a social entrepreneurship company regulated by the Portuguese Securities Commission), Core Angels (social entrepreneurship business angels) and Impact Hub (a network focused on building entrepreneurial communities for impact at scale).

Supranational support

23 | 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?

The Global Steering Group (GSC) for Impact Investment has a presence in Portugal, which was one of the first countries to join this group (in 2015) and the mission of this independent global steering group consists of driving real impact that improves lives and the planet by innovating, agitating and orchestrating the advance towards impact economies. GSC continues to play a leading role in the development and acceleration of the impact ecosystem in Portugal, and the success in its mission stems from its advocacy efforts with regard to governing bodies to create and catalyse awareness of the need to include impact investment on the public agenda.

The European Venture Philanthropy Association (EVPA) – a community of organisations (from social investors, private equity to impact investment funds) interested in venture philanthropy and social investment across Europe – is also very active in Portugal, one of the countries with the most EVPA members. The EVPA is an European forum that brings together key players within the impact investment landscape, creating an ongoing impact-driven dialogue and promoting impact through numerous training and research initiatives.

FINANCIAL TOOLS

Equity funds and loans

24 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?

The enactment of Law 18/2015 of 4 March extended the scope of the venture capital legal framework to social entrepreneurship funds and companies. With the approval of this law, both equity funds and companies aimed at promoting social entrepreneurship became specially regulated in Portugal. Despite a significant overlap with the legal framework applicable to venture capital companies and funds, a specific set of rules applies to equity funds and companies whose purpose is to promote social entrepreneurship.

In a nutshell, social entrepreneurship investment is defined as investment in the acquisition of equity or debt instruments issued by entities developing appropriate solutions to address social issues, with the objective of achieving quantifiable and positive social impact. Both social entrepreneurship funds and companies follow the set of rules applicable to entities falling below the threshold (ie, with assets under management below €100 million when leverage is used, or of €500 million for unleveraged funds) stemming from the Portuguese legislation that implemented EU directive on alternative investment fund manager (Directive 2011/61/EU). The Portuguese Securities Market Commission (CMVM) has defined the rules applicable to the evaluation of assets held by social entrepreneurship funds and companies and specified which assets may comprise their estate (having aligned it with Regulation 346/2013 on European social entrepreneurship funds).

The inaugural social entrepreneurship company (Mustard Seed Maze – Sociedade de Empreendorismo Social, SA) and fund (Mustard Seed Maze - Social Entrepreneurship Fund I (MSM Fund)) was registered back in 2018 and 2019, respectively. Since then, the MSM Fund has been deploying capital in Portugal and throughout Europe to help address pressing environmental and social issues. The MSM Fund is co-invested by the European Investment Fund. It harbours a uniquely diverse set of institutional investors and has a current size of €60 million.

Outcomes funds

25 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?

At present, outcome funds are not regulated in Portugal. Indeed, while social entrepreneurship funds and companies are regulated in the Portuguese jurisdiction, the applicable legal framework is silent with regard to requiring structuring investment models based on outcome.

This being said, due to the perceived relevance to the ethos of impact investment, regulated impact investment players in Portugal do currently link profitability and management incentives (through receipt of carried interest) to achieving pre-determined outcomes and results, according to pre-determined metrics that have been approved by investors.

Social and development impact bonds

26 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?

'Pay for success' investment models are currently not regulated in Portugal. Despite this lack of specific regulation, recent years have seen a considerable rise in the number of issuances of social impact bonds and development impact bonds. The Social Innovation Fund (FIS) in particular has been quite active in this field, with the adoption of 'pay for success' investing models which are oriented towards the attainment of predetermined social objectives and targets.

We would also note that social impact bonds benefit from a tax incentive introduced back in 2018, whereby cash inflows from social investors are recognised as expenses and losses for the relevant tax period, in an amount corresponding to 130 per cent of the total or up to a cap of 8/1000 of the sales turnover or turnover in services, regardless of any future reimbursements. The aim of these measures is to create the right incentives to boost investment in social and environmental projects.

Crowdfunding

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

Crowdfunding is a regulated activity pursuant to Law 102/2015 of 24 August. This legal framework draws a distinction between equity, debt crowdfunding and crowdfunding entailing a donation, and each type is subject to a different set of rules. Having said this, impact investment crowdfunding in particular does not benefit from separate rules. By way of example, Power Parity is a crowdfunding platform manager specifically aimed at promoting debt crowdfunding of companies pursuing environmental and social goals, but it is currently subject to the same legal framework as other debt crowdfunding platforms.

UPDATE AND TRENDS

Update and trends

28 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?

The increasing traction of green finance within the Portuguese economy has been a key trend over recent years, including landmark green bonds issuances by two key players in the capital markets sector. The increasingly mainstream nature of green finance solutions is a trend to watch closely over the coming years, including the much-anticipated inaugural sovereign green bonds issuance.

Additionally, the corporate governance impact of ESG-related concerns has been a noteworthy factor in recent years, and it is expected that this impact will be more and more present in the daily life of companies in general. In fact, from public procurement, to the ongoing activity of regulated entities (including banks), the dissemination of ESG-oriented rules has been increasingly palpable.

Moreover, social finance and the impact economy are currently at the very heart of the public debate, despite the relatively incipient legal framework specifically applicable to them, and brainstorming sessions are regularly held in this respect. The conversion of this critical mass into hard law and guidelines from public and private entities will be a trending topic for the foreseeable future.

Recommendations

29 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?

Despite the fact that self-regulation has taken these sectors a long way, assertive regulatory intervention would certainly further the cause of social and purpose-driven companies and have a multiplying effect on their impact in the Portuguese economy and society as a whole.

For instance, the mandatory introduction of purpose in companies' articles of association and having their management regularly report and demonstrate in a detailed fashion how, and to what extent, their corporate purpose is being pursued would be a quantum leap for corporate law and a shit from a strictly shareholder-value approach to a purpose-driven approach.

It is also vital to re-think tax policy to develop a package of tax incentives for purpose-driven companies based on a holistic approach tailored to the features (and needs) of the Portuguese economy. This may include, among others, a comprehensive set of direct and indirect tax benefits that allows companies to reduce the costs of revamping their business model or productive structure in order to ensure increased compliance with ESG criteria. Furthermore, it is also important to create incentives for individuals to invest, via equity or debt, into purpose-driven companies.

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