

ESG AND IMPACT INVESTING

Chile



ESG and Impact Investing

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Legance - Avvocati Associati

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.

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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?

ESG factors and the pursuit of non-financial objectives is a relatively new trend in Chile that has raised a lot of attention. However, there is only some secondary legislation addressing ESG factors. Among them, the following stand out: NCG 386 and NCG 461 issued by the Financial Market Commission (Comisión para el Mercado Financiero (CMF)); and NCG 276 issued by the Superintendency of Pensions (SP).

General Rule No. 386 requires companies to include in their annual reports information regarding diversity (gender, nationality, and age) at the board, management and organisational levels, and the gender pay gap.

Further, General Rule No. 461 incorporates the obligation to report on ESG factors in all sections of the annual report, deepening the minimum information requirements, and requires corporations to report on their corporate governance practices. In addition, the annual report must include a table of contents that expressly refers to the international reporting standards it has taken as a reference.

Therefore, there is no obligation to apply ESG factors or to improve them, but it is mandatory for listed companies and issuers of publicly offered securities to report whether they have adopted them and their status regarding diversity ratios and the gender pay gap.

On the other hand, NCG 276 establishes a series of instructions to the pension fund managers (AFP) and the pension funds administrator (AFC), with the aim of incorporating climate risk and ESG factors to their investment policies and processes, and in their risk assessment and management activities. The pension fund administrator must disclose how these elements are incorporated in the investment analysis processes carried out by their respective teams.

Law stated - 17 August 2022

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?

There is impressive development and increasing awareness regarding ESG factors, impact investment and purpose-driven companies in Chile. There are now several listed companies, investment funds, private NGOs and public organisations encouraging and adopting ESG factors, impact investment and purpose-driven companies when investing or conducting their businesses.

Regarding ESG factors, private and public sector officials have made explicit their interest in strengthening their application in Chile. In May 2022, Sociedad de Fomento Fabril (SOFOFA) organised a seminar on the subject, where the hurdles that the country must overcome to improve ESG practices were discussed. The president of the CMF and

members of the private sector expressed the need to implement ESG regulation, especially General Rule No. 461, and the importance of collaborative work. Additionally, there are several governmental agencies leading the change for their adoption and promotion, including the CMF. The regulator has organised round tables with representatives from the public and private sectors to strengthen the adoption of ESG principles. The Ministry of Finance has issued sovereign green bonds, being the first American country to do so, the Ministry of Urbanism and Housing has been working on the promotion and certification of sustainable housing, and the Tourism National Service has developed a certification for sustainable tourism operators in order to promote their activity. Also, the Santiago Stock Exchange adopted the Sustainable Stock Exchanges (SSE) initiative and has participated in the creation of sustainability indices (Dow Jones Sustainability Chile Index and the Stakeholders Sustainable Index Chile). It has also been active in promoting ESG factors and sustainability indices.

Regarding impact investment, the Ministry of Economy, Development and Tourism, together with the Ministry of Social Development and Family, launched feasibility studies for three social impact contracts (commonly known as social impact bonds), and have shown increasing interest in using this structure to achieve social objectives through private impact investment.

Regarding purpose-driven companies, currently there is a bill in Congress for the creation of a new type of legal entity: companies of collective benefit and interests (BIC). If Congress approves the bill, it would give legal recognition to purpose-driven companies, encouraging such entities to pursue social or environmental benefits along with monetary profits.

Law stated - 17 August 2022

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?

Institutional investors and financial intermediaries are not legally required to consider ESG factors when investing.

Law stated - 17 August 2022

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?

Among the most common voluntary standards and best practices used in Chile to integrate ESG factors and other non-financial principles into investment decisions are the GIIRS, IRIS+, recommendations from the Inter-American Development Bank, the compromise with the UN Sustainable Development Goals (according with the Chilean Branch of the UN Global Compact more than 90 Chilean member companies), the UN Principles for Responsible Investment (10 Chilean signatories, most of them institutional investors).

Law stated - 17 August 2022

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?

The Financial Market Commission (CMF) in 2021, through General Rule No. 461, established the obligation for listed companies and other issuers of publicly offered securities to submit information regarding their corporate governance, social responsibility and sustainable development practices in every section of their annual report.

This is only a reporting obligation that must be fulfilled by indicating which autoregulation items or good practices are currently in place. The report must include information established by General Rule No. 386 on diversity (gender, nationality, and age at board, management and organisational levels) and the gender pay gap.

Regarding AFP and AFCs, NCG 276 establishes a series of instructions with the aim of incorporating climate risk and ESG factors in their investment policies and processes, and in their risk assessment and management activities.

The Global Reporting Initiative (GRI Standards), the International Integrated Reporting Council (IIRC model), and different certifications such as B Corporation Certification or ISO 26000 are each day more common in Chile. The creation of local sustainability indices has also contributed to informing the public on which companies are more committed to ESG principles.

Law stated - 17 August 2022

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?

There are different options, among them the IRIS+ and the GIIRS, which are used to measure the actual impact in investment funds' portfolios. Also, the Santiago Stock Exchange participated in the creation of Chilean sustainability indices, such as the Dow Jones Sustainability Chile Index (DJSI Chile), and the Stakeholders Sustainable Index Chile (SSIndex Chile).

There are certain guidelines contemplated in secondary legislation issued by the CMF (NCG 386 and 461). Both norms require certain companies and other issuers of publicly offered securities to inform about ESG factors in every section of their annual report.

By applying the regulation, in summary, companies' annual reports are divided into the following sections:

- entity profile;
- corporate governance;
- strategy;
- people;
- business model;

- supplier management; and
- legal and regulatory compliance indicators.

The adoption of such good practices is voluntary, but reporting their existence or adoption is mandatory for the mentioned companies.

NCG 276 also establishes a series of instructions to AFPs and AFCs, with the aim of incorporating climate risk and ESG factors in their investment policies and processes, as well as in their risk assessment and management activities.

Law stated - 17 August 2022

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?

There are no fiscal incentives or tax benefits to encourage the integration of ESG factors.

Law stated - 17 August 2022

Impact investing

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

Impact investors in Chile tend to have a holistic investment approach and the emphasis on certain aspects or criteria depends mainly on industry focus, mission and background of the specific investors.

Law stated - 17 August 2022

PURPOSE-DRIVEN COMPANIES

Legal recognition and certification

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

Since there is no legal framework specifically designed for purpose-driven companies, the solution must be a tailor-made legal structure. The most common alternative is using a non-profit foundation, which is defined as a legal entity created by the allocation of certain assets or goods (which will no longer belong to the founder) to accomplish or develop a purpose of general interest. These non-profit entities can carry out profitable activities to increase their assets, but since according to their legal definition they do not have an actual owner or shareholder, the profits cannot be distributed and must be reinvested or donated (in the case of dissolution, the assets must be donated to another non-profit entity).

Another option is the incorporation of a for-profit stock corporation or using a combination of a stock corporation owned by a foundation. Stock corporations are commonly chosen because the minimum mandatory rules allow great flexibility when crafting by-laws (of course, the by-laws have to maintain the for-profit essence of stock corporations).

There are certain certifications for companies that pursue social or environmental purposes, the most common is the B Corporation Certification, and recently arrived in Chile is the Purpose Foundation, which promotes and certifies the adoption of the steward-ownership.

Currently a bill is being discussed in Congress that would create a new type of legal entity: companies for collective benefit and interests (BIC), which would allow corporations to pursue, along with the generation of profits, a defined positive impact or the reduction of a negative impact in the community or the environment.

Law stated - 17 August 2022

Purpose and mission

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

For-profit corporations must include in their by-laws their business purpose since it is a necessary condition of the legal form to pursue the generation of profits for their shareholders. Notwithstanding that, these corporations can also include in their by-laws certain guidelines to promote and establish mission statements (as an example, for being certified as a B Corporation, the by-laws must contain a specific declaration stating that the company, in the development of its business purpose, will seek to generate a positive impact for the community, stakeholders and the environment). The by-laws of stock corporations, which are the most commonly used legal form to establish purpose-driven companies, can always be amended by a shareholders' agreement (complying with the quorums and solemnities indicated in the by-laws).

On the other hand, the founders of non-profit foundations must establish a purpose of general interest as the foundation's mission and all the foundation's activities must aim to fulfil that purpose or to increase the foundation's assets. That purpose may or may not be subject to amendment, depending on what the founder decided when incorporating the foundation. It could decide that the purpose cannot be amended at all, or reserve for itself such authority or delegate it to the board of directors.

There are certain business sectors, such as utilities, banks, insurance companies and pension fund managers, that are heavily regulated and can only be developed through corporations with that unique and exclusive objective, which are forbidden from including other purposes in their by-laws.

Law stated - 17 August 2022

Profit distribution, winding up and remuneration

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

Since there is no specific legislation for purpose-driven companies, these companies are usually established through a non-profit foundation, a for-profit stock corporation or a combination of both.

Regarding non-profit foundations, although they can develop almost any business, under no circumstances are they permitted to distribute profits, which should only increase the foundations' assets and ultimately fulfil their main purpose. In Chile, foundations are defined as legal entities created by the allocation of certain assets or goods (which will no longer belong to the founder) to accomplish or develop a purpose of general interest. Because of their definition, foundations have no owners, and the founder will only have the authority contemplated in the by-laws. There is plenty of flexibility in that regard: the founder could be entitled to designate board members, amend the by-laws or delegate all authority to the board of directors.

With regard to stock corporations, where there are existing net profits (and no prior losses to be absorbed), there are no limitations on profit distribution. However, the by-laws can limit and establish rules regarding profit distribution (eg, requiring high shareholders' voting thresholds, limiting the distribution to a certain amount or a percentage of the revenue). Since the generation of profits for shareholders is considered to be part of the essence of such companies, those limitations should be limited to a period of time because they cannot imply an indefinite ban on profit distribution.

Law stated - 17 August 2022

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

There are no specific rules for purpose-driven companies, so for those established through for-profit corporations, the winding-up proceeding is quite standard: it must be made according to a shareholders' agreement or through a liquidation proceeding, liabilities will be paid and the remaining assets distributed to the shareholders according to their percentage in the company.

For non-profit foundations, in the case of termination, the remaining assets shall be transferred to another non-profit entity, which may be indicated in the by-laws. If that beneficiary is not indicated in the bylaws or no longer exists, the assets will belong to the Chilean state, and the president will decide the objectives for which those assets will be used, which must be similar to the dissolved entity's purpose. The reason for this is the non-profit character and the legal definition of foundations (legal entities created by the allocation of certain assets or goods for accomplishing a purpose of general interest), so they do not have owners.

Law stated - 17 August 2022

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

In stock corporations, there are no special rules or restrictions for remunerating directors, officers, employees or third parties. The by-laws may indicate whether the board members (if they exist) will be remunerated or not, or if such decision will be made in the annual shareholders meeting.

For non-profit foundations, board members cannot be remunerated as such, but could be paid for different services provided to the company, on the understanding that the services are necessary for fulfilling the foundation's purposes and are charged at market value. There is no restriction on remunerations for officers and employees of non-profit foundations.

Law stated - 17 August 2022

Measurement, benchmarking and reporting

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

Currently there is no specific regulation for purpose-driven companies. However, a bill is being discussed in Congress, for creating a new type of legal entity: the companies of collective benefit and interest (BIC). If the bill is approved, it would be a legal recognition of purpose-driven companies.

According to the bill, BIC shall prepare an annual mandatory sustainability report, which should include a description of the achievement status of the collective and environmental purposes or efforts, and also the adopted sustainability policies, agreements with the community, and how such policies and commitment have been considered in the

operational proceedings.

Law stated - 17 August 2022

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 Financial Market Commission (CMF) established, through General Rules No. 386 and 461, the obligation for listed companies, and issuers of publicly offered securities, to include in their annual report information regarding their corporate governance, social responsibility, and sustainable development practices. These have been considered as the first good practices guidelines from the Chilean regulators and have also been taken into consideration as a benchmark by companies that are not actually regulated by the CMF.

The Global Reporting Initiative (GRI Standards), the International Integrated Reporting Council (IIRC model), and different certifications such as B Corporation Certification or ISO 26000 are each day more common in our jurisdiction. There are also different impact measurements mechanisms, such as the IRIS+ and GIIRS. In addition, there are recommendations from the BID Lab (the innovation department from the Inter-American Development Bank).

Recently the Purpose Foundation started operating in Chile, promoting the steward-ownership model and working on transitioning operational companies or creating new ones from scratch under that model.

Law stated - 17 August 2022

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?

There is no specific regulation regarding purpose-driven companies; therefore, the directors are governed by the general liability rules. Board members of a corporation represent it on behalf of all shareholders and not merely on behalf of those who elected them. Therefore, board members have a fiduciary duty in favour of all shareholders and can be dismissed by the shareholders meeting at any time.

Directors of a corporation have civil, administrative and criminal liability. In exercising their duties, board members must exercise due care, and they are jointly and severally liable for damages caused to the corporation and its shareholders owing to their wilful or negligent conduct. There are certain fiduciary duties for the directors to correctly fulfil their administrative function. These duties are commonly classified as duties of care, loyalty, confidentiality and information.

Any provision in the corporation's bylaws and any agreement adopted by the shareholders' meeting that tends to release or restrict the liability of the board members shall be null and void.

Only the company and the shareholders can hold directors or other members of the company accountable for damages to the company, through three legal actions:

- a direct action brought by the company against members of the company's administration who have damaged

the company by fraud or negligence, to obtain compensation for any losses suffered because of the managers' fraud or negligence;

- a shareholders' derivative action, which may be exercised by the directors of a corporation and any shareholder or group of shareholders representing at least 5 per cent of the shares issued by the company (in the name and benefit of the company), to obtain compensation for the losses suffered by the company as a consequence of any breach of the regulation applicable to corporations; and
- a shareholders' individual action seeking tortious liability, which may be exercised by one or more shareholders for the individual benefit of each of them, to obtain compensation for any losses suffered by one or more shareholders in their individual capacity, and is exercised against those members of the management who are personally liable for the breach of their duties.

Foundation directors are accountable for the proper investment of the funds according to the purpose of the foundation or to increase its assets, being jointly and severally liable for damages caused to the foundation. All acts and contracts executed by the foundation must be to fulfil the purposes for which it was established.

Foundations are under the supervision of the Ministry of Justice and Human Rights, which has the authority to request accounting documents and any other information at any time. This ministry can order foundations to correct irregularities and non-compliance with such order will be considered a serious infraction of the foundation's by-laws. The ministry is able, on well-founded reasons, to initiate legal proceedings against the foundation, which may end with its dissolution.

Law stated - 17 August 2022

State supervision

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

As there is no primary nor secondary legislation regulating purpose-driven companies, for those established using traditional legal forms, there would be no special state supervision. Purpose-driven companies shall comply with all fiscal or taxation regulations, especially regarding donations and requirements for expenses deductibility.

Non-profit foundations are under the supervision of the Ministry of Justice and Human Rights, which is able to request accounting documents as well as any other information regarding the development of their activities at any time. This ministry can order foundations to correct irregularities and non-compliance with such order will be considered a serious infraction of the by-laws of the foundation. Also, the ministry, on well-founded reasons, can initiate legal proceedings against the foundation, which may end with an order that decrees the dissolution of the foundation.

All foundations must submit their annual reports to the ministry and depending on their assets' valuation may need to be audited by an independent audit firm. Board members are personally liable for the misuse of a foundation's assets and cannot be remunerated for their activities as board members.

Law stated - 17 August 2022

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?

There are no fiscal incentives or tax benefits specifically designed for purpose-driven companies. However, there are

several tax benefits for donors of non-profit entities, which are regulated in different special primary legislation and for specific purposes (eg, educational programmes, the development and promotions of arts, culture or sciences, and aid to the less favoured).

Law stated - 17 August 2022

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?

Public procurement rules state that the criteria for awarding a contract must be determined in the tender rules and conditions, considering technical and economic parameters, according to which a score will be assigned that allows the most objectively possible qualification of the accepted offers.

Within the contents and conditions of the tenders, public entities are authorised to also include criteria and evaluation of bidders derived from matters of high social impact. For these purposes, high social impact matters are understood as, among others, those related to compliance with regulations that favour the environment; the hiring of people in situations of disability or social vulnerability; and other matters related to inclusive development, the promotion of smaller companies and decentralisation and local development.

In Chile, government agencies use a transactional web platform named Mercado Público , managed by the government agency ChileCompra, to buy and contract what they need. ChileCompra is a decentralised public service, dependent on the Ministry of Finance, which also issues good practices and guidelines for public procurement, including the recommendation to adopt sustainable and inclusive evaluation criteria (ie, energy efficiency, environmental impact, employment conditions and remunerations, and hiring people with disabilities).

ChileCompra has also defined some certifications for suppliers, which are communicated to purchaser government agencies so that they can consider them in their purchase decisions, such as the Programme for the Endorsement of Forest Certification (PEFC), the Forest Stewardship Council (FSC) certification and the certification for companies owned by women.

Law stated - 17 August 2022

Economic sustainability and market competition

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

There is no particular aspect of purpose-driven companies that in general may give a special advantage or disadvantage when competing with other companies or that may affect their economic sustainability. Relatively higher incorporation costs of purpose-driven companies, owing to the sophistication required in the by-laws or any voluntarily certifications, should be marginal.

Law stated - 17 August 2022

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?

There is no single government agency dedicated exclusively to promoting and supporting socially and environmentally responsible investment practices, but there are several agencies that are constantly innovating through different initiatives, such as:

- the Financial Market Commission (CMF), which issues secondary legislation and good practices recommendations regarding ESG factors;
- CORFO (the Chilean economic development agency), which has different committees and programmes to improve competitiveness and productive diversification;
- the Sustainability and Climate Change Agency (a special committee of CORFO), whose mission includes the promotion of sustainable production through dialogue and public-private collaboration, and its intention is to become a leading example of public and private cooperation in the development of sustainable economy and compliance with international commitments assumed by Chile;
- InvestChile, the Foreign Investment Promotion Agency, which launched a programme to foster the adoption of best practices with a triple impact by overseas companies with operations in Chile (in alliance with Sistema B, using B Analytics and SDG Action Manager software); and
- different ministries, such as the Ministry of Tourism National Service, which oversees the certification of sustainable tourism operators; the Ministry of Urbanism and Housing, which is working on the certification of sustainable housing and creating guidelines for sustainable construction; and the Ministry of Finance, which issues green sovereign bonds, among others.

Law stated - 17 August 2022

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?

There are plenty of NGOs operating in Chile specifically dedicated to promoting and supporting socially and environmentally responsible investment practices and purpose-driven companies. Probably the most active ones are:

- Sistema B, which promotes B corporations and participates in multiple initiatives;
- Doble Impacto, a foundation to promote the development of companies and institutions that have a positive impact on the economy, society and culture, which currently works as a crowdfunder and aims to become the first ethical bank in Chile;
- Fundación San Carlos de Maipo, which promoted and implemented the first social impact contract in Chile and works on the promotion of pay-for-success structures to solve social problems; and
- Fundación Purpose, which recently arrived in Chile, and which promotes steward-ownership and creates an ecosystem where that structure is more accessible.

Law stated - 17 August 2022

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?

The Inter-American Development Bank (IDB) is constantly participating in different initiatives for promoting and supporting socially and environmentally responsible investment principles along with impact investment (it has been working with the government in the implementation of social impact contracts and in the creation of a 'pay for success' fund). The United Nations (UN) has operated in Chile through the promotion of the Principles for Responsible Investment and through the Chilean branch of the UN Global Compact (promoting the Sustainable Development Goals). Moreover, the Latin American Pay For Success Network and the Global Steering Group has carried out certain activities in Chile.

Law stated - 17 August 2022

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?

There is no special regulation regarding equity funds or other financial tools to scale up companies with social or environmental objectives, so those mechanisms or instruments are subject to the common regulation.

In Chile, there are investment funds specifically focused to scale-up companies with social or environmental objectives. For example, Doble Impacto, a Chilean crowdlending platform for impact projects, and Quest Capital, a Chilean corporate finance advisory firm, launched the first Chilean public investment fund focused on social impact, having a special approach to environmental and social development projects. There are other impact investment funds, such as the FIS Ameris.

CORFO (the Chilean economic development agency) also promotes venture investment through lines of credit with attractive payment conditions. On top of that, for impact investment funds, the FT Programme is particularly relevant. This has a reduced interest rate for funds, with the purpose of generating impact investment or social innovation. The FT Programme allows a maximum leverage of 3:1 debt-to-equity ratio, granting a line of credit from US\$2 million up to US\$14 million.

Law stated - 17 August 2022

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?

There is no regulation for pay for success investing models in Chile. However, there are private and public actors interested in establishing outcomes funds. Fundación San Carlos de Maipo, with the Inter-American Development Bank, Social Finance, and different non-profit organisations, are currently working on establishing the first Chilean pay for

success outcome fund.

Moreover, the Latin American Pay for Success Network has been working on the promotion of this kind of funding mechanism to create a proper regional ecosystem for their implementation.

Law stated - 17 August 2022

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?

There is no special regulation for pay for success investing models. However, there is increasing interest in both the private and public sectors in the implementation of social impact bonds (commonly known in Chile as social impact contracts).

On 2019, the Fundación San Carlos de Maipo (with Social Finance as financial advisor) launched the first social impact contract, to improve the reading comprehension and written expression level of vulnerable children in Santiago. Unlike most social impact contracts, this one was executed only among private entities, the outcome payers being private non-profit organisations. The implementation of that contract triggered real interest from the government in using such mechanisms, and now there are three social impact contracts, with the government as outcome payer, at a feasibility study stage. The Ministry of Economy, Development and Tourism along with the Ministry of Social Development and Family are working with Fundación San Carlos de Maipo and the Inter-American Development Bank in these matters.

Law stated - 17 August 2022

Crowdfunding

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

There is no regulation regarding crowdfunding in Chile. Existing crowdfunding initiatives have operated in Chile based on general laws and rules. In 2019, the CMF published general guidelines for crowdfunding regulation and related services, aiming to regulate such activities in the short term. Since September 2021, there has been a bill in Congress (called Ley Fintech) that aims to establish a regulatory perimeter for certain types of services based on Fintech technologies, such as crowdfunding platforms.

Law stated - 17 August 2022

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?

There are several key recent developments regarding proposed regulation and the arrival of new actors, and certainly impact investment has become a hot topic for institutional investors, family offices, NGOs and government agencies.

Adopting voluntary ESG standards, signing strong agreements such as the UN Principles for Responsible Investment, adopting the UN Global Compact Sustainable Development Goals and applying for different certifications are each day more common and also expected by investors and public opinion.

Regarding new regulations, no mandatory adoption of ESG factors have been announced.

The Financial Market Commission (CMF) proposed a bill of law to regulate the Fintech activities in Chile, including crowdfunding platforms, by implementing for the first time a legal framework. The Fintech industry (which has grown considerably in recent years) expects this bill to be approved by Congress.

Law stated - 17 August 2022

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?

As there is no specific regulation regarding social finance or purpose-driven companies, our main recommendation regarding legal models is to utilise tailor-made structures that properly fit the actual intentions of founders and investors and contribute to the creation of a sustainable relationship with all stakeholders. This is crucial to avoid fiscal audits or problems with the tax authority. Tax legislation currently is very restricted regarding the inclusion of incentives for donations or allowing investments that do not necessarily aim at creating more profits. With regard to public procurement, we recommend that suppliers be certified, in order to have a competitive advantage when government agencies take into consideration ESG, diversity or sustainability factors when assessing suppliers.

The market has proved capable of self-regulation as each day more relevant actors subscribe to social finance or ESG principles. This is probably because investors and public opinion are making the standards on these matters much more demanding than a few years ago.

Notwithstanding that, new regulations regarding purpose-driven entities, or amendments that simplify the requirements for donations and the deductibility of expenses aimed at generating a positive impact in the community or the environment, would definitely increase impact investment in Chile.

Law stated - 17 August 2022

Jurisdictions

	Australia	Geraldine Grace
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