

ANDE India SGB Finance Learning Lab Webinar: Legal Aspects of Social Success Notes

June 4th, 2020, 5-6:15 PM IST

Q&As from the session

1. How is an SSN different from an SIB?
 - Amrut: In an SSN, the outcome funder pays both the social enterprise as well as the risk investor, whereas in a social impact bond, the government is the outcome funder. In an SSN there's an incentive payment available for the enterprise itself, which is not a feature typically accorded in an SIB. This is just one of the differences, typically the root for an SIB or a DIB is a grant, whereas in an SSN it's a commercial loan, even if it's at a discounted market rate. The fact is that it's a loan transaction, where the entity has to repay the risk investor the principal and the outcome funder tops up the interest payment.
 - Aparna: In an SIB, the underlying instrument is a grant paid to a non-profit. SIB has the government as an outcome funder and a DIB has a development agency or a philanthropic agency as the outcome funder. In an impact bond, the service provider is not liable to pay back anything. In an SSN, the principal repayment has to be made by the underlying service provider, therefore the entity has to have a revenue model. It's not hard and fast, it could be principal with a small portion of the interest, with the outcome funder topping up the interest payment or it could be the service provider takes care of the principal and the outcome funder takes care of the entire interest amount. It's typically on a sliding scale and depends on the organisations involved. It's important to outline that both impact bonds and SSNs are outcome-based payments, therefore payment is triggered only when pre-determined specified social and environmental outcomes are made. There hasn't been a ton precedence with SSNs, and on the impact bond side we've had about 185 odd of these, there is no hard and fast rule, it is a contract between the three parties, therefore there can be incentive payments from service providers in both impact bonds and SSNs. In an impact bond the risk investor could choose to incentivize the service provider if they outperform and likewise SSNs, it's the outcome funder who would incentivize the social enterprise.
 - Riya: Think of it as a grant vs a loan. If you're a social enterprise and taking a loan, very simply an SSN would work for you. If you're a not for profit, or even a for profit that's able to take in a grant, you could be going in for an impact bond model.
2. 4a was an outcome payment to the social enterprise. I didn't hear the rationale/basis for that line of payment? (on the SSN structure slide)
 - Aparna: It displays how the outcome funder can choose to further incentivize the social enterprise to take away the loan repayment burden as well, but there's no hard and fast rule, it depends on how the organisations have structured it.
3. Is FCRA required, if a for profit company gets a grant and offered that as a tax in India?
 - Atulaa: Under the FCRA, registration can only be done by a society, a trust or a Section 8 company. The idea here is that this is a donation which might be used towards

charitable purpose, be it educational, cultural, social, etc. This may not be something that a private company's objects clause contains. But apart from the registration route, there is a prior permission route that entities that are not eligible for registration under the FCRA, that is taken up on a case by case basis by the Ministry of Home Affairs. So, perhaps this could be something that private limited companies might explore but I'm not aware of this being a common situation. Besides this, there are also rules within the Companies Act which prohibit private limited companies taking on deposits, so it's also important that these kinds of donations do not fall within that gap.

4. In such a multi-party transaction, what broad range could legal fees fall in? This is important to understand the size threshold of the loans, such that the SSN is economically feasible.
 - Amrut: To be honest, we haven't done an SSN transaction till date, but if we were to extrapolate based on what we would do in a typical lending transaction along with the other documents that we've outlined (however it depends on the nature and extent of due diligence that will be done on the enterprise), it would be very hard put down an exact number, but a range at a very conservative level could be anywhere between INR 4-6 lakhs? Once things become more standardized, if there's a pedigree of track record that the lender has in implementing these transactions and therefore the documents can be standardized, you will see that in line with most other investment transactions, the legal fees will settle down at an agreed range based on the effort put in by the legal counsel in such transactions. At this point it's very difficult to say that and depends on total amount of time that is spent - depends on whether some of the documents can be short circuited and can be drafted up in a simple manner between parties and if the processes can be streamlined. The other thing to consider is whether the legal cost can be shared amongst the various participants in the transaction, it may not appear to be as prohibitive, and can be built into the transaction cost in an effective manner. At this point of time, it's very difficult to provide anything other than what I would say is an educated guess.

5. How do you calculate impact when you scale up or our future projection of impact?
 - Aparna: The choice of the impact metrics needs to be closely linked to the organisation's Theory of Change and backed by evidence. It is important to chart out the inputs, activities, outputs and outcomes that we believe will lead us to change. Specifically, for pay-for-success instruments, given the high stakes involved (payments linked to the achievement of pre-determined outcomes), it is important for organisations to pick outcome metrics that are quantifiable and measurable. All stakeholders involved must also agree on these outcome metrics and targets. In some instances, in the absence of outcome metrics, output metrics have been chosen, however this is strongly embedded in the theory of change (x,y,z outputs will lead to intended outcomes) and has the backing of all stakeholders.
 - Riya: Impact measurement should ideally be done throughout the journey of growth of the enterprise. Setting certain benchmarks and metrics as per the business operations of the enterprise should be conducted as a primary step. Further, collection of data and relevant systems to report the data should be incorporated by the business as a part of

regular activities (eg. MIS reporting). However, at times, having periodic holistic impact assessments (annual/ once in two years) by a third party to further guide the operations of the business based on impact parameters would be valuable. This would help enterprises understand how their goods/ services are impacting not just their customers but also their supply chain, operations, workers, environment and larger society at general. Certain relevant resources to develop a suitable impact measurement strategy for an enterprise includes:

- Impact Aim and Business Call to Action – Frameworks backed and designed in collaboration with UNDP for measuring impact of social enterprises - <https://impactaim.com/>, <https://www.businesscalltoaction.org/>
- IRIS by GIIN – helps to establish a framework and specific impact measurement metrics - <https://iris.thegiin.org/metrics/>
- Lean Data by Acumen – useful for third party measurement - <https://acumen.org/lean-data/>

6. Recently, a working group constituted by SEBI has released a report on the establishment of a social stock exchange in India. Would appreciate your thoughts on the recommendations in the report. Are there any areas that require further elaboration or clarity?

- Atulaa: The report's recommendations are timely and welcome in the context of our webinar yesterday, considering that the Working Group recommends blended finance, and pay for success models as being suitable fundraising avenues for non-profit organisations. This will hopefully bring more attention to these structures going forward. In terms of areas that require regulatory clarity, we feel that it is crucial for the RBI to clarify whether Section 25 companies can in fact raise external commercial debt, as this would not only be relevant while effecting a Social Success Note structure for these NPOs as discussed yesterday, but also in the listing of zero coupon zero principal bonds by such companies, as the Working Group recommends. Another interesting point the Report highlights is the potential for CSR funds to be used towards outcome payments. The Companies Act Amendment 2019 in fact proposes that CSR funds be permitted to park in escrow accounts for up to 3 years. Once this Amendment is passed, we may find potential outcome funders in Indian corporates as well. The Report also acknowledges the importance of a capacity-building environment for a Social Stock Exchange consisting of donors, philanthropists and other enabling support institutions. We hope we have many more opportunities like the webinar to discuss these ideas and build on these discussions to bring them to fruition!

Summary of poll conducted regarding next steps

ANDE India Webinar: Legal A... in Progress 0:56

Attendees are now viewing questions

18 of 24 (75%) voted

1. What according to you should be the focus of the SGB finance lab / which of these would you find most useful?

