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EXPANDING OPPORTUNITY: A GUIDE TO IMPACT INVESTING IN SOUTHEAST ASIA

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The Aspen Network of Development Entrepreneurs (ANDE) is a global network of organisations that propel entrepreneurship in developing economies. ANDE members provide critical financial, educational, and business support services to small and growing businesses (SGBs) based on the conviction that SGBs create jobs, stimulate long-term economic growth, and produce environmental and social benefits.

As the leading global voice of the SGB sector, ANDE believes that SGBs are a powerful yet underleveraged tool in addressing social and environmental challenges. Since 2009, ANDE has grown into a trusted network of over 200 collaborative members that operate in nearly every developing economy. ANDE grows the body of knowledge, mobilises resources, undertakes ecosystem support projects, and connects the institutions that support the small business entrepreneurs who build inclusive prosperity in the developing world. ANDE is part of the Aspen Institute, a global non-profit organisation committed to realising a free, just, and equitable society.

Established in 2016 and headquartered in Bangkok, Thailand, the ANDE's East and Southeast Asia (ESEA) chapter serves approximately 50 members across East and Southeast Asia, including Australia. It is committed

to cultivating a vibrant ecosystem for Small and Growing Businesses (SGBs) in the region. The Chapter functions as a comprehensive platform supporting all stakeholders within the SGB landscape through various initiatives including training, talent development, knowledge sharing, networking, research, funding opportunities, impact measurement and management, and fostering collaboration among ecosystem actors.

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At a time of significant turbulence in the business world, we are determined to help our clients embrace change, confidently expand into new markets and keep on top of ever-more complicated regulatory frameworks. Our vision includes creating a foundation to contribute to community and having social impact. Our work in APAC supports our ambition to help build a fair and equitable society, as well as our commitment to our people, culture, clients and the wider legal sector.

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SyCipLaw is ISO 9001 certified, the internationally recognized standard for Quality Management Systems (QMS), and is the first Philippine law firm to obtain this certification.

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» DISCLAIMER

This guide and the information it contains were prepared for the Thomson Reuters Foundation and the Aspen Network of Development Entrepreneurs (ANDE) for general information purposes only. This guide provides an introductory level summary of legal information regarding impact investing in Indonesia, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam based on legal research conducted from 2023 to 2024. The purpose of this guide is to offer a basic overview of impact investing, by providing some general information and insights on the topic. It is not intended to be exhaustive or to address any specific factual or legal situations. Nothing in this guide provides or is intended to provide legal, tax or other professional advice. In particular, this guide does not provide any detailed commentary on tax, tax incentives, or tax law. No reliance should be placed on the content of this guide. The Thomson Reuters Foundation, ANDE, and all of the contributors to this guide do not accept any responsibility or liability whatsoever for any loss which may arise directly or indirectly from using this guide. No attorney-client relationship is established between the reader and each of the Thomson Reuters Foundation, ANDE, and the contributors to this guide. No liability whatsoever is accepted as to any errors, omissions, or misstatements or the timeliness of information contained in this guide. The Thomson Reuters Foundation, ANDE and all of the contributors to this guide are not responsible or liable for any matter relating to any third parties accessing or using this guide or its content. Relevant laws, regulations and policies in the jurisdictions covered by this guide may have been amended, supplemented, or replaced since publication. In addition, the interpretation of laws, regulations, and policies by national and local regulators is subject to change and may differ on a case-by-case basis depending on the particular fact pattern. The Thomson Reuters Foundation, ANDE and all of the contributors to this guide are under no obligation to update or revise this report.

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A&O Shearman, DFDL, Mayer Brown, MahWengKwai & Associates, and SyCip Salazar Hernandez & Gatmaitan generously provided pro bono research to ANDE. However, the contents of this report should not be taken to reflect the views or opinions of A&O Shearman, DFDL, Mayer Brown, MahWengKwai & Associates, and SyCip Salazar Hernandez & Gatmaitan or the lawyers who contributed.

Similarly, the Thomson Reuters Foundation is proud to support our TrustLaw member ANDE with their work on this report, including with publication and the pro bono connection that made the legal research possible. However, in accordance with the Thomson Reuters Trust Principles of independence and freedom from bias, we do not take a position on the contents of, or views expressed in, this report.

» EXECUTIVE SUMMARY

At the Thomson Reuters Foundation, we believe that economies are only truly inclusive when they are equitable, participatory and sustainable, and when they respect and preserve the environment around us.

Impact investing is a critical tool to help redirect business and market approaches toward tackling fundamental social and environmental inequities. Due to it being a fairly new concept in the region however, it has not been easily accessible across Southeast Asia.

Recognising this need, Aspen Network of Development Entrepreneurs (ANDE) reached out to TrustLaw, the Thomson Reuters Foundation's global pro bono service. Through TrustLaw, we connect organisations on the frontlines of social change with world-leading legal teams to improve their understanding of the legal landscape in their jurisdictions, strengthen their capabilities and help them shape economies that create opportunities for all. We have worked closely with the Aspen Network of Development Entrepreneurs (ANDE) on resources over the years to inform and empower the sector, including the Best Practice Guide for Impact Investing in Small and Growing Businesses (SGBs) in Mexico and the For-Profit Social Enterprise on Social Stock Exchange: A Legal Explainer (India).

To engage effectively in the impact investing space, a clear understanding of local regulations around early stage financing as a minority investor and Alternative Investment Funds in particular, are essential. We connected ANDE with five top law firms, to develop a thorough and user-friendly guide on impact investing laws across seven countries in Southeast Asia- Singapore, Thailand, Philippines, Indonesia, Vietnam, Malaysia and Myanmar. The aim is for this guide to be used as a valuable resource for social enterprises, incubators, accelerators, capacity developers and investors when entering investment negotiations.

We hope that it will ultimately encourage more investment in Southeast Asia-based entrepreneurs and start-ups to grow their businesses and further their social missions.

Thanks go to A&O Shearman, DFDL, Mayer Brown, MahWengKwai & Associates, and SyCip Salazar Hernandez & Gatmaitan for their pro bono support.

Carolina Henriquez-Schmitz
Director, TrustLaw,
Thomson Reuters Foundation

INTRODUCTION TO THIS REPORT

Impact investments are investments that aim to achieve positive social and environmental outcomes as well as financial returns. It is a departure from traditional corporatism, which primarily focuses on generating financial returns, and from traditional philanthropy, which primarily focuses on improving outcomes with no expectation of financial returns. Impact investing often targets social enterprises aiming to provide net positive financial returns and social and environmental impacts, as *social enterprises* address social or environmental challenges through their products, services, or operations, as well as impact-oriented development projects in sectors such as health, education, energy, or agriculture.

This guide focuses on seven countries (i.e., Indonesia, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam) in Southeast Asia, as the region presents the potential to benefit from impact investment in addressing the diverse, complex challenges and opportunities in the emerging markets. The region has a population of over 650 million,[1] with many countries having a rising middle class,[2] and a young and entrepreneurial demographic.[3] It also has a dynamic and diverse ecosystem of small and growing businesses (SGBs),[4] social enterprises, and investors who are creating innovative solutions for inclusive and sustainable development.

However, impact investment is not without its challenges and complexities. It requires a clear understanding of the impact objectives, measurement, and reporting of the investors and promoters, as well as the legal and regulatory frameworks, risks, and opportunities of the markets and sectors where they operate. Moreover, impact investment is not a uniform practice but rather a diverse and evolving field that reflects the different contexts, needs, and preferences of the stakeholders involved.

One of the key challenges is the lack of clarity and consistency in the legal and regulatory frameworks for impact investment across the different jurisdictions, as well as the availability and suitability of impact-specific structures and instruments in Southeast Asia. These factors can create uncertainty, complexity, and inefficiency for both investors and promoters, and limit the scale and effectiveness of impact investment in the region.

1 A. O'Neill. 2023. Total Population of the ASEAN Countries from 2018 to 2028. Statista.

2 A. Bonnet, and A. Kolev. 2021. The middle class in Emerging Asia: Champions for more inclusive societies? OECD Development Centre Working Papers, No. 347, OECD Publishing, Paris.

3 U. Guelich and N. Bosma. 2018. Youth Entrepreneurship in Asia and the Pacific 2019. The Global Entrepreneurship Research Association.

4 Small and growing businesses (SGBs) are defined by ANDE as commercially viable businesses with five to 250 employees that have significant potential and ambition for growth. Typically, SGBs seek growth capital from USD $20,000 to $2 million. SGBs differ from the more traditional characterisation of small and medium enterprises (SMEs) in two fundamental ways. First, SGBs are different from livelihood-sustaining small businesses, which start small and are de-signed to stay that way. Second, unlike many medium-sized companies, SGBs often lack access to the financial and knowledge resources required for growth. Learn more at https://andeglobal. org/why-sgbs.

Therefore, there is a need for a practical and accessible guide that provides an overview of the laws relevant to impact investing in Southeast Asia, as well as the background and trends of the impact investing landscape and ecosystem in the region. The guide aims to educate and inform social enterprises and investors on the key legal and regulatory issues and considerations that they may encounter when engaging in impact investing activities in Southeast Asia.

To address this challenge, we have developed this user-friendly resource with a concise and practical overview of the architecture of impact investment in Southeast Asia, covering seven countries: Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. The guide is designed to be an introductory level summary of the main legal and regulatory aspects that impact investors, early stage and mature social enterprises, conventional businesses, and impact intermediaries should be aware of and consider when engaging in investment negotiations in these countries, such as:

- The types and forms of legal entities that can be used for impact investment, and their advantages and disadvantages.
- The types and features of impact-specific structures and instruments that can be used to facilitate impact alignment, measurement, and reporting, such as social enterprises, impact funds, and social impact bonds.
- The relevant laws and regulations that govern the establishment, operation, and exit of impact investment entities and vehicles and the implications for investors and investees.
- The opportunities and challenges for cross-border impact investment and the applicable laws and regulatory regimes that affect the flow and protection of capital and returns.
- The sources and examples of impact investment activity and support in each country and the key stakeholders and initiatives that are shaping the impact investment landscape.

This guide will serve as a useful resource in providing a roadmap for investors who are interested in or already involved in mobilising capital towards improving social and environmental outcomes in Southeast Asia. The goal of this guide is to stimulate dialogue and collaboration among the various actors in the impact investment ecosystem and contribute to the development of a more conducive and enabling environment for impact investment in the region.

SECTION 1 »

REUTERS/ Athit Perawongmetha

SECTION 1 » THAILAND

1.IMPACT INVESTMENT STRUCTURES

There are a number of reasons why impact investors should take an interest in Thailand:

- Thailand has a large and diverse social sector, with a multitude of registered civil society organizations, social enterprises, and community-based groups, addressing various social and environmental issues such as poverty, education, health, gender, climate change, and biodiversity. These organizations offer a large pool of potential impact investees and partners for investors who seek to create positive social and environmental outcomes alongside financial returns. Noting the existence of the Thai Foreign Business Act, involvement of local partners is likely to be crucial to the success of an impact investment in Thailand.

- Thailand has a supportive policy environment for impact investing, with several initiatives and incentives from the government and regulators to promote social entrepreneurship, social innovation, and responsible business practices. For example, the Social Enterprise Promotion Act of 2019 provides tax benefits, funding, and capacity building for social enterprises, guidelines and standards for green, social, and sustainability bonds, issued by the Thai SEC and investment promotion measures for smart and sustainable industry and community and society development issued by the Board of Investment of Thailand, as outlined in more detail in our report.

- Thailand has a high and increasing awareness and interest in impact investing, among both the public and private sectors, as well as the civil society and academia. There are various initiatives and events that aim to raise the profile and understanding of impact investing, such as the Thailand Social Impact Forum, the Thailand Social Investment Forum, the Thailand Impact Investment Week, and the Thailand Impact Awards.

KEY INVESTMENT INSTRUMENTS IN THAILAND

An array of investment instruments are available for impact investments in Thailand; the key instruments are set out in detail in the following paragraphs.

Debt Instruments

» BONDS

Bonds are debt instruments which are divisible into units, each representing the holder's right to receive payment and/or other benefits. Each of these units has a predetermined rate of return and are equal in value to one another.[5] There are two major categories of bonds in Thailand: government bonds and corporate bonds.

Government Bonds

Government bonds are currently the dominant type of debt securities in the Thai market. The umbrella term "government bonds" consist of three major subcategories as follows:

I. **Government Bonds:** medium to long-term debt instruments issued by the Ministry of Finance of Thailand, comprising investment bonds, loan bonds and savings bonds. These bonds serve a number of purposes. From the perspective of the Ministry of Finance, these bonds can finance budget deficit and from the perspective of bondholders, these bonds can provide households with an alternative source of savings.

II. **Bank of Thailand Bonds/Bills:** debt instruments which are tools for the Bank of Thailand (the BOT) to manage liquidity.

III. **State-Owned Enterprise (SOE) Bonds:** medium to long-term debt instruments issued by state-owned enterprises which may be guaranteed or not guaranteed by the Ministry of Finance of Thailand.

In addition to the three main types of government bonds set out above, there are also Treasury Bills (T-Bills) which are short-term debt instruments that may be issued by the public sector.

The Royal Government of Thailand (the **RGT**) is determined to achieve sustainable development in line with the United Nations Sustainable Development Goals (UNSDGs) and global warming agenda, including strengthening finance programs especially the promotion of domestic green, social, sustainability and sustainability-linked bonds. The RGT, acting through the Ministry of Finance of Thailand, issued the first sustainability government bonds in August 2020. The proceeds from those bonds has been used to support environmental and social projects that include a Covid-19 relief package and the financing of the Mass Rail Transit Orange Line (East). The offering in 2020 was open for subscription by local and foreign investors and successfully attracted strong demand from both groups. In 2022, the RGT issued a new series of sustainability government bonds to support the development and management of water resources for consumption domestically and in agricultural projects on farming areas outside of irrigated areas.

The RGT intends to continue to pursue regular bond issuance programmes to ensure that sufficient supply is provided for ESG projects. Certain types of foreign investors may invest in government sustainability bonds, subject to further criteria to be announced by the RGT upon the issuance of each series of such bonds.[6]

5 Section 4 of Securities and Exchange Act B.E. 2535

6 The Ministry of Finance of Thailand. N/A. Sustainability Bond Annual Report 2022.

Corporate Bonds

Corporate bonds are bonds issued by corporate entities, including (but not limited to) private and public companies incorporated under Thai law, as well as foreign government agencies or organizations, international organizations and foreign corporate entities. Corporate bonds have various features including, for example, senior, subordinated or perpetual bonds, convertible or non-convertible bonds and structured notes. The issuance and offering of corporate bonds must be made in compliance with the Securities and Exchange Act B.E. 2535, as amended, and the rules and regulations of the Securities and Exchange Commission, the Office of the Securities and Exchange Commission and the Capital Market Supervisory Board of Thailand (collectively, the **Thai SEC**).

In the context of sustainability development, the Thai SEC permits fund raisings by way of sustainability-themed bond issuance. Sustainability-themed bonds that are *offered in Thailand* are regulated under the same legal framework as other domestic non-ESG bonds but with additional approval criteria and/or disclosure and reporting requirements (the **ESG-Related Criteria**), depending on their type. Currently, the predominant types of sustainability-themed bonds in Thailand are as follows:

I. **Green, Social and Sustainability Bonds:**[7] these bond instruments closely resemble conventional bonds except in terms of the application of any proceeds. Proceeds of these bonds will be applied to exclusively finance or re-finance (a) in the case of green bonds, eligible environmental projects with climate and environmental benefits; (b) in the case of social bonds, social development projects and (c) in the case of sustainability bonds, a combination of both environmental and social development projects.

II. **Sustainability-linked Bonds:**[8] these bond instruments have no limitation on the use of any proceeds; the proceeds may be used for general purposes. However, sustainability-linked bonds must not be complex instruments e.g., subordinated or perpetual bonds or structured notes. Sustainability-linked bonds must have specific financial characteristics and/or a specific structure which can vary depending on the issuer's ability to meet one or several sustainability/ESG objectives. The objectives are then (i) measured through defined key performance indicators (KPIs) and (ii) assessed against defined sustainability performance targets (SPTs) which normally relate to pre-existing sustainability issues of an issuer. One of the common financial characteristics of sustainability-linked bonds is a potential coupon variation, where the interest rate of the bonds steps down when the issuer achieves the KPI/SPT set for the bonds.

Subject to any selling restrictions applicable to each issue, foreign investors may subscribe to sustainability-themed bonds offered and sold in Thailand. In case a Thai issuer wishes to make an offshore offering of sustainability-themed bonds, the offering will not be subject to the ESG-Related Criteria prescribed by the Thai SEC.

» LOANS

Under the Thai Civil and Commercial Code, as amended (the **CCC**), a loan is a contract whereby a lender transfers to a borrower the ownership of a certain quantity of property (i.e., money in this context) and the borrower agrees to return the same.[9] Written evidence signed by the borrower is required for any loan of an

7 The Securities and Exchange Commission, Thailand. N/A. Guidelines on Issuance and Offer for Sale of Green Bond, Social Bond and Sustainability Bond

8 The Securities and Exchange Comission, Thailand. N/A. Guidelines on Issuance and Offer for Sale of Sustainability-Linked Bond issued by the Thai SEC

9 Section 650 of the CCC

amount exceeding THB2,000 to be enforceable.[10] Loans can be taken out at market or preferred rates from financial institutions and will sometimes be against collateral.

In respect of sustainable finance, the BOT recently issued the Financial Landscape Consultation Paper on Repositioning Thailand's Financial Sector for a Sustainable Digital Economy[11] which provides the overall direction for developing the financial sector with an aim to supporting the transition towards a digital and environmentally-friendly economy. This was followed by the Directional Paper on Transitioning towards Environmental Sustainability issued by the BOT in August 2022 under the new Thai financial landscape which sets out the guidelines for the financial sector to prepare for environmentally related changes in order to accommodate the business sector and the public in transitioning towards an environmentally friendly economy.[12] In February 2023, the BOT issued the Policy Statement Re: Internalizing Environmental and Climate Change Aspects into the Financial Institution Business.[13] Under such Policy, the BOT encourages financial institutions and companies within the financial business sector to appropriately assess environmental opportunities and risks and be able to provide green financial products and services to support a concrete transition towards an environmentally friendly economy for the Thai economic and financial system.

Sustainable and Responsible Investing Funds

The Sustainable and Responsible Investing Funds (the **SRI Funds**) are mutual funds with a sustainability focus and investment objectives which take into account environmental, social and governance (the **ESG**) factors. The Thai SEC has published disclosure guidelines for SRI Funds setting out minimum requirements in respect of: (1) the disclosure of information in SRI Funds' schemes, factsheets and prospectuses; (2) the disclosure of information in SRI Funds' reports; (3) the disclosure of information on proxy voting on behalf of unit holders of SRI Funds; and (4) SRI Funds' advertisements (the **Guidelines**).[14] These Guidelines have been prepared with a view to enabling asset management companies to properly disclose information regarding SRI Funds and, thus, promoting transparency and informed investment decisions among the investors.

To support asset management companies in giving more weight to sustainability-driven investments, the Thai SEC has also granted exemptions for the application fees for (1) the establishment of an SRI Fund and (2) the amendment to mutual fund schemes to be designated as SRI Funds. Both exemptions apply to applications submitted to the Thai SEC from 1 January 2023 onwards.

10 Section 653 of the CCC

11 Bank of Thailand. 2022. Financial Landscape Consultation Paper on Repositioning Thailand's Financial Sector for a Sustainable Digital Economy.

12 Bank of Thailand. 2022 BOT Press Release No. 43/2022.

13 Bank of Thailand. 2023. Policy Statement of the Bank of Thailand Re: Internalizing Environmental and Climate Change Aspects into Financial Institution Business dated 15 February 2023

14 The Securities and Exchange Commission, Thailand. N/A. Attachment to Practical Guidelines No. Nor Por. 2/2565, Practical Guidelines on Disclosure of Information for Sustainable and Responsible Investing Funds.

Equity instruments

» ORDINARY SHARES

Ordinary shares are the most common type of equity instrument issued by a company in Thailand which broadly give the right to attend and vote at general meetings of shareholders, the right to any dividends declared from the profits of the company and the right to any residual profits left on the liquidation of the company.

» PREFERENCE SHARES

Preference shares are the type of equity instrument that give the holders certain preferential rights over ordinary shares, such as priority in receiving dividends or repayment of capital, or increased voting rights. Rights of holders of preference shares will be explicitly specified in the company's articles of association and such rights will vary from company to company. The preferential rights attributed to the issued preference shares cannot be modified. Consequently, changes to preferential rights require the cancellation of preference shares and the subsequent issuance of new preference shares. It is worth noting that a Thai company is not legally required to issue preference shares and, under Thai law, preference shares are not convertible to ordinary shares.

Analysis of differences between private debt and private equity

NO.	BASIS	PRIVATE DEBT	PRIVATE EQUITY
1	STATUS	**Bonds and Loans:** The bondholder and the lender under the loans are creditors of the relevant issuer and borrower.	**Ordinary Shares:** Ordinary shareholders have the status of owning a share in the capital of the company.[15] **Preference shares:** Preferred shareholders have the status of owning a share in the capital of the company similar to the ordinary shareholders, but some rights of the preference shareholders may be different from the ordinary shareholders (e.g. voting rights).

15 Sections 1077, 1087 and 1141 of the CCC.

NO.	BASIS	PRIVATE DEBT	PRIVATE EQUITY
2	BENEFITS	**Bonds:** Generally, the bondholder is entitled to the rights to receive principal and interest payments, noting certain type of bonds are sold at a discounted price with no interest payment. **Loans:** Generally, the lender is entitled to the rights to receive principal and interest payments, including any other fees, charges or amounts as agreed under the underlying facility agreement.	**Ordinary Shares:** Ordinary shareholders will be entitled to receive dividends declared by the company and the board and shareholders elect to declare a dividend.[16] **Preference shares:** Preferred shareholders will be entitled to receive dividends declared by the company and the board and shareholders elect to declare a dividend.[17] Depending on the terms of the shares, preferred shareholders may be entitled to receive a fixed rate of dividends or receive dividends in priority over ordinary shareholders.
3	ASSURED RETURNS	**Bonds and Loans:** As above, the bondholder and the lender are entitled to the rights to receive the returns as agreed under and in accordance with the terms and conditions of the bonds/the underlying facility agreement of the loans (as applicable).	**Ordinary shares and Preference shares:** Returns on equity are not assured; they depend on the performance of the company and the decision of the board and shareholders whether or not to declare a dividend.
4	CAPITAL REPATRIATION	**Bonds and Loans:** Capital can be fully repatriated, subject to an approval from the BOT or an authorised commercial bank/agent of the BOT prior to any outward remittance from Thailand of any amount payable by any person in accordance with the Exchange Control Act B.E. 2485 (1942), as currently in force.	**Ordinary shares and Preference shares:** The same as for bonds and loans.
5	SOURCES OF PAYMENT	**Bonds and Loans:** Unless specifically set out under the terms and conditions of the bonds/the underlying facility agreement of the loans, there is no specific requirement or prohibition applying to the sources of payment.	**Ordinary shares and Preference shares:** The source of payment of any dividends must be the profits of the company. Dividends can be paid only if the company has profits available for distribution in accordance with legal and accounting rules.

16 Sections 1084 and 1201 of the CCC.
17 Section 1200 of the CCC.

NO.	BASIS	PRIVATE DEBT	PRIVATE EQUITY
6	SECURITY	**Bonds:** Security or a guarantee by a third person may be granted in favour of the holders of bonds. **Loans:** Loans may be secured by the creation of security over the assets of a borrower. To secure the payment obligations under the loans, there are three forms of real security interest recognised under Thai law: • a pledge (which requires actual or third-party possession by the pledgee and is possible in relation to movable assets and rights represented by an instrument such as shares); • a mortgage of registered machinery and real property; and • a business security created by the entry into a business security agreement under the Business Security Act B.E. 2558 (2015).	**Ordinary shares and Preference shares:** Generally pure equity investments do not involve any form of security rights for shareholders.
7	GOVERNANCE RIGHTS	**Bonds and Loans:** No governance rights for bondholders and lenders unless the terms and conditions of the bonds/the underlying facility agreement of the loans provides otherwise.	**Ordinary shares and Preference shares:** Shareholders shall have the level of governance rights as specified under the relevant laws and articles of association of the company, for example: • the right to attend and vote at the general meeting of shareholders; • the right to request to review the minutes and resolutions of meetings of the board of directors and shareholders; and • the right to request the board of directors to hold a general meeting of shareholders.

KEY BUSINESS ENTERPRISES IN THAILAND

There are three main types of business enterprises in Thailand including: (i) ordinary partnerships; (ii) limited liability partnerships; and (iii) private limited companies, all of which can be established under the CCC, as discussed below. Please note that for the purpose of this Guide, we do not discuss other business enterprises including a public limited company whose shares can be offered to the public and listed and traded on relevant exchanges, including the Stock Exchange of Thailand as the characteristic, qualifications and compliance requirements for a public limited company are very detailed. Generally speaking, the higher capital and governance or disclosure requirements that apply to public limited companies could make them less efficient vehicles for impact investing.

Ordinary Partnerships

An ordinary partnership (or commonly known as a non-limited liability partnership) (the **NLP**) can be set up by two or more individuals whose liabilities are joint and unlimited, and can be divided into two types as follows:

- Non-registered ordinary partnership, which is not registered with the relevant authority and so will have no legal personality. The partnership has to enter into legal obligations in the name of individual partners rather than in the name of the partnership.
- Registered ordinary partnership, which is registered with the relevant authority and so will have status as a legal person, separate and distinct from the individual partners. The partnership is therefore able to enter into legal obligations in its own name.

Limited Liability Partnerships

A limited liability partnership (the **LLP**) can also be set up by two or more individuals and is required to be registered as a legal person. Partners of the LLP may limit their liability to the amount of capital committed to invest in the partnership by each partner, provided that there must be at least one unlimited-liability partner in the LLP (who also serves as a managing partner of the **LLP**).

Private Limited Companies

A private limited company (the **PLC**) is the most popular form of business enterprise in Thailand. The shareholders have limited liability to the remaining unpaid amount of their shares. The establishment of the PLC requires a minimum of two individual shareholders as the promoters. It has its own legal personality and can enter into legal obligations in its own name.

Overview of the legal position of each type of enterprise is summarized below.

NO.	BASIS	NLP	LLP	PLC
	General requirements			
1	MEANING	The NLP is formed by an agreement between two or more individuals agreeing to unite for a common undertaking, with a purpose of sharing profit which may be derived therefrom.[18]	The LLP is a type of partnership in which there are: a. one or more individuals whose liability is limited to the amount they have committed to contribute to the partnership; and b. one or more individuals who have joint and unlimited liability for all obligations of the partnership.[19]	The PLC is a kind of company formed with the capital divided into shares and the liability of the shareholders is limited to the unpaid amount of the shares respectively held by each of them.[20]
2	CONSTITUTION AND LIABILITY OF THE ENTITY	Any liabilities arising by virtue of the operation of a non-registered ordinary partnership bind all partners as individuals. Any liabilities arising by virtue of the operation of a registered ordinary partnership bind the partnership itself as a legal entity. In both types of partnership, all the partners have joint and unlimited liability for all obligations of the partnership.[21]	Any liabilities arising by virtue of the operation of an LLP bind the LLP itself as a legal entity. The liability of each partner depends on the type of their partnership, i.e., limited or unlimited.[22]	Any liabilities arising by virtue of the operation of a PLC bind the PLC itself as a legal entity. The liability of the shareholders is limited to the unpaid amount of the shares respectively held by each of them.

18 Section 1012 of the CCC.
19 Section 1077 of the CCC.
20 Section 1096 of the CCC.
21 Section 1025 of the CCC.
22 Section 1077 of the CCC.

NO.	BASIS	NLP	LLP	PLC
3	CRITERIA FOR SETTING UP	The NLP must be set up by a minimum of two individuals. The contribution of each partner may consist of money, other property or services.[23]	The LLP must be set up by a minimum of two individuals. The contribution of any partner with limited liability must be in money or other property (but cannot be services).[24] The contribution of the unlimited liability partner can be in money, other property or services.	The PLC must be set up by a minimum of two individual shareholders, each holding at least one share in the PLC.[25] The payment of shares can be in cash and/or in kind.
4	MINIMUM CAPITAL TO SET-UP	No minimum capital requirement. However, the practical aspect of business and administrative costs in setting up a business should be considered by the partners when determining the initial capital.	Same as for NLPs.	Minimum capital is THB10, divided into two shares, held by each of the two individual shareholders as the promoters. However, the practical aspect of business and administrative costs in setting up a business should be considered by the promoters when determining the initial capital. The par value of each share must not be less than THB5,[26] and at least 25% of the par value of shares must be paid up upon incorporation.[27]

23 Sections 1012 and 1026 of the CCC.
24 Sections 1012 and 1083 of the CCC.
25 Sections 1097 and 1100 of the CCC.
26 Section 1117 of the CCC.
27 Section 1105 of the CCC.

NO.	BASIS	NLP	LLP	PLC
5	PARTICULARS/DOCUMENTS REQUIRED FOR ESTABLISHMENT	The following key particulars are required: • The name of the partnership; • The objectives; • The address of the principal office and of all branch offices; • The full names, addresses and occupations of all partners; • The names of the managing partner(s); • The restrictions, if any, imposed on the powers of the managing partner(s); and • The seal of the partnership.[28]	The following key particulars are required: • The name of the LLP; • A statement that the partnership is a limited partnership and including the objectives of the LLP; • The address of the principal office and of all branch offices; • The full names, trade names, addresses and occupations of all partners with limited liability; • The contributions of the partners with limited liability; • The full names, trade names, addresses and occupations of the partners with unlimited liability; • The names of the managing partner(s); and • The restrictions, if any, imposed on the powers of the managing partner(s).[29]	The following key documents are required: • Memorandum of association which includes the company name, address of the head office, objectives, details of share capital and the details of the individual shareholders as the promoters;[30] • Details of the director(s) and authorised signatories; • List of shareholders; • Articles of association; and • Evidence of payment of shares subscribed to.
6	LENGTH OF THE VALIDITY OF THE BUSINESS ENTERPRISE	Indefinite period unless dissolved.	Same as for NLPs.	Same as for NLPs.

28 Section 1064 of the CCC.
29 Section 1078 of the CCC.
30 Section 1097 of the CCC.

NO.	BASIS	NLP	LLP	PLC
7	TIME INVOLVED IN SETTING UP	The registration could be done within one day, provided that required particulars and documents are provided to the registrar.[31]	Same as for NLPs.	Same as for NLPs.
8	LIABILITIES OF AUTHORIZED REPRESENTATIVES/ DIRECTORS/ PARTNERS	All the partners have joint and unlimited liability for all obligations of the partnership.[32] The managing partner(s) of the NLP shall be liable for the NLP's performance of activities contrary to the law or to the objectives of the NLP or acts outside of the scope of authority granted to the managing partner(s).	Limited liability partner(s) shall be liable up to the level of their capital commitments and no more. Any partners whose liability is not limited shall have joint and unlimited liability for all obligations of the partnership.[33] The managing partner(s) of the LLP shall be liable for the LLP's performance of activities contrary to the law or to the objectives of the LLP or acts outside of the scope of authority granted to the managing partner(s).	The directors owe fiduciary duties to shareholders to, among other things, perform their duties with care, exercise diligence and to not have conflicting interests. The directors shall be liable for the PLC's performance of activities contrary to the law or to the objectives of the PLC or acts outside of the scope of authority granted by resolutions of the shareholders'.[34]
9	ABILITY TO UNDERTAKE INCOME GENERATING ACTIVITIES	May generate income from its business activities	Same as for NLPs.	Same as for NLPs.
10	MANAGEMENT	Managed by the managing partner(s). If the managing partner(s) are not appointed, any business may be managed by each of the partners, provided that no partner may enter into a contract to which any other partners object.[35]	Managed by the partner(s) whose liability is unlimited.[36]	A director or directors shall be responsible for the management of the company in accordance with the articles of association and resolutions of the shareholders.[37] The board of directors may appoint a manager to oversee day-to-day operation of the company.

31 Digital Government Development Agency. N/A. Publicity Guideline on Registration of the Ordinary Partnership and Limited Liability Partnership and Publicity Guideline on Registration of the Private Limited Company.

32 Section 1025 of the CCC.

33 Section 1077 of the CCC.

34 Section 1169 of the CCC.

35 Section 1033 of the CCC.

36 Section 1087 of the CCC.

37 Section 1144 of the CCC.

NO.	BASIS	NLP	LLP	PLC
11	STATUTORY AUDIT	For registered NLPs only, annual financial statements must be prepared and audited by a qualified accountant. Exemption for statutory audit: Any registered NLP whose (a) registered capital is not more than THB5 million; (b) total assets is not more than THB30 million; and (c) total income is not more than THB30 million, each in any financial year, is not required to have its accounts audited.[38]	Annual financial statements must be prepared and audited by a qualified accountant. Exemption for statutory audit: Any LLP whose (a) registered capital is not more than THB5 million; (b) total assets is not more than THB30 million; and (c) total income is not more than THB30 million, each in any financial year, is not required to have its accounts audited.[39]	Annual financial statements must be prepared and audited by a qualified accountant. Audited annual financial statements shall be considered and approved by the shareholders at the annual general meeting.[40]

38 Section 11 of the Accounting Act B.E. 2543 (2000), as amended and the relevant ministerial regulation.

39 Section 11 of the Accounting Act B.E. 2543 (2000), as amended and the relevant ministerial regulation.

40 Sections 1196 – 1197 of the CCC.

NO.	BASIS	NLP	LLP	PLC
12	COMPLIANCE	Some of the key ongoing compliance obligations are as follows: • For registered NLPs only, submit audited annual financial statements to the registrar within five months of the date of the closure of accounts.[41] • Each partner may not carry out any business of the same nature as and competing with that of the NLP or undertake to be an unlimited-liability partner in any other partnership, unless consents from other partners are obtained.[42] • No person may be introduced as a partner in the partnership without the consent of all partners unless an agreement provides otherwise.[43]	Some of the key ongoing compliance obligations are as follows: • Submit audited annual financial statements to the registrar within five months of the date of the closure of accounts.[44] • While the partner with unlimited liability may not, the partners with limited liability may carry out any business of the same nature as that of the partnership.[45] • While the partner with unlimited liability may not, the partners with limited liability may transfer their shares without the consent of the other partners.[46]	Some of the key ongoing compliance obligations are as follows: • Submit audited annual financial statements to the registrar within one month after approval by the shareholders at the annual general meeting.[47] • No invitation to subscribe for shares shall be made to the public.[48] • Maintain the minutes of the board of directors and the shareholders' meetings.[49] • Maintain the register of shareholders; prepare a list of the same to be submitted to the registrar annually.[50] • Directors shall not carry on or join as an unlimited-liability partner in any business competing with that of the company.[51] However, there is no similar prohibition for shareholders.

41 Section 11 of the Accounting Act B.E. 2543 (2000), as amended.
42 Sections 1038 and 1066 of the CCC.
43 Section 1040 of the CCC.
44 Section 11 of the Accounting Act B.E. 2543 (2000), as amended.
45 Section 1090 of the CCC.
46 Section1091 of the CCC.
47 Section 1199 of the CCC.
48 Section 1102 of the CCC.
49 Section 1207 of the CCC.
50 Sections 1138 and 1139 of the CCC.
51 Section 1168 of the CCC.

NO.	BASIS	NLP	LLP	PLC
13	MEETINGS	There are no statutory meeting requirements.	Same as for NLPs.	A general meeting of shareholders shall be held within 6 months from the date of incorporation of the company and shall subsequently be held at least once every 12 months. This meeting is called an "annual general meeting". The board of directors may hold other general meeting as they deem appropriate and such meetings are called an "extraordinary general meeting".[52]
14	OVERSEAS DIRECT INVESTMENT	Subject to foreign investment restrictions under the FBA and other applicable laws. Please see **Foreign Business Act** on page 44 for more details.	Subject to foreign investment restrictions under the FBA and other applicable laws. Please see **Foreign Business Act** on page 44 for more details.	Subject to foreign shareholding restrictions under the FBA and other applicable laws. Please see **Foreign Business Act** on page 44 for more details.

52 Section 1171 of the CCC.

NO.	BASIS	NLP	LLP	PLC
15	CLOSURE	The NLP may be dissolved by the court or due to the occurrence of any of the following events: a. as provided by the partnership agreement; b. if the partnership is made for a definite period of time, by the expiration of such period; c. if the partnership is made for a single undertaking, by the termination of such undertaking; d. if the partnership is made for an indefinite period, by any of the partners giving six-months notice to the other partners at the end of a financial year and the other partners agreeing to the partnership's dissolution; or e. By the death of any partner or by any partner becoming bankrupt or incapacitated by the court's order. After the liquidation, any remaining balance of funds, if any, shall be distributed as profit among partners.[53]	The LLP may be dissolved by the court or due to the occurrence of any of the following events: a. as provided by the partnership agreement; b. if the partnership is made for a definite period of time, by the expiration of such period; c. if the partnership is made for a single undertaking, by the termination of such undertaking; or d. if the partnership is made for an indefinite period, by any of the partners giving six-months notice to the other partners at the end of a financial year and the other partners agreeing to the partnership's dissolution. However, death, bankruptcy, or incapacity of one of the partners does not cause the dissolution of the partnership, unless it is expressly specified as such in the partnership agreement. After the liquidation, any balance of funds, if any, shall be distributed as profit among partners.[54]	The PLC may be dissolved by the court or due to the occurrence of any of the following events: a. as provided by the articles of association; b. if the PLC is formed for a definite period of time, by the expiration of such period; c. if the PLC is formed for a single undertaking, by the termination of such undertaking; d. by a special resolution of the shareholders' to dissolve the company; or e. if the company becomes insolvent by the court's order.[55] After the liquidation, the balance of funds, if any, shall be shared among shareholders proportionate to their shareholding.[56]

53 Sections 1055, 1062 and 1063 of the CCC.
54 Sections 1080 and 1092 of the CCC.
55 Section 1236 of the CCC.
56 Section 1269 of the CCC.

NO.	BASIS	NLP	LLP	PLC
	Governance requirements			
16	GENERAL MEETING – CONVENING THE MEETING	No statutory requirements regarding the general meeting.	Same as for NLPs.	The general meeting can be called by (a) the board of directors or (b) any shareholder(s) holding at least one-fifth (20%) of the company's share capital submitting a written request to the board of directors.[57]
17	GENERAL MEETING – NOTICE TO THE PARTNERS/ SHAREHOLDERS	No statutory requirements regarding notice of the meeting to partners.	Same as for NLPs.	Notice to convene the meeting must be sent to the shareholders by post at least seven days (or fourteen days for matters requiring a special resolution) prior to the meeting date.[58] If the company issues shares with bearer certificates, the company will be required to publish the notice in a local newspaper or via electronic means together with sending such notice to the shareholders by post.
18	GENERAL MEETING – MINIMUM NUMBER OF PARTNERS/ SHAREHOLDERS	No statutory requirements regarding the minimum number of partners to form a quorum for the meeting.	Same as for NLPs.	There must be at least two shareholders holding at least one-fourth (25%) of the company's share capital attending the shareholders' meeting in person or by proxy,[59] unless otherwise specified by the articles of association.

57 Section 1173 of the CCC.
58 Section 1175 of the CCC.
59 Section 1178 of the CCC.

NO.	BASIS	NLP	LLP	PLC
	Rights of partners/shareholders			
19	INFORMATION RIGHTS	Partners have the right to enquire at any time into the management of the business and to inspect and copy any of the partnership's books and documents.[60]	Same as for NLPs.[61]	• Shareholders have the right to inspect the company's documents, including minutes and resolutions of meetings of the board of directors and shareholders.[62] • Shareholders may ask for a copy of the share register book (whether in whole or in part), upon paying a copying fee of no more than THB5 per page.[63] • Shareholders shall receive a copy of the company's balance sheet at least three days before the relevant meeting date.[64]
20	RIGHT TO RECEIVE PROFITS	Any profits of the partnership belong to the partners proportionately to their contributions.[65]	Same as for NLPs.[66]	Shareholders have the right to receive dividends declared by the company, provided that the distribution of dividends must be calculated in proportion to the number of shares held by each shareholder, unless otherwise specified in the articles of association in relation to preference shares.[67]

60 Section 1037 of the CCC.
61 Section 1037 of the CCC.
62 Section 1207 para. 2 of the CCC.
63 Section 1140 of the CCC.
64 Section 1197 of the CCC.
65 Section 1044 of the CCC.
66 Section 1044 of the CCC.
67 Section 1200 of the CCC.

NO.	BASIS	NLP	LLP	PLC
21	VOTING RIGHTS	If it is agreed that matters relating to the business of the partnership shall be decided by a majority of partners, each partner has one vote regardless of the amount of their contribution to the partnership.[68]	Same as for NLPs.[69]	Unless otherwise specified by the articles of association of the company, every shareholder has one vote per share.
22	PRE-EMPTIVE RIGHTS	No specific provision regarding pre-emptive rights.	Same as for NLPs.	Any newly issued shares must be offered to all existing shareholders in proportion to the number of shares held by each shareholder. The board of directors may offer unsubscribed shares to other shareholders of the company or subscribe for such shares themselves.[70]
23	REVOCATION OF RESOLUTION	No specific provision regarding such right.	Same as for NLPs.	Any shareholder may bring a case to the competent court to revoke a resolution of the shareholders' which is not in compliance with the articles of association of the company or the CCC within one month from the date of the resolution.[71]
24	RESIDUAL PROFITS UPON THE WINDING UP OF THE PARTNERSHIP/ COMPANY	Each partner is entitled to the partnership's remaining assets after all creditors (who normally must get paid prior to partners) get paid in full.[72]	Same as for NLPs.[73]	Each shareholder is entitled to the company's remaining assets after all creditors (who normally must get paid prior to shareholders) get paid in full.[74]

68 Section 1034 of the CCC.
69 Section 1034 of the CCC.
70 Section 1222 of the CCC.
71 Section 1195 of the CCC.
72 Section 1269 of the CCC.
73 Section 1269 of the CCC.
74 Section 1269 of the CCC.

TYPES OF SOCIAL ENTERPRISES IN THAILAND

Social enterprises under Thai laws vary in their purposes; however, the key common characteristic among them is that they are non-profit seeking and may engage in non-profit activities for purposes prescribed by the law and its regulations. However, any income earned from such activities may not be distributed among the members and/or directors even after the dissolution of the social enterprise.

For the purpose of this Guide, we have classified Thai social enterprises into three common types: (i) foundations; (ii) associations; and (iii) chambers of commerce. Foundations and associations are established under the CCC, while chambers of commerce are established in accordance with the Chamber of Commerce Act B.E. 2509 (1966), as amended (the **CCA**).

Foundations

A foundation is an entity with properties that have been specifically appropriated for charitable purposes by law. Once registered, it has its own legal personality and can enter into legal obligations in its own name. A foundation can either be created by (i) a person or (ii) by a testator of a will appointing a person to create a foundation or directly appropriating his or her property to the foundation as an effect of the will. A non-Thai can establish a foundation jointly with a Thai person.

A foundation must have at least three directors to conduct the business of the foundation according to the law and regulations of the foundation.

Associations

Associations may be established with a broader scope than foundations. They can be established for any activity which is done in a continuous and collective manner and for any purpose other than that of sharing profits or incomes. The establishment of an association requires at least 10 prospective members, three of which are required to file the application to register the association. Once registered, it has its own legal personality and can enter into legal obligations in its own name. A non-Thai can establish an association jointly with a Thai person.

Chambers of Commerce

Chambers of commerce are institutions set up mainly to promote, support and facilitate its members' trade, services, profession, industry, agriculture, finance, or economy in a non-profit manner. Under the CCA, there are four types of chambers of commerce: (i) Provincial chamber of commerce; (ii) Thai chamber of commerce; (iii) foreign chamber of commerce; and (iv) the Council of the Chambers of Commerce of Thailand. Each of the different types provide for different specifications in its membership and regulations. However, for the purpose of this Guide, the foreign chamber of commerce will only be considered for the purposes of investment in Thailand. As of the date of this Guide, there are 40 foreign chambers of commerce in Thailand.[75]

75 The Thai Chamber of Commerce. N/A. The List of Foreign Chambers of Commerce in Thailand

The establishment of a chamber of commerce requires prior approval from the Central Chamber of Commerce Office. Specific requirements for the members of a chamber of commerce apply depending on whether it is a natural or legal person, as well as its citizenship. Once approved, it has its own legal personality and can enter into legal obligations in its own name.

Comparison of each type of social enterprises

The three social enterprises covered are generally not comparable as they operate for different purposes. It must be noted that foundations may only carry out activities in a limited scope as their undertakings may only be done for charitable purposes, including for public charity, religious, artistic, scientific, educational or other purposes for the public benefit. Activities conducted by associations may be done for a wider range of purposes, as long as they are not conducted for the purpose of sharing profits or income. Chambers of commerce are most suitable for promoting trade-related activities. Therefore, in considering the most appropriate choice of social enterprise for investment, one must not only consider the ease of setting up the enterprise but also which organization best serves the objectives of the establishment.

Analysis of each type of enterprise is summarized below

NO.	BASIS	FOUNDATION	ASSOCIATION	CHAMBER OF COMMERCE
1	MEANING	A registered entity that consists of property that has been specifically appropriated for charitable purposes including for public charity, religious, artistic, scientific, educational or other purposes for the public benefit and not for sharing profit.[76]	A registered entity created for conducting any activity which, according to its nature, is to be done continuously and collectively by persons for any purpose other than that of sharing profits or income.[77]	An institution set up by a group of persons to promote trade, services, professions, industry, agriculture, finance, or economy which is not for seeking profits or sharing income.[78]
2	GOVERNING LAW	Primarily governed by the CCC, the Ministerial Regulation Re: Regulations, Operation and Registration of the Foundation B.E. 2545 (2002) (the **Foundation Rules**) and other relevant rules.	Primarily governed by the CCC, the Ministerial Regulation B.E. 2537 (1994) issued under the CCC, as amended (the **Association Rules**), and other relevant rules.	Primarily governed by the CCA and the Ministerial Regulation Re: Criteria and Procedures for Application to Establish a Chamber of Commerce B.E. 2553 (2010) (the **Chamber Rules**), and other relevant rules.

76 Section 110 of the CCC.
77 Section 78 of the CCC.
78 Section 4 of the CCA.

NO.	BASIS	FOUNDATION	ASSOCIATION	CHAMBER OF COMMERCE
3	CONSTITUTION AND LIABILITY OF THE ENTITY	No minimum number of members. However, the foundation must have at least three persons conducting the business of the foundation as the directors.[79] The objectives of the foundation must not be contrary to the law or likely to endanger public order, national security or good morals.[80] A foundation is a legal person.[81] It is therefore liable for acts done by the directors as its representatives according to the lawful objectives of the foundation.[82]	An association must consist of at least 10 members.[83] The directors of the associations are responsible for the management of the association.[84] The objectives of the foundation must not be contrary to the law or likely to endanger public order, national security or good morals.[85] An association is a legal person.[86] It is therefore liable for acts done by the directors as its representatives according to the lawful objectives of the association.[87]	A foreign chamber of commerce must consist of members whose domicile is in Thailand and whose nationality is of the same nationality of that foreign chamber of commerce. In case a member is a legal person, that member must have partner(s) or shareholder(s) holding at least 50% of the capital of such entity whose nationality is of the same nationality of that foreign chamber of commerce. The member must also conduct activities in areas set forth in the definition of chamber of commerce discussed above.[88] A chamber of commerce is a legal person.[89] It is therefore liable for acts done by the directors as its representatives according to the lawful objectives of the chamber of commerce.[90]

79 Section 111 of the CCC.
80 Section 115 of the CCC.
81 Section 122 of the CCC.
82 Section 76 of the CCC.
83 Section 81 of the CCC.
84 Sections 86 and 87 of the CCC.
85 Section 82 of the CCC.
86 Section 83 of the CCC.
87 Section 76 of the CCC.
88 Section 22 of the CCA.
89 Section 11 of the CCA.
90 Section 76 of the CCC.

NO.	BASIS	FOUNDATION	ASSOCIATION	CHAMBER OF COMMERCE
4	PERMITTED ACTIVITIES	All lawful activities that are done for the objectives of the foundation and not for sharing profits nor seeking interest for any person.[91]	All lawful activities that are done for the objectives of the association and not for sharing profits or income.[92]	All lawful activities that are done for the objectives of the chamber of commerce and not for sharing profits or income. In addition, the chamber of commerce must not conduct its own or its members' business, intervene in prices or productions of goods or services, give or lend money or conduct other activities in a way which disrupts normal market competition or poses threats to national security or economic stability (subject to certain exceptions).[93]
5	CRITERIA FOR SETTING UP	An individual can set up a foundation by submitting an application with the registrar in the district where the principal office of the foundation is located.[94]	At least three members of the association must jointly file an application with the registrar in the district where the principal office of the association is located.[95]	At least five individuals must file an application[96] at the Department of Business Development or relevant Office of Provincial Commercial Affairs where the principal office of the chamber of commerce is located.[97]
6	MINIMUM CAPITAL TO SET UP	Initial capital must consist of at least THB 100,000 – 500,000 cash, depending on the cash and/or non-cash capital used for the establishment and the objective(s) of the foundation.	No minimum capital requirement.	No minimum capital requirement.

91 Section 110 para. 2 of the CCC.
92 Section 78 of the CCC.
93 Section 29 of the CCA.
94 Clause 3 of the Foundation Rules.
95 Section 81 of the CCC and Clause 3 of the Association Rules.
96 Clause 3 of the Chamber Rules.
97 Section 9 of the CCA, in conjunction with Clause 5 of the Chamber Rules.

NO.	BASIS	FOUNDATION	ASSOCIATION	CHAMBER OF COMMERCE
7	DOCUMENTS REQUIRED FOR ESTABLISHMENT	The following key documents are required: a. Names of the property owners and list of properties allotted to the foundation; b. Names, addresses, and professions of all directors of the foundation; c. Articles of association of the foundation; d. A legally binding promise from the property owners to give their properties under (a) to the foundation; e. In the case that the application for registration of the foundation under (a) is made by effect of a will, a copy of such will; f. A brief plan of the location of the principal office and all branch offices (if applicable); and g. A copy of a letter of consent for the use of such location from the owner or possessor of the property under (f).[98]	The following key documents are required: a. Names, addresses, and professions of at least 10 members; b. Names, addresses, and professions of all directors; c. Articles of association of the association; d. A copy of the minutes of the general meeting for setting up the association; e. A brief plan of the location of the principal office and all branch offices (if applicable); f. A copy of a letter of consent for the use of the location of the association referred to in (e); and g. A certificate of confirmation from all directors.[99]	The following key documents are required:[100] a. A copy of the identity card and house registration of the incorporators who are Thai nationals and a copy of the non-Thai identification card or passport, resident permit or evidence of permission to stay in Thailand temporarily and working permit of incorporators who are non-Thai; b. Evidentiary documents of business activities of the individuals who are the promoters; c. Thai Police Clearance Certificate; d. A copy of a letter of consent to use the location of establishment; e. Articles of association of the chamber of commerce; and f. A brief map of the area of the office location, including photos.
8	LENGTH OF THE VALIDITY OF THE BUSINESS ENTERPRISE	Indefinite period unless dissolved.	Same as for foundations.	Same as for foundations.

98 Clause 3 of the Foundation Rules.
99 Clause 2 of the Association Rules.
100 Clause 3 of the Chamber Rules.

NO.	BASIS	FOUNDATION	ASSOCIATION	CHAMBER OF COMMERCE
9	TIME INVOLVED IN SETTING UP	60 days, provided that the required particulars and documents are provided to the registrar.[101]	Same as for foundations.	One day, provided that the required particulars and documents are provided to the registrar.[102]
10	LIABILITIES OF AUTHORIZED REPRESENTATIVES / DIRECTORS/ PARTNERS	The directors shall be liable for the foundation's performance of activities contrary to the law or to the objectives of the foundation.[103]	The directors shall be liable for the associations' performance of activities contrary to the law or to the objectives of the association.[104]	The directors shall be liable for the chamber of commerce's performance of activities contrary to the law or to the objectives of the chamber of commerce.[105]
11	ABILITY TO UNDERTAKE INCOME GENERATING ACTIVITIES	A foundation may undertake income generating activities for its objectives but it may not distribute income or profits among its members.[106]	An association may undertake income generating activities for its objectives but it may not distribute income or profits among its members.[107]	A chamber of commerce may undertake income generating activities but it may not distribute income or profits among its members.[108]
12	MANAGEMENT	The directors are responsible for managing the foundation in accordance with the laws and regulations and the articles of association of the foundation.[109]	The directors are responsible for managing the association in accordance with the laws and regulations, the articles of association and the general meeting's supervision.[110]	The directors are responsible for managing the chamber of commerce in accordance with the laws and regulations, the articles of association and the general meeting's supervision. The board may delegate its authorities to a director or an executive officer or a person in an equivalent position.[111]
13	STATUTORY AUDIT	The financial statements must be certified by a qualified accountant.[112]	No statutory requirement.	A statement of financial position must be prepared at least once every financial year and reviewed by a qualified accountant. [113]

101 Department of Provincial Administration. N/A. Publicity Guideline on Setting up of the Foundations. Publicity Guideline on Setting up of the Associations.
102 Digital Government Development Agency. N/A. Publicity Guideline on Registration of the Chamber of Commerce.
103 Section 76 of the CCC.
104 Section 76 of the CCC.
105 Section 37 of the CCA.
106 Section 110 of the CCC.
107 Sections 78 of the CCC.
108 Section 30 of the CCA.
109 Section 111 of the CCC.
110 Section 86 of the CCC.
111 Section 25 of the CCA.
112 Ministry of Interior. 1960. Foundation Rules and the Memorandum No. 8372/2503 (https://dl.parliament.go.th/backoffice/viewer2300/web/viewer.php).
113 Section 34 of the CCA.

NO.	BASIS	FOUNDATION	ASSOCIATION	CHAMBER OF COMMERCE
14	COMPLIANCES	Some of the key ongoing compliance requirements are as follows: a. Prepare an annual report and submit it to the registrar by March every year. b. Submit financial statements certified by a qualified accountant to the registrar by March every year. c. Maintain copies of the minutes of all meetings of the foundation to be submitted to the registrar by March every year.[114] d. Allow members to examine the activities and properties of the foundation.	Some of the key ongoing compliance requirements are as follows: a. Conducting a general meeting of the members at least once a year.[115] b. Allow members to examine the activities and properties of the association.[116]	Some of the key ongoing compliance requirements are as follows: a. Prepare an annual report to be present to the general meeting and submit to the registrar. b. A statement of financial position reviewed by a qualified accountant shall be submitted to the registrar within 30 days after approval by the general meeting of the members.[117] c. Maintain the register of members. d. Allow members to examine the activities and properties of the chamber of commerce.
15	MEETINGS	The board of directors shall hold meetings for taking certain decisions of the foundation.	A general meeting of the members shall be called by the board of the directors of the association at least once a year.[118] The board of directors may call extraordinary general meetings as they think fit.[119]	A general meeting of the members shall be called according to the articles of association of the chamber of commerce.[120]
16	OVERSEAS DIRECT INVESTMENTS	A non-Thai person can set up a foundation with at least one Thai national. No more than half the members shall be non-Thai. Additional documentary evidence may be required upon application if a non-Thai is to be a director.	A non-Thai person can set up an association with at least one Thai national. No more than half the members shall be non-Thai. Additional documentary evidence may be required upon application if a non-Thai is to be a director.	A member of a foreign chamber of commerce must conduct business and have a domicile in Thailand and must hold the same nationality of that foreign chamber of commerce.

114 Clause 13 of the Foundation Rules.
115 Section 93 of the CCC.
116 Section 89 of the CCC.
117 Section 35 of the CCA.
118 Section 93 of the CCC.
119 Section 94 of the CCC.
120 Section 13(5) of the CCA.

NO.	BASIS	FOUNDATION	ASSOCIATION	CHAMBER OF COMMERCE
17	CLOSURE	A foundation may be dissolved by the court or for any of the following reasons: a. As prescribed by the articles of association; b. Expiration, if the foundation is formed for a definite period; c. The impossibility of an objective, if the foundation is formed for that specific objective; d. Bankruptcy; or e. Court order, due to a reason provided by law.[121] After liquidation, the remaining assets shall be transferred to such other foundation or legal person specified in the articles of association or another foundation or legal person with similar objectives as the dissolved foundation.[122]	An association may be dissolved by the court or for any of the following reasons: a. As prescribed by the articles of association; b. Expiration, if the association is formed for a definite period; c. Fulfillment of an undertaking, if the association is formed for a specific undertaking; d. Resolution of the general meeting; e. Bankruptcy; or f. Revocation of the registration by the registrar.[123] After liquidation, the remaining assets shall be transferred to the association, foundation, or legal person with a charitable purpose specified in the articles of association or by the general meeting's resolution. Without the specification above, the assets shall belong to the state.[124]	A chamber of commerce may be dissolved for the following reasons: a. Resolution of the general meeting; b. Bankruptcy; or c. Order of the Minister, due to a reason provided by law.[125] After liquidation, the remaining assets cannot be distributed among the chamber of commerce's members but shall be transferred to another legal person with a charitable purpose specified in the articles of association or by the general meeting's resolution. Without the specification above, the assets shall belong to the state.[126]

121 Section 130 of the CCC.
122 Section 134 of the CCC.
123 Section 101 of the CCC.
124 Section 107 of the CCC.
125 Sections 43 and 44 of the CCA.
126 Section 47 of the CCA.

REGISTRATION UNDER THE SOCIAL ENTERPRISE PROMOTION ACT

The Social Enterprise Promotion Act B.E. 2562 (2019) (the **SEPA**) provides a legal framework to promote and support social enterprises in Thailand. The SEPA provides promotional measures believed to be crucial for social enterprise development and incentives which include tax benefits, financial support and other privileges to a registered social enterprise (the **Registered SEs**). In order to obtain the incentives under the SEPA, a social enterprise must possess qualifications as prescribed in the SEPA and file an application for registration to be a Registered SE with the Office of Social Enterprise Promotion of Thailand.

(a) Types of Registered SEs

There are two types of Registered SEs under the SEPA: (i) profit-sharing and (ii) non-profit-sharing.[127]

(b) Requirements of Registered SEs[128]

Registered SEs are required to:

(i) be a legal person established under Thai laws, examples of such legal persons include NLPs, LLPs, PLCs, public limited companies, co-operatives and foundations;

(ii) have its main objectives as promoting the employment of certain persons, solving problems or developing the community, society or environment, for other public benefits or returning benefits to society as prescribed by the Minister;

(iii) have no less than 50% of revenue derived from selling products or services (applicable only to the profit-sharing type);

(iv) have no less than 70% of profits reinvested in activities within the objectives set out in (ii) above and no more than 30% of profits may be shared among owners or shareholders (applicable only to the profit-sharing type);

(v) have good governance, including having an anti-corruption policy, complying with applicable laws, having a proper internal control and risk management system and preparing operational and financial reports for disclosure to the public on an annual basis;

(vi) have not been revoked from being a Registered SE within the last two years; and

(vii) not have more than 25% of the entity's partners, board members, authorised representatives or shareholders as persons who used to be part of any Registered SE that had its registration revoked, unless it can be proven that those persons were not involved in actions that caused the registration to be revoked.

127 Section 6 of the SEPA.

128 Sections 3 and 5 of the SEPA.

(c) Benefits of Registered SEs

(i) The right to receive grants or loan from the Social Enterprise Promotion Fund established under the SEPA.[129]

(ii) Tax benefits under the Royal Decree on the Taxation Code Re: Tax Exemption (No. 735) B.E. 2564 (2021),130 such as (1) corporate income tax exemption on the net profit of the non-profit-sharing Registered SEs; (2) certain tax benefits for the total invested amount in Registered SEs by investors; and (3) certain tax benefits from donating money or assets to the Registered SEs, provided that relevant conditions are met.

(iii) Privileges in government procurement processes under the Ministerial Regulation Prescribing Supplies and Methods for Procurement of Supplies Promoting or Supporting by the Government B.E. 2563 (2020), as amended.[131]

In addition, the Thai SEC allows Registered SEs to raise funds from the public without applying for the Thai SEC's approval and filing of the registration statement for offering securities to the public.[132]

In the beginning of the launch of the SEPA, as of January 2020, there were 145 Registered SEs,[133] two of the better known examples of which are (i) Doi Kham (a food manufacturing company) which supports local farmers and develops and processes agricultural produce into high-quality and healthy products at fair prices; and (ii) Dairy Home (a provider of organic products and restaurant) which produces high quality milk with safe, eco-friendly processes with no chemicals that harm the environment.

B CORPORATION CERTIFICATION[134]

B Corporation (B Corp) certificates are granted to organizations that generate significant social and environmental benefits from the way they do business and meet the highest standards of social and environmental performance, transparency and accountability. Companies in Thailand are not legally required to obtain a B Corp certificate. However, a Thai company may voluntarily apply for a B Corp certificate or any other similar certificates as it deems appropriate.

129 Section 59 (1) of the SEPA.

130 Section 59 (2) of the SEPA.

131 Section 59 (3) of the SEPA.

132 Clause 6(4) of Notification of the Securities and Exchange Commission No. KorChor. 18/2551 Re: Exemption from Filing of the Registration Statement for the Offer for Sale of Securities, as amended, and Clause 1 of the Notification of the Capital Market Supervisory Board No. TorChor. 1/2563 Re: Exemption for the Offering of Shares to General Public by the Social Enterprise which is a Private Limited Company

133 List of the registered social enterprises under the SEPA, as of 3 January 2020, on the website of SE Thailand (https://www.sethailand.org/).

134 B Corp Website, About B Corp Certification (https://www.bcorporation.net/en-us/certification/).

According to the B Corp Asia website,[135] there are seven B Corps in Thailand since 2016:

- JasBerry Co., Ltd.;
- Danone Specialized Nutrition (Thailand) Co., Ltd;
- Rapid Asia Co., Ltd.;
- Paper & Page (Thailand) Co., Ltd;
- Circular Industry Co., Ltd.;
- BeeConscious Co. Ltd; and
- Urmatt Limited.

2. OVERVIEW OF THE LEGISLATIVE FRAMEWORK FOR IMPACT INVESTING

In this section, we set out below the key legislative frameworks which should be considered when undertaking impact investing in Thailand.

FOREIGN BUSINESS ACT

The Foreign Business Act B.E. 2542 (1999) (the **FBA**) provides a legal framework which regulates the carrying out of business in Thailand by entities or persons which are considered to be "foreign" under the FBA. For the purpose of this section of the report, we will refer to "foreigners" as defined in Thai legislation as "non-Thai". Note that a legal person will be considered a non-Thai under the FBA if 50% or more of its share capital is held by: (a) a natural person who does not have Thai nationality; (b) a legal person not registered in Thailand; and/or (c) a legal person who itself has 50% or more of its share capital held by (i) a natural person who does not have Thai nationality; (ii) a legal person not registered in Thailand; or (iii) a legal person in which a person under (i) or (ii) invests in 50% or more of the total capital of such a legal person. The situation under (c)(iii) is such that a legal person registered in Thailand with a parent company also registered in Thailand will still be considered "non-Thai" if a grandparent entity owning 50% or more of the parent is "non-Thai".

The FBA categorises the businesses that are restricted for non-Thai persons into three lists:

- Businesses listed under List 1 are highly restricted for non-Thai persons due to reasons specific to each type of business. It is not possible to obtain permission to carry out business as a non-Thai person for the types of business specified in List 1 (e.g. media businesses, agriculture and trading in the ownership of land).

135 B Corp Asia Website (https://www.bcorpasia.org/thailand).

- Businesses listed under List 2 are businesses related to national safety and security, businesses affecting cultural arts, traditional customs and folk handicrafts, and businesses affecting natural resources or the environment. These businesses under List 2 are prohibited to non-Thai persons, except where permission is obtained from the Minister of Commerce with an approval from the Cabinet.

- Businesses listed under List 3 are businesses in which Thai nationals are not yet ready to compete with non-Thai persons. These businesses under List 3 are also prohibited to non-Thai persons except where permission is obtained from the Director-General of the Department of Business Development of the Ministry of Commerce (**MOC**), along with the approval of the Foreign Business Committees and the issuance of a foreign business license (**FBL**) to the non-Thai person.

According to the FBA, in a case where the business of a non-Thai person is: (i) promoted by the Board of Investment of Thailand (**BOI**) or granted a license to operate permitted business under the Industrial Estate Authority of Thailand Act B.E. 2522 (1979), as amended (**IEAT Act**); and (ii) listed in List 2 or List 3 of the FBA, such non-Thai person can operate the promoted business in Thailand without having to obtain an FBL. However, such non-Thai person will still be required to apply for the Foreign Business Certificate (**FBC**) to be issued by the Director-General of the Department of Business Development of the MOC. Further note that the process for obtaining the FBC is simpler than the FBL. Please see **BOI PRIVELEGES** and **IEAT ACT** sections below.

Note that apart from the FBA, certain activities/businesses (e.g. telecommunication, insurance, financial institutions and security businesses) may be subject to sector-specific laws that require specific permits or approvals from the relevant authorities.

BOI PRIVILEGES

The Investment Promotion Act of B.E. 2520 (1977), as amended (**BOI Act)**, empowers the BOI to grant investment incentives for both non-Thai and Thai business operators who engage in any type of promoted business activities as designated in the BOI's announcements (**BOI Promoted Businesses**). Pursuant to the BOI Act, BOI Promoted Businesses must engage in (a) activities which are important and beneficial to the economic and social development or security of the country; (b) activities which involve production for export; (c) activities which need significant amounts of capital, labour or services; or (d) activities which utilize agricultural products or natural resources as raw materials, provided that in the opinion of the BOI, those activities are non-existent in Thailand, existent but inadequate or using out-of-date production processes. In order to be eligible for BOI investment privileges, the Thai incorporated company can be established by non-Thai and/or Thai business operators either before or after BOI investment privileges have been granted.

In addition, according to the Announcement of the BOI No.8/2565 Policies and Criteria for Investment Promotion announced on December 2022, the BOI updated the investment policies and criteria for BOI Promoted Businesses to enhance Thailand's competitiveness and help achieve sustainable development, including promoting an economy that values environmental and social sustainability, creates opportunity and reduces inequality. In this regard, the BOI approved a series of promotion measures to encourage investments that will have a reduced impact on the environment or support sustainable development,[136] including:

136 Office of the Board of Investment. 2023. Investment Promotion Guide 2023

» INVESTMENT PROMOTION MEASURES FOR INDUSTRIAL UPGRADES TOWARDS SMART AND SUSTAINABLE INDUSTRY

This measure aims to sustainably stimulate the development and transformation of the Thai manufacturing and service sectors by providing certain BOI investment privileges to business operators who: (i) use automation systems, artificial intelligence, machine learning or big data in the production line or service; or (ii) invest in upgrading machinery to modern technology to reduce energy consumption, utilize alternative energy or mitigate environmental impacts, such as by reducing waste or greenhouse gas emissions. Business operators will also have to comply with other conditions provided by the BOI.

» INVESTMENT PROMOTION MEASURES FOR THE DEVELOPMENT OF THE COMMUNITY AND SOCIETY

This measure aims to encourage business operators to participate in the development of the local community and society by providing certain BOI investment privileges to business operators who: (i) invest a minimum of THB 5 million in total in the projects of local organizations to improve the quality of life for grassroot economy and society; (ii) provide at least THB500,000 of support per local organization entity; and (iii) comply with other conditions provided by the BOI.

The BOI investment privileges under the BOI Act vary depending on the type of BOI Promoted Businesses. The BOI investment privileges include: (i) tax incentives, such as the exemption or reduction of import duties on machinery, raw or essential materials and the exemption of corporate income tax on the net profit and dividends derived from the BOI Promoted Businesses; (ii) being granted a permit to have a majority non-Thai shareholding; (iii) being granted a permit to own land in Thailand to be used for the BOI Promoted Businesses; and (iv) being granted a permit to bring into Thailand skilled workers and experts to work in investment promoted activities.

LAND CODE

In Thailand, the principal law that controls ownership over land of the private sector is the Land Code B.E. 2497 (1954), as amended (the **Land Code**). The Land Code is enforced and supervised by the Land Department, Ministry of Interior. The Land Code provides that, generally, non-Thai persons are not allowed to own freehold land in Thailand unless they are granted special privileges: (i) by the BOI; (ii) under the IEAT Act; or (iii) by way of grandfather right under the provisions of a treaty or laws giving the right to own land in Thailand prior to the enactment of the Land Code.

IEAT ACT

Under the IEAT Act, provided that they obtain a license from the Industrial Estate Authority of Thailand (**IEAT**), non-Thai industrial operators are permitted to operate certain businesses and own land within the industrial estate area or industrial estate free zone, as designated by the IEAT, in an area of a size the IEAT deems appropriate.

MERGER CONTROL

Depending on the industry and the size of the investors, anti-trust considerations may be relevant. As mergers and acquisitions may result in a business operator gaining more market power, over 100 jurisdictions have a competition authority to regulate and monitor transactions that may increase the concentration of market power in any given market. Thailand is now amongst these countries. The Trade Competition Act B.E. 2560 (2017) provides a dual compulsory merger control regime, which requires a pre-closing filing if the merger or acquisition will result in a monopoly or create market dominance in Thailand and/or a post-closing filing if the merger or acquisition may significantly reduce competition in any relevant market.

FOREIGN EMPLOYMENT

Generally, a non-Thai person who would like to work, conduct business or invest in Thailand must obtain either: (i) a visa and work permit or (ii) a smart visa, unless certain exemptions apply.

Visa and Work Permit

Generally, a non-Thai person who enters Thailand is required to have a valid visa. Under the Immigration Act B.E. 2522 (1979) (as amended), there are certain categories of visa based on the purpose of entry. For a non-Thai person who wishes to work, conduct business or undertake investment activities in Thailand, they must apply for a non-immigrant visa.

Apart from obtaining a valid visa, pursuant to the Emergency Decree re: Foreigners' Working Management B.E. 2560 (2017), as amended, a non-Thai person is allowed to work in Thailand if (i) the work to be carried out by such person is not a prohibited occupation for non-Thai persons, according to the Notification of the Ministry of Labour Re: the Prohibited Occupations for Non-Thai issued on 1 April B.E. 2563 (2020) (**Notification on Prohibited Occupations**) and (ii) a work permit is obtained.

The Notification on Prohibited Occupations categorises the prohibited occupations for non-Thai into four lists:

- List 1 is the occupations that are strictly prohibited for non-Thai persons (e.g. wood carving, cloth weaving and making Thai musical instruments).
- List 2 is the occupations that are prohibited for non-Thai persons but with a condition that non-Thai persons are allowed to work under international agreements or obligations that Thailand is bound by (e.g. controlling, auditing or performing accounting services and civil engineering works and architectural works in certain areas).
- List 3 is the occupations that are prohibited for non-Thai persons but with a condition that skilled or semi-skilled non-Thai persons are allowed to work when working for an employer (e.g. agriculture, fishery, knife making and shoemaking).
- List 4 is the occupations that are prohibited for non-Thai persons unless such non-Thai person has an employer and is permitted to enter into Thailand by immigration law under the memorandums of understanding or agreements between the Thai government and foreign governments (e.g. labour and shop front sellers).

Smart Visa

A smart visa is a special type of visa offered to qualified highly skilled individuals including investors, senior executives and startup entrepreneurs wishing to work or invest in targeted industries as prescribed in the Notification of BOI No. Por.12/2561 re: Qualifications, Criteria and Conditions for Smart Visa. Targeted industries under the said BOI's Notification include industries relating to agriculture and biotechnology, biofuel and biochemicals and environmental and renewable energy management. A holder of the smart visa is allowed to work in the targeted industries in Thailand without obtaining a work permit.

FOREIGN EXCHANGE

Thai exchange controls are regulated by the Exchange Control Act B.E. 2485 (1942), as amended, which gives the BOT control over all kinds of transactions involving foreign exchange in Thailand. These transactions include buying, selling, remitting and exchanging foreign currencies and the import/export of Thai Baht.

Outward Remittance

All outward remittance of foreign currency must be either transacted through an authorised commercial bank or approved by the BOT, depending on the type of transaction. The Notification of the Exchange Control Officer Re: Rules and Procedures relating to Currency Exchange dated 18 April 2022 provides a "negative list" of specific transactions for which outward remittance requires prior approval from the BOT. Outward remittance transactions which are not on the negative list can be transacted through an authorised commercial bank/agent without approval from the BOT upon submission of supporting documents to an authorised commercial bank/agent which is approved by the BOT. Examples of such transactions not on the negative list include the repayment of an offshore loan where the loan proceeds were remitted into Thailand, the payment of a dividend to an offshore shareholder and payment of the purchase price to an offshore seller.

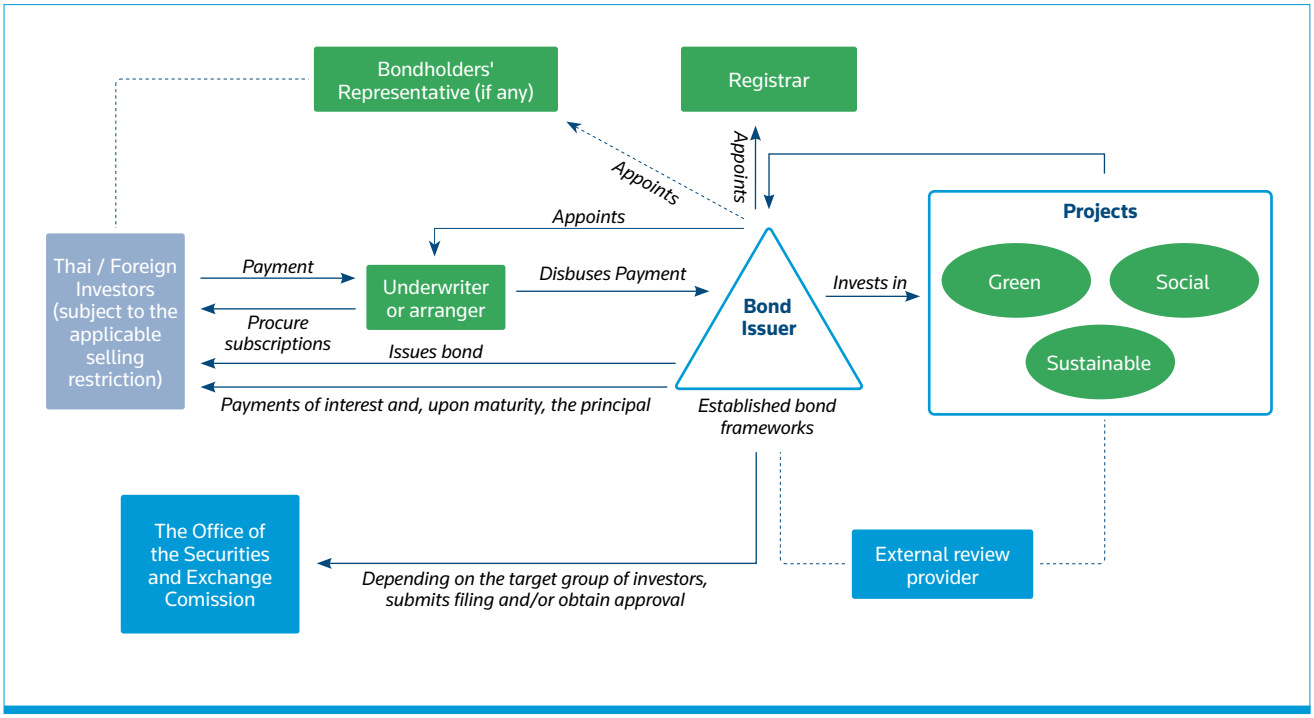
Inward Remittance

There is no limit on the amount of foreign currency that may be imported. However, any person who exports goods outside of Thailand or receives foreign currency money outside Thailand as a result of entering into a cross border transaction must procure that the foreign currency payment for the goods or transaction be made within 360 days of exporting the goods or entering into the transaction. They must then immediately remit the money into Thailand and exchange that money to or deposit that money with an authorised bank within 360 days of being informed by the bank of such inward remittance. Where foreign currency is acquired by means other than those stated above, generally the recipient must immediately remit the money back into Thailand and sell it to or deposit it with an authorised bank within 360 days of being informed by the bank of such inward remittance.

3.ILLUSTRATION – AN IMPACT FUND

As discussed above, please see below illustrations of some possible impact investment models that can be used in Thailand.

DOMESTIC GREEN/SOCIAL/SUSTAINABILITY BOND OFFERING



Description

In this model, green, social or sustainability bonds are offered by an issuer in Thailand. Depending on the selling restrictions applicable to the offering, Thai and foreign investors may invest in the bonds by subscribing for them through the underwriter/arranger appointed by the issuer. The proceeds from the offering will be used by the issuer to finance or re-finance environmental or social impact projects, or both.

Advantages

The primary advantage of this model is that it allows the issuer to diversify its pool of investors who are looking to make investments for their portfolios in ESG products. This in turn may lower the overall financing costs. Until 31 May 2025, the issuer will also benefit from an exemption with regards to paying approval and filing fees to the Thai SEC.[137]

137 Notification of the Securities and Exchange Commission No. KorMor. 7/2565 Re: Exemption of Approval Fee for Green Bonds, Social Bonds, Sustainability Bonds and Sustainability-linked Bonds and Notification of the Securities and Exchange Commission No. SorMor. 15/2565 Re: Exemption of Filing Fee for Green Bonds, Social Bonds, Sustainability Bonds and Sustainability-linked Bonds.

Disadvantages

The issuer becomes subject to additional ESG-related criteria when it issues the bonds. The issuer needs a sizable ESG project and the bonds may only demonstrate the issuer's ESG performance at a project level rather than at the overall business level.

Examples of Thai green bond issuers[138]

Export-Import Bank of Thailand, BTS Group Holdings Public Company Limited, Toyota Leasing (Thailand) Company Limited, B.Grimm Power Public Company Limited and Gulf Energy Development Public Company Limited.

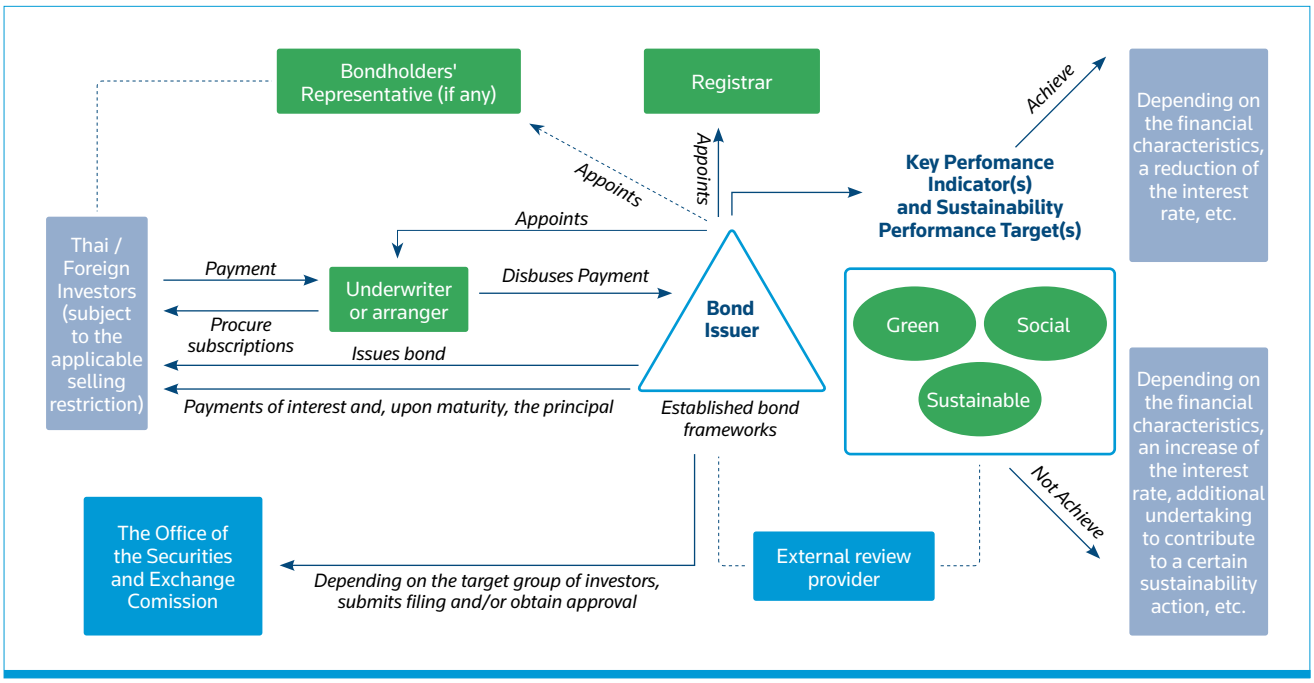
Examples of Thai social bond issuers[139]

National Housing Authority, Government Savings Bank, Government Housing Bank and Thaifoods Group Public Company Limited.

Examples of Thai sustainability bond issuers[140]

Ministry of Finance of Thailand, Government Savings Bank, Government Housing Bank, Kasikornbank Public Company Limited and Bangkok Expressway and Metro Public Company Limited.

DOMESTIC SUSTAINABILITY-LINKED BOND (SLB) OFFERING



138 Registered Bonds with Thai Bond Market Association – Green, Social & Sustainability Bond

139 Registered Bonds with Thai Bond Market Association – Green, Social & Sustainability Bond

140 Registered Bonds with Thai Bond Market Association – Green, Social & Sustainability Bond (https://www.thaibma.or.th/EN/BondInfo/ESG.aspx).

Description

In this model, sustainability-linked bonds (**SLBs**) are offered by an issuer in Thailand. Depending on the selling restriction applicable to the offering, Thai and foreign investors may invest in the bonds by subscribing for them through the underwriter/arranger appointed by the issuer. SLBs must have certain financial characteristics, either or both of: (i) a potential variation of the interest rate (e.g. step-up and/or step-down features); and (ii) a condition imposing obligation(s) on the issuer to contribute to at least one particular sustainability strategy/objective of its own or of its parent, subsidiary, affiliate or associate companies (collectively, the **Group**) (such condition shall hereinafter be referred to as, the **ESG Obligation**). The aforementioned potential interest rate variation and ESG Obligation will be subject to the issuer/Group's performance relative to the predetermined Key Performance Indicator(s) (**KPI(s)**) and Sustainability Performance Target(s) (**SPT(s)**). For example, the issuer may impose a condition that it will increase the interest rate of the bonds if it fails to achieve a predetermined SPT in respect of a certain KPI or vice versa.

Advantages

This model has the same benefits as the previous model, but it is more beneficial to an issuer who cannot meet the criteria for green, social or sustainability bonds, particularly because the issuer's business may be a non-green or transitioning business with no sizable ESG projects.

Disadvantages

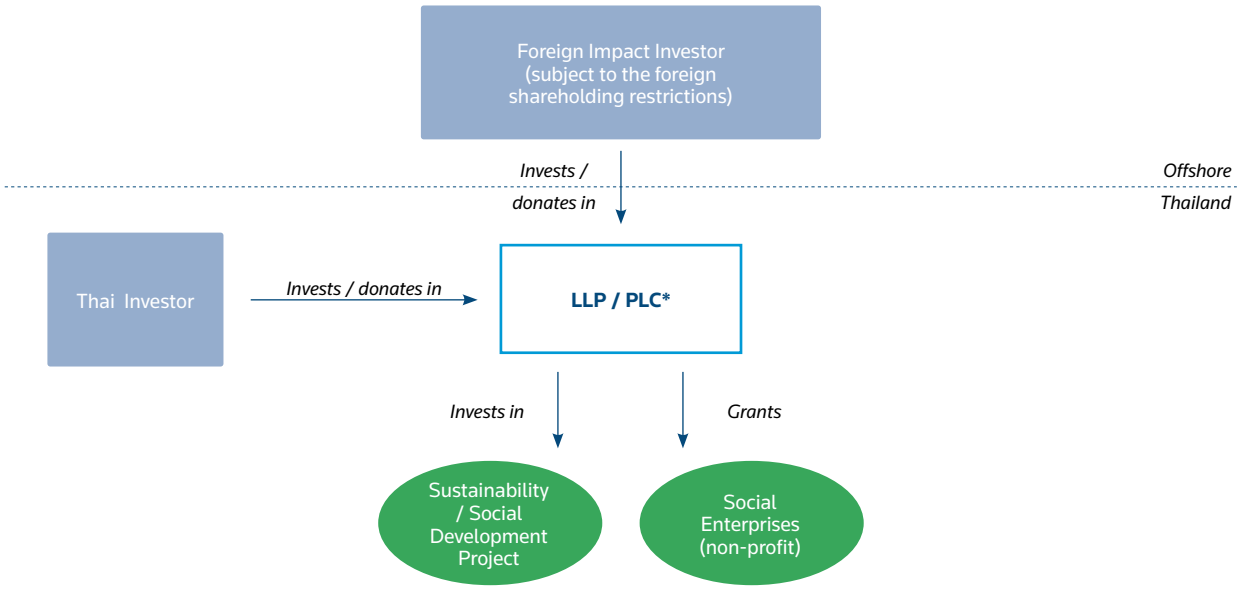
The issuer becomes subject to additional ESG-related criteria when it issues the bonds, including a more complicated on-going reporting requirement.

Examples of Thai SLB issuers[141]

Thai Union Group Public Company Limited, Indorama Ventures Public Company Limited and BTS Group Holdings Public Company Limited.

141 Registered Bonds with Thai Bond Market Association – Green, Social & Sustainability Bond (https://www.thaibma.or.th/EN/BondInfo/ESG.aspx).

FOREIGN DIRECT INVESTMENT ROUTE



Remark: LLP / PLC may be registered as social enterprises under the Social Enterprise Promotion Act B. E. 2562 (2019) provided the criteria are met.

Description

In this model, foreign investors may, subject to foreign shareholding restrictions, contribute capital in an LLP or subscribe for newly issued shares of a PLC whose businesses focus on sustainability or social development projects (e.g. reducing energy consumption, mitigating environmental impact, participating in local community and society development or providing grants to social enterprises) and/or are registered as a Registered SE under the SEPA.

Advantages

This model allows the investor to have governance rights in the LLP/PLC, subject to the amount of its capital participation or shareholding. This means the investor may be able to influence the internal policy relating to impact investment while limiting its liability to the remaining unpaid amount of their shares. Particularly, if the investor is specialized in the social or environmental impact industry, knowhow sharing might arise from the investment. In addition, investors or donors of the Registered SE may benefit from tax benefits as provided under the SEPA.

Disadvantages

The return on this model cannot be assured. The return of contributions in an LLP is subject to the partnership agreement and the distribution of profits in a PLC can only be paid if the company has profits available. In addition, non-Thai shareholders are subject to foreign shareholding restrictions under the FBA and other applicable laws.

4.OPPORTUNITIES AND CHALLENGES

KEY OPPORTUNITIES WHICH CURRENTLY EXIST FOR IMPACT INVESTING IN THAILAND

Existing legal infrastructure for certain types of impact investments

As outlined above, Thailand has already introduced a legislative and regulatory framework for certain types of impact investments in the form of green/social/sustainability and sustainability-linked bond offerings. In terms of corporate structures, there are existing legal concepts for entities that intend to serve a social purpose and are not primarily profit driven, in the form of foundations and associations.

Therefore in respect of any project where a foundation or association is the appropriate legal form, investors and the project benefit from these existing concepts and do not need to undertake the work that would be required in adapting the constitution and structure of a generally profit-driven enterprise model (such as a private limited company) to make it appropriate for impact investment. Additionally, the capital requirements to establish such entities are relatively low.

Furthermore, in respect of any projects where a bond may be an appropriate form of financing, issuers and investors benefit from established guidelines and structures for such an issuance and do not need to 're-invent the wheel'.

Opportunities for collaboration with local partners

To some foreign investors who do not currently have a Thai partner identified, the requirements of the FBA may appear to be a challenge when considering impact investments in Thailand. The FBA is a cornerstone of the Thai corporate law and investing landscape and currently there appears to be little legislative appetite to relax Thailand's foreign direct investment restrictions in any significant way.

Notwithstanding the above, the requirements of the FBA present a significant opportunity for Thai impact investors (or impact investment projects) which may benefit from the broader experience of a foreign investor and the lower capital commitments resulting from investing alongside a foreign partner.

From an international investor's perspective, the requirements of the FBA likewise present the investor with the opportunity to benefit from collaboration with a local Thai partner, including:

- the knowledge and experience of the Thai partner in navigating legal and regulatory requirements and engaging with local authorities in Thai;
- where the project requires local staff in Thailand, the work can be shared with the staff of the Thai partner and the foreign investor may not need to hire any (or as many) staff in Thailand in order to execute the project;

- the experience of the Thai partner in navigating local customs and assisting the foreign investor with developing a deeper understanding of what 'impact' metrics are relevant and what a successful impact investment project would look like in that community; and

- the lower capital commitment resulting from investing alongside a partner.

KEY CHALLENGES WHICH CURRENTLY EXIST FOR IMPACT INVESTING IN THAILAND

Existing frameworks generally designed for large-scale projects

Thailand's existing frameworks for green/social/sustainability and sustainability-linked bond offerings are most appropriate for sizeable impact projects with significant or sustained funding requirements. The nature and complexity of such arrangements would make them unsuitable for smaller scale projects.

Sector-specific documentary and administrative requirements and timelines

In addition to the general guidelines set out above, impact investors in Thailand need to be conscious of sector-specific regulation and licencing requirements. The documentary requirements and timelines for complying with sector-specific regulation and obtaining necessary licences will depend on the scope of the project/business activity and the relevant licencing authority and will need to be assessed on a case-by-case basis. This is where foreign investors will be able to benefit significantly from collaboration with a Thai partner in navigating registration and licencing requirements and engaging constructively with local authorities at an early stage.

SECTION 2 »

REUTERS/ Nguyen Huy Kham

SECTION 2 » VIETNAM

1. IMPACT INVESTMENT STRUCTURES

There are a number of reasons why impact investors should take an interest in Vietnam:

- Vietnam has been an attractive target for development and impact investors given rapid urbanization, and a growing middle class. Vietnam sits strategically as a key manufacturing hub of the global supply chain in Southeast Asia. Sectors in which we see significant interest from development and impact investors include education, healthcare, and banking.

- Vietnam's economic boom has also resulted in the need to significantly ramp-up electricity output. Vietnam has made strong commitments to reach net-zero carbon emissions by 2050. Given favourable geographic and climate conditions, Vietnam has turned to renewable energy as an alternative to fossil fuels with significant foreign investment in rooftop solar, ground-mounted solar, and onshore wind with considerable investments in this sector over recent years. Development banks have often been in the forefront of setting ground-breaking innovative financing structures in this sector.

- Vietnam is also an example of a jurisdiction where women have reached prominent roles in business, constituting over 25% of CEOs and board positions in listed companies, which is considerably higher than peers in the region and many Western nations. This has sparked investment interest from impact investors in grassroots women entrepreneurship programs or on-lending structures with local banks for which the use of proceeds is linked to developing women entrepreneurship.

KEY INVESTMENT INSTRUMENTS IN VIETNAM

Vietnamese law allows foreign investors to utilize a range of investment instruments, including basic equity investments (in charter capital, with respect to a limited liability company, or shares in a joint stock company). Shares may be ordinary shares or preference shares that provide a variety of features, such as special dividends or conversion rights.[142] Vietnamese law also provides for convertible or non-convertible debt instruments, such as convertible loans and convertible bonds.[143] Government debt instruments such as treasury bills, government bonds, government guaranteed bonds are also available, but they are not commonly selected options.

142 Enterprise Law No. 59/2020/QH14 (2020 Enterprise Law).

143 Securities Law No. 54/2019/QH14 (2019 Securities Law); Decree No. 155/2020/ND-CP guiding the implementation of 2019 Securities Law (Decree 155); Decree No. 153/2020/ND-CP, as amended by Decree No. 65/2022/ND-CP and Decree No. 08/2023/ND-CP on private offering of corporate bonds (Decree 153) and the 2020 Enterprise Law.

Pay for success contracts and social impact bonds are not covered by the regulations and are not commonly used. Grants to companies or charities are possible, but require separate approval as foreign aid[144] and are not considered a capital investment.

To the extent a particular investment instrument is not specifically covered by Vietnamese regulations, foreign investors may be better off modifying a more common structure to reflect their social or charitable purposes. For example, while Vietnamese regulations do not provide for a "social impact bond", investors may be able to use more standard commercial forms to achieve the same risk allocation.

We discuss below common types of investment instruments in Vietnam, including debt instruments and equity instruments:

Debt instruments

» LOANS:

Loans are the most common type of debt instrument in Vietnam. Loans can be issued by domestic or foreign entities, financial or credit institutions, and can be either unsecured, guaranteed or secured.

Domestic Loans: generally, domestic loans may only be provided by credit institutions and foreign bank branches pursuant to the 2010 Credit Institution Law and its guiding regulations. Loans provided by other domestic entities (with or without interest) to other entities can be made on the basis of the 2015 Civil Code on a "one-off" basis and not on a regular basis.[145]

Foreign Loans: foreign loans are commonly utilised by (i) large corporations to finance their business operations in Vietnam, given the lower cost of borrowing in foreign currency (as compared to VND) and the increased liquidity of the offshore lending market, or (ii) by FDI companies seeking funds from its parent through shareholder loans. Loans provided by foreign lenders to Vietnamese borrowers are subject to strict foreign exchange control requirements under the 2005 Foreign Exchange Ordinance and relevant regulations, including limitations on the use of proceeds or the facility size, and registration of medium- and long-term loans with the State Bank of Vietnam (the SBV).[146]

In respect of sustainability, the 2020 Environmental Protection Law provides for the extension of green credit by local credit institutions and foreign bank branches for certain environmentally beneficial projects.[147] On 7 August 2018, the SBV issued Decision No. 1604/QD-NHNN on development of green banking operations in Vietnam, setting out an action plan promoting green credit by local credit institutions and foreign bank branches to encourage environment-friendly projects and sectors. Furthermore, the SBV has recently issued Circular No, 17/2022/TT-NHNN (23 December 2022) on management of environmental risk in extending credit to environment-related projects which is crucial for providing green credits by credit institutions and foreign bank branches.

144 Decree No. 80/2020/ND-CP on management and use of non-refundable and non-ODA foreign aid.

145 Credit Institution Law No. 47/2010/QH12 (**2020 Credit Institution Law**), Article 8.

146 Foreign Exchange Ordinance No. 28/2005/PL-UBTVQH11 (**2005 Foreign Exchange Ordinance**); Circular No. 08/2023/TT-NHNN on conditions for borrowing foreign loans (**Circular 08**); Circular No. 12/2022/TT-NHNN on foreign exchange control in borrowing and repayment of foreign loans (**Circular 12**).

147 Environmental Protection Law No. 72/2020/QH14 (**2020 Environmental Protection Law**), Article 149.

» CORPORATE BONDS:

Vietnamese companies frequently employ corporate bonds to raise debt capital from domestic and international investors. In Vietnam, bonds are a type of security, and therefore the offering and trading of bonds are regulated by the 2020 Enterprise Law, 2019 Securities Law and its guiding regulations,[148] as well as the rules and regulations of the State Securities Commission (the **SSC**), the Vietnam Securities Depository and Clearing Corporation (the **VSDC**)[149] and relevant stock exchanges. Offering of international bonds is also subject to foreign exchange control requirements.[150]

Bonds can be issued within Vietnam or in international markets,[151] either as a public offering[152] or a private placement.[153] Corporate bonds have different features, including straight bonds, convertible or non-convertible bonds, warrant-linked bonds. Bonds can be unsecured, secured or guaranteed. Issuers are required to meet certain conditions depending on whether the issuer is a public or private company, and the type of bond to be issued. Investors subscribing for bonds by way of a private placement are limited to professional securities investors or strategic investors.[154] The par value of bonds for a public offering is VND 100,000 (about US$4.20) (and a multiple of VND 100,000 or about US$4.20)[155] and for a private placement is VND 100 million (about US$4,200) (and a multiple of VND 100 million or about US$4,200).[156]

In terms of sustainability development, Vietnamese law recognises the concept of 'green' bonds as a financing instrument for funding climate or environment-related projects.[157] Issuance and trading of green bonds are generally regulated under the same legal framework as non-ESG bonds but with additional conditions on eligible projects and requirements on use of proceeds, disclosure and reporting,[158] including on the issuer's compliance with environmental protection requirements, which are specifically provided in the 2020 Environmental Protection Law and its guiding relations.[159] Green bond issuers are entitled to lower regulatory fees for using public securities services.[160]

Equity Instruments:

Shares are the most common type of equity instrument, and can be issued by a joint stock company in Vietnam. The laws provide for the scope of rights attached to ordinary shares and a few regulated types of preference shares, though generally the charter (i.e., articles of association) of the entity may provide for more preferential treatment or additional rights of shareholders.[161]

148 Decree 155, Decree 153.
149 Decision No. 27/QD-HDTV of the VSDC on registration and deposit of privately offered corporate bonds.
150 Circular No. 10/2022/TT-NHNN on foreign exchange control of international issuance of non-government guaranteed bonds.
151 Decree 153.
152 2019 Securities Law, Decree 155.
153 Decree 153.
154 Decree 153, Article 8.
155 2019 Securities Law, Article 13.2.
156 Decree 153, Article 6.4(a).
157 Decree 153, Article 4.2.
158 Decree 153, Articles 19.1(b) and 21.2(d).
159 2020 Environmental Protection Law, Article 150; Decree No. 08/2022/ND-CP guiding the implementation of the 2020 Environmental Protection Law (**Decree 08**), Articles 154 and 157.
160 Circular No. 101/2021/TT-BTC on public service fees in securities sector (**Circular 101**), Article 3.6.
161 2020 Enterprise Law, Article 114.

» ORDINARY SHARES

Ordinary shares generally give shareholders rights to attend and vote at the general shareholders' meetings (**GSM**), access to certain corporate information of the company, and key economic rights pro rata to their shareholding (including dividends and rights upon redemption or liquidation). Shareholders may have certain rights related to the operation of the company if they reach specified ownership levels. Please see **Key legislative frameworks that minority investors should be aware of** on page 73.[162]

» PREFERENCE SHARES

Preference shares give shareholders certain preferential rights over ordinary shares, such as priority in receiving dividends or repayment of capital, or increased voting rights. The 2020 Enterprise Law permits a joint stock company to issue the following types of preference shares:

Voting preference shares carry more votes than ordinary shares (as further prescribed in the company's charter) and cannot be transferred. In private companies, voting preference shares may only be issued to founding shareholders. The rights attached to these shares are forfeited after three years from the date of incorporation and these shares then become ordinary shares.[163]

Redeemable preference shares can be redeemed by the issuing company upon the holder's demand or under terms and conditions set forth in the share certificate. A redeemable preference shareholder has all the rights of an ordinary shareholder (except for voting rights, the right to attend the GSM, and the right to nominate a person to the board of directors (BOD) and to the inspection committee (IC)). Redeemable preference shares can be converted to ordinary shares.[164]

Dividend preference shares are shares on which a dividend is paid at a rate that is greater than the rate that applies to ordinary shares or at an annual fixed rate. In the case of an annual fixed rate, dividends are paid to dividend preference shareholders regardless of the company's operating result. Similar to a redeemable preference shareholder, a dividend preference shareholder has no voting rights, is not entitled to attend the GSM and cannot nominate a person to the BOD or IC. Dividend preference shares can be converted to ordinary shares.[165]

Others: the 2020 Enterprise Law permits a joint stock company to issue hybrid preference shares that are not stipulated in the Law on Enterprises, provided that they are described in the company's charter or that ordinary shareholders agree to issue such hybrid preference shares.[166]

The scope of rights attached to non-regulated preference shares depends largely on the charter of the entity and the relevant share certificate.

Preference shares can be converted to ordinary shares upon approval of the GSM. Conversion is not mandatory unless otherwise agreed by the issuing company and the preference shareholders.[167] A resolution that causes adverse changes to rights and obligations of preference shares requires approval from shareholders holding at least 75% of the total number of preference shares of the affected share class.[168]

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162 2020 Enterprise Law, Article 115.
163 2020 Enterprise Law, Article 116.
164 2020 Enterprise Law, Article 118.
165 2020 Enterprise Law, Article 117.
166 2020 Enterprise Law, Articles 114.2(d) and 114.3.
167 2020 Enterprise Law, Article 114.5.
168 2020 Enterprise Law, Article 148.6.

Analysis of differences between private debt and private equity

NO.	PARTICULAR	PRIVATE DEBT	PRIVATE EQUITY
1	STATUS	**Bonds and Loans** Bondholders and Lenders under loans are creditors of the relevant issuer and borrower.	**Shares:** Shareholders have the status of owning a share in the capital of the company. However, certain rights of preference shareholders may be different from those of ordinary shareholders (such as voting rights).[169]
2	ECONOMIC BENEFITS	**Bonds:** Generally, bondholders are entitled to receive interest and principal payments as per the terms and conditions of the bonds. **Loans:** Generally, lenders are entitled to receive principal and interest payments, including any other fees, charges or amounts as agreed under the underlying facility/loan agreement.	**Ordinary Shares:** Ordinary shareholders are entitled to receive dividends upon approval of the GSM and subject to the business results of the company.[170] **Preference Shares:** Generally, preference shareholders are entitled to receive the same dividends as ordinary shareholders, except that dividend preference shareholders are entitled to an annual fixed amount which includes a fixed dividend payable regardless of the company's business results.[171]
3	FUND REPATRIATION	**Bonds and Loans:** Funds from principal and interest payments of a bond/loan can be repatriated offshore after completion of all tax and financial obligations, provided that all requisite approvals for the issuance of bonds to offshore investors or for the borrowing of loans from offshore lenders have been duly obtained.[172]	**Ordinary Shares and Preference Shares:** Funds from dividends or redemptions of shares can be repatriated offshore after completion of all tax and financial obligations, provided that the shares were duly issued and paid for.[173]

169 2020 Enterprise Law, Article 114-118.

170 2020 Enterprise Law, Article 115.1(b).

171 2020 Enterprise Law, Article 114-118.

172 2005 Foreign Exchange Ordinance, Article 11.2; Circular No. 05/2014/TT-NHNN on foreign indirect investment in Vietnam (**Circular 05**), Article 8.

173 2005 Foreign Exchange Ordinance, Article 11.1; 2020 Investment Law No. 61/2020/QH14 (**2020 Investment Law**), Article 12; Decree No. 186/2010/TT-BTC on repatriation of profits from direct investment in Vietnam by foreign investors (**Decree 186**).

NO.	PARTICULAR	PRIVATE DEBT	PRIVATE EQUITY
4	SOURCES OF PAYMENT	**Bonds and Loans:** Unless specifically set out under the terms and conditions of the bonds or the underlying facility/ loan agreement of the loans (as applicable), there is no specific requirement or prohibition as regards the sources of payment.	**Ordinary Shares** Generally, dividends on ordinary shares can only be paid annually from retained earnings, provided that:[174] a. the company has made profit and fulfilled all its tax and financial obligations under the laws; b. the company has made sufficient appropriation and compensated for previous losses; c. upon distribution of dividends, the company is still able to pay all debts or property obligations that become due; and d. additionally, if the company is a foreign owned company, it must not have accumulated loss.[175]
5	SECURITY	**Bonds and Loans** Bonds/Loans can be: a. guaranteed by credit institutions or foreign bank branches or by a third party; or b. secured by assets of the issuer/ borrower or a third party.[176] Offshore investors/lenders are not allowed to take security over immovable properties (i.e., land or fixtures attached to land).[177]	**Ordinary Shares and Preference Shares:** Generally, pure equity investments do not involve any form of security rights for shareholders.

174 2020 Enterprise Law, Article 135.
175 Decree 186, Article 3.3.
176 Decree 153, Article 4.4.
177 Land Law No. 45/2013/QH13.

NO.	PARTICULAR	PRIVATE DEBT	PRIVATE EQUITY
6	GOVERNANCE RIGHTS	**Bonds and Loans:** Generally, bondholders/lenders have no governance rights unless otherwise provided under the terms and conditions of the bonds/the underlying facility/loan agreement of the loans (as applicable).	**Ordinary Shares:** Generally, ordinary shareholders have governance rights as specified under the relevant laws and the charter (i.e., articles of association) such as:[178] • right to request the board of directors to convene a GSM; • right to attend and vote at the GSM; • right to request to review minutes and resolutions of the meetings the board of directors and shareholders; and • right to nominate members to the board of directors. **Preference Shares** Governance rights of preference shareholders are specified under the charter (i.e., articles of association) and the relevant the share certificate, and generally are similar to those of ordinary shareholders, except as discussed in **PREFERENCE SHARES** on page 59.[179]

178 2020 Enterprise Law, Article 115.
179 2020 Enterprise Law, Articles 114-118.

KEY BUSINESS ENTERPRISES IN VIETNAM

Investors may select the form of enterprise to carry out its investment, including:

(a) a limited liability company (**LLC**) in the form of either a single-member LLC (**SMLLC**) or a multi-member LLC with two or more (up to a maximum of 50) members (**MMLLC**).[180] An LLC has a simple corporate structure and therefore is preferable for foreign investors that intend to have complete control of a business. Assignment of charter capital (equity) is subject to the right of first refusal by the members;[181]

(b) a shareholding or joint stock company (**JSC**) which is a company with at least three shareholders but no maximum number of shareholders. A JSC may be preferable in case there are multiple shareholders as JSCs may issue bonds and multiple classes of shares (whereas an LLC may only issue bonds). Shareholders of a JSC have the right to freely assign their shares, subject to certain statutory lock-up periods;[182]

(c) a general partnership or a limited liability partnership; and[183]

(d) a private enterprise (akin to a sole proprietorship).[184]

The two forms that are most commonly considered by foreign investors are LLC and JSC, depending on the number of stakeholders and scale of the business. An LLC is more appropriate for the operations of small or medium-sized businesses owned by a small number of persons, whereas JSCs are frequently appropriate for larger businesses that have substantial financial needs and the possibility of going public. Foreign investment conditions may also be relevant to selecting a structure (e.g., whether a local partner is required by law). While the 2020 Enterprise Law of Vietnam does include partnerships, these are rarely used for foreign investment, in favor of LLCs or JSCs.

180 2020 Enterprise Law, Chapter III.
181 2020 Enterprise Law, Article 52.
182 2020 Enterprise Law, Chapter V.
183 2020 Enterprise Law, Chapter VI.
184 2020 Enterprise Law, Chapter VII.

Overview of the legal positions of each type of enterprises is summarized below.

NO.	BASIS	SMLLC	MMLLC	JSC
	General requirements			
1	CRITERIA FOR SETTING UP	An SMLLC can be set up by one owner being an individual or organisation.[185]	An MMLC can be set up by two or more (up to 50) members being either individuals and/or organisations.[186]	A JSC can be set up by at least three shareholders being either individuals and/or organisations.[187]
2	VALIDITY OF THE REGISTRATION	Indefinite period unless the enterprise ceases operations, dissolves or declares bankruptcy, although certain foreign-invested companies may only operate within the term of operation specified in the investment registration certificate issued to it, unless extended.[188]		
3	CAPITAL CONTRIBUTION	Contribution can be made in cash and/or in kind with monetary value and must be made within 90 days upon incorporation.[189] While there is no general minimum capital requirement for set-up related to the form of enterprise, the specific sector in which the SMLLC/MMLLC/JSC will operate may have a minimum capital requirement.		
4	TIME INVOLVED IN SETTING UP	The regulatory timeline for set-up is 3 business days upon submission of a complete application to the registrar,[190] exclusive of time for completion of investment procedures for foreign investment, which largely depends on the scale of the business and sectors in which it will operate.[191] In practice, the timeframe is usually longer.		
5	LEGAL REPRESENTATION	The SMLLC/MMLLC/JSC must appoint at least one individual as the legal representative who represents the company in legal, administrative or regulatory proceedings and acts on behalf of the company. A company may have multiple legal representatives, provided that at least one of them permanently resides in Vietnam. If the enterprise has only one legal representative, such person must reside in Vietnam. The legal representative need not be a Vietnamese citizen.[192]		

185 2020 Enterprise Law, Article 74.
186 2020 Enterprise Law, Article 46.
187 2020 Enterprise Law, Article 111.
188 2020 Investment Law, Article 44.
189 2020 Enterprise Law, Article 75.
190 2020 Enterprise Law, Article 26.
191 2020 Investment Law.
192 2020 Enterprise Law, Article 12.

NO.	BASIS	SMLLC	MMLLC	JSC
6	CLOSURE	An SMLLC/MMLLC/JSC may be dissolved upon occurrence of the following events:[193] • expiration of operational term specified in its constitutional documents (if any) without extension; • upon decision of the owner (for SMLLC) / members' council (for MMLLC) or GSM (for JSC); • not ensuring the required minimum number of members (for MMLLC) or shareholders (for JSC) for 6 consecutive months without applying for conversion of enterprise form; • being ordered to cease operation by the court; or • revocation of the enterprise registration certificate. An SMLLC/MMLLC/JSC may also be declared bankrupt if it becomes insolvent.[194]		

193 2020 Enterprise Law, Article 207.

194 Bankruptcy Law No. 51/2014/QH13, Article 4.2.

NO.	BASIS	SMLLC	MMLLC	JSC
	Governance requirements			
7	ORGANI-SATIONAL STRUCTURE	A SMLLC is managed by:[195] • the president or members' council; and • the (general) director. If the owner is an institution, it may appoint one person to hold the position of president or appoint between 3 and 7 persons to form a members' council to exercise the rights and perform the obligations of the owner. The chairman of the members' council is appointed by the owner or elected by the members' council.[196] The (general) director is appointed by the president or the members' council (as applicable) to manage the day-to-day operations of the SMLLC.[197] The SMLLC must have at least one legal representative holding the position of either president or the chairman of members' council (as applicable) or (general) director.[198] There is no residency requirement for any of these management positions, except where such person concurrently holds the title of legal representative (as the legal representative must reside in Vietnam).	A MMLLC is managed by:[199] • the members' council; • the chairman of the members' council; and • the (general) director. The members' council comprises all members of the MMLLC. A member that is an institution may appoint its authorised representative to exercise its rights and perform its obligations in the company. The members' council elects the chairman.[200] The (general) director is appointed by the members' council to manage the day-to-day operations of the MMLLC.[201] The MMLLC must have at least one legal representative holding the position of either chairman of the members' council or (general) director.[202] There is no residency requirement for any of these management positions, except where such person concurrently holds the title of legal representative (as the legal representative must reside in Vietnam).	A JSC may have either of the following structure:[203] a. GSM, BOD, IC and (general) director. For a JSC where there are fewer than 11 shareholders and the institutional shareholders hold less than 50% of the shares, an IC is not required; b. GSM, BOD and (general) director. For this structure, at least 20% of the BOD must be independent directors and there must be an Audit Committee under the BOD. The GSM comprises all shareholders of the JSC and is the highest decision-making authority of the JSC. The GSM elects the members of the BOD and IC (if required).[204] The BOD/IC elects their chairman.[205] The (general) director is appointed by the BOD to manage the day-to-day operations of the JSC.[206] The JSC must have at least one legal representative holding the position of either chairman of the BOD or (general) director.[207] There is no residency requirement for any of these management positions, except where such person concurrently holds the title of legal representative (as the legal representative must reside in Vietnam).

195 2020 Enterprise Law, Article 79.
196 2020 Enterprise Law, Articles 80-81.
197 2020 Enterprise Law, Article 63.
198 2020 Enterprise Law, Article 79.
199 2020 Enterprise Law, Article 82.
200 2020 Enterprise Law, Article 55.
201 2020 Enterprise Law, Article 63.
202 2020 Enterprise Law, Article 54.
203 2020 Enterprise Law, Article 137.
204 2020 Enterprise Law, Article 138.2(c).
205 2020 Enterprise Law, Articles 156, 168.
206 2020 Enterprise Law, Article 162.
207 2020 Enterprise Law, Article 137.

NO.	BASIS	SMLLC	MMLLC	JSC
8	STATUTORY MEETING REQUIREMENTS	There is no minimum meeting requirement. A meeting of the members' council may be conducted if attended by at least two-thirds of the total number of members.[208]	The members' council must meet at least once a year.[209] A meeting of the members' council may be conducted if attended by members representing at least 65% of the charter capital for the first attempt and at least 50% for the second attempt. No quorum for the third attempt.[210]	The GSM must meet at least annually within 4 months of the end of each financial year. The annual meeting can be delayed by the BOD but no later than 6 months from end of financial year.[211] The GSM may be conducted if attended by shareholders representing at least 50% of the voting shares for the first attempt and at least 33% for the second attempt. No quorum for the third attempt. The BOD must meet at least quarterly. A meeting of the BOD shall be conducted where at least ¾ of the total number of members attend.[212]
	Rights of members/shareholders			
9	INFORMATION RIGHTS	The owner has the right to obtain all information related to the SMLLC.	A member (or a group of members) holding 10% of more of the charter capital of the MMLLC (or a lower threshold provided under the charter) may inspect and request copies of the member register, minutes and resolutions of the members' council and other documents of the company, as well as documents related to transactions, accounting records, and financial statements of the company.[213]	Generally, ordinary shareholders of JSC have the following information rights:[214] • a shareholder has the right to inspect and request copies of certain corporate information of the company, e.g., charter, minutes, and resolutions of the GSM; and • a shareholder (or a group of shareholders) holding 5% or more of voting shares of the JSC (or a lower threshold provided under the charter) may inspect and request copies of minutes and resolutions of the BOD, annual and semi-annual financial statements, reports of the IC, contracts and agreements approved by the BOD and other documents of the company, except for those related to business secrets.

NO.	BASIS	SMLLC	MMLLC	JSC
10	RIGHT TO RECEIVE PROFITS	The owner has sole authority to determine the use of profits after fulfilment of all due tax and financial obligations of the SMLLC.[215]	Any profits (after fulfilment of all tax and financial obligations) of the MMLLC belong to the members in proportion to the capital contribution of each member.[216]	A shareholder has the right to receive dividends in proportion to its shareholding in the JSC and pursuant to a resolution of the GSM, unless otherwise specified in the charter and the share certificate in relation to preference shares.[217]
11	VOTING RIGHT	Each member of the members' council of a SMLLC (if applicable) has one vote, but each such vote represents the percentage of contribution as authorised by the owner. A resolution of the members' council can be passed upon having agreed votes from at least 50% of the attendants or from attendants representing at least 50% of the contributions (or at least 75% for certain special matters), as specified under the charter.[218]	Each member of a MMLLC has the number of votes in proportion to its capital contribution. Unless otherwise provided under the charter, a resolution of the members' council can be passed upon having agreed votes from attendants representing at least 65% of the contributions of all attendants (or 75% for certain special matters).[219]	An ordinary shareholder has one vote for each share.[220] Preference shareholders may have more votes or cannot vote, as specified in the charter and share certificate.[221]

215 2020 Enterprise Law, Article 76.
216 2020 Enterprise Law, Articles 49, 55, 69.
217 2020 Enterprise Law, Articles 115 and 117.
218 2020 Enterprise Law, Article 80.
219 2020 Enterprise Law, Articles 59.3 and 59.5.
220 2020 Enterprise Law, Article 115.1(a).
221 2020 Enterprise Law, Article 116.

NO.	BASIS	SMLLC	MMLLC	JSC
12	PRE-EMPTIVE RIGHT	Not applicable as an SMLLC can only have one member.	When a MMLLC seeks to increase its charter capital, existing members have priority to contribute additional capital. A member is entitled to transfer its rights to make capital contribution of such portion to another entity provided that such portion of capital contribution has been first offered to all other existing members proportionately on the same offering terms and conditions and has not been fully acquired by the existing members within 30 days. Transfer of all or part capital contribution by a member of a MMLLC is also subject to the same right of first refusal.[222]	Where a JSC seeks to issue new shares by way of private placement, existing shareholders are given pre-emptive rights over the subscription of such shares, except in a situation of merger or consolidation. If a shareholder does not subscribe for the shares offered to them, the BOD is entitled to offer such shares to a third party on terms that are not more favourable than the terms originally offered to the relevant shareholder. A shareholder may transfer its pre-emptive right to other persons.[223]
13	REVOCATION OF RESOLUTION	No specific provision regarding such right.	Any member of the MMLLC holding 10% or more of the charter capital of the JSC (or a lower threshold provided under the charter) may request the court to cancel a decision pf the members' council within 90 days after the end of the relevant meeting of the members' council if such meeting was convened in breach of, or the contents such decision were not in compliance with, the law and the charter of the MMLLC.[224]	Any shareholder of the JSC may request the court to suspend or cancel (i) a resolution of the GSM if such resolution is passed in breach of the laws or the charter within 90 days from receipt of such resolution,[225] or (ii) decision of the BOD in case such decision is passed in breach of a GSM's resolution or the charter.[226]
14	RESIDUAL PROFITS UPON LIQUIDATION	The owner is entitled to recover all remaining asset value of the SMLLC after all statutory payments have been made upon liquidation.[227]	Each member is entitled to receive distributions from the remaining asset value of the MMLLC in proportion to its contribution after all statutory payments have been made upon liquidation.[228]	Each ordinary shareholder is entitled to receive distributions from the remaining asset value of the JSC in proportion to its contribution after all statutory payments have been made upon liquidation.[229] Payment priority of preference shareholders generally should be specified in the charter and the relevant share certificate.

TYPES OF SOCIAL ENTERPRISES IN VIETNAM

Vietnamese law provides for different types of social enterprises and non-profits, some of which are similar to the B Corp concept. These include, among others: social funds, charitable funds, and social enterprises. The law also recognizes international non-governmental organizations and other types of voluntary social associations or relief establishments.

Social Funds and Charity Funds

» FUNCTIONS AND PERMITTED ACTIVITIES

Social Funds and Charity Funds are both non-governmental, non-profit organizations, but are established with different aims. A Social Fund supports the development of culture, community, education and health, while a Charity Fund assist during natural disasters or aids disadvantaged individuals or communities. Social Funds and Charity Funds are generally governed under the 2015 Civil Code and Decree No. 93/2019/ND-CP on the organisation and operations of social funds and charity funds.

A fund may not pledge or mortgage the fund license, or use funding from the state budget to contribute assets to the fund. Its activities may not contravene social morality or customs.[230]

» LEGAL PERSONALITY AND LIABILITY

In each case, the founding member must be a Vietnamese citizen or Vietnamese organization. If the fund is founded by an organization with foreign invested capital, the representative appointed as the founding member must be a Vietnamese citizen. The founding members must establish a Foundation Board with at least three members.[231] The Foundation Board shall nominate a Fund Management Council and submit the application to establish and license the fund. [232]

» REGISTRATION AND CAPITAL REQUIREMENTS

The founding members are required to contribute assets to establish the fund. The funding requirements range from VND25,000,000 to VND6,500,000,000, depending on whether the fund operates at a national or local level. The requirements are higher if the fund is established with assets contributed by foreign individuals or organizations, up to VND8,700,000,000. However, the value of assets contributed by foreign individuals or organizations may not exceed 50% of the total value of assets contributed to establish the fund.[233]

If the fund is established from donated assets and does not conduct fundraising, the fund must annually set aside at least 5% of its total assets to finance programs or projects relevant to its operations.[234]

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230 Decree No. 93/2019/ND-CP (**Decree 93**), Article 9.
231 Decree 93, Article 11.
232 Decree 93, Article 36.
233 Decree 93, Article 14.
234 Decree 93, Article 8.2(c).

The fund's charter must describe its functions, tasks and objectives, and describe its principles for fundraising and use of donations.[235]

» COMPLIANCE REQUIREMENTS

The fund must publicize an annual report of the contributions it has received, and also submit an annual report on its operations and finances to the People's Committee of the province where the fund is located and to the state agency tasked with oversight of its license.[236]

The Fund Management Council must appoint an internal Fund Control Board, which supervises and inspects the operations of the fund.[237]

» EXAMPLES OF SOCIAL FUNDS, CHARITY FUNDS IN VIETNAM:

The National Fund for Vietnamese Children: a State-owned charity fund under the Ministry of Labour, Invalids and Social Affairs which aims to mobilize domestic and international resources to offer supports to children in Vietnam.

Fund for Disabled Children: a non-profit social-charity fund operating in the field of humanitarian aid and charity to support the improvement of the quality of life of disabled children, and promote the protection, care and education of disabled children.

Golden Heart Charity Social Fund: a social-charity fund that aims to support public servants, officials, employees, people with particularly difficult circumstances, and operates community-based social and charitable activities.

Humanity Charity and Social Foundation: supports charitable social activities such as sponsoring projects, vocational training programs, raising disabled children, orphans, elderly and the poor in Ho Chi Minh City.

Bao An Foundation: a social fund operating for the purpose of supporting and promoting the development of culture, education and science for community-based benefits.

Hope Foundation: a social-charity fund operating humanitarian rescue programs for victims of natural disasters, people with disabilities, disadvantaged people, equip infrastructure for development of disadvantaged areas and promote access to support, promote technology application, start-up, and equip individuals and communities with sustainable development tools, especially knowledge through education.

235 Decree 93, Article 16.
236 Decree 93, Article 8.2(i).
237 Decree 93, Article 30.

Social Enterprises

» FUNCTIONS AND PERMITTED ACTIVITIES

There is no specific law or regulation that exclusively focuses on social enterprises. Social Enterprises are licensed under the normal incorporation provisions of the 2020 Enterprise Law. However, they must (a) operate for the purposes of resolving social and environmental issues, and (b) reinvest at least 51% of their annual profit after taxes to achieve these goals.[238]

» LEGAL PERSONALITY AND LIABILITY

A Social Enterprise is licensed and structured as a standard limited liability company or joint stock company under the Law on Enterprises.

» REGISTRATION AND CAPITAL REQUIREMENTS

A Social Enterprise may receive funding from individuals and organizations in Vietnam, and from offshore. Offshore funding must be approved by the People's Committee in the province where the Social Enterprise is registered. If the funding is not utilized within six months, the approval may be revoked.[239]

Offshore funding must be used for humanitarian or public interest. Domestic funding may be used for administrative and operating expenses.

» COMPLIANCE REQUIREMENTS

In addition to standard corporate reporting (such as on labor compliance), a Social Enterprise must submit an annual report of the contributions it has received, and an annual report on its operations to the People's Committee of the province where the Social Enterprise is located.[240]

» NOTABLE SOCIAL ENTERPRISES IN VIETNAM:

KOTO – Know One, Teach One: a not-for-profit social enterprise operating as a restaurant and training centre with a focus on empowering disadvantaged and underprivileged youth. Through their 2-year vocational training programs, KOTO equips individuals with practical skills and knowledge in hospitality industry.

Reaching Out: a social enterprise providing training and workshops in making high-quality handcrafted products and creating jobs for people with disabilities to help them earn a stable income while operating as a profitable retail business.

238 2020 Enterprise Law, Article 10.
239 Decree No. 47/2021-ND-CP (**Decree 47**), Article 4.
240 2020 Enterprise Law, Article 10 and Decree 47, Article 4.

Tohe: a social enterprise operating an art shop and a creative playground where disadvantaged children can learn and experience art and develop their talent. Part of the product revenue is returned directly to the artists.

KymViet: a social enterprise offering training and workshops for disabled individuals to make handicrafts which help them earn a regular income while operating as a viable business.

Thuong Thuong Handmade: a social enterprise offering vocational training in making high-quality handicrafts and creating jobs for people with disabilities and incurable illness.

Mai Vietnamese Handicrafts: a non-profit social enterprise that provides income generation training and marketing services to Vietnamese artisans by marketing the work of numerous craft producers particularly disadvantaged women from different regions of Vietnam.

Advantages and Disadvantages

For purposes of offshore investment, a Social Enterprise allows investment within the standard corporate structures available to a for-profit investment and will be more familiar to foreign entities. They are also more flexible vehicles, as they are not subject to the stricter requirements on founders and foreign capital applicable to Social Funds and Charity Funds. However, Social Enterprise is not yet a common concept in Vietnam, the licensing process may be slow and require more detailed conversations with the provincial authorities, who may be reluctant to move forward without central guidance.

2. OVERVIEW OF THE LEGISLATIVE FRAMEWORK FOR IMPACT INVESTING

In this section, we set out below the key legislative frameworks which should be considered when undertaking impact investing in Vietnam.

KEY LEGISLATIVE FRAMEWORKS THAT MINORITY INVESTORS SHOULD BE AWARE OF

The provisions regulating the corporate governance of enterprises are primarily set out in the 2020 Enterprise Law and, with respect to public companies (which includes all listed entities on stock exchanges), the 2019 Securities Law. In principle, public companies abide by the 2020 Enterprise Law in the same manner as private companies, except for a few specific matters where the 2019 Securities Law provide for more stringent conditions.[241] Certain specifically regulated sectors (such as banking, consumer finance, insurance) have separate provisions on corporate governance though they generally follow the standards of the 2020 Enterprise Law.

Over recent years, Vietnamese laws have significantly improved with the aim of strengthening the rights of minority shareholders in both private and public companies. Key investor rights include:[242]

241 2019 Securities Law, Chapter III, Section 2.
242 2020 Enterprise Law, Article 115.

- all ordinary shareholders have the right to attend and vote at shareholders' meetings, access to certain corporate information of the company, and key economic rights pro rata to their shareholding (including dividends and upon redemption or liquidation);

- a shareholder (or a group of shareholders) holding 10% or more (or a lower threshold prescribed by the corporate charter) of ordinary shares may nominate a candidate to the board and the inspection committee. The election of members of the board of directors may occur through cumulative voting (where each shareholder may cast all their aggregate votes for all open board seats for a single candidate), which may ensure some minority shareholder representation on the board;

- a shareholder (or a group of shareholders) holding 5% or more (or a lower threshold if prescribed by the charter) of ordinary shares of a company has rights to access and extract internal documents of the company (e.g., management resolutions, financial records), the right to request convening a shareholders' meeting in special cases, the right to request the inspection committee to review the management activities of the company when necessary, and to request the court or arbitrator to rescind a shareholders' resolution if it fails to comply with the laws or the charter;

- a shareholder (or a group of shareholders) holding at least 1% of ordinary shares of the company may file a lawsuit, whether on their own behalf or the company's behalf, against the members of the board or the general director for indemnification to the company if such person violates the laws or the charter, and shall have access and extract necessary information by order of the court or arbitral tribunal before or during the proceedings;[243]

- any shareholder of the company may request the court to suspend or cancel a decision of the board in case such decision is passed in breach of a shareholders' resolution or the charter;[244] and

- any shareholder voting against a shareholder resolution on re-organization of the company or against the rights/obligations of shareholders stipulated in the charter may require the company to redeem its shares (which shall be at the market price based on a professional valuer).[245]

To enhance transparency, companies are also required to disclose information on their related parties and interests, and transactions with these parties, to prevent conflicts of interests.[246] Public companies are held to even more rigorous disclosure standards, as disclosure must be made at regular intervals (such as financial statements, annual reports) or upon the occurrence of exceptional events (upon occurrence of events that could impact stock prices, company's operations, or shareholders). Additionally, there are disclosure mandates pertaining to transactions involving major shareholders, founding shareholders, and insiders.[247]

Access to information is a fundamental shareholder right under Vietnamese laws. Having adequate corporate information is vital for shareholders to make timely investment decisions, and potentially take legal action if necessary.

243 2020 Enterprise Law, Article 166.
244 2020 Enterprise Law, Article 151.
245 2020 Enterprise Law, Article 132.
246 2020 Enterprise Law, Articles 164 and 176; Decree 155, Chapter VIII, Section 6.
247 Circular No. 96/2020/TT-BTC on public disclosure on securities market.

KEY LEGISLATIVE FRAMEWORKS ADDRESSING FOREIGN DIRECT INVESTMENTS

Foreign investment in Vietnam is primarily governed by the 2020 Investment Law, the 2020 Enterprise Law, international and bilateral treaties to which Vietnam is a party, including, most notably, Vietnam's commitments for accession to the WTO in 2007 (**WTO Commitments**) and the ASEAN Framework Agreement on Services (AFAS) and regulations applicable to foreign investment in certain regulated sectors (such as banking, logistics, aviation).

Generally, except for a limited number of service sectors (such as banking, aviation) in which foreign ownership is restricted or conditional, most service sectors are currently open to 100% foreign investment without conditions.

Foreign investors may choose to acquire equity and become shareholders of an existing local entity or incorporate either a new joint venture with Vietnamese partners or a wholly foreign-owned entity. Unless investing in sectors that restrict or impose conditions on foreign ownership and require participation of a local partner (such as advertising, logistics, and tourism), or in the case where a Vietnamese partner has a particular piece of land that is ideally suited for development of a project, most foreign investors often prefer the operational flexibility of establishing their own entity.

Generally, to establish a new entity, the investor must first apply for an investment registration certificate with the local investment authority for its investment project and subsequently an enterprise registration certificate to establish the new entity. Each step requires preparation and submission of an application dossier providing details about the parent company and the proposed scope of operations of such entity. In practice, it may take up to 3 months to complete the incorporation. In addition, certain business sectors are "conditional" (such as distribution, education, insurance). In these sectors, the entity must satisfy certain qualifications before beginning operations. These qualifications depend on the specific sector and may cover, for example, charter capital, personnel, facilities, and sub-licenses.

In practice, local government officials in different provinces may have different views and approaches in terms of interpretation of the law, and thus may have different requirements when assessing investment proposals. Generally, investment licensing procedures are straightforward for sectors in which foreign investment is specifically permitted under the WTO Commitments or AFAS, especially if supported by comprehensive local regulations.

KEY LEGISLATIVE FRAMEWORKS ADDRESSING ALTERNATIVE INVESTMENT FUNDS

The responses to Section 3 below explain that foreign investors would not invest in onshore funds governed by Vietnamese laws.

OTHER KEY LEGISLATIVE FRAMEWORKS RELATING TO IMPACT INVESTING OR CORPORATE SOCIAL RESPONSIBILITY

In Vietnam, there is no law or regulation that specifically provides for, or exclusively focuses on, impact investing or corporate social responsibility (CSR). There are regulatory frameworks that support socially responsible investment activities. On the other hand, CSR principles are set out in different pieces of legislations that govern the operations of a business.

- The 2020 Enterprise Law governs the establishment and operations of enterprises in Vietnam, including the "social enterprise" - a business model that prioritizes social and environmental objectives and is encouraged by the government. The 2020 Investment Law offers incentives for investments that yield social or environmental benefits and disallows extension of projects that utilise outdated technologies that may harm the environment.

- The 2019 Securities Law focuses on transparency and protection of investors and shareholders by imposing several disclosure and corporate governance requirements on public companies. Furthermore, public companies are required to disclose in their annual report data related to the impact of their businesses on the environment and society (including compliance with environment regulations, employee welfare, responsibility towards the community) and assessment from the board, and their corporate objectives with regard to corporate, environment, society and community sustainability.

- The 2020 Environmental Protection Law imposes obligations on businesses to consider the environmental impact during business operations and implement measures to minimize these impacts. The law encourages companies to invest in eco-friendly products, services, technologies and promote environmental education. This law also provides the legal framework for green bonds and loans. The obligations with respect to the protection and preservation of the environment and natural resources are also prescribed in different other sector-specific regulations (such as water resources, sea and islands, oil and gas, minerals) and imposed on concerned businesses.

- Vietnam's 2019 Labour Code outlines various rights and protections for employees, including provisions related to working hours, wages, occupational health and safety, and other labor-related matters. Additionally, the 2015 Law on Occupational Health and Safety imposes requirements on employers to ensure occupational health and safety for employees at workplace. Enterprises are also obliged under the 2020 Enterprise Law to ensure the lawful rights and interests of employees, ensure workplace safety, and promote fair labour practices. These are important aspects of CSR.

The Vietnamese government encourages enterprises to voluntarily incorporate CSR into their policies and has taken significant steps to improve the legal framework for CSR and increase the obligations of the State and businesses with respect to adoption and implementation of CSR practices.

Notably, the Government recently issued several regulations on private offering of corporate bonds,[248] which aims to enhance transparency in the corporate bond market and appears designed to protect investors in several key areas, such as requiring greater specificity in offering documents, setting a floor with respect to bondholder thresholds to approve changes to the terms and conditions of the bonds, and mandating additional information disclosure obligations by issuers.

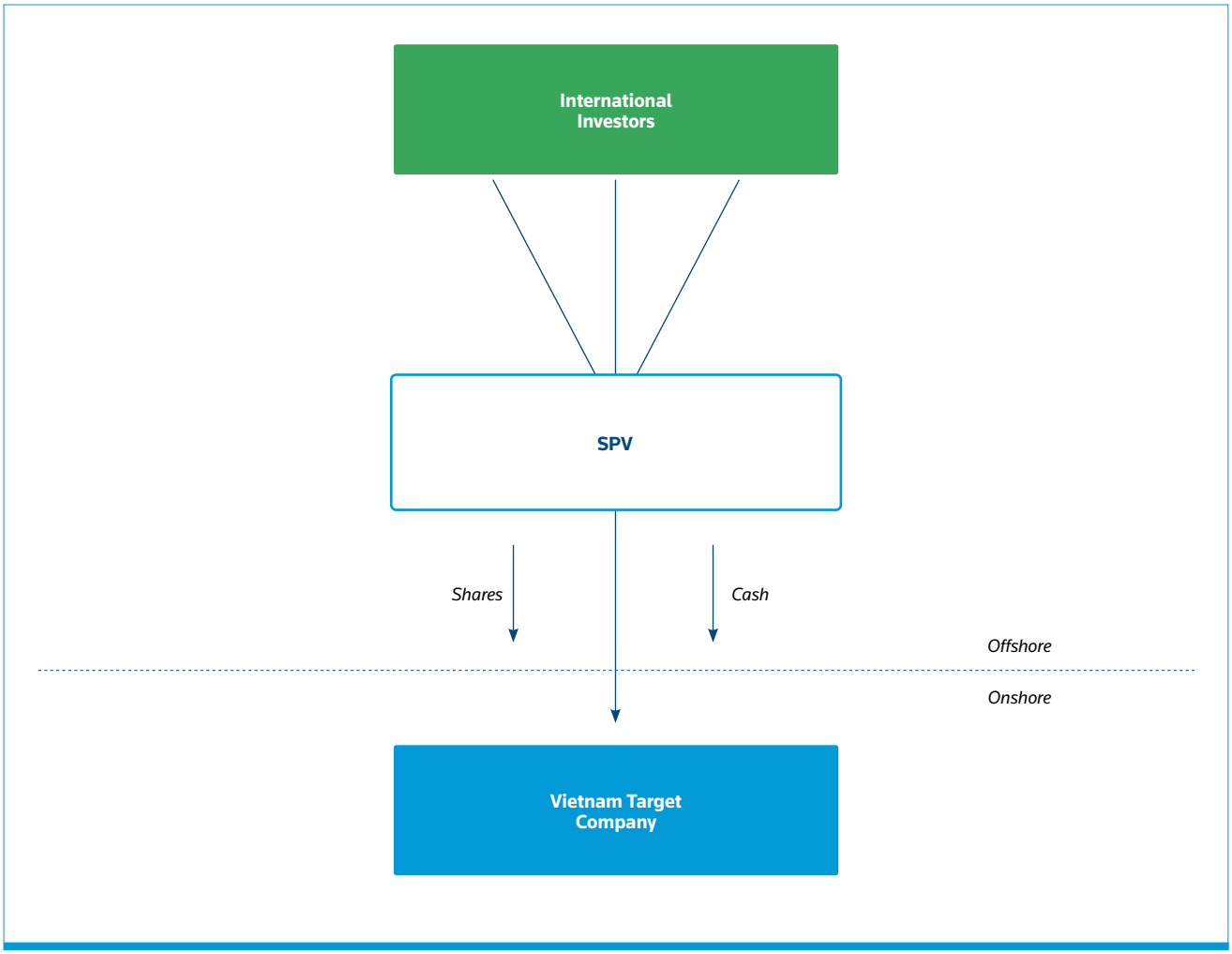
The Government has also embarked on an anti-corruption campaign since 2022 which has-in part-focused on private sector leaders who have allegedly committed fraud and deceived the public.

248 Decree 153.

3.ILLUSTRATION – AN IMPACT FUND

ILLUSTRATION OF AN IMPACT INVESTMENT FUND AND ITS TYPICAL STRUCTURE

The customary investment structure for impact investors in Vietnam is to make an investment into the Vietnamese target in many cases through a special purpose vehicle domiciled in Singapore or another jurisdiction that has favourable tax and corporation protections (see below).[249]



In some cases, depending on the structure of the target, investors will invest into a holding company in a jurisdiction such as Singapore which holds 100% of the operating asset (see below). This structure is often used where the target has operating businesses in multiple jurisdictions with ownership consolidated at a holding company level. Since Singapore is a developed common law jurisdiction, this structure also presents

249 As Singapore is a member of the Association of Southeast Asian Nations (ASEAN), Singaporean investors may benefit from special investment incentives in certain sectors.

the advantage of the target group having a more sophisticated corporate structure. For example, Vietnamese law has limited provisions governing preference shares and it is unusual for a Vietnamese target to have multiple layers of preference shares with rights corresponding to each designated investment round. It would be more efficient to structure a transaction of this nature in Singapore or another offshore jurisdiction.

In the experience of the authors, we do not see impact investors making investments through onshore investment funds. By onshore funds, we are referring to funds formed under, and regulated by, Vietnamese law.

The primary reason is that the onshore fund regulations are designed to attract and deploy funds from local Vietnamese investors (not foreign investors). Therefore, in addition to burdensome regulatory licensing procedures to navigate, the key challenges would be to legally manage the cashflows in offshore currency. As the export of local currency - Vietnam Dong (VND) - is strictly regulated, an onshore fund that holds and manages investments for offshore investors may have difficulties remitting dividends and capital proceeds offshore.

4.OPPORTUNITIES AND CHALLENGES

KEY OPPORTUNITIES WHICH CURRENTLY EXIST FOR IMPACT INVESTING IN VIETNAM

The Vietnamese economy is one of the fastest growing in the Asia-Pacific region, averaging close to 7% growth over the past decade according to The World Bank Group. Vietnam was one of the very few countries globally to achieve economic growth in COVID-disrupted 2020, recording an increase in GDP of 2.9%. With a population of 100 million, Vietnam has also taken advantage of its strategic geographic position to rival China as a key player in the global supply chain.

Vietnam's growth offers investment opportunities in key macroeconomic sectors such as power and banking. For Vietnam to continue to meet (and potentially surpass) growth targets, Vietnam will require critical capital injections into the power sector and the banking ecosystem. Moreover, Vietnam's growth has contributed to the growth of rising income consumer driven sectors such as healthcare are education. These are sectors in which we have seen strong growth in recent years as further discussed below:

Power: The power sector is of particular interest to impact investors given Vietnam's strong commitment to renewable energy, as outlined in the recently issued-and long awaited- Power Development Plan VIII. Vietnam has previously set objectives in Politburo decisions to achieve 25% to 30% renewable energy generating output by 2045. In addition to onshore wind projects and ground-mounted solar and rooftop projects that are currently deployed, Vietnam is looking to offshore wind as a critical power source given the potential large scale for these projects as well as biomass and LNG-to-power. Ancillary services such as battery storage capabilities for renewable energy projects are also attracting investor attention.

Banking: Banking is another macro sector that has attracted strong client interest. The State Bank of Vietnam (SBV) has now fully adopted Basel II in its prudential ratio requirements and a number of banks are moving towards Basel III compliance. The result therefore is that Vietnamese banks have an insatiable demand for capital as they strive to meet double digit credit growth targets, which we have seen funded by foreign investors through equity as well as on-lending structures and convertible Tier 2 Capital instruments. Impact investors have often tailored their investments in banks specifically to fulfil their investment goals and to maximize the value of the investment. For example, impact funds have made on-loans to Vietnamese banks for the purpose of on-lending to green power projects or SMEs that are led by women entrepreneurs.

Healthcare: As Vietnamese grow wealthier and a strong middle class takes shape, the demand for international standard medical services (whether through hospitals or clinics) will continue to grow. We have seen significant investor interest in the pharmaceutical sector, as well as in hospitals and clinics. One strong impact investor goal is the further growth and development of rural access to healthcare as these communities have been historically underserved.

Education: The evolution of private education in Vietnam is stunning and, in the same vein as healthcare, consistent with the success story of an emerging middle class. We have worked with foreign investors (a number of whom focus on impact investing) on transactions in the K-12 range as well as vocational programs. Vietnam has gradually reduced hurdles for foreign investment in the educational sector though hurdles remain.

KEY CHALLENGES WHICH CURRENTLY EXIST FOR IMPACT INVESTING IN VIETNAM

It is a well established maxim that along with opportunities comes challenges-a number of the sectors described above in which there are key opportunities face similar challenges related to the Vietnam investment and legal climate. There are also sector-specific challenges, which are also examined below.

Currency remittance: VND is strictly controlled from an export perspective and foreign investors needs to take this into account for each transaction to ensure that capital proceeds and dividends can be promptly remitted. Generally the outbound export of capital must track the specific inbound process.

There are a number of regulated specific bank accounts that should be used for equity investments by offshore parties which may depend on whether the transaction is considered a direct or indirect investments. Offshore loans are funded directly in foreign currency (generally USD or EUR) and loan principal and interest may be remitted in foreign currency, subject to registration requirements for loans with a tenor greater than 12 months with the SBV.[250]

For indirect equity investments (such as acquiring non-controlling stakes in Vietnamese businesses), the investor must open a specialised indirect investment account to fund the transaction and the currency denomination of the investment instrument must be in VND.[251] Some transactions (convertible notes) will require particular scrutiny to ensure that the appropriate regulators are involved in the process.

Uncertain and Evolving legal provisions: Investors in Vietnam must be in tune to a rapidly evolving and changing legal regime. A number of sectors in which impact investors are particularly active are undergoing significant legal transitions.

One such sector is renewable energy. A number of ground-mounted solar and wind projects are so-called "transitional projects" that, for a variety of reasons, were delayed to a point where they were unable to capture the feed-in-tariffs (FiT) before the expiry of their deadline. This has resulted in uncertainty as to what tariff would apply to these projects given the absence of a replacement FiT and evolving draft regulations on a bidding mechanism. Other challenges exist for solar projects, in particular curtailment as the standard issue power purchase agreement does not have a clear take or pay structure and compensation upon termination is limited.

The education sector is also a challenging one for foreign investment. Foreign companies may invest up to 100% of the capital in an educational business, and may either incorporate a foreign-owned education institution or a foreign-owned company to set up and operate the education institution. However, foreign-owned schools are subject to a number of regulatory requirements which are difficult to meet and not always clearly defined or interpreted. The Ministry of Planning and Investment (MPI) and Ministry of Education and Training (MOET) report that, while foreign investment in the education sector has increased in recent years, foreign investment in this sector remains comparatively low due to the strict regulatory requirements regarding capital, personnel, facilities and complicated licensing procedures. Although several legal requirements and restrictions applicable to foreign-owned education institutions under prior legislation have been significantly relaxed or removed, and the regulatory procedures for approving the investment have also been clarified and simplified, these remain challenging for foreign businesses when considering investment in this sector. In particular, foreign invested educational institutions (K-12) must fulfil teacher-student ratios, minimum investment requirements, and ground floor area/student ratio.[252]

250 Circular 08 and Circular 12.

251 Circular 05.

252 Decree No. 86/2018/NC-CP on cooperation and investment by foreign investors in educational sector.

The regulations impacting offshore loan and bond issuance have also recently been overhauled. In particular, the use of proceeds of offshore loans and international bonds is now stricter in certain ways under recent regulations that have become effective in the past year.[253] In particular, this has affected refinancing local VND debt with offshore loans and has potentially limited the use of holdco financings, in which proceeds are pushed down from a holding company borrower to the operating company level. Consequently, offshore lending structures may need to be more creative and innovative.

Foreign Ownership Limits (FOL): Whilst Vietnam's WTO commitment schedule as phased out most foreign ownership limits, a number of restrictions still remain in critical sectors that have attracted foreign investment. One example is banking, where foreign ownership is capped at 30% in aggregate with no single foreign investor and its related parties able to own more than 20% in aggregate of the bank's shares.[254] These restrictions have a significant impact on foreign investors' willingness to invest in the banking sector. Moreover, convertible instruments (such as Tier 2 Capital Bonds) will require additional structural protections, such as reserving foreign room with the State Securities Commission, to ensure that the transaction can be properly executed. Given the critical role of foreign investment to develop Vietnam's banking sector and banks' insatiable need for capital, the FOL has been an impediment.

Execution Timelines: Investors in the Vietnam market must often be patient as complex deals often take months to complete-this is in part driven by regulatory requirements (such as SBV approvals for lending and investment in the banking sector) but are also driven in many cases by inexperienced counterparties who may be receiving foreign capital for the first time. We suggest to our clients being foreign investors that they should push their investee companies to engage suitable counsel for their projects.

Corruption: As is the case with other emerging markets, investors should perform integrity checks on their business partners and key individuals in investee companies and to vet compliance with anti-corruption laws, as well as sanctions and anti-money laundering compliance.

253 Decree 153.

254 Decree No. 01/2014/ND-CP on acquisition of shares in Vietnamese credit institutions by foreign investors.

REUTERS/ Lim Huey Teng

SECTION 3 » MALAYSIA

1.IMPACT INVESTMENT STRUCTURES

Impact investing, increasingly popular in the West, is gaining traction in Southeast Asia, with Malaysia joining other regional countries in recognizing its significance. Despite being nascent in Malaysia, with no dedicated investment instruments or entities, the country's diverse cultural and financial landscape, strategic location, and sustainability initiatives make it appealing for impact investments. Malaysia's regulatory framework supports both conventional and Islamic financial instruments. While lacking specific impact investment funds, Malaysia offers opportunities within existing systems, hinting at potential reforms to enhance its impact investment landscape. Though Malaysia's regulatory framework for impact investing is still developing, it exhibits promise through principles such as those governing foreign direct investment. Instruments like private equity and venture capital, used for foreign investment, signify openness to innovative financial mechanisms. While challenges persist, Malaysia is poised to establish itself as an attractive destination for sustainable and socially responsible investments, bolstered by ESG principles and guidelines issued by regulatory bodies like Bursa Malaysia and the Securities Commission. Ensuring enforceability of these principles within the private sector is the next crucial step. This chapter aims to demonstrate to various stakeholders, including social enterprises and investors, why Malaysia remains an appealing destination for foreign investment.

KEY INVESTMENT INSTRUMENTS IN MALAYSIA

In general, Malaysia, like most countries, has a wide range of instruments used for funding, such as loans, debt instruments (including bonds and grants) and equity instruments. What sets Malaysia apart however, is that both conventional and Islamic financial instruments coexist, offering investors options based on their preferences and principles. Malaysia's regulatory framework ensures that both conventional and Islamic financial instruments are well-regulated and supervised, providing investors with confidence in the marketplace.

Conventional Investment Instruments

Conventional investment instruments in Malaysia are based on traditional investment practices. They are based on interest-bearing transactions and are widely used by both local and foreign investors.

Islamic Investment Instruments

In line with Malaysia's position as a leading hub for Islamic finance, various investment instruments are available that comply with Islamic (***shariah***) principles, which prohibit the charging or earning of interest (***riba***). These Islamic investment instruments are designed to offer investors ethical and socially responsible investment opportunities.

Key differences between conventional and Islamic investment structures in Malaysian banking that foreign impact investors may want to be aware of are summarized below:

ASPECT	CONVENTIONAL	ISLAMIC
BASIS OF INVESTMENT	• Interest-based. • Earning interest on loans and deposits is a common practice • Returns on investments are typically generated through interest, dividends, and capital gains.	• Based on *shariah* principles. • Prohibits the payment or receipt of interest (*riba*) • Profit is generated through profit-and-loss sharing, trade, and asset-backed financing.
CONTRACTUAL STRUCTURES	Common investment instruments include bonds, stocks, and traditional loans.	• Uses contracts like *mudarabah* (profit-sharing), *musharakah* (joint venture), and *sukuk* (Islamic bonds), which are structured to ensure compliance with Sharia principles.
PROHIBITED ACTIVITIES	May involve investments in activities or sectors which are considered *haram* (forbidden) and non-compliant with *shariah* principles and conventional financial services involving interest.	Strictly avoids investing in sectors considered non-compliant with *shariah* principles, such as gambling, alcohol, tobacco, and conventional financial services involving interest.
PROFIT AND LOSS	Typically fixed interest rates. Risks and rewards are not necessarily linked, and investors expect a fixed return on their investments, regardless of the performance of the underlying assets.	Emphasises profit and loss sharing. Profits and losses are distributed based on the agreement made in the investment contract.
IMPACT CRITERIA	While conventional investors may consider environmental and social factors, their primary focus is often on financial returns.	Islamic finance inherently encourages ethical and social considerations, which align with impact investing goals. Investments must adhere to Sharia principles, which often emphasise ethical and responsible practices.

Investment Instruments (FDI principles)

Notably, in the context of impact investing, there are no specific instruments directly associated with impact investing in Malaysia. Notwithstanding, the principles governing foreign direct investment (FDI) would provide the most immediate guide. The primary instrument for foreign investment in Malaysia is private equity. Other instruments used include venture capital and social impact bonds.

» PRIVATE EQUITY

Private equity plays a significant role in the Malaysian investment market, offering opportunities for investors to support businesses that align with their social and environmental goals. Private equity investments involve acquiring ownership stakes in private companies, which can provide capital for expansion, innovation, and impact-driven initiatives. These investments allow investors to actively engage with portfolio companies and influence their social and environmental practices.

The types of shares that can be issued by Malaysian companies are governed under Section 69 of the Companies Act 2016:

> "69. Types of shares
>
> Subject to the constitution of the company, shares in a company may-
>
> - be issued in different classes;
> - be redeemable in accordance with section 72;
> - confer preferential rights to distributions of capital or income;
> - confer special, limited or conditional voting rights; or
> - not confer voting rights."

In Malaysia, the types of shares in a company generally issued to shareholders are ordinary shares and preference shares.

» VENTURE CAPITAL

Venture capital firms or investors provide funding to early-stage or high-growth startups with high potential for success. In the context of impact investing, venture capital firms in Malaysia actively seek out companies that generate positive impacts alongside financial returns. These investments support innovative businesses working towards sustainable solutions in sectors such as renewable energy, healthcare, education, and technology. Below are some examples of corporate venture capital:

Petronas Ventures was set up in 2019 as the corporate venture capital arm of Berhad. It's programme, FutureTech, has continued to promote industry best practices while offering greater market access to start-ups, emphasising regional growth and scalability;

In 2018, Sunway Berhad established its venture capital fund, Sun SEA Capital LP.[255] It has partnered with several other venture capital firms in other Southeast Asian countries and invests in working on fintech, agritech, ecommerce, edtech and healthtech;

Frontier Digital Ventures invests in startups with a focus on digital technology.

» DEBT INSTRUMENTS

Bonds and convertible debt instruments are frequently utilised.

Bonds refer to fixed-income securities where investors lend money to the issuer (company, government, or organization) for a specified period at a predetermined interest rate. The issuer promises to repay the borrowed amount (principal) at maturity. Bonds are commonly used for raising capital, financing projects, or meeting long-term funding requirements. Under Islamic financing, bonds are known as sukuk.

Convertible debt instruments, on the other hand, are debt securities that can be converted into equity (shares) of the issuer under specified conditions. These instruments offer investors the potential to participate in the company's growth by converting their debt holdings into ownership stakes if certain conversion criteria are met. Convertible debt instruments provide flexibility for both the typically more prevalent in the context of public listed companies. Public listed companies are entities whose shares are traded on a stock exchange, offering them broader access to capital markets and a larger pool of potential investors. These companies often have greater resources and public visibility, making them more suitable for issuing bonds or convertible debt securities.

While bonds and convertible debt instruments are frequently utilised, these instruments are typically restricted to public listed companies only. Therefore investors will need to comply with the guidelines under the listing requirements and the Companies act 2016 applicable to public listed companies. Please visit https://www.bursamalaysia.com/ for information related to listing requirements.

Private companies, such as limited liability partnerships and private limited companies, might have limitations in utilising bonds or convertible debt instruments due to regulatory requirements or limited access to public markets hence they rely on alternative funding sources, like bank loans, private equity investments or internal funds, to meet their financing needs.

For the public listed companies that can utilise debt instruments, an example in the Malaysia context is social impact bonds. Social impact bonds, or funds, are investment vehicles specifically designed for impact investing, aiming to generate measurable social and environmental outcomes while delivering financial returns.[256] Though in the current landscape, the bonds or funds are more focused at channelling capital into projects or organisations focused on addressing societal issues (such as poverty alleviation, sustainable agriculture, affordable housing, or climate change mitigation) rather than emphasising the financial returns.

255 Capital Markets Malaysia. 2023. Malaysian CVC Success Stories.

256 Generally there are no legal or regulatory restrictions on which asset classes these funds invest in, unless an investor specifically wants to be an investor of a shariah compliant public listed company, then those shariah compliant public listed companies are mindful of the asset classes that their funds are invested into and likely rely on the list of shariah compliant listed public companies and list of shariah compliant securities that are issued by the Securities Commission of Malaysia from time to time.

Social impact bonds first emerged in Malaysia following the introduction of the Sustainable and Responsible Investment (**SRI**) Sukuk Framework by the Securities Commission Malaysia (**SC**) in 2014.[257] This framework was the result of SC Malaysia's Capital Market Masterplan 2, which aims to promote socially responsible financing and investment. The masterplan sets the Sustainable and responsible investment agenda to develop a conducive environment for investors and issuers who are interested in SRI and to facilitate the growing trend of new innovative financial tools, such as green bonds and social impact bonds.[258]

Khazanah Nasional Berhad (**Khazanah**) is known to have launched Malaysia's first social impact bond[259] in 2015. Below is some further information about Khazanah and this launch:

Khazanah is Malaysia's sovereign wealth fund, with investments across all levels of the Malaysian economy. Its principal aim is to deliver strong long-term risk-adjusted returns across its portfolios for the development of Malaysia.[260]

Malaysia's first social impact bond was executed through a sustainable and responsible investment known as Ihsan SRI Sukuk (sometimes referred to as social impact *sukuk*).

The *sukuk* was issued through a Malaysian-incorporated independent special purpose vehicle (**SPV**) called Ihsan Sukuk Berhad (**Ihsan**).

The funds raised were utilised for Khazanah's Trust School Programme, which focuses on improving the accessibility of quality education in selected Malaysian public schools. The programme focuses on transforming schools from various aspects through its stakeholders including school leaders, teachers, students, parents and the community, which are translated into measurable key performance indicators (**KPIs**).

The Ihsan SRI Sukuk followed a "pay for success" structure which measures the social impact of the programme through the KPIs to determine the rate of returns to investors. The *sukuk* was structured according to the Islamic principle of *wakalah bi al-istithmar* (agency with the purpose of investment). The structure allowed the issuer to utilise a combination of commodities and tangible assets, making it asset efficient and suitable for the use of the issuer, SPV and obligor.[261] The structure of the transaction is illustrated in paragraph 3.1 below.

Khazanah continues with its goals to create long lasting impacting and has launched the second tranche of the sukuk in 2017,[262] along with other initiatives such as Dana Impak.[263]

It is important to note that while the above instruments provide avenues for impact investment in Malaysia, they are not exclusively limited to impact investing.

257 Capital Markets Malaysia. 2023. SRI Sukuk

258 S.Azman, I. Haneef, & E. Ali. 2022. An empirical comparison of sustainable and responsible investment Ṣukūk, social impact bonds and conventional bonds. ISRA International Journal of Islamic Finance.

259 Boey, K. Y. 2015. Khazanah to launch Malaysia's first social impact bond. Reuters

260 Khazanah Nasional Berhad. N/A. About US.

261 S.Azman, I. Haneef, & E. Ali. 2022. An empirical comparison of sustainable and responsible investment Ṣukūk, social impact bonds and conventional bonds. *ISRA International Journal of Islamic Finance.*

262 Khazanah Nasional Berhad. N/A. Khazanah raises RM100 million from second tranche of Sustainable and Responsible Investment (SRI) Sukuk | Khazanah Nasional Berhad

263 Khazanah Nasional Berhad.N/A. Investment Approach

Furthermore, exploring opportunities to collaborate with social enterprises and mission-aligned organisations can also be part of the impact investing strategy. These partnerships can provide avenues for co-investments or direct investments in enterprises that are explicitly focused on addressing social and environmental challenges.

As impact investing gains traction in Malaysia, it is expected that the ecosystem will continue to evolve, potentially leading to the development of more specialised vehicles and platforms dedicated to impact investing.

RESTRICTIONS OR LEGAL PROHIBITIONS ON INVESTMENT STRUCTURES

Generally, there are minimal restrictions imposed on foreign investments and foreign investment structures in Malaysia. Some restrictions imposed on certain industry sectors include the requirement of minimum Bumiputera ownership or equity in companies involved in those certain industry sectors. However, investors should note that there are certain restrictions imposed by the relevant authorities in certain industry sectors.

KEY BUSINESS ENTERPRISES IN MALAYSIA

Foreign investors wishing to set up businesses in Malaysia can choose from the business structures more particularly set out below. Private limited companies are the most common and popular structure for doing business in Malaysia. Foreigners are restricted from setting up sole proprietorships and partnerships as these structures are only open to Malaysian citizens and permanent residents.

All companies, partnerships and sole proprietors intending to do business in Malaysia are required to register with the Companies Commission of Malaysia which is responsible for the administration of the Registration of Businesses Act 1956 and the Companies Act 2016.

Limited Liability Partnerships

Commonly known as LLP's, offers a combined business structure between a partnership and limited liability features of a company. It is a corporate body that is a separate legal entity from its partners, can hold property and is capable of suing and being sued as an entity. There must be a minimum of two partners who may be individuals or a corporate body. However, to set up an LLP, at least one compliance officer must be appointed who must be a Malaysian citizen or permanent resident.

A significant distinction of an LLP, from other types of entities, is that it does not issue shares. Unlike a company, where ownership is typically determined by the number of shares held, an LLP is formed through a partnership agreement between two or more partners, which outlines issues such as profit sharing, decision-making authority, contributions, and liabilities. In Malaysia, an LLP is governed by the Limited Liability Partnerships Act 2012.

In the context of impact investing, an LLP can be a suitable entity for investors seeking to combine financial returns with social and environmental impact. By operating as an LLP, investors can pool their resources and expertise to achieve sustainable objectives while enjoying the benefits of limited liability. Through an LLP in Malaysia, investors can focus on making investments that align with their social and environmental goals while adhering to the legal requirements and regulations set forth by the Limited Liability Partnerships Act 2012.

Private Limited Companies

Commonly known in Malaysia as a sendirian berhad company (**Sdn Bhd**). A private limited company is a corporate legal entity separate and distinct from its members. The company is capable of suing and being sued as an entity and can own property in its own name. Members of the company (shareholders) have limited liability and are not personally liable for debts and losses of the company. Private limited companies can be incorporated with one director and one shareholder under the Companies Act 2016 however it is a requirement for at least one director to ordinarily reside in Malaysia with a principal place of residence in Malaysia.

Public Limited Companies

Commonly known in Malaysia as a berhad company (**Bhd**) which is defined as a company other than a private company. A public company is incorporated whenever it is intended to invite the public to subscribe for shares or debentures in the company or to deposit money with the company as compared to private limited companies which cannot invite the public to subscribe for shares. Public companies must have at least two directors that maintain their principal place of residence in Malaysia.

Branch office

A foreign company wishing to establish a place of business or carry on business in Malaysia may set up a branch office. Such an office is classed as an extension of the foreign company and not a separate legal entity. Therefore, the parent company of a branch office is liable for all the debts and liabilities of the branch office. A branch office is considered a non-resident entity given that the control and management of a branch office is vested with the parent foreign company and as such, will not be regarded as resident in Malaysia for tax purposes nor will be eligible for any tax exemptions. The branch must be registered with the Companies Commission of Malaysia and must appoint at least one agent who is ordinarily resident in Malaysia.

Regional office

A foreign company wishing to set up a regional office in Malaysia may set up a regional office or representative office. Such offices cannot not undertake any commercial activities, and only represents its head office / principal upon undertaking designated functions where its operations must be funded completely through sources outside of Malaysia (examples of Regional offices may be to promote marketing of foreign companies). Regional offices are not corporate bodies incorporated in Malaysia, however they would still require an approval known as the Representative/Regional's Approval, from the Government of Malaysia. The Representative/Regional's Approval is an approval of the establishment of the regional office.

Labuan companies (Offshore Companies)

Off-shore companies may be incorporated in Labuan, which is a Federal Territory of Malaysia off the coast of Borneo in East Malaysia, and is governed by the Labuan Companies Act. Labuan companies may benefit from a preferential tax treatment under the Labuan Business Activity Tax Act, and are subject to low income tax depending on the type of activity conducted in Labuan.

TYPES OF NOT-FOR-PROFIT STRUCTURES / SOCIAL ENTERPRISES IN MALAYSIA

Certified B Corporations are recognised in Malaysia. Genashtim Sdn Bhd was the first company to be certified as a B Corp in Malaysia in April 2020. Since then, a total of 10 Malaysian businesses[264] have met the highest standards of verified social and environmental performance, public transparency, and legal accountability to balance profit and purpose and obtained B Corp certification, they are:

- Genashtim Sdn Bhd (certified since April 2020);
- Impacto Sdn Bhd (certified since February 2022);
- Earth Heir (certified since May 2022);
- Havas Immerse (certified since July 2022);
- The Habitat Penang Hill (certified since September 2022);
- InNature Berhad (certified since February 2023);
- Bintang Capital Partners Berhad (certified since May 2023);
- Batik Boutique (certified since June 2023);
- Juara Partners Sdn Bhd (certified since July 2023); and
- VISTA Eye Specialist (certified since August 2023).

In respect of entities involved in charitable activities in Malaysia, two (2) types of entities exist:

- A society registered under the Societies Act 1966; or
- A company limited by guarantee (CLBG) incorporated under the Companies Act 2016.

264 https://www.bcorporation.net/en-us/find-a-b-corp/?refinement%5BhqCountry%5D%5B0%5D=Malaysia

DIFFERENCES BETWEEN A SOCIETY AND A CLBG

While a society and a CLBG are both legal entities used for non-profit purposes, they have distinct differences. Other than the different procedures involved, the two proposed entities can be distinguished in terms of their legal structure, governance, and characteristics. The differences can be briefly summarised as follows:

NO.		SOCIETY	CLBG
1	LEGAL STRUCTURE	• A society is a group of individuals who come together for social, charitable, religious, cultural, educational, or recreational purposes. • It is governed by the Societies Act 1966.	• A CLBG is a type of company that operates for non-profit purposes. • It is governed by the Companies Act 2016.
2	FORMATION	• A society is formed by online registration through the State Department of the Registrar of Societies of Malaysia.	• A CLBG is formed as a company and is regulated by and incorporated under the Companies Act 2016.
3	MEMBERSHIP	• Societies have members who support the organisation's objectives. • Members typically have a say in decision-making processes, such as electing office bearers.	• A CLBG typically has members who provide a guarantee to cover a specific amount in the event of the company's winding up. These members do not hold shares or ownership stakes.
4	GOVERNANCE	• Societies are managed by a committee or board of office bearers elected by the members. • The committee oversees the society's activities and operations.	• A CLBG is managed by a board of directors who are responsible for the company's activities and compliance with regulations.
5	LEGAL PERSONALITY	• Upon registration, a society gains its own legal personality. This allows it to own property, enter contracts, and sue or be sued in its own name. • Office-bearers can be held liable in respect of offences by the society (Section 51 of the Societies Act 1966).	• Similar to a society, a CLBG has its own legal personality, allowing it to own assets (with restrictions to own or dispose of land under its own name unless licensed), enter contracts, and operate independently.
6	ACTIVITIES	• Societies engage in activities related to their stated objectives, which can range from cultural events to charitable initiatives and more.	• A CLBG's activities are determined by its stated objectives in the constitution and may include commercial activities. It can engage in various non-profit activities.

REGISTERING A SOCIETY UNDER THE SOCIETIES ACT 1966

Under section 2 of the Societies Act 1966, a society includes any club, company, partnership or association of seven (7) or more persons whatever its nature or object, whether temporary or permanent, but does not include:

- any company registered under the provisions of any written law relating to companies for the time being in force in Malaysia;
- any company or association constituted under any written law;
- any trade union registered or required to be registered under the provisions of any written law relating to trade unions for the time being in force in Malaysia;
- any company, association or partnership formed for the sole purpose of carrying on any lawful business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members of the company, association or partnership;
- any co-operative society, registered as such, under any written law;
- any organisation or association in respect of which there is for the time being in force a certificate (which may be granted, refused or cancelled at his discretion) by a person or authority appointed under the provisions of the written law for the time being in force relating to the registration of schools that such organisation or association forms part of the curriculum of a school; or
- any school, management committee of a school, parents association or parents and teachers association registered or exempted from registration under any law for the time being in force regulating schools.

In other words, an entity which has been established under any other legislation or duly certified by the authority appointed for regulating such an entity need not be registered, nor is the entity considered a society, under the Societies Act 1966.

Online Application

An application for registering a society shall be submitted to the State Department of the Registrar of Societies of Malaysia in the respective states according to the registered address of the society. Since 2010, applications are to be completed through the electronic system known as eROSES at https://www.ros.gov.my/www/. The online application must be submitted by the appointed secretary of the society with a valid eROSES account.

The application shall be processed by the State Department of the Registrar of Societies and the secretary of the society will be informed of the status of the application through the society's registered email as appearing on eROSES.

First General Meeting and Annual Statement

Upon a successful registration of the society, the society may elect to conduct its first general meeting within the first three months of such registration or at the end of the financial year.

In addition to the above, once an application has been approved, a society is required to submit an annual statement within sixty days from the date of the meeting, or in the case where no general meeting is held, within sixty days from the end of that calendar year. This requirement is set out in Section 14(1) of the Societies Act 1966.[265]

Advantages and disadvantages of registering a society

In contrast to a CLBG, registering a society is generally a simpler and quicker process compared to incorporating a CLBG as the application is made online and it does not require complex documentation like drafting an extensive constitution or a supporting shareholders agreement. A society is not subject to the strict compliance requirements under the Companies Act 2016. The more relaxed requirements applicable to societies also allows them more flexibility in terms of membership, governance structure and non-commercial activities.

Further, the costs of incorporation are also minimal with no requirement for a paid-up capital and the time involved during the incorporation stage may be shorter. The timeline and costs of incorporation of a society may be summarised as follows:

- Whilst the State Department of the Registrar of Societies will take up to five working days to process an application on the eROSES portal, the entire registration process may take up to approximately one to two months in view of the time for the applicant to prepare the documents and to revert in the event any further documents or information is requested by the Registrar or if there are rejected documents or applications (if any).

- The costs for the registration of the society through eROSES shall be RM30 being administration fees which can be made either online or over the counter at the State Department of the Registrar of Societies within ninety days from the date of the application.

Conversely, societies are typically restricted from engaging in commercial activities for profit, which might limit their revenue sources. Given that many societies often rely on donations, grants, and fundraising, the restriction in commercial activities may pose challenges in securing consistent funding.

It may also be argued that societies might face challenges related to decision-making, leadership transitions, and effective management due to their governance structure.

265 https://mercy.org.my/wp-content/uploads/2015/05/Societies-Act-1966.pdf

Board member restrictions and meeting requirements applicable to a society

A society does not have a "board" per se but it has a committee or appointed office-bearers such as the president, vice-president, secretary or treasurer of such society or any branch of the society, or who is a member of the committee or governing body of the society, or of any branch of the society or who holds in such society or any branch of such society any office or position analogous to any of the foregoing. A society requires a minimum of seven members to form the committee or governing body.

There is nothing in the Societies Act 1966 which requires that the members be Malaysian or resident in Malaysia, but there must be someone authorised to act for and on behalf of the society in Malaysia which is indicated in Section 14 of the Societies Act 1966.[266]

The specific member restrictions for a registered society will vary based on the society's constitution and regulations. The Societies Act 1966 only provides that such restrictions must be included in the constitution but it does not state the exact details. Among the details which are to be decided by the society include the following:

- the qualifications for membership, including particulars of any restriction or limitation that may be imposed as to the number, age limit, sex, religion, race, nationality, dwelling place, clan or surname of persons who may be admitted to membership of the society;
- the method of appointment or election of members;
- the composition and method of appointment of the committee or governing body and the designations, powers and functions of the office-bearers of the society and where applicable, the branches of the society; and
- that, if the Registrar so requires, the office-bearers of the society and every officer performing executive functions in such society shall be citizens.

Financial requirements applicable to a society

A registered society must maintain proper accounting records, conduct annual audits, and submit financial statements to regulatory authorities when required. Moreover, section 14(2) of the Societies Act 1966 states that the Registrar may, at any time by notice under his hand, order any registered society to furnish him in writing with duly audited accounts; or the description of any money or property, any pecuniary benefit or advantage received by the society from any person ordinarily resident outside Malaysia or any organisation, authority, government, or agency of any government, outside Malaysia and other particulars relating to the society.

266 https://mercy.org.my/wp-content/uploads/2015/05/Societies-Act-1966.pdf

INCORPORATING A CLBG UNDER THE COMPANIES ACT 2016

A company limited by guarantee is a public company incorporated for providing recreation or amusement, promoting commerce and industry, art, science, religion, charity, pension or superannuation schemes or any other objects useful for the community or country such as environment, health, education, research, social, sports and any other categories the Minister (of Domestic Trade and Living Costs) may think fit. Moreover, the principal liability of its members is limited by the constitution to such an amount as the members undertake to contribute to the assets of the company if the company is wound up.

There are two types of CLBG, one with the use of the word "Berhad" or "Bhd" and one without the use of the word "Berhad" or "Bhd". Depending on the proposed name of the CLBG, the incorporation procedure and requirements will vary slightly.

A CLBG may be incorporated under section 45 of the Companies Act 2016 by lodging an application to the Registrar of the Companies Commission of Malaysia designated under subsection 20A(1) of the Companies Commission of Malaysia Act 2001.

Requirements for Constitution

Further, under section 38 of the Companies Act 2016, a company limited by guarantee is required to have a constitution, and the constitution shall be signed by the Subscribers intending to incorporate such a company and lodged with the Registrar. In essence, a constitution shall, when adopted, bind the company and the members to the same extent as if the constitution had been signed and sealed by each member and contained covenants on each member to observe all provisions in the constitution.

The form of a constitution of a company limited by guarantee is as set out in section 38(3) of the Companies Act 2016, which states the constitution shall include the following particulars:

- That the company is a company limited by guarantee;
- The objects of the company;
- The capacity, rights, powers and privileges of the company;
- The number of members with which the company proposed to be incorporated;
- Matters contemplated by the Companies Act 2016 to be included in the constitution; and
- Any other matters as the company wishes to include in its constitution.

Advantages and disadvantages of incorporating a CLBG

A company limited by guarantee is beneficial for non-profitable organisations as it is able to apply for tax exemptions. Pursuant to section 2 of the Income Tax Act 1967, most business entities are generally taxable given the wide definition of a taxable "person" which "includes a company, a body of persons, a limited liability partnership and a corporation sole". Nevertheless, Malaysia offers tax exemptions to a certain number of entities which are not for profit in character such as companies limited by guarantee and non-profit organisations.

Further, pursuant to section 127 of the Income Tax Act 1967, any income as set out under Part 1 of Schedule 6 of the same Act shall be exempt from tax. In particular, paragraph 13 of Part 1 of Schedule 6 of the Tax Act 1967 specifies that:

> "127. Exemptions from tax: general
>
> (1) Notwithstanding any other provision of this Act but subject to section 127A, any income specified in Part I of Schedule 6 shall, subject to this section, be exempt from tax.
>
> Schedule 6 Part 1: Income which is exempt
>
> Paragraph 13
>
> (1) The income of—
>
> (a) an institution, organisation or fund approved for the purposes of subsection 44(6) so long as the approval remains in force; or (b) a religious institution or organisation in respect of any contribution received for charitable purposes in the basis year for a year of assessment provided such institution or organisation is not operated or conducted primarily for profit and is established in Malaysia exclusively for the purpose of religious worship or the advancement of religion."

Section 127, read with section 44(6) of the Income Tax Act 1967, states that the total income of a person shall deduct an amount equal to any gift of money made by him to the Government, a State Government, a local authority or an institution or organisation. Section 44(7) of the Income Tax Act 1967 further defines an "organisation" and "institution". Under the definition of an "institution", only six categories are listed, namely, a hospital, a public or benevolent institution, a university or other educational institution, a public authority or society engaged solely in research or other work connected with the causes, prevention or cure of disease in human beings, a Government-assisted institution engaged in socio-economic research, or a technical or vocational training institutions. Whereas, "organisation" is given a wide definition to include an organisation established exclusively to administer a public or private fund which is held for various purposes.

In light of the above provisions, a company limited by guarantee may apply for a tax exemption. Since "organisation" and "institution" are defined broadly, a company limited by guarantee can fall under either definition as it is a non-profit organisation and it is established for a non-profitable purpose. Although a CLBG is not restricted to only non-charitable activities, as long as the money is being used for the purposes as stated under its constitution, it will be able to apply for a tax exemption. Moreover, because the definition can be interpreted widely, it is possible that societies may also enjoy the same exemptions provided they satisfy the criteria for exemption.

Furthermore, the members' liability will only be limited to the amount of assets they have guaranteed in the event the CLBG is wound up. For this type of entity, the members are required to give a guarantee which is

a fixed amount that is only payable once the business ends. In the event the company limited by guarantee ends up with a higher liability than what the members guaranteed, the members are not required to pay more than what they initially guaranteed and this is taken as an advantage that prevents members from incurring any further loss beyond what they had originally guaranteed.

In contrast, one of the main disadvantages in relation to a company limited by guarantee is the cost and complexity involved in connection with its incorporation. As mentioned in paragraphs 5.21 to paragraph 5.29 above, there are many requirements to be satisfied, such as the requirement for a director(s), constitution and contributor (where Berhad is omitted).

A company limited by guarantee is also subject to a number of prohibitions, unless prior approval is obtained from the Registrar. These prohibitions include the following:

- It is prohibited to appoint new directors;
- It is prohibited from paying any fees, salaries, fixed allowances or any benefits to its Directors;
- It must use the profits and other income for the purposes stated in the objects of the company;
- It is prohibited from paying any dividends to its Members;
- It is prohibited to solicit any contribution or donation or make any money collection from the public;
- It is prohibited from incorporating or holding any subsidiary; and
- It is required to comply at all times with all the provisions set forth in the constitution, other than the conditions mentioned above.

Additionally, pursuant to section 45(4) of the Companies Act 2016, a company limited by guarantee is also generally not entitled to own or dispose of land under its own name unless it has applied for a licence from the Minister. This would mean that the company will be restricted in its operation as follows:

> **"45. Company limited by guarantee**
>
> (4) A company limited by guarantee shall not hold land unless a licence has been obtained from the Minister.
>
> (5) For the purposes of approving licences under this section, the Minister may prescribe regulations or impose any conditions as he thinks fit."

Board member restrictions and meeting requirements applicable to a CLBG

A CLBG must have a minimum of two directors. There is no specific maximum limit, but the constitution of the CLBG may set a maximum number. Directors of a CLBG must be individuals who are of legal age, sound mind, and not disqualified under the Companies Act 2016. A non-Malaysian citizen (foreigner) can become a director of a CLBG provided that they have a residential address in Malaysia.

Financial requirements applicable to a CLBG

The Registrar may require a CLBG to submit a segmental report together with its financial statements. If a CLBG gives to or receives from any organisation any fund/donation/contribution, the CLBG is required (i) to make appropriate disclosure on the funds/donations/contributions in the notes to the financial statements; and (ii) to make appropriate disclosure on the operational expenses in the notes to the financial statements.

A CLBG must keep a list of the funds, donations or contribution given to or received at all time as follows:

i. the name of individual/company/associate/counterpart/etc.;

ii. the correspondence address of the respective party;

iii. the amount of fund, donation or contribution to each party specifying whether in Ringgit Malaysia or foreign currency;

iv. the date of transaction; and

v. the accounting records and supporting documents that are relevant to that particular transaction.

A CLBG should keep bank statements as evidence in relation to the transactions of the fund, donations or contributions as specified above considering the Registrar may issue a notice and require a CLBG to submit the Financial Information Form to the Companies Commission of Malaysia at any time.

Additionally, A CLBG must ensure that its financial resources are utilised solely for the purposes of carrying its objects. In conducting its activities, it must ensure that it does not depart from the objects for which it was established or the provisions set forth in its constitution.

ALTERNATIVE: PRIVATE LIMITED COMPANY

One of the most common forms of business entities is a private limited company, otherwise known as Sendirian Berhad in Malaysia. A private limited company is a separate legal entity from its shareholders, and the liabilities of the shareholders are limited to the share proportions that they hold in the company. Additionally, a private limited company can be fully owned by foreign shareholders for most business activities.

In Malaysia, companies can be registered with a minimum paid-up capital of Ringgit Malaysia One only (RM1.00). However, for private limited companies that are fully owned by foreign individuals or corporations, such companies may be subject to the equity or minimum paid-up capital requirements of the industry in which the company will be carrying out its business.

In accordance with Section 14 of the Companies Act 2016, the application for incorporation of a private limited company needs to include a statement by the persons desiring to incorporate the private limited company with other details of the company, its proposed business, details of its directors, and other particulars.

The private limited company must have at least one shareholder, at least one resident director who ordinarily resides in Malaysia, and a company secretary who must be a qualified person living in Malaysia. When appointing an individual as a director of the Malaysian Entity, the Foreign Company must take into account

the following director requirements as set out in the Companies Act 2016 (including that the individual is a natural person over 18 years of age, is of sound mind, and meetings other suitability criteria as set out in the Companies Act 2016).

Upon the Registrar's satisfaction of the application, and payment of the prescribed fee that is payable, the Registrar will incorporate the company accordingly. Depending on the Registrar's consideration of the application, the process of incorporating the private limited company may take up to 14 days. Upon incorporation, the private limited company can commence its business activities, including hiring staff. The private limited company, as an employer, must observe the provisions of the Employment Act 1955.

TAX INCENTIVES FOR FOREIGN INVESTMENTS

Malaysia has several tax advantages and investor-friendly policies offering incentives, tax exemptions and streamlined procedures to attract and retain foreign direct investments. Direct and indirect tax incentives are available for investment in certain industry sectors, such as manufacturing, trading, tourism, agriculture, education, healthcare, tourism and property development. These tax incentives are provided under the Promotion of Investment Act 1986 and the Income Tax Act 1967.

The Promotion of Investment Act 1986 establishes several different types of incentives. The two most important are the pioneer status incentive and the investment tax allowance. Pioneer status essentially entitles an investor to an income tax holiday for five years. However, the Minister of International Trade and Industry has broad powers under the Promotion of Investment Act 1986 to determine which investments are entitled to which incentives. For example, an investor who is granted pioneer status for investment in certain defined "high technology" projects is entitled to a 100% income tax holiday. In contrast, in general manufacturing activities, investors with pioneer status are only entitled to a 70% income tax discount.

Below are some types of tax incentives available for foreign investment, subject to qualifying criteria and adherence to the Promotion of Investments Act 1986:

Pioneer status

A company granted pioneer status enjoys a five-year partial exemption from income tax (usually an exemption of 70% or 100% tax). Pioneer status may apply to companies participating in a promoted activity or producing a promoted product. The power to determine any product or activity lies with the Minister of International Trade and Industry (usually in manufacturing, tourism, agriculture and any other industrial sector).

Investment tax allowance

Similar to the pioneer status incentive, a company granted investment tax allowance also enjoys a five-year partial exemption from payment of tax based on its capital expenditure that generally provides for a deduction (over and above capital allowances).

Special incentive scheme

Special incentive schemes are available for approved projects that fall within specific priority sectors or are located in certain economic regions in the country, such as foreign investment companies that introduce automation and modern machinery.

Green initiative schemes

Green incentives refer to tax exemptions applicable for those who promote or are part of green initiative research in the development of modern technology for clean energy.

Research and development incentives

The Promotion of Investments Act 1986 defines research and development as any systematic or intensive study carried out in the field of science or technology to use the study results to produce or improve materials, devices, products, produce or processes. Tax incentives may be applicable for five to ten years with specific qualifying criteria governed and regulated by the Malaysian Investment Development Authority (MIDA).

High technology and strategic project incentives

A high technology company is a company engaged in promoted activities or in the production of promoted products in areas of new and emerging technologies. A high technology company may qualify for pioneer status or investment tax allowance mentioned above.

Double deduction of expenses incurred for promotion of exports

Expenses that are incurred during the process of promoting exports and the supply of goods overseas can be deducted twice from taxable profits. This incentive is available to manufacturing and agricultural companies producing "promoted products" or engaged in "promoted activities".

Labuan offshore companies

International businesses are attracted to Labuan's favourable tax structure for non-residents and business-friendly environment, making the territory one of the preferred destinations for offshore company formation. Businesses undertaking "Labuan non-trading activities" continue to be exempt from tax under the Labuan Business Activity Tax Regulations as may be updated from time to time.

Operational headquarters incentives

An approved Operational Headquarters refers to a locally incorporated company that carries on a business in Malaysia, providing Qualifying Services to its offices or related companies outside Malaysia and is subject to certain qualifying services only. Tax incentives include tax exemptions for up to ten years with applications to be submitted to MIDA.

Special economic corridors

The Sabah Development Corridor is a tax scheme companies can apply to boost economic growth in the shipping, production, hotel and education sectors.

6. OVERVIEW OF THE LEGISLATIVE FRAMEWORK FOR IMPACT INVESTING

INDUSTRY-SPECIFIC FOREIGN INVESTMENT LEGISLATIVE FRAMEWORKS

Malaysia does not have a centralised or consolidated foreign investment framework specifically for impact investing. Instead, legislation on foreign investment participation in Malaysia is sector-specific and regulated by the regulatory authorities supervising these sectors. These industry sectors include financial services, capital markets activities by investment banks, petroleum, communications and multimedia, water and energy. For example, the Industrial Coordination Act 1975 governs the manufacturing sector, which is overseen by MIDA; while the financial services sector is predominantly regulated by the Financial Services Act 2013 and the Islamic Financial Services Act 2013, both of which are overseen by the Central Bank of Malaysia (**Bank Negara Malaysia**).

Malaysia does have a framework in the form of the Promotion of Investment Act 1986 that exclusively deals with the incentives applicable to companies and individuals for investment tax allowance and the restrictions and conditions on foreign investment.

The Malaysian government has tasked several governing or regulatory bodies with the responsibility of regulating foreign investment in different industries and sectors. MIDA is one of these regulatory bodies that promote initiatives to increase foreign investments in the manufacturing and services sector, and to further assist the National Committee on Investment to expedite the regulatory process to approve new investments.

The following are some of the other governmental agencies, bodies and authorities involved in foreign investment tasked with facilitating investments and ensuring compliance in different industries:

(a) Bank Negara Malaysia: financial services and foreign currency controls;

(b) MIDA: manufacturing and services sector;

(c) Ministry of International Trade and Industry (MITI): technology, electrical, electronics, machinery, medical devices, aerospace, energy;

(d) Ministry of Trade, Co-operatives and Consumerism: wholesale, retail & trade;

(e) Malaysian Economic Corridors: there are various Economic Corridors with statutory bodies assigned to encourage development in specific regions in Malaysia; and

(f) Economic Planning Unit, Prime Minister's Department (EPU): foreign entities' acquisition of land and properties.

ENVIRONMENTAL, SOCIAL AND CORPORATE GOVERNANCE (ESG)

Given that Malaysia does not have a centralised or consolidated foreign investment framework, let alone legislation solely for impact investing, we provide a brief overview of the possible areas and other considerations that investors may want to direct their minds to when undertaking impact investing in Malaysia.

Malaysia has a growing landscape for alternative investment funds, with a specific focus on ESG funding, offering opportunities in various sectors including government projects, real estate, and private equity. Below is a brief overview:

Alternative Investment Funds:

The alternative investment funds available in Malaysia include:

I. Initiatives by the Securities Commission Malaysia (SC). The SC is the primary regulatory authority overseeing alternative investment funds in Malaysia. It regulates and supervises fund managers, venture capital, private equity, and other alternative investment vehicles.

II. For offshore funds, Labuan International Business and Financial Centre offers a comprehensive legal framework and provides legal entities (such as companies limited by shares or by guarantee, private and charitable foundations, special purpose trusts, protected cell companies, limited liability partnerships and limited partnerships) with a wide range of business and investment structures facilitating cross-border transactions, business dealings and wealth management needs.

III. Investors can set up various fund structures, including limited partnerships, venture capital companies, private equity companies, and Real Estate Investment Trusts (REITs). A REIT is a fund or a trust that owns and manages income-producing commercial real estate (shopping complexes, hospitals, plantations, industrial properties, hotels and office blocks).[267]

The operation of alternative investment funds, whether they be venture capital, private equity, or other such funds, is subject to regulatory oversight to ensure investor protection, market integrity, and financial stability.

267 Bursa Malaysia. N/A. FAQs on Real Estate Investment Trust (REITs).

This oversight is facilitated through licensing requirements overseen by the SC. Fund managers seeking to operate alternative investment funds must undergo a comprehensive application process to obtain the necessary licences from the SC. The licensing process ensures that fund managers in Malaysia meet stringent regulatory standards and are equipped to manage alternative investment funds effectively.

ESG Landscape

ESG reporting is an organisation's public disclosure of its environmental, social, and corporate governance data. The purpose of an ESG report is to ensure transparency into the organisation's ESG activities and measure its sustainability performance so stakeholders, such as investors, consumers, and NGOs, can make better-informed decisions.

In Malaysia, the significance of ESG principles in the corporate landscape is underscored by the following ESG guidelines issued by both the Securities Commission and Bursa Malaysia respectively:

(i) Guidelines on Sustainable and Responsible Investment Funds;[268] and

(ii) Sustainability Reporting Guide.[269]

These guidelines lay the foundation for responsible and sustainable business and investment practices. The most pronounced aspect of the ESG Guidelines is the mandatory reporting scheme applicable to public listed companies. In fact, Malaysia was one of the first countries to make ESG reporting mandatory for all public listed companies since 2016.

The ESG Landscape in Malaysia is further complimented by the following:

Sustainable Finance and ESG Integration: The guidelines on sustainable and responsible investment issued by the SC emphasise the integration of ESG factors into investment decision-making processes among financial institutions and investment funds. Financial institutions and investment funds are encouraged to incorporate ESG considerations into their strategies, portfolio management, and reporting.

Sukuk and Green Bonds: Malaysia is a leader in Islamic finance and offers green sukuk and green bonds to finance environmentally-friendly projects.

Government Initiatives: Malaysia's government actively promotes sustainable development and offers incentives and support for ESG investments, particularly in areas like renewable energy, green technology, and sustainable agriculture. By actively supporting sustainable development, the government aims to address environmental and social challenges, reduce the carbon footprint, and enhance the country's overall sustainability while attracting investment in these crucial areas.

268 https://www.sc.com.my/api/documentms/download.ashx?id=9a455914-71db-4982-a34b-9a8fc7df79b5

269 https://www.bursamalaysia.com/sites/5bb54be15f36ca0af339077a/content_entry5ce3b5005b711a1764454c1a/5ce3c83239fba2627b286508/files/bursa_malaysia_sustainability_reporting_guide-final.pdf?1570701456

*Corporate Social Responsibility (**CSR**):*

CSR refers to a corporation's open and transparent business practices that are based on ethical values and respect for the community, employees, the environment, shareholders and other stakeholders. Essentially it is a corporation's commitment to exhibit socially responsible behaviour into their business operations be it by making charitable donations or enhancing employee welfare to aligning or modifying the corporation's operations to ensure that it is more environmentally friendly.

In Malaysia, CSR is a formal business strategy and obligation that is captured in annual reports and other forms of reporting by organisations, but it is not mandatory unlike ESG reporting for public listed companies. Although not mandatory, the requirement for disclosure of CSR activities is for enhanced transparency and to encourage listed issuers to bear in mind CSR when undertaking their business and operations.

Below are examples of how CSR is incorporated in the Malaysian legal framework:

Companies Act 2016: The Act mandates that companies that meet certain criteria must prepare a statement on CSR activities as part of their annual reports.

Bursa Malaysia Listing Requirements: Listed companies are required to disclose their CSR activities in their annual reports, promoting transparency and accountability.

Voluntary Sustainability Reporting: Many companies in Malaysia voluntarily produce sustainability reports, reflecting their commitment to CSR and ESG principles.

Foreign investors seeking to invest in Malaysia should consider these key legal aspects when engaging in alternative investment funds, ESG funding, and CSR initiatives.

Foreign Investor Rights

Investors considering opportunities in Malaysia often seek assurance and protection for their investments. One crucial aspect of this protection is afforded through Bilateral Investment Treaties (**BITs**), which outline the rights and safeguards available to foreign investors. Key investor rights under BITs in Malaysia include national treatment, most-favoured nation treatment, protections against expropriation and provisions on free transfer of funds.[270]

Apart from BITs, Malaysia further safeguards foreign investors through its membership in the Multilateral Investment Guarantee Agency (**MIGA**) and the corresponding MIGA Convention; Malaysia has signed the 1965 Convention on the Settlement of Investment Disputes and has adopted the Convention on the Settlement of Investment Disputes Act 1966. Additionally, Malaysia actively engages in fostering international trade relations, being a party to seven bilateral investment free trade agreements and participating in six regional free trade agreements through its ASEAN membership.

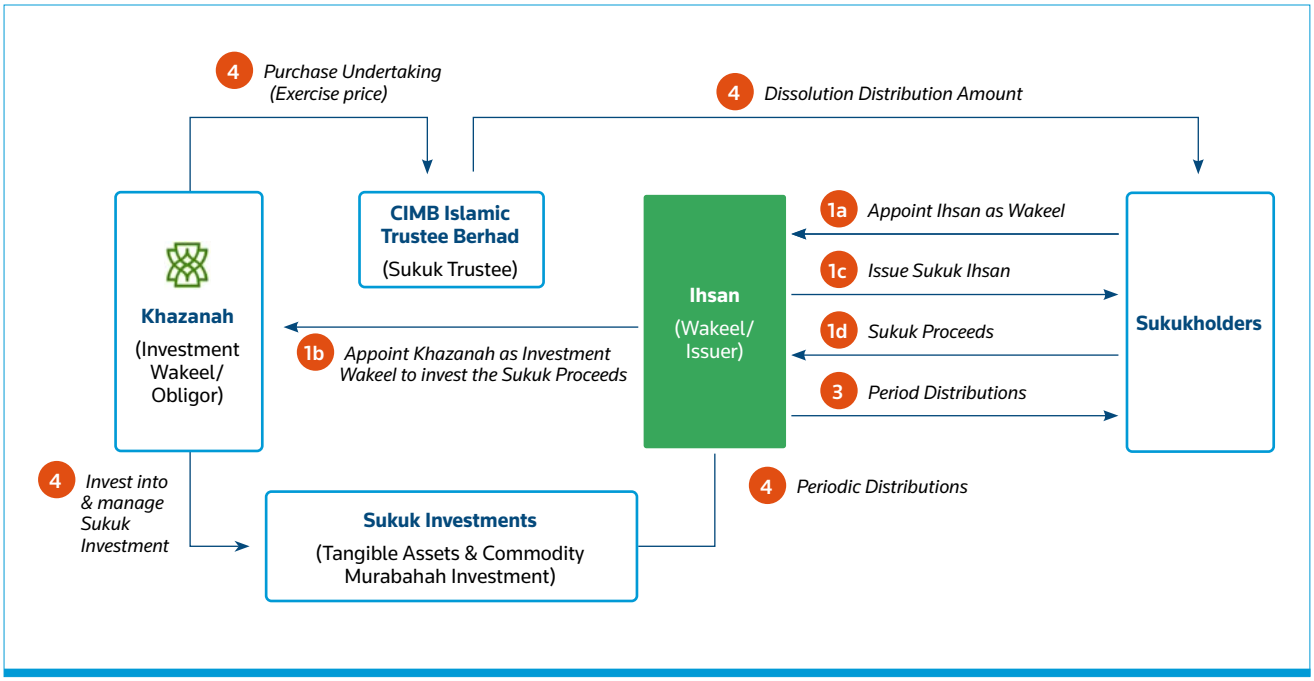
270 Please refer to https://mahwengkwai.com/benefits-bilateral-investment-treaties-bits-foreign-direct-investments-fdis-malaysia/ for further explanation on investor rights in Malaysia.

3.ILLUSTRATION – AN IMPACT FUND

Whilst Malaysia does not specifically have an impact investment structure or fund, equity investment by foreign companies acquiring stakes in local companies and foreign direct investment in projects by way of joint ventures and mergers & acquisitions are common types of foreign investment in Malaysia. Foreign companies typically enter into a share purchase agreement with the shareholder of the target company (SPA) or share subscription agreement with the target company (SSA) for a shareholding in the target company. However, the percentage of shares intended to be purchased and transferred will be determined in view of any equity ownership restrictions in the relevant industry sector.

ILLUSTRATION OF THE FIRST SOCIAL IMPACT BOND

Below is an illustration of the first social impact bond launched by Khazanah known as the Ihsan SRI Sukuk:



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There are 4 main parts to the structure:

(a) The sukuk holders appoint Ihsan as wakil (agent) to manage the sukuk proceeds. Subsequently, Ihsan assigns Khazanah as the investment agent to invest the funds received. At the same time, Ihsan (the issuer) issues the SRI sukuk to sukuk holders in exchange for the proceeds.

271 S.Zain, Z.M. Sori. 2017. Musharakah Sri Sukuk & Development Of Waqf Properties/Assets In Malaysia. ResearchGate.

(b) Khazanah as the investment agent will invest the funds into sukuk investments comprising tangible assets and commodity murabahah investment. These investments are fully managed by Khazanah.

(c) Periodic distributions are transferred to the sukuk holders through Ihsan. The distributions (if any) depend on pre-agreed conditions.

(d) Khazanah grants CIMB Islamic Trustee Berhad (Trustee) authority to undertake a purchase at an exercise price of the sukuk. Khazanah (the obligor) undertakes the purchase of the sukuk holders' undivided and proportionate beneficial interest in the tangible assets. The trust is dissolved upon the exercise of the purchase undertaking.

4. OPPORTUNITIES AND CHALLENGES

As previously stated, in Malaysia, there is no general legislation or overarching structure for impact investment. However, there are current measures such as the MIDA and specific restrictions that apply to FDI in different industry sectors.[272]

MIDA plays a pivotal role in governing investment for specific industries. It closely collaborates with federal and state agencies to facilitate the investment process, expedite the necessary approvals of licences or certificates, and secure infrastructure facilities. MIDA's global outreach, in collaboration with state government and agencies is a further testament to its commitment to assist investors. The SC has also been instrumental in advancing this movement. The SC has published guidance notes, established taxonomies to facilitate the domestic development of ESG investing, and introduced the Sustainable and Responsible Investment Roadmap for the Malaysian Capital Market.[273] These established provisions not only streamline the investment process for foreign investors but also offer substantial advantages when it comes to FDI in Malaysia.

OPPORTUNITY FOR REFORM IN IMPACT INVESTING IN MALAYSIA

In the absence of a single regulatory body and an established framework on impact investing, coupled with the relatively minimal restrictions on FDI, the establishment of a fixed impact investment regime or reform to consolidate investment structures is needed in Malaysia.

The government's commitment to incentivizing foreign investors is evident, particularly through initiatives like the 2020 series of 40 short-term economic recovery measures (collectively called PENJANA, Pelan Jana Semula Ekonomi Negara), which introduced favourable tax rates and allowances.[274] These measures reflect Malaysia's recognition of the pivotal role that foreign investment plays in boosting the local economy.

As such, these established policies should serve as a source of inspiration for the government to proactively revamp and reform the framework for impact investment, promoting sustainable growth and development.

272 C.Thomazios., A.Mohd Sohaimi. 2023. Benefits of bilateral investment treaties for foreign direct investments in Malaysia.
273 https://www.sc.com.my/api/documentms/download.ashx?id=09879b86-6948-4c0c-8d29-559764a09964.
274 Deloitte Malaysia. N/A. Views on the PENJANA stimulus package.

KEY CHALLENGES WHICH CURRENTLY EXIST FOR IMPACT INVESTING IN MALAYSIA

One of the primary challenges is the lack of a specific legislative framework for impact investing in Malaysia. While the country has implemented measures to encourage foreign investment and adheres to ESG principles, and although Malaysia has regulatory bodies like the MIDA and various other agencies overseeing FDI, the regulatory environment can be fragmented.

Without a clear and comprehensive framework, it becomes difficult for investors to understand their responsibilities and the potential impact of their investments, it also makes it challenging for them to navigate the investment landscape effectively. A unified and harmonised regulatory structure specifically tailored for impact investing would provide clarity and coherence.

In regards to ESG principles, a key challenge is ensuring that businesses and investors are held accountable for adhering to ESG standards. Presently, only public listed companies in Malaysia have mandatory reporting requirements adhering to ESG principles and standards. There is presently no mandatory reporting framework for ESG adherence for private limited companies. A comprehensive framework could provide standardised guidelines for ESG reporting and adherence, contributing to a more sustainable and responsible investment landscape.

A new comprehensive structure for impact investing should provide guidelines, standards, and incentives to attract impact investors and ensure that investments have a positive social and environmental effect. It should also address the assessment, measurement, and reporting of impact, which is crucial for transparency and accountability in impact investment.

In conclusion, the development of a proper framework is imperative to address these challenges and provide a clear path for impact investors looking to make a difference while achieving financial returns in Malaysia.

SECTION 4 »

REUTERS/ Edgar Su

SECTION 4 » SINGAPORE

1. IMPACT INVESTMENT STRUCTURES

Singapore is a leading financial hub in Asia with a stable political and legal system, a robust regulatory framework, a diverse and skilled talent pool and a strong commitment to innovation and sustainability. Singapore is also a centre for impact investing, with a supportive ecosystem of intermediaries, networks, and initiatives that facilitate capital flows, capacity building, and collaboration among diverse stakeholders. These features provide a foundation for impact investment into the jurisdiction, especially in light of active promotion by the government and government-linked corporations. Examples include:

- establishment of the Centre for Impact Investing and Practices (**CIIP**) by Temasek Trust to foster best practices, including by way of the formation of private equity fund ABC World Asia (which currently has USD 300 million in assets under management);
- allocation of USD 600 million by Temasek and BlackRock toward a late venture capital and growth equity platform dedicated to investment into decarbonisation solutions;
- the Green Plan, an ambitious government initiative to drive sustainable development across sectors including renewable energy, public transportation and water and waste management; and
- various schemes operated by the Monetary Authority of Singapore (**MAS**), such as an ESG Impact Hub to engage and coordinate stakeholders.

As discussed throughout this report, Singapore also has a legislative framework that provides a number of different legal structures for entities with a social or charitable purpose to be established and focus on impact investing, in the form of social enterprises and charities. This provides flexibility and choice for impact investors looking to promote investments in social and charitable projects.

Certain challenges do stand in the way of Singapore becoming a full-fledged hub for impact investing. For example, it lacks a separate corporate form for a for-profit 'social enterprise', leading to a potential trade-off between investor objectives and funding requirements. Singapore also remains in need of a directed regulatory framework to facilitate impact investing. Equally, these challenges serve as opportunities for investors to grow alongside and help inform Singapore's evolving offering.

SOCIAL ENTERPRISES AND NON-PROFITS IN SINGAPORE

For the purposes of this chapter, 'social enterprises' and 'charities' in Singapore should be distinguished. Broadly speaking, social enterprises are businesses that are run on a for-profit basis with a specified social aim, whereas charities are organisations that are run on a non-profit basis with a specified social aim.

Types of corporate structures generally used by a social enterprise in Singapore

The Singapore Centre for Social Enterprises (**raiSE**) describes a 'social enterprise' as a business entity set up with clear social goals and where there is clear management intent to achieve such goals as well as clear and significant resources allocated to fulfil its social objectives. The legal framework in Singapore does not provide for a specific and separate corporate form for a 'social enterprise' - for example, there is no equivalent of a benefit corporation or B Corp structure that can be found in various states in the US. Although there is no distinct legal structure for benefit corporations, it is possible for Singapore companies to become 'B Lab' certified and we discuss this further in Section 4 (Opportunities and Challenges in Singapore) below.

Accordingly, to establish a social enterprise in Singapore, the same corporate structures which are used for the incorporation of ordinary for-profit organisations would need to be used.

The following corporate structures may be used for the establishment of a social enterprise:

- sole proprietorship;
- general partnership;
- limited partnership;
- limited liability partnership; or
- private company limited by shares.

The majority of social enterprises in Singapore are set up as private companies limited by shares. A small number have instead adopted limited liability partnership or sole proprietorship structures. An even smaller proportion of social enterprises register as limited partnerships or general partnerships.

Both private companies and limited liability partnerships have a separate legal identity. This concept of separate legal entity is typically viewed as a benefit and is therefore commonly cited as a reason for adopting those structures. This can be compared to sole proprietorships and general partnerships which are not separate legal entities and therefore indistinct from the individuals that run the relevant enterprises. This lack of distinct legal personality places severe practical restrictions on their ability to grow and e.g. seek investment from investors.

Given the lack of use of those structures, for the purposes of this report, we will focus on the main types of corporate structures used to establish social enterprises, being: (i) a private company limited by shares, (ii) a limited liability partnership and (iii) the limited partnership.

The table below sets out a comparison of the key features of these three main types of corporate structures used by organisations to set up social enterprises.

BASIS	LIMITED PARTNERSHIP (LP)	LIMITED LIABILITY PARTNERSHIP (LLP)	PRIVATE COMPANY (LIMITED BY SHARES) (COMPANY)
HELD BY	• Partners, comprising general partners and limited partners.[275] • Minimum: One general partner and one limited partner.[276] • No maximum.	• Partners. • Minimum: Two.[277] • No maximum.	• Shareholders. • Minimum: One.[278] • Maximum: 50.[279]
WHO MAY BE A PARTNER/ SHAREHOLDER	• Individuals (foreign or Singaporean) at least 18 years old. • A company. • A LLP.[280]	• Individuals (foreign or Singaporean) at least 18 years old. • A company. • A LLP.[281]	• Individuals (foreign or Singaporean) at least 18 years old. • A company. • A LLP.
TYPE OF INTERESTS THAT A PARTNER/ SHAREHOLDER WOULD HOLD	• Partners collectively own the property of the LP and will be entitled to a distribution of the profits. • Partners will also have a right to the distribution of the partnership upon dissolution.	• A partner in an LLP has contractual rights to share in the profits. • A partner also has a right to receive an amount equal to their capital contribution upon leaving.[282]	• Shares in the Company. • Shares have no par value.[283]

275 Section 3, Limited Partnerships Act 2008 (LP Act).
276 Section 3, LP Act.
277 Section 28, Limited Liability Partnerships Act 2005 (LLP Act).
278 Section 20A, Companies Act 1967 (CA).
279 Section 18, CA.
280 Section 3, LP Act.
281 Section 11, LLP Act.
282 Section 15, LLP Act.
283 Section 62A, CA.

BASIS	LIMITED PARTNERSHIP (LP)	LIMITED LIABILITY PARTNERSHIP (LLP)	PRIVATE COMPANY (LIMITED BY SHARES) (COMPANY)
MINIMUM CAPITAL REQUIREMENTS	None.	None.	• Minimum: One share. • Shares have no par value. • Value of the share is the agreed price of issue. • Lowest minimum amount paid up is usually SGD1.
LEGAL STATUS	• No separate legal personality. • Cannot hold property in its own name.	• Separate legal entity.[284] • Can hold property in its own name.[285] • Rights and obligations are separate from those of its partners.[286] • Can do and suffer such other acts and things as bodies corporate may lawfully do and suffer (eg granting loans).[287]	• Separate legal entity. • Can hold property in its own name. • Rights and obligations are separate from those of its shareholders and directors. • Subject to the provisions of the Companies Act and its constitution, a Company can grant loans and issue warrants entitling the holder to subscribe for shares.[288]
CONTINUITY IN LAW	• Continues to exist unless dissolved by agreement of the general partners on the terms of the partnership agreement. • Dissolved, among other things, upon the death or bankruptcy of any general partner.	Perpetual succession until wound up in accordance with the LLP Act.[289]	Perpetual succession until wound up in accordance with the Companies Act.[290]

284 Section 4, LLP Act.
285 Section 5, LLP Act.
286 Section 12, LLP Act.
287 Section 5, LLP Act.
288 Section 19, CA.
289 Section 4, LLP Act.
290 Section 19, CA.

BASIS	LIMITED PARTNERSHIP (LP)	LIMITED LIABILITY PARTNERSHIP (LLP)	PRIVATE COMPANY (LIMITED BY SHARES) (COMPANY)
LIABILITY OF PARTNERS/ SHAREHOLDERS	• General partner: Liable for all the debts and obligations of the LP incurred while a general partner. • Limited partner: Liable for the debts and obligations of the LP incurred while a limited partner but only up to the amount of their agreed contribution.[291]	• Obligation of the LLP is solely the obligation of the LLP.[292] • Partner is not liable for the obligation unless it involves a tort of his own wrongful act or omission. In that case, the partner is liable to the same extent as the LLP.[293] • The other partners of the LLP are not liable for the wrongful act or omission of the partner in default.[294] • The liabilities of the LLP are to be met out of the property of the LLP.	• An obligation of the Company is solely the obligation of the Company. • The liability of a shareholder to contribute is limited to the amount, if any, unpaid on his shares.[295] • The liabilities of the Company are to be met out of the property of the Company.
MANAGEMENT	• By the general partners. • Any general partner may bind the LP. • A limited partner does not have the power to bind the LP and should not take part in the management of the LP.[296]	In accordance with the LLP agreement. For instance, partners are free to agree on, inter alia: • voting thresholds and/or requirements for deciding on certain matters or issues relating to the LLP; and • persons who may be introduced as partners of the LLP, and whether this requires any consent from the partners.	• By the board of directors.[297] • The shareholders and/ or the Company may enter into a shareholders' agreement to govern the relationship between the shareholders and the management of affairs of the Company.

291 Section 6, LP Act.
292 Section 4, LLP Act.
293 Section 4, LLP Act.
294 Section 4, LLP Act.
295 Section 22, CA.
296 Section 6, LP Act.
297 Section 157A, CA.

BASIS	LIMITED PARTNERSHIP (LP)	LIMITED LIABILITY PARTNERSHIP (LLP)	PRIVATE COMPANY (LIMITED BY SHARES) (COMPANY)
RESTRICTIONS ON WHO MAY BE INVOLVED IN MANAGEMENT	Undischarged bankrupt may not be involved in the management without leave/permission of the High Court or Official Assignee.[298]	The following persons may not be involved in the management of the LLP:[299] • An undischarged bankrupt without leave/permission of the High Court or Official Assignee; • A person disqualified by order of court; and • A person convicted of any offence related to an LLP.	Directors must be natural persons, at least 18 years old. and of full legal capacity.[300] The following persons may not be directors: • an undischarged bankrupt without leave/ permission of the High Court or Official Assignee;[301] • a person disqualified by order of court;[302] • a person convicted of any offence in connection related to a Company;[303] • a person who has been disqualified under the Companies Act;[304] and • a person who has, within a five year period, been a director of three companies that have been struck off the register of companies as being defunct companies.[305]

298 Section 29, LP Act.
299 Section 61, LLP Act.
300 Section 145, CA.
301 Section 148, CA.
302 Sections 155C and 155D, CA.
303 Section 154, CA.
304 Section 149, CA.
305 Section 155A, CA.

BASIS	LIMITED PARTNERSHIP (LP)	LIMITED LIABILITY PARTNERSHIP (LLP)	PRIVATE COMPANY (LIMITED BY SHARES) (COMPANY)
REGISTRATION REQUIREMENTS AND EXPENSES	• General partner must lodge the required statement of particulars with the Accounting and Corporate Regulatory Authority of Singapore (ACRA).[306] • The ACRA fee for registration is SGD100 plus additional fees for renewal of registration and lodgement of documents.[307]	• A statement containing the specified particulars of the LLP and its partners must be lodged with ACRA by every partner of the LLP.[308] • Registration may be denied under limited circumstances (eg the business is likely to be used for an unlawful purpose).[309] • The ACRA fee for registration is at least SGD100 plus additional fees for renewal of registration and lodgement of documents.[310]	• Filing of the required particulars of the company.[311] The following documents will need to be executed for the purposes of incorporation: • Form 45 (Letter of Consent to act as director); • constitution; and • power of attorney to sign the constitution, if the subscriber is a corporation. Registration may be denied under limited circumstances (eg the business is likely to be used for an unlawful purpose). The registration fee for the incorporation of a Company is approximately at least SGD300 plus additional fees for renewal of registration and lodgement of documents.[312]

306 Section 11, LP Act.
307 Accounting and Corporate Regulatory Authority of Singapore. N/A. Limited partnership-related fees
308 Section 19, LLP Act.
309 Section 21, LLP Act
310 Accounting and Corporate Regulatory Authority of Singapore.N/A.LLP-related fees.
311 Section 19, CA.
312 Accounting and Corporate Regulatory Authority of Singapore.N/A.Company-related fees

BASIS	LIMITED PARTNERSHIP (LP)	LIMITED LIABILITY PARTNERSHIP (LLP)	PRIVATE COMPANY (LIMITED BY SHARES) (COMPANY)
FORMALITIES AND COMPLIANCE REQUIREMENTS	• If every general partner is ordinarily resident outside Singapore, a local manger must be appointed. The local manager will be responsible for the filing and compliance requirements under the LPA.[313] • The general partners must maintain accounting and other records to sufficiently explain the transactions and financial position of the LP.[314] • Changes of particulars to the LP and the partners must be lodged with ACRA.[315]	There must be at least one manager who is: • a natural person; • at least 18 years old; • of full legal capacity; and • is ordinarily resident in Singapore. A manager must lodge an annual declaration of solvency. The LLP must maintain accounting and other records to sufficiently explain its transactions and financial position. It must maintain a registered office in Singapore. Changes of particulars to the LLP and the partners must be lodged with ACRA.	• Minimum of one director who may or may not also be the shareholder. • One director must be ordinarily resident in Singapore.[316] • Holding of an annual general meeting (AGM) within six months after the end of each financial year.[317] • Laying of the Company's audited financial statements at the AGM.[318] • Lodgement of an annual return with ACRA after its AGM within seven months after the end of its financial year.[319] • Maintenance of a registered office in Singapore.[320] • Appointment of a company secretary who has his principal or only place of residence in Singapore.[321] • Appointment of auditors.[322] • Lodgement of particulars of specified types of security or charges granted by the Company with ACRA.[323] • A small Company is usually exempt from the requirement to carry out an audit.[324]

313 Section 28, LP Act.
314 Section 27, LP Act.
315 Section 18, LP Act.
316 Section 145, CA
317 Section 175, CA.
318 Section 201, CA.
319 Section 197, CA.
320 Section 142, CA.
321 Section 171, CA.
322 Section 205, CA.
323 Section 131, CA.
324 Section 205C, CA.

BASIS	LIMITED PARTNERSHIP (LP)	LIMITED LIABILITY PARTNERSHIP (LLP)	PRIVATE COMPANY (LIMITED BY SHARES) (COMPANY)
CLOSING THE BUSINESS	An LP may be dissolved by the agreement of the general partners or in accordance with the terms of the partnership agreement.	• An LLP may be wound up voluntarily by the partners or by order of the High Court. • The Court may wind up an LLP under certain circumstances.[325]	• A Company may be wound up voluntarily by its shareholders or by an order of the High Court.[326] • The Court may wind up a company under certain circumstances.

325 Section 39, LLP Act.

326 Part 8, Insolvency, Restructuring and Dissolution Act 2018.

Types of corporate structures used by charities in Singapore

The term 'charity' refers to the status of an organisation, and not its legal structure. When establishing a charity, there are two separate issues that need to be considered:

- the form or structure of the charity to be used; and
- whether the charity should be simply a registered charity, or be an institution of public character (**IPC**).

We consider each of these issues below. It should be noted that the requirements to be registered as a charity or an IPC impose an additional layer of compliance in addition to the compliance or regulatory requirements that arise from the form or structure of the charity.

The Singapore government maintains a Charity Portal at charities.gov.sg that provides various resources needed to set up and run a charity, as well as e-services for the registration of charities and filing of annual submissions, among other services.

» THE FORM OR STRUCTURE OF THE CHARITY

There are two main forms or structures that are typically used when setting up a charity:

- a company limited by guarantee; and
- a society.

In addition to these, a charity may also be set up as a charitable trust or as a co-operative society. The Trustees Act 1967 allows trustees appointed under a trust that has charitable purposes to be incorporated as a body corporate, known as a charitable trust; the Co-operative Societies Act 1979 provides for the establishment of co-operative societies[327] in accordance with the framework set out the legislation. In comparison to the company limited by guarantee or the society, the charitable trust and the co-operative society are not as commonly used as structures for charities in Singapore.

327 A co-operative society is one that has as its object the promotion of the economic interests of its members in accordance with co-operative principles; and/or one that, while it has regard to the economic interests of its members in accordance with essential co-operative principles, has as its object the promotion of the economic interests of the public generally, or of any section of the public (section 4 of the Co-operative Societies Act 1979).

The table below sets out a comparison of the key features of a company limited by guarantee and society.

BASIS	COMPANY LIMITED BY GUARANTEE (CLG)	CHARITABLE SOCIETY
PURPOSE	A public company limited by guarantee is a company without share capital, which carries out non-profit making activities that have some basis of national or public interest.	A society is a club, company, partnership or association of 10 or more persons, whatever its nature or object, and not already registered under any other law.[328]
MEMBERSHIP	• Members. • Minimum: One.[329]	• Members. • Minimum: Ten.[330]
CONSTITUTION	The CLG's constitution must set out the number of members, the amount guaranteed and the object of exclusively charitable purposes. The constitution must also be submitted to ACRA.[331]	The rules which govern the Society must be submitted to the Registry of Societies (ROS) on registration.[332]
LEGAL PERSONALITY	Separate legal personality and distinct from its members. CLGs can sue, or to be sued, in its own name; it can enter into contracts, and can own property all in its own name.[333]	There is no separate legal personality and members bear all legal liability incurred.
LIABILITY	• Liability of members is limited to the amount which they undertake to contribute to the assets of the CLG in the event of winding up. • If the member ceases to be a member before the CLG is wound up, that member will continue to be liable for one year afterwards, for debts and liabilities of the CLG contracted before their membership ceased.[334]	There is no separate legal personality and all members of the Society may be personally liable for any liability incurred by the Society.

328 Section 2, Societies Act 1966 (SA).
329 Section 20A, CA.
330 Section 2, SA.
331 Section 22, CA.
332 Regulation 3, Societies Regulations.
333 Section 19, CA.
334 Section 22, CA.

BASIS	COMPANY LIMITED BY GUARANTEE (CLG)	CHARITABLE SOCIETY
REGISTRATION REQUIREMENTS AND EXPENSES	CLG must be incorporated with ACRA and have at least: • one director ordinarily resident in Singapore;[335] • one company secretary residing locally;[336] and • one member. After incorporation, the CLG must appoint an auditor. The fee to reserve the CLG name is SGD15. The registration fee for CLGs is SGD300.[337]	Society must be registered with the ROS and have ten or more members. The office holders of certain categories of societies must meet specified Singapore citizenship / permanent residence requirements.[338] These are: • Societies whose membership is confined exclusively to members of a single race; • Societies whose object, purpose or activity is to represent, promote any cause or interest of, or discuss any issue relating to a class of persons defined by reference to their gender or sexual orientation; • Any society whose object, purpose or activity is to promote or discuss the use or status of any language; • Any arts groups except those promoting classical music / works; • Any society whose object, purpose or activity is to represent persons who advocate, promote, or discuss any issue relating to any civil or political right (including human rights, environmental rights and animal rights); • Any religious group. The registration fee for Societies ranges from SGD300-450 depending on whether it is a specified society and whether the application is submitted online or in paper.[339]

335 Section 145, CA.
336 Section 171, CA.
337 Accounting and Corporate Regulatory Authority of Singapore.N/A.Company-related fees
338 Section 4 read with the Schedule, SA.
339 Regulation 10, Societies Regulations.

BASIS	COMPANY LIMITED BY GUARANTEE (CLG)	CHARITABLE SOCIETY
CAPITAL REQUIREMENTS	• Members undertake to contribute to the assets of the CLG in the event of winding up. • CLGs are prohibited from paying dividends and profits to their members.[340] • Members have the option of limiting the amount they guarantee to a nominal amount.	None.
FORMALITIES AND COMPLIANCE REQUIREMENTS	CLG must comply with annual corporate governance requirements stipulated under the Companies Act. These requirements include: • holding an AGM of the members;[341] • lodging its AGM resolutions and annual return;[342] • keeping minutes of the AGM; • lodging resolutions; and • lodging any change in officers and CLG particulars with ACRA within stipulated statutory deadlines.	Obligations under the Societies Act include the following: • Maintain proper accounts and records of the transactions and affairs of the society;[343] • Submit an Annual Return and its audited statement of accounts (if required) to the ROS annually;[344] • Apply to change its name, place of business and rules;[345] • Apply to use any flag, symbol, emblem, badge or other insignia;[346] • Submit an audited statement of accounts (income and expenditure and balance-sheet) within 60 days of the conclusion of any fund-raising appeal;[347] • Submit a certificate upon its voluntary dissolution.[348]

340 Section 38, CA.
341 Section 175, CA.
342 Section 197, CA.
343 Regulation 4, Societies Regulations.
344 Regulation 7, Societies Regulations.
345 Section 11, SA.
346 Section 13, SA.
347 Regulation 6, Societies Regulations.
348 Section 7, SA.

BASIS	COMPANY LIMITED BY GUARANTEE (CLG)	CHARITABLE SOCIETY
ANNUAL ACCOUNTS	Annual accounts must be prepared and: • audited; • approved by the directors; • presented before the members in the mandatory yearly annual AGM; and • subsequently lodged with ACRA within 30 days of the AGM, together with details of the AGM.[349]	• Annual accounts must be prepared and audited for Societies whose gross income or expenditure exceeds SGD500,000 in each financial year.[350] • If the Society holds an AGM, it must submit the annual return and audited accounts within one month of the holding of the AGM to the ROS. • If no AGM is held, it must submit the accounts once every calendar year within one month after the close of its financial year.[351]

349 Section 201, CA.
350 Regulation 4, Societies Regulations.
351 Regulation 7, Societies Regulations.

» REGISTRATION AS A CHARITY OR AS AN INSTITUTION OF PUBLIC CHARACTER

All charities in Singapore are governed by the Charities Act 1994 (**Charities Act**) and must be registered with the Commissioner of Charities (**COC**). Registration must be made within three months of their establishment.[352] Processing time is about two to three months and registration is free of charge.

To be registered as a charity, the organisation must meet the following basic conditions:[353]

- its governing instruments provide for exclusively charitable purposes;
- these purposes must be wholly or substantially beneficial to the community in Singapore; and
- it must have at least three governing board members, two of whom must be Singapore citizens or permanent residents. In addition, the following persons are disqualified from acting as governing board members:[354]
  - a person who is convicted of an offence involving dishonesty, terrorism, terrorism financing or money laundering;
  - the person who is an undischarged bankrupt or has made a composition or arrangement with his or her creditors and has not been discharged in respect of it;
  - a person that is subject to a disqualification order from acting as a director under the Companies Act; and
  - a person that has been removed by the Commissioner of Charities from any capacity following a hearing.

It is also possible to be categorised as an institution of public character (**IPC**) which is a subset of the registered charity status. An IPC is entitled to issue to donors tax deductible receipts for qualifying donations. This enables donors to claim tax relief (from their assessable income) on the amount donated, at the stipulated prevailing deduction rate. To qualify as an IPC, the registered charity must additionally meet the following criteria:[355]

- the activities of an IPC as stated in its governing constitution must:
  - be beneficial to the community in Singapore as a whole;
  - not be confined to sectional interests or groups of persons based on race, creed, belief or religion; and
  - meet the objectives of the relevant Sector Administrators (see below); and
- at least half of the governing board members of the IPC must comprise Singapore citizens and be independent.

352 Section 7, Charities Act 1994.
353 Regulation 3, Charities (Registration of Charities) Regulations.
354 Section 28, Charities Act 1994.
355 Regulation 3, Charities (Institutions of A Public Character) Regulations.

Regulation of social enterprises in Singapore

There are no specific laws that govern or regulate businesses that operate or hold themselves out as social enterprises. Nor are there any specific tax or other benefits accorded to such businesses.[356]

Regulation of charities in Singapore

Charities are supervised by the COC, which works with the Charity Council and five Sector Administrators that help it manage charities in their respective sectors. The five Sector Administrators are:

- the Ministry of Education, for charitable objects related to the advancement of education;
- the Ministry of Health, for charitable objects related to the promotion of health;
- the Ministry of Social and Family Development, for charitable objects related to the relief of poverty or those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- the People's Association, for charitable objects related to the advancement of citizenship or community development; and
- Sport Singapore, for charitable objects related to the advancement of sport, where the sport promotes health through physical skill and exertion.

Under the Charities Act, all registered charities must file an annual report with the COC within six months of the end of the financial year.[357] The annual report must set out, among other things, a review of the activities carried out by the charity during the financial year as well as a review of the financial state of the charity.[358] The annual report must be accompanied by its financial statements. A charity's financial statements must be audited by public accountant if its gross income or total expenditure exceeds S$500,000.[359] Where this is not the case, they should be examined by an independent person meeting the following requirements in each of the following cases:

- where the charity has a gross income or total expenditure of up to S$250,000, the independent person must be a person who is reasonably believed by the governing board members to have the requisite ability and practical experience to carry out a competent examination of the accounts;[360] and
- where the charity has a gross income or total expenditure between S$250,000 and up to S$500,000, the independent person must be a person who is a member of the Institute of Singapore Chartered Accountants (**ISCA**) or who possesses the necessary qualifications to be a member of the ISCA.[361]

356 Grants or schemes provided by the state may, however, impose various restrictions or requirements as a condition to accessing such grants or schemes. These may include requirements as to corporate governance structures or use of the funds. In addition, membership to organisations that provide assistance to social enterprises, such as the Singapore Centre for Social Enterprise (**raiSE**) may require compliance with certain criteria for membership. raiSE, for example, requires the allocation of at least 20% of resources to fulfill social outcomes. Such matters are specific to the grant, scheme or organisation and are outside the scope of this response.

357 Section 14, Charities Act 1994.

358 Regulation 7, Charities (Accounts and Annual Report) Regulations 2011.

359 Regulation 6, Charities (Accounts and Annual Report) Regulations 2011.

360 Regulation 6, Charities (Accounts and Annual Report) Regulations 2011.

361 Regulation 6, Charities (Accounts and Annual Report) Regulations 2011.

In addition, all registered charities should submit a governance evaluation checklist, which sets out the extent to which the charity complies with the essential guidelines of the Code of Governance for Charities and IPCs, on a "comply or explain" basis.[362]

IPCs are subject to more stringent requirements. In addition to complying with the requirement applicable to all registered charities, IPCs must:[363]

- issue tax deduction receipts to donors upon receiving tax deductible donations;
- maintain donation records;
- post financial and non-financial information online;
- submit audited financial statements;
- submit an annual return of donations;
- submit an annual report detailing the use of donation money and proposed future plans; and
- be administered by a group of independent trustees (ie there must be independent control).

In addition, the raising of funds by charities through seeking donations from the public must comply with certain rules, and these are discussed below in Section 1.2.

KEY INVESTMENT INSTRUMENTS IN SINGAPORE

The ways in which social enterprises and charities may raise funds and obtain investments are generally dependent on their corporate form and whether they hold charitable status. We also note that an ordinary business organisation may itself seek to raise funds for a specific social enterprise purpose on a one-off or occasional basis. An example of this would be the issue of sustainability-linked bonds (**SLBs**), green bonds, social or sustainability bonds.

Investment raising by social enterprises in Singapore

Social enterprises or businesses with a specific social aim are not separately regulated from other organisations as a matter of Singapore law. Accordingly, their raising of investment would be treated in the same manner as the raising of investment by an ordinary business.

362 Commissioner of Charities. Code of Governance for Charities and Institutions of Public Character.
363 Parts III and IV, Charities (Institutions of A Public Character) Regulations

Types of investment instruments available in Singapore

Private companies limited by shares have the ability to use a broad range of investment instruments for their fundraising purposes. Companies may generally obtain funds by capital investment (i.e. shares or equivalents) or by debt. The range of investment instruments that may be issued by companies include:

- ordinary shares;
- preference shares (whether redeemable or non-redeemable, or whether convertible into ordinary shares or not);
- bonds.

The kinds of agreements typically entered into for investments using such instruments are discussed below in Section 2.

» SHARES

Shares typically give the shareholder the following rights:

- a right to vote at shareholder meetings;
- a right to dividends (if declared); and
- a right to a distribution upon insolvency, although the shareholder is only entitled to distributions if there are any assets left after the company's creditors are fully paid.

The above rights may be varied, and where an investor is seeking to invest in a social enterprise, the following are usually relevant:

- a share normally carries one vote per share. However, this right may be varied to provide for more than one vote per share or to provide for no voting rights. For example, preference shares sometimes provide that shareholders have no voting rights but give the shareholder a right to attend shareholder meetings;
- a shareholder has a right to receive dividends. A company may only declare dividends out of its profits and dividends are ordinarily declared at the discretion of its directors. Preference shares can be structured with varying dividend structures and can, for example, provide for a minimum dividend amount to be paid annually, and if the company is not able to pay dividends, the amount will roll-over to the subsequent year; and
- a person who has subscribed for shares would ordinarily not be able to take out their investment except by selling their shares. However, a company may issue redeemable preference shares which would allow the shareholder to have the relevant shares redeemed on the terms and in the manner set out in the company's constitution.

These varied rights would be set out in the company's constitution.

» BONDS

Bonds (also referred to as debentures or notes) are essentially a form of debt against the company. Unlike shares, the terms on which the money is borrowed, and are to be repaid, are set out in the agreement or instrument and not in the company's constitution. As with any other kind of loan, a bond will provide for interest to be paid to the bondholder at specified interest payment dates. Singapore law allows for bonds to be issued that are convertible into shares.

There are generally two main categories of sustainability-themed bonds in Singapore:

• Green/Social/Sustainability Bonds

Green, social and sustainability bonds have features that closely resemble that of conventional bonds; however, they serve a distinct purpose in terms of the application of proceeds. The proceeds of a green/social/sustainability bonds issuance will be applied towards financing or re-financing, in part or in full, new and/or existing eligible environmental projects with climate and environmental benefits or social development projects (as the case may be), while proceeds from sustainability bonds will be applied to finance and/or re-finance a combination of both environmental and social development projects.

Examples of Singapore green/social/sustainability bond issuers: the Singapore Government, the Housing & Development Board of Singapore, DBS Bank, CapitaLand Integrated Commercial Trust, First REIT etc.

• Sustainability-linked Bonds

Unlike green, social or sustainability bonds, the proceeds from the issuance of SLBs are not ring-fenced to green, social or sustainable purposes and may be used for general corporate or other purposes. Instead, SLBs are linked to the performance of certain key performance indicators (**KPIs**) in achieving pre-defined sustainability performance targets (**SPTs**), and depending on whether this is achieved, certain characteristics of the SLBs may vary (e.g. there may be a coupon step-up if the SPTs are not achieved). In this sense, issuers who do not require heavy capital expenditure requirements in the green areas and would have found it challenging to tap the green bond market would nonetheless be able to tap the SLB market since the use of proceeds are not restricted.

Examples of sustainability-linked bond issuers: Nanyang Technological University, Surbana Jurong, CapitaLand Ascott Trust etc.

To support Singapore's decarbonisation efforts and deepen Singapore's green finance market, the Singapore Government announced at Budget 2022 that the public sector will take the lead by issuing up to S$35 billion of green bonds by 2030. This will include bonds issued by the Singapore Government as well as Statutory Boards. These public sector green bond issuances will serve as reference for the corporate green bond market, deepen market liquidity for green bonds, and attract green issuers, capital, and investors. On 9 June 2022, the Singapore Government published the Singapore Green Bond Framework (**Framework**), a governance framework for sovereign green bond issuances under the Significant Infrastructure Loan Act 2021 (**SINGA**), intended to align the public sector with the market best practices on issuing green bonds under the SINGA and to serve as a benchmark for corporate green bonds. The Framework adheres to market best practices as it is developed and structured in alignment with the core components and key recommendations of the International Capital Market Association (**ICMA**) Green Bond Principles 2021 and the ASEAN Capital Markets

Forum ASEAN Green Bonds Standards 2018. The Singapore Government, acting through the MAS, issued its inaugural sovereign green bonds in August 2022. The proceeds of the issuance have been allocated to finance enhancement projects on Singapore's rail network.

To pave the way for greater private sector green finance activity, the MAS has also implemented the Sustainability Bond Grant Scheme[364] which helps to defray the cost of external reviews to demonstrate the alignment of sustainability bonds with international standards in order to encourage the private sector to issue green, social, sustainability and sustainability-linked bonds. The grant is currently valid until 31 December 2028.

Additionally, in order to support the development of a robust sustainable finance ecosystem, the Singapore Exchange Securities Trading Limited (**SGX-ST**) launched the SGX Sustainable Fixed Income initiative[365] in 2023. This initiative recognises fixed income securities listed on the SGX-ST that meet certain standards for green, social or sustainable (**GSS**) fixed income securities and satisfy certain eligibility criteria[366]. By seeking recognition under the SGX-ST's Sustainable Fixed Income Initiative, bond issuers are able to raise their visibility and profile with investors that are interested in sustainable fixed income. They can also upload sustainability-related reports and other documentation through the SGX-ST announcement portal to inform investors of their sustainable finance strategy.

Given that social enterprises are very much in a nascent state in Singapore, it would be more usual for a social enterprise to issue ordinary shares or enter into a loan agreement rather than utilise other investment instruments as discussed above. However, these types of instruments are common in the venture capital / private equity space for the funding of start-ups and a social enterprise that has good profit prospects would be similarly able to use such forms of funding. Whether and how the monies raised are used for social purposes is a matter of private contract between the investor and the social enterprise, and measurement metrics would be a relevant consideration for inclusion in the agreements between them.

Regulatory framework for the raising of funds in Singapore

Under the Securities and Futures Act 2001, a company that seeks to raise funds by issuing shares or bonds would need to issue a prospectus unless an exemption applies. A prospectus is a detailed legal document typically running into hundreds of pages setting out the matters that an investor would reasonably need to know before making the investment being sought, along with various other matters mandated by law. The preparation of such a document would normally involve financial, accounting and legal advisors and this method of seeking finance is generally not relevant for social enterprises as it is both costly and time consuming, and would generally not be relevant to investors taking investments in early stage businesses.

Early stage businesses that seek to raise funds will generally rely on the following exemptions for raising funds (whether equity or debt) without a prospectus:

- a small offer, where the total amount raised is less than SGD$5 million in any period of 12 months;[367]

364 Details on the MAS Sustainable Bond Grant Scheme is available at the MAS website.

365 A list of securities recognised under the SGX Fixed Income Initiative is available on the SGX website and on Greennode (a GSS bond information hub operated by Marketnode, an SGX and Temasek joint venture).

366 The eligibility criteria for fixed income securities listed on the SGX-ST to be recognized under the SGX Sustainable Fixed Income initiative can be found at https://www.sgx.com/fixed-income/sustainable-fixed-income.

367 Section 272A, Securities and Futures Act 2001

- an offer made to no more than 50 persons in any period of 12 months, provided the offer is not accompanied by an advertisement;[368] or
- an offer made to accredited investors[369] or institutional investors:[370]
  - an institutional investor is essentially a financial institution such as a bank or investment firm; and
  - an accredited investor is an individual with net personal assets of SGD2 million in value or financial assets exceeding SGD1 million in value or whose income in the last 12 months is not less than SGD300,000. A corporation can also be an accredited investor if it has net assets of more than SGD10 million in value.

Other considerations that will have an impact on the equity funding by private limited companies include:

- private limited companies may have at most 50 shareholders. Accordingly, if the number of persons taking up shares in the company will cause the company to exceed this limit, the company will have to convert from a private limited company to a public limited company; and
- shareholders do not manage the company. That is the duty of the board. However, while shareholders do not manage the company, certain key decisions must be presented to shareholders for their decision. In addition, shareholders benefit from investing in the company by receiving dividends. Accordingly, where the board seeks to bring in more shareholders, the other shareholders in the company will therefore be concerned about a potential dilution of their voting power or entitlement to dividends. Therefore, unless shareholders have authorised its directors to issue shares without further shareholder approval, an issue of additional shares will require the approval of the majority of the shareholders of the company.

Other funding models in Singapore

The use of "pay for success" contracts (also known as social impact bonds) is fairly nascent in Singapore. Unlike jurisdictions like the United States, where various states have enacted legislation for state governments for the authorisation of the award of "pay for success" contracts, no such legislation exists in Singapore. Public-private partnerships in the area of achieving socially desired outcomes is not, however, an unknown concept in Singapore: the Housing Development Board for example, which provides the bulk of residential housing in Singapore, partners with private architects and contractors to design, build and supply this housing.

The use of "pay for success" contracts in Singapore is however developing. The following are examples:

- The Growing Autistic Talent for Engineering Sector (or GATES) programme uses a traditional "pay for success" contract model where the upfront funder will be repaid by the government if specified outcomes are achieved. In this instance, the research and technology non-profit organisation Trampolene works to train and place young adults with autism in engineering jobs. Upfront funders such as Temasek Foundation,

368 Section 272B, Securities and Futures Act 2001
369 Section 275, Securities and Futures Act 2001
370 Section 274, Securities and Futures Act 2001

Quantedge Foundation and Ishk Tolaram Foundation provided the initial funding for the programme. They will be repaid by the government if specified social outcomes are achieved. These include the criterion that trainees stay in a job for at least nine months. Other criteria relate to job training and placement.

- AWWA (formerly known as the Asian Women's Welfare Association) has a partnership with Standard Chartered and the Temasek Trust for its Family Empowerment Programme which uses a modified approach to the "pay for success" concept. In this case, while funding is provided on a wholly charitable, non-repayment basis, the funding is given in tranches, with further funding assured if the stipulated socially desired metrics are achieved. Under the Family Empowerment Programme, AWWA provides eligible poor families with stable financial assistance with the aim of improving their chances of emerging from chronic poverty. Funding for the first 18 months was provided by Standard Chartered and Temasek Trust has committed to provide funding for the subsequent 18 months if certain stipulated outcomes are met.

Fund raising by charities in Singapore

Organisations (including registered charities and IPCs) or individuals may raise funds for charitable, benevolent or philanthropic purposes, such as to support a charity's operations or programmes. A "fund-raising appeal" is defined as an appeal to any persons to give money or property, or a receipt from any persons of money or property for charitable, benevolent or philanthropic purposes. All fund-raising appeals in Singapore, whether online or offline, regardless if it is for local or foreign charitable, benevolent or philanthropic purposes, are regulated under the Charities Act 1994, Charities (Fund-Raising Appeals for Local and Foreign Charitable Purposes) Regulations 2012 and the Charities (Institutions of A Public Character) Regulations (for IPCs). This includes the raising of funds and donations not just from the general public but from private individual donors and organisations as well.

In general, a person conducting a fund-raising appeal in Singapore must:[371]

- ensure that any information provided to donors or to the general public is accurate and not misleading;
- disclose the name of the organisation, intended use of funds raised (includes the cause and/or beneficiaries) and whether any commercial fund-raiser has been engaged in soliciting the donation;
- keep the information relating to donors confidential; and
- ensure that there are adequate control measures and safeguards to ensure proper accountability and to prevent any loss or theft of donations.

Additional requirements apply if the fund-raising is done by commercial fund-raisers or commercial participators.[372]

371 Regulation 4, Charities (Fund-raising Appeals for Local and Foreign Charitable Purposes) Regulations 2012

372 Note that fund raising for foreign charitable purposes attract additional requirements, such as the need for a permit from the Commissioner of Charities (regulation 21, Charities (Fund-raising Appeals for Local and Foreign Charitable Purposes) Regulations 2012) and as well as the need to provide the Commissioner for Charities with an undertaking to apply within Singapore not less than 80% of the net proceeds received in response to the fund-raising appeal, unless the Commissioner in his discretion otherwise allows (regulation 22(2), Charities (Fund-raising Appeals for Local and Foreign Charitable Purposes) Regulations 2012).

The usage of donations must comply with the following requirements:[373]

- all donations have to be used according to the donors' intentions;
- if such intention is not specified, donations must be used according to the purpose communicated to the donors during solicitation; and
- if such intention is not specified and no purpose is communicated to the donors during solicitation, the donations may be used to fund any activity carried out by the charity that meets its purposes under its governing instrument or in the case of an IPC, the donations may be used to fund the activities carried out by the IPC.

If a donation cannot be used, the charity or IPC must refund the donation or use the donation as may be approved by the COC or Sector Administrators.

Note that the raising of funds by house-to-house visits or soliciting in streets or other public places is subject to additional requirements under the House to House and Street Collections Act 1947 including the need for a permit. This manner of raising funds is outside the ambit of this write-up.

Another option for fund raising is to apply for grants from the Singapore Government, which would be more akin to a capital contribution without the need for a return or an instrument being issued. The provision of grants would be heavily case, fact and time dependent and an organisation seeking a grant would need to consider what can be applied for (if anything) at the relevant time.

2. LEGISLATIVE FRAMEWORK FOR IMPACT INVESTING IN SINGAPORE

REGULATORY FRAMEWORK FOR INVESTORS IN SINGAPORE

As noted above, there is no specific regulatory framework governing investments into social enterprises. Such investments are governed by the same framework as investments into a regular for-profit business, as discussed below. For the business, the raising of funds must be accompanied by the issue of a prospectus or make use of one of the exemptions discussed in paragraph 1.2(c).

Investors into social enterprises under one of the exemptions would generally have to rely on their own private due diligence and private agreement with the social enterprise to ensure their own rights and protections. As noted earlier, impact investment is still in a nascent state in Singapore and there are currently no set of common standards by which such impact investment is carried out. This write-up will therefore set out what is common practice for private investment in an ordinary for-profit business.

The principal documents that are used in a private investment in a company via a subscription of shares are:

- a share subscription agreement setting out the terms and conditions of the subscription; and

373 Regulation 5, Charities (Fund-raising Appeals for Local and Foreign Charitable Purposes) Regulations 2012.

- a shareholders' agreement regulating the management of the investee company and specifying the respective rights and obligations of shareholders among each other.

The share subscription agreement will include, among other things, representations and warranties as to the business and financial status of the company. In addition, the investors will carry out legal, financial, tax and/or commercial due diligence to assure themselves as to these matters.

The shareholders' agreements will usually contain protective provisions for the investors who are likely to be minority shareholders in the investee company. These commonly include:

- certain corporate governance rights. For example, the right to appoint directors or board observers and the specification of certain matters that will be reserved for the approval of shareholders generally or some or all of the investors in particular;
- anti-dilution mechanisms, such as pre-emption rights over the issue of new shares;
- transfer restrictions, such as a right of first refusal over the shares to be sold to a third party; and
- exit mechanisms, such as co-sale rights enabling the minority investor to sell a pro rata portion of its shares to the third-party buyer along with the selling shareholder(s).

REGULATION OF FOREIGN DIRECT INVESTMENT IN SINGAPORE

Singapore has no laws that restrict foreign investment[374] save for a narrow category of assets and businesses that are not generally relevant to social enterprises (eg private residential property, companies carrying out media or broadcasting services).

However, where a social enterprise is seeking funds from foreigners, it should bear in mind that the Foreign Interference (Countermeasures) Act 2021 may apply. In brief, this states, among other things, that a person who receives funding from a foreign principal and publishes information or material in Singapore that seeks to influence public opinion on a matter which, in Singapore, is a matter of public controversy must disclose the funding from the foreign principal. Most social enterprise work is unlikely to meet this criteria.

REGULATION OF ALTERNATIVE INVESTMENT FUNDS IN SINGAPORE

Alternative investment funds can offer impact investors access to a diverse range of opportunities, sectors, geographies, and asset classes that may align with their impact goals and risk-return preferences. For example, alternative investment funds can invest in early-stage social enterprises, renewable energy projects, microfinance, or sustainable agriculture, among others.

374 The government has plans to introduce a new law to regulate foreign investments in entities "critical to Singapore's national security interests", though these entities have not yet been identified. Entities can be designated under the proposed rules if they are incorporated, formed or established in Singapore; carry out business activities in Singapore; or provide goods and services to people in Singapore. The second reading of the Significant Investments Review Bill is expected in January 2024.

The Singapore regulatory framework for funds does not treat alternative investment funds as a separate category of funds, whether for regulation or licensing purposes. There is also currently no regulatory framework imposing requirements on what constitutes an alternative investment fund. As with any other investment fund, an alternative investment fund will need to be established in accordance with the Securities and Futures Act 2001 and to comply with the Code on Collective Investment Funds.

The establishment and licensing of a fund manager and the establishment and marketing of an investment fund are beyond the scope of this write up. However, we would note that under the Securities and Futures (Licensing and Conduct of Business) Regulations:

- a fund manager that sets up and markets an investment fund should ensure that its product advertisement is not false or misleading and provides and a fair and balanced view of the capital markets products to which it relates;[375] and

- the fund manager should also ensure that any non-product advertisement is not false or misleading and does not contain any exaggerated statement which is calculated to exploit an individual's lack of experience and knowledge.[376]

Fund managers of alternative investment funds should therefore ensure that statements as to how the fund's investments meets its social purpose or impact investment policies are accurate, fair and balanced and not exaggerated.

Fund managers generally are also required to comply with the Guidelines on Environmental Risk Management (Asset Managers) (Guidelines) issued by the Monetary Authority of Singapore (**MAS**). The Guidelines apply to all holders of a capital markets services licence for fund management and real estate investment trust management, and to registered fund management companies in respect of investments of the funds/mandates that they manage on a discretionary basis. They do not apply where an asset manager does not have discretionary authority.

The Guidelines generally require that asset managers take the following steps in implementing a system of environmental risk management:

- having the Board and senior management take ownership of environmental risk management by ensuring effective oversight of environmental risk management and disclosure. The Board should ensure that there is a risk management framework in place, that they understand what environmental risk entails, and that there are persons at senior management and Board level who are responsible for oversight of the risk;

- with a framework in place for environmental risk management and disclosure, the framework must be translated into effective policies and process for identifying and assessing risk, putting in place practices and internal controls for risk management, and monitoring the risk so that there are timely updates to the Board and senior management. As with risk management in other areas, environmental risk management will include stress testing to determine the impact of various scenarios on the asset manager; and

- the asset manager should also disclose to its stakeholders its approach to managing environmental risk. This may include disclosure of the potential impact of material environmental risk in quantitative terms on the asset manager.

375 Regulation 46, Securities and Futures (Licensing and Conduct of Business) Regulations.

376 Regulation 46D, Securities and Futures (Licensing and Conduct of Business) Regulations.

The Guidelines also require asset managers, among other things, to embed relevant environmental risk considerations in their research and portfolio construction processes if they have assessed such risks to be material. Accordingly, asset managers should include an evaluation of the potential impact of relevant environmental risk on an investment's return potential. They should put in place appropriate processes and systems to monitor, assess and manage the potential and actual impact of environmental risk on individual investments and portfolios on an ongoing basis, where material.

OTHER LAWS RELEVANT TO IMPACT INVESTING AND CORPORATE SOCIAL RESPONSIBILITY IN SINGAPORE

The MAS is the central bank and financial regulatory authority of Singapore, and it plays a role in promoting and facilitating impact investing and corporate social responsibility in the financial sector. For example, it has issued guidelines for financial institutions to adopt ESG criteria and practices, such as the Guidelines on Environmental Risk Management.

More recently, the MAS issued a voluntary industry Code of Conduct for ESG rating and data product providers on 6 December 2023. The Code is aligned with the recommendations of the International Organisation of Securities Commissions (IOSCO) in its Final Report on "Environmental, Social and Governance (ESG) Ratings and Data Products Providers" in November 2021. The Code defines ESG ratings and data products broadly, and the intent is to capture products where the ESG rating entails an opinion on ESG profile or characteristics of the rated entity; or where the ESG data provided to market participants entails estimations, calculations or analysis by the provider. At the moment, ESG rating and data product providers are to comply with the Code on a "Comply or Explain" basis, meaning that providers should either comply with the Code or explain why they do not comply with the Code.

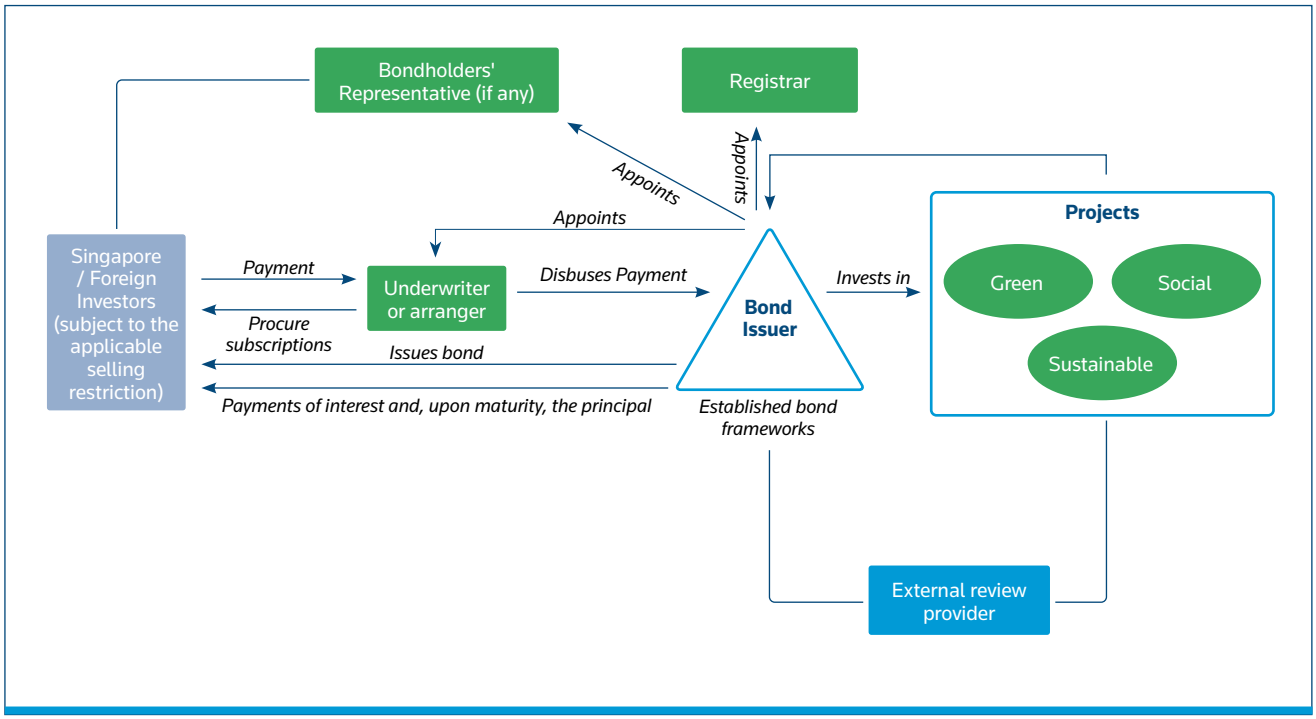
To encourage greater allocation of capital to green and transition activities, MAS has also launched a multi-sector transition taxonomy which aims to provide a consistent classification system which can provide a benchmark for green activities and protect against greenwashing in the green and transition economy.[377] The taxonomy will provide a common language which investors can use to better understand the impact of their investments.

377 https://www.mas.gov.sg/news/media-releases/2023/mas-launches-worlds-first-multi-sector-transition-taxonomy.

3.ILLUSTRATION – IMPACT INVESTMENT STRUCTURES

As discussed in the earlier sections, please see below illustrations of possible impact investment models used in Singapore.

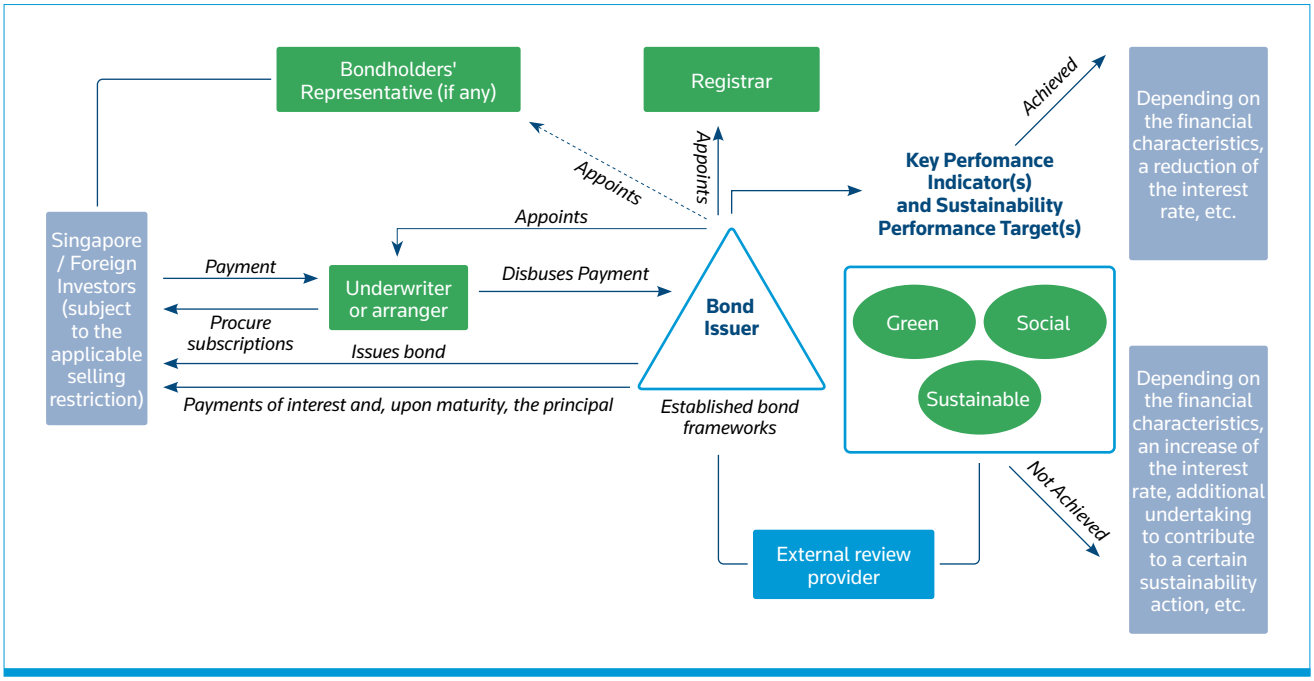
GREEN/SOCIAL/SUSTAINABILITY BOND OFFERING IN SINGAPORE



Structure diagram, key stakeholders and funds flow

In this model, green, social or sustainability bonds are offered by an issuer in Singapore. Depending on the selling restrictions applicable to the offering, Singapore and foreign investors may invest in the bonds by subscribing for them through the underwriter/arranger appointed by the issuer. The proceeds from the offering will be used by the issuer to finance or re-finance environmental or social impact projects, or both.

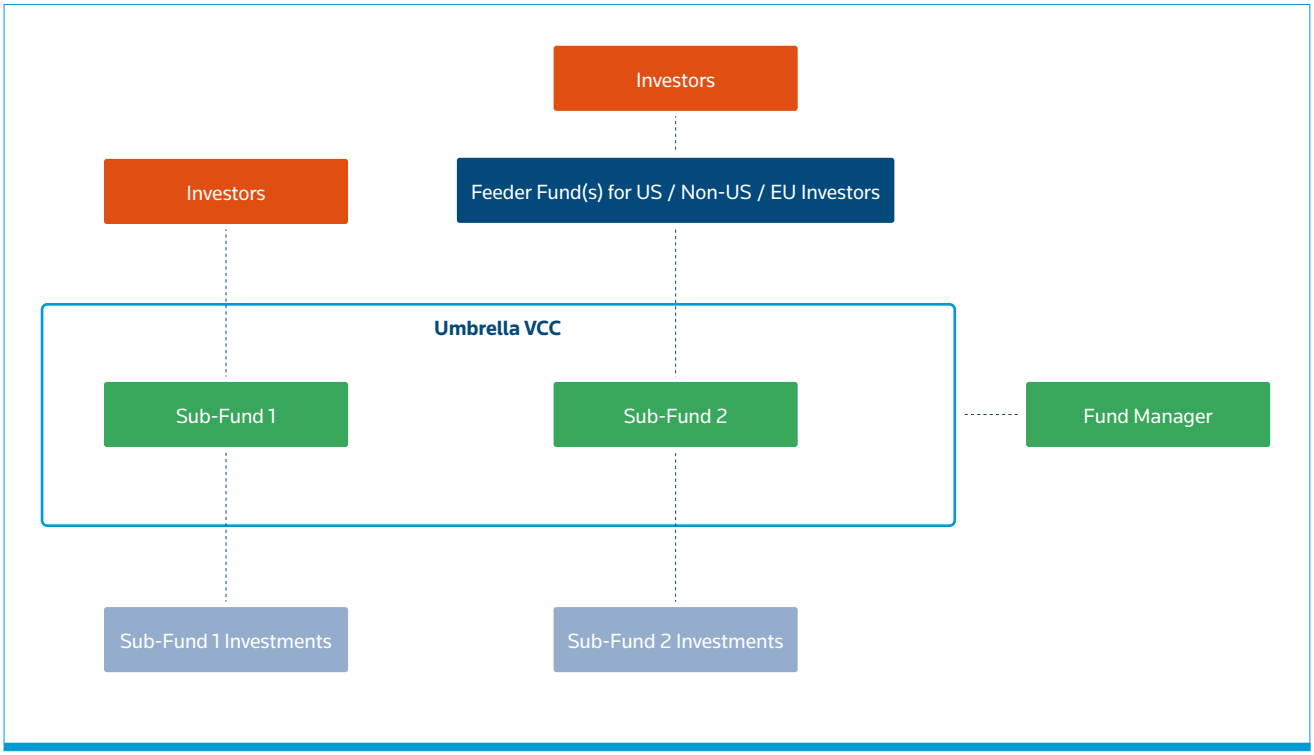
SUSTAINABILITY-LINKED BOND OFFERING IN SINGAPORE



Structure diagram, key stakeholders and funds flow

In this model, SLBs are offered by an issuer in Singapore. Depending on the selling restriction applicable to the offering, Singapore and foreign investors may invest in the bonds by subscribing for them through the underwriter/arranger appointed by the issuer. SLBs must have certain financial characteristics, either or both of: (i) a potential variation of the interest rate (e.g. step-up and/or step-down features); and (ii) a condition imposing obligation(s) on the issuer to contribute to any sustainability strategies/objectives of its own or any of its parent, subsidiary, affiliate or associate company (collectively, the **Group**) (such condition shall hereinafter be referred to as, the **ESG Obligation**). The aforementioned potential interest rate variation and ESG Obligation will be subject to the issuer/Group's performance relative to the predetermined KPIs and SPTs. For example, the issuer may impose conditions that it will increase the interest rate of the bonds if it fails to achieve a predetermined SPT in respect of a certain KPI or *vice versa*.

ILLUSTRATION OF AN IMPACT INVESTMENT FUND AND THE TYPICAL STRUCTURE



STRUCTURE DIAGRAM, KEY STAKEHOLDERS AND FUNDS FLOW

In this model an umbrella variable capital company (**VCC**) structure is set up and managed by a fund manager. The umbrella VCC may comprise several sub-funds and classes of shares. Investors may invest in a specific class of shares in a sub-fund, either directly as shareholders or through a feeder fund structure created by the fund manager. The fund manager is required to be a holder of a capital markets services licence for fund management, a registered fund management company or a financial institution exempt from holding a capital markets services licence under the Securities and Futures Act. Each sub-fund will invest in impact investments during the investment period, in line with the investment strategy of the sub-fund.

The use of an umbrella VCC structure with multiple sub-funds allows for the sub-funds to share a common board of directors and service providers, such as the same fund manager. Each sub-fund may be operated with its own investment objectives and strategy, with different assets and different investors.

This model allows for the scaling up of impact through the pooling of capital from multiple investors, whilst affording flexibility through the offering of different investment strategies through different sub-funds, and benefitting from the cost-savings of an umbrella structure. As with all investment fund structures, the distribution waterfall can also be designed so as to meet different investor's risk/return appetites and to provide proper incentivisation to fund managers.

4. OPPORTUNITIES AND CHALLENGES IN SINGAPORE

KEY OPPORTUNITIES WHICH CURRENTLY EXIST FOR IMPACT INVESTING IN SINGAPORE

Impact investing in Singapore offers opportunities to address social and environmental challenges in various sectors, such as financial inclusion, education, health, clean energy, and urban solutions, both locally and across Southeast Asia and beyond.

Impact investing and philanthropy is supported by the Singapore government and international networks. Singapore has shown that it is inclusive, aware and open to philanthropic and impact investment, for example:

- the Singapore government established the Singapore Centre for Social Enterprise[378] (**raiSE**) to support and grow the social enterprise sector in Singapore. It also helps social enterprises access potential investors. By the end of the financial year 2021/2022, raiSE reported that it had 365 members and assisted a total of 1,500 social service organisations that year;[379]

- the Asian Venture Philanthropy Network[380] (**AVPN**) was founded over a decade ago and is headquartered in Singapore. AVPN connects members who invest for social and environmental impact, and who support ventures with grants and skills, to learn from each other and share best practices;[381]

- the Singapore Economic Development Board's International Organisations Programme Office (EDB-IOPO) helps organisations set up and operate in Singapore. It works with various organisations, such as non-governmental organisations for development and environment, foundations and philanthropy, industry and professional groups and intergovernmental organisations, including for charitable and social purposes;[382] and

- the Temasek Trust's CIIP has also collaborated with B Lab Global to establish the B Lab & CIIP Centre of Excellence for Asia (the **Centre**) to accelerate the growth of the B Corporation in the region, including in Singapore. Among other things, companies are offered (i) training and professional accreditation programmes using B Lab Global's standards for B Corp Certification, (ii) access to knowledge on stakeholder models of governance, and (iii) the opportunity to attend workshops and other events.[383]

Singapore's economy and the wealth of its residents and corporations has been steadily growing over a number of years and generally exceeds global rates.[384] This rising prosperity teamed with Singapore's tradition of philanthropy and reputation as a financial centre in the region, means that many of its corporations, high net worth individuals, family offices and foundations have the ability to contribute to various charitable causes.[385] With this growth there is capital available for impact investing in Singapore.

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378 raise.sg

379 raiSE's FY21 Annual Report "raiSE the bar" (2021-2022).

380 avpn.asia.

381 Singapore Economic Development Board (EDB)" Philanthropy Handbook, Giving Effectively from Singapore to Asia-Pacific" (2022)

382 Ibid.

383 ciip.com.sg/news-centre/media-release/Details/b-lab-and-centre-for-impacting-investing-and-practices-to-establish-centre-of-excellence-for-asia.

384 Monetary Authority of Singapore.2022. Macroeconomic Review, The Singapore Economy; Singapore Economic Development Board.2022. Philanthropy Handbook, Giving Effectively from Singapore to Asia-Pacific.

385 Eugene, Tan K. B. 2022.The 2022 Global Philanthropy Environment Index Singapore.

Singapore has a one-tier corporate tax system and therefore does not impose withholding tax on dividend payments made by resident companies, which is particularly attractive for impact investors seeking to repatriate dividends to their shareholders.

Singapore's status as a hub for philanthropy has also been promoted through a philanthropy tax incentive scheme for family offices, which allows single family offices managing a fund under Section 13U or 13U of the Income Tax Act 1947 to receive a 100% tax deduction for overseas donations, capped at 40% of the donor's statutory income. These donations include innovative forms of philanthropy such as blended finance structures, social impact bonds, impact investments and venture philanthropy, subject to the meeting of certain criteria. This is complementary to the extension of the 250% tax deduction for qualifying donations made to IPCs and other eligible institutions (applicable for the period 1 January 2024 to 31 December 2026).

KEY CHALLENGES WHICH CURRENTLY EXIST FOR IMPACT INVESTING IN SINGAPORE

As discussed above in this report, while there is a framework for non-profit organisations to obtain charity status in Singapore, the legislative framework in Singapore does not have a specific and separate corporate form for a for-profit 'social enterprise' (i.e. there is currently no equivalent of a 'benefit corporation' structure). Impact investors looking to set up in Singapore would have to rely on existing corporate structures which are typically used for ordinary for-profit organisations (such as a private limited company).

Given the absence of a 'benefit corporation' structure being available in Singapore as a distinct legal structure,[386] impact investors and social enterprises may find that there a lack of alignment between investment objectives of impact investors against the funding needs of social enterprises. However, this is not insurmountable as there are various equity and/or debt instruments and governance structures which are also used by traditional for-profit organisations which should on the one hand, allow social enterprises to seek the funding required from impact investors and maintain control over the direction and management over the social enterprise, and on the other hand, allow impact investors to achieve their social and/or environmental objectives while making a financial return on their investment.

In addition to the general requirements and obligations set out above, impact investors in Singapore need to be conscious of sector-specific regulation. The documentary requirements and timelines for complying with sector-specific regulation and obtaining necessary licences will depend on the scope of the project/business activity and the relevant licencing authority and will need to be assessed on a case-by-case basis.

386 Note that whilst there is no distinct legal structure for a 'benefit corporation', it is possible for Singapore companies to become B Lab certified as discussed above in Section 5.1 of this report. The Centre continues to gather input from companies in building the new B Corp Standards.

SECTION 5 »

REUTERS/ Darren Whiteside

SECTION 5 » INDONESIA

1. IMPACT INVESTMENT STRUCTURES

Indonesia, as one of the largest and fastest growing economies in the region, offers a compelling destination for impact investors to create social and environmental initiatives. With a rich and diverse culture, a dynamic labour force, and a vast geography of islands each with their own unique opportunities and challenges, Indonesia offers a wide range of sectors to suit different investors' preferences and priorities. The diversity and complex social and environmental needs, coupled with its entrepreneurial and innovative spirit, create a fertile ground for impact investors to catalyse positive change.

The Indonesian government has also created a more conducive environment for investors by introducing the landmark regulatory change, which is the Omnibus Law in 2020, which streamlined licensing processes, reformed labour laws, and eased the land acquisition process. In 2022, the Ministry of Investment/Indonesian Investment Coordinating Board issued the first ever Sustainable Investment Guide, which aims to foster a culture and community of sustainability among investors and stakeholders. Moreover, Indonesia has committed to retire most of its coal fired power plants by 2050 and is in the process of developing more policies and incentives to support renewable and environmentally friendly energy sources.

While the development of Indonesia's investment environment is certainly exciting, it is not without its concerns. There are still sector specific issues which have not yet been addressed and there are larger regulatory issues that the Indonesian government is working on. Other challenges that impact investors may face is the low awareness of impact investing among the population in comparison to traditional or mainstream investments. We hope that this report can address many of the questions that impact investors may have about the Indonesian investing environment.

KEY INVESTMENT INSTRUMENT IN INDONESIA

The following investments structures are generally used by investors for impact investment in Indonesia:

Debt instruments

» BONDS (*OBLIGASI*)

Bonds are medium-term or long-term securities, issued in Rupiah or foreign currency, containing a promise from the issuing party (either companies or the Government of Indonesia (the **Government**)) to pay interest

(coupon) for a certain period of time and also to repay the principal of debt at a predetermined time to the buyer of the bond. Bonds take the form of acknowledgement of indebtedness that can be traded. [387] Bonds are a type of fixed income investment security that aims to provide a relatively stable investment value growth rate with relatively less risk, compared to shares.

There are two types of bonds in Indonesia:

Government bonds (*obligasi negara*)

The Government issues fixed coupon bonds, variable/floating rate coupon bonds and sharia principle bonds (state ***sukuk***). Generally, the Government issues these bonds (which serve different purposes such as financing state budget, diversifying financing source, managing national debt portfolios and broadening investor base) each year.

In addition to the government bonds above, there are Treasury Bills (*Surat Perbendaharaan Negara*) issued by Bank Indonesia (i.e. the Central Bank of Indonesia) which are short-term debt instruments that may be issued by the public sector.

The Government first entered the thematic bond market with an inaugural issuance of green sharia principle bonds (state ***sukuk***) in 2018, which have been followed by annual issuances in subsequent years, globally and domestically[388] to both retail investors and institutional investors. The proceeds under this state ***sukuk*** are used exclusively for financing or refinancing green projects that contribute towards climate change mitigation and adaptation as well as biodiversity preservation.[389] Since 2018, the cumulative green ***sukuk*** issuance value is USD6.9billion.[390]

The Government has taken a further step by issuing the first blue bond (ocean financing instruments whereby funds raised are earmarked exclusively for projects deemed ocean-friendly) in the Japanese debt capital market raising JPY20.7 billion (USD150million). This blue bond aligns with the International Capital Market Association principles, and it aims to tap innovative sources of financing for investments that benefit communities and the sustainable uses of marine ecosystems.[391]

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387 Indonesian law categorizes bonds as securities (efek), which can be traded at the stock exchange subject to certain formalities as required under Law No. 8 of 1995 on Capital Market. Other types of securities traded at the stock exchange are stocks/shares, sukuk, asset-backed securities and real estate investment funds.

388 https://www.adb.org/sites/default/files/publication/843491/green-bond-market-survey-indonesia.pdf

389 The Government has developed a green bond and green sukuk framework under which it plants to finance or refinance eligible green projects via the issuance of green bonds and green sukuk. The projects must fall into one of the nine eligible sectors and subject to review and approval from the Ministry of Finance and the National Development Planning Agency. The allocation of proceeds will be made by the Ministry of Finance and the relevant ministries shall track, monitor and report to the Ministry of Finance on the environmental benefits of the eligible green projects. Annually, the Ministry of Finance will repaper and publish a green bond and green sukuk annual report listing the projects and the estimation of beneficial impacts.

The sectors are renewable energy, energy efficiency, sustainable tourism, sustainable management of natural resource, resilience to climate change for highly vulnerable areas and sectors/disaster risk reduction, green buildings, sustainable agriculture, sustainable transport, and waste to energy and waste management.

390 https://api-djppr.kemenkeu.go.id/web/api/v1/media/C65110FE-4CAF-4C08-9DF7-E3FEFA1BB61B#:~:text=Since%202018%2C%20Indonesia%20has%20issued,the%20sovereign%20green%20sukuk%20market.

391 https://unsdg.un.org/latest/stories/indonesia-launches-world's-first-publicly-offered-sovereign-blue-bond.

The proceeds of the bond will be used for boosting the Indonesia's blue economy which includes coastal protection, sustainable management of fisheries and aquaculture, marine biodiversity conservation and mangrove rehabilitation.

Corporate bonds

This type of bond can be issued either by state-owned enterprises or private companies, established under Indonesian law. Corporate bonds are further classified into fixed coupon bonds, variable coupon bonds and sharia principle bonds.

Corporate bonds take various forms with specific features, for example, senior, subordinated or perpetual bonds, convertible or non-convertible bonds, structured notes, etc. Both the issuance and offering of corporate bonds must be made in compliance with Indonesian capital market laws and regulations and the issuer has to obtain a registration statement from the Financial Services Authority (*Otoritas Jasa Keuangan,* the **OJK**).

Under the framework of sustainability, the OJK has issued OJK Regulation No. 60/POJK.04/2017 on the Issuance and the Terms of Green Bonds (the **OJK Regulation No. 60**), permitting fund raisings by way of green bond issuance.[392] Under OJK Regulation No. 60, the proceeds of green bonds can only be used for financing or refinancing environmental business activities. This type of bond is subject to the same legal requirements as other local non-green bonds with additional requirements and reporting obligations; in particular, the OJK Regulation No. 60 limits the business activities that are eligible for financing through issuance of Green Bonds, which include: renewable energy, energy efficiency, pollution prevention and control, management of natural resources and use of sustainable lands, natural resources conservation, environmentally friendly transportation, climate change adaptation, products that can reduce the utilisation of resources and pollution, environmental-based building which fulfils specific national, regional or international standards or certification; and certain other environmental based activities that can be financed or refinanced by green bonds. Furthermore, it is required that the issuer of a Green Bond obtains an opinion or assessment from an environmental expert confirming that the activities that are to be funded by the Green Bond are beneficial for the environment.

» LOANS

Under the Indonesian Civil Code, as amended (the **ICC**), a loan is an agreement (***perjanjian***) whereby one party provides another with a specific amount of consumable items, subject to the condition that the borrower shall return similar types of items of the same amount and quality to the lender.[393] Indonesian law does not require a written agreement for the purpose of enforceability, as an agreement can be concluded either written or orally. However, as a matter of market practice, a lender typically requires a borrower to enter into a written agreement with the lender. Loans can be secured or unsecured.

Under the framework of sustainability, the OJK released the sustainable finance roadmap finance in 2014 and then the OJK Regulation No. 51/POJK.03/2017 on the Application of Sustainable Finance to Financial Services Institutions (the **OJK Regulation No. 51**).[394] OJK Regulation No. 51 requires financial services institutions (which can include providers of loans, such as commercial banks) to operate in accordance with certain sustainability-related requirements, including a green taxonomy classifying sustainable financing and investment activities. Under OJK Regulation No. 51 there is also a mandatory requirement for any financial institutions, issuers and public companies to prepare an annual sustainability report to accompany its annual report. OJK Regulation

392 The OJK Regulation No. 60 defines environmental based debt securities (efek bersifat utang berwawasan lingkungan) or green bonds as debt securities with the proceeds going to the financing or refinancing of certain business activities and/or other business activities which aim to preserve, repair and/or enhance quality or function of the environment, either partially or as a whole.

393 Article 1754 of the ICC.

394 The roadmap consists of 2 phase. Phase 1 (2015-2019) covers increasing awareness through sustainable finance roadmap, introduction to sustainable finance principles, introduction of sustainable business activities, development of incentive schemes and capacity building programs. Phase 2 (2021 – 2025) covers building a sustainable finance ecosystem, developing the supply side and developing the demand side.

No. 51 also requires financial institutions specifically to establish a sustainable finance action plan, summarising (among others) the relevant institution's sustainability strategy, priorities and goals.

Islamic Debt Instruments

Both Bonds and Loans may be issued or provided in its sharia compliant forms. Bonds are issued as Sukuk, whereas loans are issued as sharia compliant loans. Both are subject to the guidelines (*fatwa*[395]) issued by the National Sharia Council – Indonesian Ulama Council (*Dewan Syariah Nasional - Majelis Ulama Indonesia,* DSN - MUI).

The implementation of islamic debt instruments are as follows:

» SHARIA BONDS (*SUKUK*)

The key difference between a Sukuk and a conventional bond is that Sukuk holders do not receive interest over the Sukuk it holds, rather it receives payment from the performance of the underlying asset in which the Sukuk issued from. This aligns with the principles of sharia as islamic instruments are prohibited from charging interest (*riba*) and is instead advised to share profits and assume risks of losses.

Furthermore, sharia principles such as the prohibition of forbidden activities (*haram*), uncertainty (*gharar*) and speculation (*masyir*) will also be key feature of Sukuk. This affects the kinds of use of proceeds permitted under the Sukuk and the manner that the Sukuk will be constructed. The proceeds from a Sukuk will not be used to finance activities which are prohibited such as gambling or activities which contains elements of speculation or uncertainty. Although there are differing views to the extent at which an activity is considered to be prohibited, such as in the case of hotel or aircraft business which may serve alcohol, a commodity that is usually considered prohibited.

395 Fatwa issued by DSN – MUI are rulings issued by the Indonesian Islamic Scholars which acts as guidelines on how islamic principles are implemented to modern societal necessities such as implementation of islamic finance in the context of modern banking and finance.

The issuance of Sukuk is governed under Indonesian law and its implementation is subject to sharia principles (including the rulings of DSN-MUI), provided that the principles do not contradict the prevailing laws. Sukuk may be issued and offered publicly[396] or in a private placement[397] context. The key differences between publicly and privately issued Sukuk is as follows:

PARTICULARS	PUBLICLY ISSUED SUKUK	PRIVATELY ISSUED SUKUK
ELIGIBLE ISSUERS	Public entity	Public entity, private entity, supranational institutions and collective investment contracts (mutual funds)
ELIGIBLE BUYERS	The public is eligible to purchase the Sukuk	Only professional investors are eligible. Professional investors include: • Financial service institutions (banks, pension funds, insurance companies, investment managers, securities companies); • Private individuals (with a minimum threshold of (i) owning assets of at least IDR10 billion excluding fixed assets, and (ii) an average investment portfolio of IDR30 billion at least a year of the Sukuk issuance); and • Entities (with a minimum threshold of (i) owning assets of at least IDR20 billion excluding fixed assets, and (ii) an average investment portfolio of IDR6 billion at least a year of the Sukuk issuance)
SELLING RESTRICTION	Offered to at least 100 parties or sold to at least 50 parties	Offered to 100 parties at most or sold to 50 parties at most

396 OJK Regulation No. 18/POJK.04/2015 on Issuance and Requirements of Sukuk as amended by OJK Regulation No. 3/POJK.04/2018.
397 OJK Regulation No. 30/POJK.04/2019 on Issuance of Debt Securities and/or Sukuk Without Public Offering.

Sukuk can be issued based on the following forms of sharia agreements (***akad***):[398]

Mudharabah (similar to a partnership where one partner brings capital and the other provides labour);

Musyarakah (similar to profit sharing);

Murabahah (similar to cost plus financing);

Salam (similar to advance payment);

Istishna (similar to purchase order); or

Ijarah (similar to leasing).

Typically, Sukuk that is domestically issued will be structured using either ***Mudharabah*** (similar to a partnership where one partner brings capital and the other provides labour) or ***Ijarah*** (similar to leasing) agreement. The forms of agreement chosen affects the structure of the Sukuk. For more details on the types of forms of sharia agreements, please see the types of akad section below.

» SHARIA COMPLIANT LOANS

It is important that we first establish that there are no specific laws pertaining to sharia loans unlike Sukuk which the issuance is regulated by the OJK. Sharia loans, which is a growing aspect of banking and finance, relies heavily on the freedom of contract principle provided by the Clause 1338 of the ICC[399] and the modern interpretation of sharia principles as provided in the DSN-MUI rulings. The rulings are extensive and mirrors the needs of modern finance to which concepts such as syndicated lendings have been ruled upon[400].

Similar to Sukuk, the prohibition of charging interest applies and is typically replaced by fees (***ujrah***) which are charged as part of the service provided by the lender to the borrower. Furthermore, the loan documentation will include additional concepts depending on the sharia agreement used as basis for the loan. For instance, sharia compliant loans are typically structured using ***Musyarakah Mutanaqishah*** (similar to cooperation over the joint ownership of asset), this entails that the loan agreement to include clauses on the leasing of purchased assets, profit sharing between the parties and transfer of purchased assets from the lender to the borrower. Similarly, a form of sharia agreement that is typically used in providing sharia compliant loan is ***Mudharabah*** whereby the lender acts as a fund owner (***shahibul maal***) and the borrower acts as a fund manager (***mudarib***), this structure entails profit sharing between the lender and the borrower based on the agreed distribution of profits.

Given that there are no strict regulations on the form of sharia compliant loans, lenders and borrowers may negotiate the loan documentation to best serve the intention of the parties and whilst complying with sharia principles. This provides flexibility loans where the documentation is commercially required to be sharia compliant such as often required by sharia banks.

398 Fatwa DSN-MUI No. 32/DSN-MUI/IX/2002 on Sharia Bonds.

399 First sentence of clause 1338 of the ICC provides "All agreements made lawfully are binding for those who have made them, as if it were laws".

400 Fatwa DSN-MUI No. 91/DSN-MUI/IV/2014 on Syndicated Financing.

Equity instruments

» COMMON/ORDINARY SHARES

Common shares are the most common type of equity instrument issued by a company in Indonesia. Indonesian company law gives shareholders the right, among others, to attend and cast votes in the general meeting of shareholders and the right to receive dividend payments and any residual assets left on the liquidation of the company.

» PREFERRED/PREFERENCE SHARES

Preference shares are a type of equity instrument that give the holders thereof certain preferential rights over ordinary shares, such as the right to receive a fixed percentage of dividend payments and a priority right to receive any residual assets left on the liquidation of the company in comparison to the holders of common shares. However, holders of preference shares cannot cast votes in the general meeting of shareholders. An Indonesian company is not legally required to issue preference shares.

Analysis of differences between private debt and private equity

NO.	PARTICULAR	PRIVATE DEBT	PRIVATE EQUITY
1	STATUS	**Bonds and Loans** The bondholder and the lender under the loans are creditors of the relevant issuer and borrower.	**Ordinary Shares:** Ordinary shareholders have the status of owning a share in the capital of the company. **Preference shares:** Preferred shareholders have the status of owning a share in the capital of the company similar to the ordinary shareholders, but some rights of the preference shareholders may be different from the ordinary shareholders (e.g. rights to receive fixed payment of dividend).
2	BENEFITS	**Bonds:** Generally, the bondholder is entitled to receive principal and interest payments, noting certain type of bonds are sold at discounted price with no interest payment. **Loans:** Generally, the lender is entitled to the rights to receive principal and interest payments, including any other fees, charges or amounts as agreed under the underlying facility agreement.	**Ordinary Shares:** Ordinary shareholders will be entitled to receive dividends declared by the company (and the share of any residual assets at liquidation). **Preference shares:** Preferred shareholders will be entitled to receive a fixed percentage of dividends declared by the company (and the share of any residual assets at liquidation).
3	ASSURED RETURNS	**Bonds and Loans:** As above, the bondholder and the lender are entitled to receive returns as agreed under, and in accordance with, the terms and conditions of the bonds/the underlying facility agreement of the loans (as applicable).	**Ordinary shares and Preference shares:** Returns on equity cannot be assured.
4	CAPITAL REPATRIATION	**Bonds and Loans:** Capital can be fully repatriated, subject to certain disclosures under Indonesian law.	**Ordinary shares and Preference shares:** Capital can be fully repatriated, subject to certain disclosures under Indonesian law.
5	SOURCES OF PAYMENT	**Bonds and Loans:** Unless specifically set out under the terms and conditions of the bonds/the underlying facility agreement of the loans, there is no specific requirement or prohibition in relation to the source of payments.	**Ordinary shares and Preference shares:** Dividends can be paid only if the company has profits available for distribution in accordance with law and accounting rules.

NO.	PARTICULAR	PRIVATE DEBT	PRIVATE EQUITY
6	SECURITY	**Bonds:** Security or guarantee by a third person may be granted in favour of the bondholder. **Loans:** Loans may be secured by creation of security over the assets of a borrower. To secure the payment obligations under the loans or bonds, the following types of security interests can be received by lenders: • a pledge (*gadai*) which requires actual possession by the pledgee and is possible in relation to movable assets and rights represented by an instrument such as shares; • a fiducia security (*jaminan fidusia*) which does not require actual possession by the fiducia grantee and it is common to grant a fiducia security over movable assets such as receivables and insurance policies; • a *hak tanggungan* (land mortgage) over land and properties; and • a hypothec over vessel.	**Ordinary shares and Preference shares:** Generally pure equity investments do not involve any form of security rights for shareholders.
7	GOVERNANCE RIGHTS	**Bonds and Loans:** No governance rights unless the terms and conditions of the bonds/ the underlying facility agreement of the loans provides otherwise.	**Ordinary shares and Preference shares:** Shareholders shall have the governance rights specified under relevant laws and the articles of association of the relevant company, for example: • right to attend and vote at the general meeting of shareholders; • right to request for review minutes and resolutions of the meetings the board of directors and shareholders; and • right to request that the board of directors hold a general meeting of shareholders.

KEY BUSINESS ENTERPRISES IN INDONESIA

There are four types of common business enterprises in Indonesia: (i) *firma* (**FA**); (ii) *commanditaire vennootschap* or limited liability partnership (**CV**); (iii) private limited company or *perseroan terbatas* (**PT**), and (iv) cooperatives, all of which can be established under Indonesian law, as discussed below.

Please note that for the purpose of this guide, we do not discuss a public limited company whose shares can be offered to the public and listed and traded on relevant exchanges, including the Indonesian Stock Exchange as its characteristics, qualifications and compliance requirements are very detailed and, generally speaking, the higher capital and governance or disclosure requirements applicable to public limited companies can make them less efficient vehicles for impact investing.

FA

An FA is a business entity established by two or more persons ('partners') under a common name (***nama bersama***). Each partner is solely responsible for the firm's obligations. An FA is established by executing an agreement deed before a notary.[401] An FA is not a separate legal entity from its owners and therefore there is no legal separation between assets and liabilities of the individuals and the FA. It should be noted that an FA is not a legal person under Indonesian law.

CV

A CV is a business entity established by two or more persons as partners, either as active partners or silent partners. Active partners are those that provide capital as well as run the business of the entity, while silent partners are those that provide capital only. Active partners have full responsibility for all the entity's assets and liabilities, and silent partners are responsible only for the capital paid by such partners. The process for establishing a CV is the same as the process for establishing an FA, as set out above. Additionally, in similarity to an FA, a CV is not a legal person under Indonesian law.

Private Limited Company

A PT is the most popular form of business enterprise in Indonesia. The shareholders have limited liability to the amount of paid-up capital contributed to the PT by such shareholder. The establishment of a PT requires a minimum of two individuals as shareholders and the prospective shareholders are required to signed an deed of establishment before a notary.[402] It has its own legal personality and can enter into legal obligations in its own name.

401 The agreement shall contain the name of the founder of the firm, the profit distribution, as well as the terms for the beginning and the termination of the agreement.

402 Indonesian law allows a PT to be established by only one shareholder namely an individual limited liability company (perseroan terbatas perorangan). However, this is only applicable for a small-medium enterprises (SMEs) i.e. a business entity that has a capital below IDR5billion. Only Indonesian citizens that can establish this type of limited liability company.

Cooperatives

A cooperative is a business entity whose membership is composed of individuals (at the minimum of 9 individuals) or cooperatives, and which bases its activities on the principle of cooperatives and acts as a mass economic movement based on the principle of collective effort.[403] There are 2 (two) different forms of cooperatives, primary cooperatives and secondary cooperatives. A primary cooperative is established by, at least, 9 individuals, while a secondary cooperative is established by, at least, 3 primary cooperatives. The establishment of the cooperative is by way of a notarial deed which shall be approved by the Ministry of Cooperatives and Small-Medium Enterprises. It has its own legal personality and can therefore enter into legal obligations in its own name.

Analysis of each type of enterprise is summarized below

		FA	CV	PT	COOPERATIVE
	General requirements				
1	MEANING	A form of partnership between two or more individuals carrying on business under a common name (*nama bersama*).	A form of partnership between two or more individuals as partners, either as active partners or silent (passive) partners.[404]	A legal entity limited by shares and established under a deed of establishment before a notary.[405]	A business unit whose membership is composed of individuals or cooperatives and which bases its activities on the principle of cooperatives and acts as a mass economic movement based on the principle of collective effort.[406]

403 Article 1(1) of Law No. 25 of 1992 on Cooperatives, as amended (the Cooperatives Law).

404 The definition is based on the interpretation of Article 19 of the Commercial Code.

405 Article 1 of the Company Law.

406 Article 1(1) of the Cooperatives Law.

		FA	CV	PT	COOPERATIVE
2	GOVERNING LAW	Article 1618 to 1652 of Section III of the ICC. Articles 16 to 35 of the Indonesian Commercial Code (the **Commercial Code**). Minister of Law and Human Rights Regulation (the **MOLHR**) No. 17 of 2018 on the Registration of Limited Partnership, *Firma* and Civil Partnership (the **MOLHR Regulation No. 17**)	Article 1618 to 1652 of Section III of the ICC. Articles 16 to 35 of the Commercial Code. Minister of Law and Human Rights Regulation No. 17 of 2018 on the Registration of Limited Partnership, *Firma* and Civil Partnership (the **MOLHR Regulation No. 17**)	The Company Law	The Cooperatives Law
3	CONSTITUTION AND LIABILITY OF THE ENTITY	All the partners have joint and unlimited liability for all obligations of the FA.[407]	The liability of each partner depends on the type of their partnership, i.e., active partners or silent partners (see above).[408]	The liability of each shareholder is limited to the amount of paid-up capital contributed by the shareholders.[409]	The liability of the members is limited to the amount of paid-up capital contributed by the members.[410]
4	CRITERIA FOR SETTING UP	The FA can be established by a minimum of two individuals under a common name, the contribution of each partner may consist of money or assets (which can be converted into money).[411]	The CV can be established by a minimum of two individuals, either as active partners or silent partners.[412]	The PT can be established by a minimum of two individuals holding shares in the PT. The payment of shares can be in cash and/or in kind.[413]	The cooperative can be established by 9 individuals.[414]

407 Article 17 of the Commercial Code.
408 Article 19 of the Commercial Code.
409 Article 3(1) of the Company Law.
410 Article 55 of the Cooperatives Law.
411 Article 16 of the Commercial Code and Article 1618 of the ICC.
412 Article 19 of the Commercial Code.
413 Articles 7(1) and 34(1) of the Company Law.
414 Article 6 (1) of the Cooperatives Law.

		FA	CV	PT	COOPERATIVE
5	MINIMUM CAPITAL TO SET-UP	No minimum capital requirement.	No minimum capital requirement.	No minimum capital requirement. However, at least 25% of the entity's authorized capital must be paid up by the shareholders during the establishment process.[415]	No minimum capital requirement.
6	PARTICULAR REQUIREMENTS FOR ESTABLISHMENT	The following key particulars are required to be included in the deed of establishment and for the purpose of registration through the online system by the Ministry of Law and Human Rights: • the identity of the founders; • the business activity; • the rights and obligations of the founders; • the time period of the FA.[416]	The following key particulars are required to be included in the deed of establishment and for the purpose of registration through the online system by the Ministry of Law and Human Rights: • the identity of the founders; • the business activity; • the rights and obligations of the founders; • the time period of the FA.[417]	The following key documents are required for the purpose of establishment and registration through the online system by the Ministry of Law and Human Rights: • the deed of establishment containing the articles of association of the company; • memorandum of association which includes the name, address of head office, objectives, details of share capital and the details of the promoters; • details of the director(s) and authorised signatories; • list of shareholders; • articles of association; and • evidence of payment of share subscription.[418]	The following documents are required for the purpose of establishment and registration through the online system of the Ministry of Law and Human Rights: • the minutes of the establishment meeting attended by members of the cooperative establishing the cooperative; • the articles of association of the cooperative; • evidence of payment of savings by the members; and • working plan of the cooperative.[419]

415 Article 33 (1) of the Company Law.

416 Article 12 (4) a of MOLHR Regulation No. 17 of 2018.

417 Article 12 (4) a of MOLHR Regulation No. 17 of 2018.

418 Article 6 of MOLHR No 21. of 2021 on the Registration Requirements and Procedures for Establishment, Amendment and Dissolution of Limited Liability Companies.

419 Article 12 (3) of MOLHR Regulation No. 14 of 2019 on Validation of Cooperatives.

		FA	CV	PT	COOPERATIVE
7	VALIDITY OF THE REGISTRATION	Indefinite period unless dissolved.	Indefinite period unless dissolved.	Indefinite period unless dissolved.	Indefinite period unless dissolved.
8	TIME INVOLVED IN SETTING UP	The signing of the notarial deed and the registration can be done within one day, provided that required particulars and documents are provided to the notary.	The registration can be done within one day, provided that required particulars and documents are provided to the notary.	The registration can be done within one day, provided that required particulars and documents are provided to the notary.	The registration can be done within one day, provided that required particulars and documents are provided to the notary.
9	LIABILITIES OF AUTHORIZED REPRESENTATIVES/ DIRECTORS/ PARTNERS	All the partners have joint and unlimited liability for all obligations of the FA.[420]	Active partners have unlimited liability for all obligations of the CV. Silent partners have limited liability up to the amount of their capital commitments.[421]	The directors have a fiduciary duty to perform their role with care, exercise diligence and not having conflicting interests, etc. in accordance with the articles of association.[422]	The administrators hold a fiduciary duty to perform their role with care, exercise diligence and not having conflicting interests, etc. in accordance with the articles of association.[423]
10	ABILITY TO UNDERTAKE INCOME GENERATING ACTIVITIES	There are no limits on the its ability to undertake income generating activities.	There are no limits on the its ability to undertake income generating activities.	There are no limits on the its ability to undertake income generating activities.	There are no limits on the its ability to undertake income generating activities.

420 Article 18 of the Commercial Code.
421 Article 19 of the Commercial Code.
422 Article 97 (2) of the Company Law.
423 Article 30 (1) of the Cooperatives Law.

		FA	CV	PT	COOPERATIVE
11	MANAGE-MENT	Managed by the partners.[424]	Managed by the active partner(s).[425]	Two-tier board system. A director or directors shall be responsible for the management of the company in accordance with the articles of association.[426] The board of commissioners shall be responsible for the supervision of the management of the company. The board of directors employs the recommendations of the board of commissioners to administer the company as efficiently as possible. Every PT is required to have at least one director and one commissioner. The company's shareholders can serve as directors or commissioners but shareholding is not required to be a member of management.[427]	The administrators shall be responsible for the management of the cooperative.[428]
12	STATUTORY AUDIT	There is no requirement under the law that the FA shall be subject to an audit.	There is no requirement under the law that the CV shall be subject to an audit.	There is no requirement under the law that a privately owned PT shall be subject to an audit.	Lending cooperatives with a minimum capital of IDR5 billion (approximately USD325,000) are subject to an audit.[429]

424 Article 17 of the Commercial Code.
425 Article 20 of the Commercial Code.
426 Article 92 of the Company Law.
427 Article 108 of the Company Law.
428 Article 30 (1) a of the Cooperatives Law.
429 Article 104 (2) of MOLHR Regulation No. 8 of 2023 on Lending Activities by Cooperatives.

		FA	CV	PT	COOPERATIVE
13	ONGOING COMPLIANCE OBLIGATIONS	Key compliance obligations for an FA are as follows: • Obtain MOLHR approval for reserving the name of the FA, including subsequent amendments to the articles of association which contains changes to its name;[430] and • Notify the MOLHR of any amendments to the articles of association (excluding its name) or its dissolution.[431]	Key compliance obligations for a CV are as follows: • Obtain MOLHR approval for reserving the name of the CV, including subsequent amendments to the articles of association which contains changes to its name; [432] and • Notify the MOLHR of any amendments to the articles of association (excluding its name) or its dissolution. [433]	Key compliance obligations for a PT are as follows: • Obtain MOLHR approval for establishment.[434] • Obtain MOLHR approval for amendments of articles of association concerning the matters of name, domicile, business activity, authorized capital, reduction of issued/paid-up capital and change of status into publicly traded or privately owned.[435] • Notify the MOLHR of any amendments to the articles of association (excluding any matters set out above).[436]	Key compliance obligations for Cooperatives are as follows: • Obtain MOLHR approval for establishment.[437] • Obtain MOLHR approval for amendments to the articles of association concerning the matters of name, merger and spin-off of its business.[438] • Notify the MOLHR of any amendments to the articles of association (excluding any matters set out above).[439]
14	MEETINGS	No mandatory meetings are required. Partners may convene a meeting to amend the deed of an FA.[440]	No mandatory meetings are required. Partners may convene a meeting to amend the deed of a CV.[441]	A general meeting of shareholders is required to be held annually. An extraordinary meeting of shareholders may also be held from time to time as needed.[442]	A meeting of the members is required to be held annually. An extraordinary meeting of members may be held from time to time as needed. [443]

430 Articles 7 (1) and 16 (1) of MOLHR Regulation No. 17 of 2018.
431 Article 15(3) of MOLHR Regulation No. 17 of 2018.
432 Articles 7 (1) and 16 (1) of MOLHR Regulation No. 17 of 2018.
433 Article 15(3) of MOLHR Regulation No. 17 of 2018.
434 Article 7 (4) of the Company Law.
435 Article 21 (1) of the Company Law.
436 Article 21 (3) of the Company Law.
437 Article 9 of the Cooperatives Law; and Article 3 (1) of MOLHR Regulation No. 14 of 2019 on Validation of Cooperatives.
438 Article 12 (2) of the Cooperatives Law; and Article 17 (1) of MOLHR Regulation No. 14 of 2019 on Validation of Cooperatives.
439 Article 23 (1) of MOLHR Regulation No. 14 of 2019 on Validation of Cooperatives.
440 Article 18 (3) of MOLHR Regulation No. 17 of 2018.
441 Article 18 (3) of MOLHR Regulation No. 17 of 2018.
442 Article 78 of the Company Law.
443 Articles 26 and 27 (1) of the Cooperatives Law.

		FA	CV	PT	COOPERATIVE
15	OVERSEAS DIRECT INVESTMENT	FA is not open to overseas direct investment.	CV is not open to overseas direct investment.	PT is open for overseas direct investment, subject to the positive list, which determines which fields of business are open to foreign investment.[444]	Cooperatives are not open to overseas direct investment.
16	CLOSURE	An FA may be dissolved for the following reasons: • end of term of establishment; • the destruction of properties required to carry out its business activity; • the decision of the partners as a result of the passing away or declaration of incompetence of a partner;[445] The dissolution takes effect once it is registered in with the MOLHR and announced in a newspaper.[446]	A CV may be dissolved for the following reasons: • end of term of establishment; • the destruction of properties required to carry out its business activity; • the decision of the partners as a result of the passing away or declaration of incompetence of a partner;[447] The dissolution takes into effect once it is registered with the MOLHR and announced in a newspaper. [448]	A PT may dissolve for the following reasons: • end of term of establishment; • the destruction of properties required to carry out its business activity; • agreement between shareholders; • court decision; • statutory result due to license revocation;[449] The dissolution takes effect following the completion of a mandated liquidation process.[450]	Cooperatives may dissolve for the following reasons: • agreement between the members through the members meeting; • government decision due to regulatory violation;[451] The dissolution must be announced by the government.[452]

444 Article 7 of Presidential Regulation No. 10 of 2021 on Business Investment as amended by Presidential Regulation No. 49 of 2021; and Article 9 (9) of the BKPM Regulation 4 of 2021 on the Guideline and Procedure for Risk Based Business Licensing Services and Investment Facilities.

445 Article 1646 of the ICC.

446 Article 29 of the Commercial Code.

447 Article 1646 of the ICC.

448 Article 29 of the Commercial Code.

449 Article 142 (1) of the Company Law.

450 Article 143 (1) of the Company Law.

451 Article 46 of the Cooperatives Law.

452 Article 56 of the Cooperatives Law.

		FA	CV	PT	COOPERATIVE
	Governance requirements				
17	GENERAL MEETING	No specific requirement regarding general meeting.	No specific requirement regarding general meeting.	Other than an annual general meeting of shareholders (**GMS**), a GMS may also be held at the request of: • one or more shareholders who jointly represents 1/10 or more of the total number of shares with voting rights, unless the articles of association set out a smaller number; or • the board of commissioners.[453] Such request shall be submitted to the board of directors along with the reason for the request. The board of directors must issue a notice to convene a GMS within at the latest 15 days from the date of receipt of a GMS request.[454]	Other than an annual meeting of members, a meeting of members may also be held at the request of the members or administrators.[455] Requirement and procedure to convene a members' meeting are regulated in the articles of association of the cooperative.[456]
18	NOTICE OF THE PARTNERS/ SHARE-HOLDERS' MEETING	No requirement regarding the notice.	No requirement regarding the notice.	Board of directors must send a notice to convene a GMS to the shareholders at the latest 14 days prior to the GMS, exclusive of the day of notice and the day of the GMS.[457]	No requirement regarding the notice.

453 Article 79 (2) of the Company Law.
454 Article 79 (5) of the Company Law.
455 Article 27 (1) of the Cooperatives Law.
456 Article 8 (e) of the Cooperatives Law.
457 Article 82 (1) of the Company Law.

		FA	CV	PT	COOPERATIVE
19	MINIMUM NUMBER OF PARTNERS/ SHARE-HOLDERS FOR MEETING	No requirement regarding the minimum number of partners to form a quorum of the meeting.	No requirement regarding the minimum number of partners to form a quorum of the meeting.	A GMS may be held in accordance with the following quorum: • for a general meeting: attendance of more than 1/2 of the total shares with voting rights, or failing that, at least 1/3 of the total shares with voting rights on the second GMS summons;[458] • for amendment of articles of association: attendance of at least 2/3 of the total shares with voting rights, or failing that, at least 3/5 of the total shares with voting rights on the second GMS summons;[459] • for approval of merger, consolidation, acquisition or separation, submission of application for the PT to be declared bankrupt, extension of duration of establishment and dissolution of the PT: attendance of at least 3/4 of the total shares with voting rights, or failing that, at least 2/3 of the total shares with voting rights on the second GMS summons.[460]	No requirement regarding the minimum number of partners to form a quorum of the meeting.

458 Article 86 of the Company Law.
459 Article 88 of the Company Law.
460 Article 89 of the Company Law.

		FA	CV	PT	COOPERATIVE
	Rights of partners/shareholders				
20	INFORMATION RIGHTS	No specific information rights under regulation – this will be governed by an FA's constituting documents.	No specific information rights under regulation – this will be governed by a CV's constituting documents.	Shareholders are entitled to information regarding: • the PT's annual report, containing, among others, a financial statement, report on the activities of the PT, report on the implementation of the corporate social and environmental responsibility requirements (see above), and details of issues arising during the fiscal year which have affected the business activities of the PT;[461] • Issuance of new shares.[462]	A member is entitled to information regarding: The Cooperative's annual report containing the year's balance sheet and the state and business of the Cooperative.[463]
21	RIGHT TO RECEIVE PROFITS	Unless agreed otherwise, profits are distributed to the partners proportionately to their contribution.[464]	Unless agreed otherwise, profits are distributed to the partners proportionately to their contribution.[465]	Unless determined otherwise in the GMS, dividends are distributed to the shareholders based on the amount and classification of shares owned by them.[466]	Unless agreed otherwise, profits are distributed to the members in accordance with their contributions to the cooperatives.[467]

461 Article 66 (2) of the Cumpany Law.
462 Article 43 (1) of the Company Law.
463 Article 35 of the Cooperatives Law.
464 Article 1633 of ICC.
465 Article 1633 of ICC.
466 Articles 52 (1) b and 53 (4) d of the Company Law.
467 Article 5(1) of the Cooperatives Law.

		FA	CV	PT	COOPERATIVE
22	VOTING RIGHT	Unless agreed otherwise, each partner is considered to have received power from the other partners to take action.[468]	Unless agreed otherwise, each partner is considered to have received power from the other partners to take action.[469]	Shareholders voting rights are determined by the amount and classification of shares they own through the GMS process.[470]	Primary members of a cooperative have one voting right each. Secondary members have voting rights calculated based on the size of the member's business and total amount of members.[471]
23	PRE-EMPTIVE RIGHT	Not applicable	Not applicable	Newly issued shares must be offered to all existing shareholders in proportion to the number of shares held by each shareholder.[472] Shares intended to be sold to third parties must first be offered to all existing shareholders.[473]	Not applicable
24	REVOCATION OF RESOLUTION	No provision regarding such right.	No provision regarding such right.	Any shareholder may file a lawsuit to court to revoke any resolutions made by the shareholders, board of directors or board of commissioners, provided that such resolution is unfair and prejudiced against the suing shareholder.[474]	No provision regarding such right.
25	RESIDUAL PROFITS UPON THE WINDING UP OF THE PARTNERSHIP/ COMPANY	No specific provision regarding such rights. Profits are generally allocated to the partners proportionately to their contribution.[475]	No specific provision regarding such rights. Profits are generally allocated to the partners proportionately to their contribution.[476]	Each shareholder is entitled to residual profits from the PT's remaining assets once creditors are paid in full.[477] Allocation of residual profits is subject to the amount and classification of shares.[478]	Each member is entitled to residual profits from the Cooperatives remaining assets once creditors are paid in full.[479] Allocation of residual profits is not regulated further.

468 Article 17 of the Commercial Code.
469 Article 17 of the Commercial Code.
470 Article 52 (1) b and Article 53 (4) a of the Company Law.
471 Article 24 of the Cooperatives Law.
472 Article 43(2) of the Company Law.
473 Article 43(1) of the Company Law.
474 Article 61 of the Company Law.
475 Article 1633 of ICC.
476 Article 1633 of ICC.
477 Article 52 (1) b and Article 149 (1) of the Company Law.
478 Article 53 (4) e of the Company Law.
479 Article 54 (g) of the Cooperatives Law.

TYPES OF SOCIAL ENTERPRISES IN INDONESIA

One of the relevant structures for non-profit seeking activities under Indonesian law is the 'foundation' (***yayasan***) as described under Law No. 16 of 2001 on Foundations as further amended by Law No. 28 of 2004 (as further amended from time to time, the **Foundation Law**). A foundation is a legal entity that is established by one or more persons or legal entities based on the separation of assets for a specific purpose that is beneficial to the public interest, social welfare, or human development.[480] A non-Indonesian can establish a foundation jointly with an Indonesian national. It should be noted that any income earned from such activities shall not be distributed among the members and directors even after the dissolution of the entity.

As a matter of structure, a foundation shall have a board of trustees, a board of executives, and a board of supervisors.

Social enterprises under Indonesian laws vary in their purposes; however, the key common characteristic among them is that they are non-profit seeking and may engage in non-profit activities for purposes prescribed by the law and its regulations.

Some of the main legal aspects that apply to the establishment of a foundation in Indonesia:

Establishment, registration and licensing

A foundation must be registered with the Ministry of Law and Human Rights within 30 days of its establishment and obtain a legal entity certificate. A foundation must also obtain a tax identification number (NPWP) from the Directorate General of Taxation and a business identification number (NIB) from the Online Single Submission (OSS) system. Depending on the type and scope of its activities, a foundation may also need to obtain specific licenses or permits from other relevant authorities.

Reporting and auditing

A foundation must submit annual reports and financial statements to the Ministry of Law and Human Rights and the Directorate General of Taxation, as well as to any other authorities that grant licenses or permits to the foundation. A foundation must also appoint an independent auditor to audit its financial statements and ensure compliance with the applicable accounting standards and principles. A foundation must also disclose its sources and uses of funds, assets, liabilities, and activities to the public through its website or other media.

Taxation and incentives

A foundation is subject to income tax, value-added tax, and other taxes in accordance with the prevailing tax laws and regulations. However, a foundation may be eligible for tax exemptions or deductions if it meets certain criteria and obtains a decree from the Minister of Finance or a designated official. For example, a foundation

480 Article 1 of the Foundation Law.

may be exempted from income tax if it is engaged in certain fields of public interest, such as education, health, social welfare, religion, culture, environment, or research and development, and if it allocates at least 75% of its net income for those purposes. A foundation may also be eligible for deductions on its taxable income if it makes donations to certain recipients, such as other foundations, religious institutions, educational institutions, or social institutions, that are approved by the Minister of Finance or a designated official. Additionally, a foundation may benefit from incentives such as reduced import duties, value-added tax refunds, or customs facilities if it imports goods or services for its activities in the public interest.

Supervision and sanctions

A foundation is subject to supervision and oversight by the Ministry of Law and Human Rights and other relevant authorities, as well as by the public and the media. A foundation must comply with the laws and regulations that govern its establishment, operation, and dissolution, as well as with its own articles of association and bylaws. A foundation must also respect the rights and interests of its beneficiaries, donors, partners, employees, and other stakeholders. A foundation that violates the laws and regulations or its own articles of association and bylaws may face administrative, civil, or criminal sanctions, such as warnings, fines, suspensions, revocations, or imprisonment, depending on the nature and severity of the violation. A foundation may also be dissolved by a court decision, by the request of its founders or board of trustees, or by the occurrence of certain events that make its continuation impossible or unnecessary.

2. OVERVIEW OF THE LEGISLATIVE FRAMEWORK FOR IMPACT INVESTING

In this section, we set out below the key legislative frameworks which should be considered when undertaking impact investing in Indonesia.

FOREIGN INVESTMENT LAW

The main legal framework for foreign investment in Indonesia is Law No. 25 of 2007 on Capital Investment (as amended from time to time, the **Investment Law**), which applies to both domestic and foreign investors and aims to promote and protect investment activities, create a conducive business climate, and foster economic development and national competitiveness. The Investment Law defines foreign investment as any investment activity conducted by a foreign investor, either using foreign capital entirely or jointly with domestic capital, in the form of a limited liability company established under Indonesian law and domiciled in Indonesia.

The Investment Law grants foreign investors the same rights and obligations as domestic investors, subject to certain exceptions and limitations, such as the negative investment list (***daftar negatif investasi,*** **DNI**), the divestment requirement, the domestic component requirement, and the dispute settlement mechanism. The DNI is a list of business sectors that are either closed, partially closed, or open with certain conditions for foreign investment, based on considerations of national interest, security, morality, culture, environment, and economic development. The DNI is periodically updated by the government, most recently by Presidential Regulation No. 10 of 2021 on Investment Business Fields (the **2021 DNI Regulation**), which replaced the previous DNI regulation issued in 2016. The 2021 DNI Regulation significantly liberalized and simplified

the DNI, reducing the number of business sectors that are closed or restricted for foreign investment, and introducing a new classification of priority sectors that are eligible for various incentives and facilities. The divestment requirement is a condition imposed on certain foreign investments that obliges the foreign investor to gradually reduce its ownership share in the limited liability company to a certain percentage or transfer it to a domestic partner within a specified period of time. The divestment requirement is determined by the relevant sectoral authority or the Investment Coordinating Board (**BKPM**), which is the central government agency responsible for overseeing and facilitating investment activities in Indonesia. The domestic component requirement is a condition imposed on certain foreign investments that requires the limited liability company to use a certain percentage of local raw materials, components, or services in its production or operation. The domestic component requirement is also determined by the relevant sectoral authority or the BKPM and may vary depending on the type and scale of the business activity.

The Investment Law also provides for various incentives and facilities for foreign investors, such as tax holidays, tax allowances, import duty exemptions, land and building tax reductions, investment guarantees, ease of licensing and permits, and special economic zones. The incentives and facilities are granted based on the criteria and procedures set by the government, and may vary depending on the type, location, sector, and scale of the investment activity. The BKPM is the main institution that administers and coordinates the incentives and facilities for foreign investors, in collaboration with other relevant ministries and agencies. The BKPM also operates a one-stop integrated service that aims to simplify and expedite the investment licensing and permitting process for foreign investors.

LAND LAW

Law No. 5 of 1960 on Basic Agrarian (as amended from time to time, the **Land Law**) is the main national legislation governing land matters. According to the Land Law, land is a natural resource that belongs to the state and is controlled by the state for the benefit of the people. The Land Law recognizes five types of land rights that can be held by individuals or legal entities, namely: ***hak milik*** (freehold or ownership), ***hak guna usaha*** (right to cultivate), ***hak guna bangunan*** (right to build), ***hak pakai*** (right to use), and ***hak sewa*** (right to lease). The Land Law also recognizes customary land rights (***hak ulayat*** or ***hak adat***) of indigenous communities, as long as they are not contrary to national interests and laws. The Land Law also regulates the procedures and requirements for land registration, transfer, acquisition, dispute resolution, and agrarian reform. Please note that, specific laws and regulations may therefore apply to different sectors, regions and issues related to land in Indonesia, such as forestry, mining, plantation, spatial planning, environmental protection, land taxation, land acquisition for public purposes, land reform, land administration, land dispute resolution, and land governance.

MICRO, SMALL AND MEDIUM ENTERPRISES LAW

Under Law No. 20 of 2008 on Micro, Small and Medium Enterprises (as amended from time to time, the **MSME Law**), in order to be classified as a micro, small or medium enterprise, such enterprise needs to comply with certain criteria relating to business capital, turn over, net worth indicators, annual sales results, investment value, incentives and disincentives, application of environmentally friendly technology, local content and number of workers.[481] The MSME Law provides certainty for MSMEs in respect of obtaining finance in the

481 Despite of such criteria as described under the MSME Law, as a matter of practice, the division is based on revenue. Micro enterprises have annual turnover of at most Rp300 million, with assets of up to Rp50 million, excluding land and building of business premises, small enterprises have a turnover between Rp300—Rp500 million, with a total yearly sale of up to Rp2 billion and medium enterprises have a yearly turnover between Rp500 million and Rp10 billion.

form of loans, guarantees, grants and other forms of financing from state-owned enterprises, national and foreign large enterprises. For example, Indonesian central and regional governments are obliged to assist and provide further access to finance for MSMEs, including facilitating their promotion in public infrastructure (e.g. at least 30% of the total shopping/commercial area within certain premises must be utilized for the promotion of MSMEs).

MERGER CONTROL

The main source of merger control law in Indonesia is Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (as amended from time to time, the **Competition Law**), which empowers the Commission for the Supervision of Business Competition (**KPPU**) as the independent authority responsible for enforcing the law and issuing implementing regulations. The Competition Law applies to mergers, consolidations, and acquisitions of shares or assets that meet certain thresholds of combined assets or sales value, either in Indonesia or globally, and that have a direct or indirect impact on the Indonesian market. The Competition Law also covers joint ventures, mergers of state-owned enterprises, and foreign mergers that affect the Indonesian market.

The KPPU applies a substantial lessening of competition (**SLC**) test to evaluate the potential effects of a merger on the relevant markets, taking into account factors such as market structure, market concentration, entry barriers, potential competition, efficiency gains, and consumer benefits. The KPPU also uses a market share-based safe harbor rule, which presumes that a merger does not raise competition concerns if the combined market share of the parties is less than 20% in the relevant market, or if there are at least five other competitors with similar or larger market shares in the relevant market. However, the KPPU may still review a merger that falls within the safe harbor rule if there are other indications of SLC.

FOREIGN EMPLOYMENT

Generally, employers in Indonesia are required to obtain approval of the Foreign Manpower Utilization Plan (***Rencana Penggunaan Tenaga Kerja Asing***, **RPTKA**) and employers shall apply through the online system managed by the Ministry of Manpower. The RPTKA approval can then be used as the basis to obtain the relevant visa to enter Indonesia for the purpose of working and the limited stay permit. These visas are required if the foreign national intends to reside and work in Indonesia.

There are 18 positions that cannot be held by foreign nationals, mainly related to human resources and industrial relations occupations. However, foreign nationals can hold jobs as directors and commissioners as long as they are not managing personnel and the appointment of the foreign directors and commissioners does not contradict the prevailing laws and regulations.

FOREIGN EXCHANGE

Law No. 24 of 1999, dated 17 May 1999 on the Flow of the Foreign Exchange System and Exchange Rate System (**Law 24/1999**) provides that a person may hold and use foreign currency freely in the Republic of Indonesia. The transfer of foreign exchange to and from abroad and the status of any offshore asset or liability of an Indonesian company that falls under certain criteria, however, are subject to disclosure and reporting obligations to Bank Indonesia as stated in Bank Indonesia regulations.[482]

Further, pursuant to Bank Indonesia Regulation No. 24/7/PBI/2022 on the Transaction in Foreign Exchange Market and its implementing regulation pursuant to the Board of Governors of Bank Indonesia Regulation No. 24/10/PADG/2022 on Implementation of Transaction in Foreign Exchange Market (the **FX Regulations**), dated 4 July **2022** an Indonesian citizen or entity (excluding Banks) may purchase foreign currencies against Indonesian Rupiah (**IDR**) without an underlying transaction in the maximum amount of USD100,000 or its equivalent per month/customer. Any purchase of foreign currencies against IDR of more than USD100,000 or its equivalent per month/customer must be supported by an underlying transaction and the maximum amount of the foreign exchange that can be purchased must be equal to the value of the underlying transaction.

The FX Regulations prohibit the transfer of IDR offshore. An Indonesian bank, however, may transfer IDR to an account of a foreign party or a joint account of a foreign party and a local party held at an onshore bank if the transfer is:

- in maximum amount equivalent to US$1,000,000 per day/customer; or
- made between accounts owned by the same foreign party. If the transfer is of more than the equivalent of US$1,000,000 per day/customer, the transfer shall have an underlying transaction.

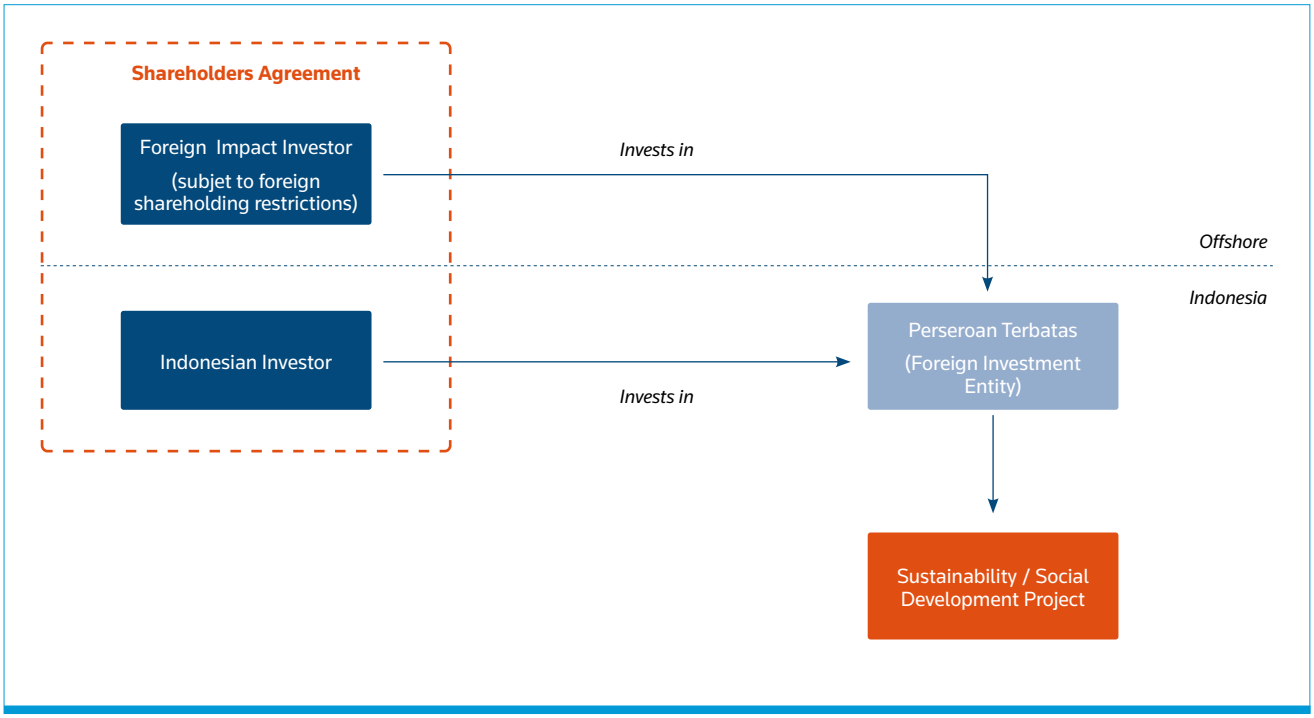
The definition of "underlying transaction" includes loans, direct investments and portfolio investments.

482 These Bank Indonesia regulations are Bank Indonesia Regulation No. 16/22/PBI/2014 on the Foreign Exchange Activities Reporting and the Application of the Prudential Principle in Managing Offshore Loans for Non-Bank Companies Reporting as partially revoked by Bank Indonesia Regulation No. 21/2/PBI/2019 on the Foreign Exchange Activities Reporting and Board of Governors of Bank Indonesia Regulation No. 21/4/PADG/2019 on Foreign Exchange Activities Reporting in Forms of Offshore Loans and Risk Participation Transactions.

3.ILLUSTRATION – AN IMPACT FUND

As discussed in the earlier sections, please see below illustrations of possible impact investment models used in Indonesia:

FOREIGN DIRECT INVESTMENT ROUTE



Description

In this model, foreign investors may, subject to foreign shareholding restrictions, purchase shares of an existing PT or subscribe to the newly issued shares of a PT, whose businesses focus on sustainability or social development projects (e.g. reducing energy consumption, mitigating environmental impact or participating in local community and society development, or provide grants to social enterprises).

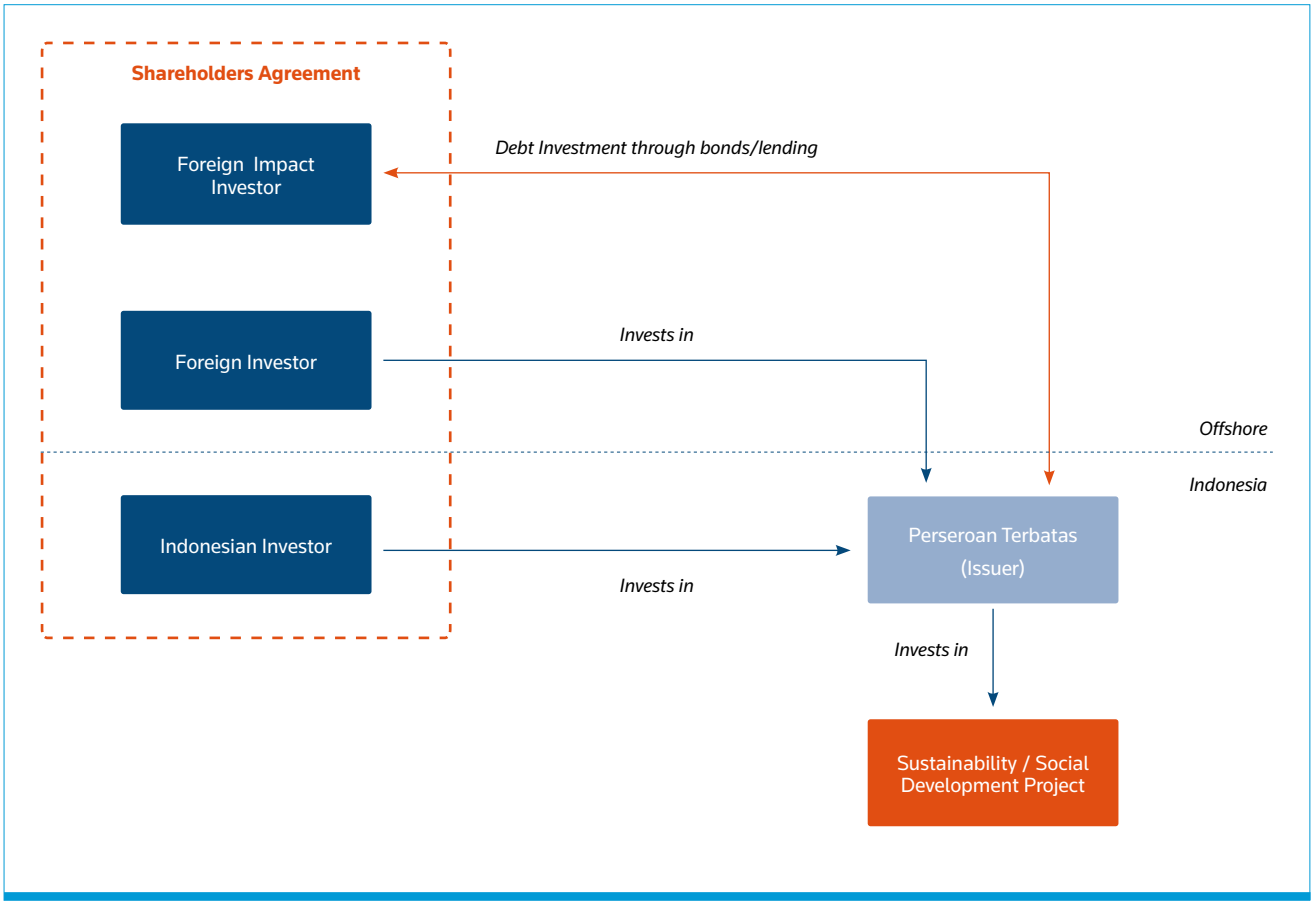
Advantages

This model allows the investor to have governance rights in the PT, subject to the amount of its shareholding (and shareholders agreement to the extent it is applicable) and may influence the company's internal policy relating to impact investment, while limiting the investors liability to the amount of capital used to purchase the shares or subscribe to the newly issued shares. If the investor specializes in social or environmental impact industries, there may also be know-how sharing or synergy from the investment.

Disadvantages

The return on this model cannot be assured as the return from the PT is paid from the profits of the company and will vary depending on the performance of the company. The investor's ability to govern the company is limited to its shareholding, commonly foreign investors only a hold a minority stake in companies, which requires a shareholder's agreement to ensure control of the company.

DEBT INSTRUMENT ROUTE



Description

In this model, foreign investors may, provide loans directly to companies or purchase corporate bonds issued by companies, whose businesses focus on sustainability or social development projects (e.g. reducing energy consumption, mitigating environmental impact or participating in local community and society development, or provide grants to social enterprises).

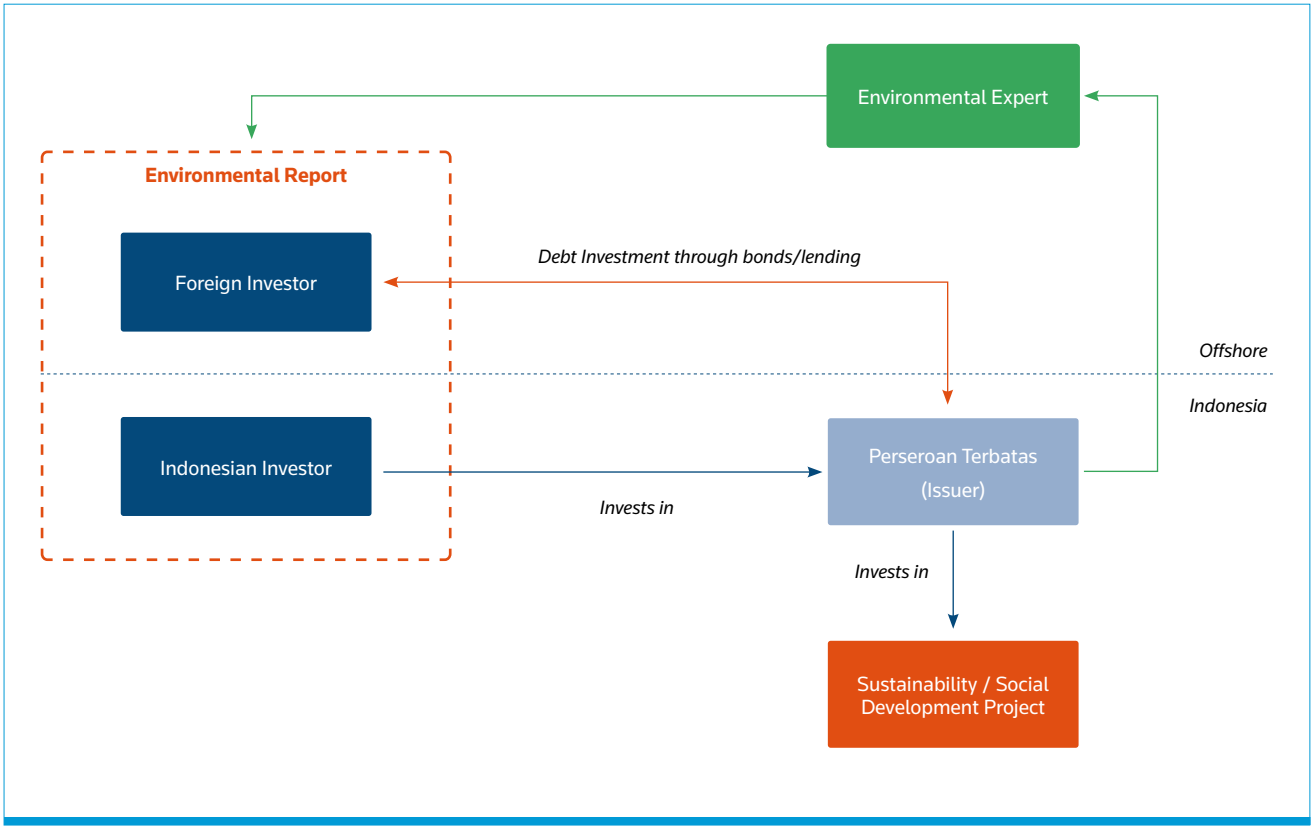
Advantages

This model allows the investors to limit their exposure to the risks of owning a company and benefit from the scheduled payments of the loan or coupon of the bond. Investors may also retain a level of governance by entering into an investor's rights agreement with the shareholders of the company which allow the investor to influence the company's internal policy relating to impact investment.

Disadvantages

The return on this model is limited to the company's payment on principal and interest/coupon, and the return is not affected by the performance of the company, therefore foregoing potential higher returns. Furthermore, there are no governance rights for the investors, unless it enters into an investor's rights agreement with the shareholders of the company to allow the investor to protect its interests.

GREEN BOND ROUTE



Description

In this model, foreign investors may, purchase green bonds which are assessed by an environmental expert on an annual basis and reported to the OJK. Green bonds are required to allocate at least 70% of the funds collected to certain environment-related activities (see above) and are subject to annual assessments by environmental experts.

Advantages

This model provides investors a guarantee that at least 70% of the proceeds from the green bond is going to be used for specific environment-related activities. In addition, environmental reports from external environmental experts are required to be disclosed on an annual basis which provides investors with transparency regarding the use of their investments proceeds and the progress of the relevant project finance through the green bond in relation to sustainability matters. The government may also work to incentivise investments in Green bonds through giving sustainable finance awards, or recognising issuers for their sustainability / social development achievements.

Disadvantages

The return on this model is limited to the company's payment on principal and interest/coupon, and the return is not affected by the performance of the company, therefore foregoing potential higher returns. The incentives provided under the law are generally cosmetic and do not ease the impact investors costs or burden in investing in the project. Furthermore, other incentives that may be given by the government are unclear in nature and remain to been seen.

4. OPPORTUNITIES AND CHALLENGES IN INDONESIA

KEY OPPORTUNITIES WHICH CURRENTLY EXIST FOR IMPACT INVESTING IN INDONESIA

The development of legal frameworks for green and sustainable investments

Foreign impact investors can expect significant developments of the legal framework for green and sustainable investments in Indonesia in the coming years. Recently the OJK has released the Green Taxonomy which is a guiding document for the development of sustainability in every sector of the Indonesian economy. This is aimed at promoting future investments in green and sustainable projects, including investments foreign investors.

Special economic zones for investments

Special economic zones are constructed by the government to promote investments within these zones and stimulate economic growth. Impact investors may setup their project/business within these zones to enjoy benefits such as lower capital requirements, tax benefits, ease of licensing and other similar benefits. These zones are predominantly located outside the island of Java where the infrastructure and economy are less developed, which may benefit foreign impact investors seeking to create the most impact through their project/business.

KEY CHALLENGES WHICH CURRENTLY EXIST FOR IMPACT INVESTING IN INDONESIA.

Existing legal frameworks are recent and in development

As of this moment, the Government of Indonesia is continuously building the necessary legal frameworks to accommodate sustainability as part of its economy. However, the legal developments are relatively recent, and their implementation and benefits remain to be seen. While the current legal framework provides the basis to develop a sustainable focused economy, its implementing regulations are still being constructed.

Sector-specific documentary and administrative requirements and timelines

Foreign impact investors in Indonesia will have to be conscious of sector-specific regulation and licencing requirements. The documentary requirements and timelines for complying with sector-specific regulation and obtaining necessary licences will depend on the scope of the project/business activity and the relevant licencing authority and will need to be assessed on a case-by-case basis. Foreign impact investors will benefit significantly from collaborating with local Indonesian partners and local advisors in navigating registration and licencing requirements, including in engaging constructively with local authorities and any local population that is affected by the project/business at an early stage.

SECTION 6 »

REUTERS/ Shwe Paw Mya Tin

SECTION 6 » MYANMAR

1. IMPACT INVESTMENT STRUCTURES

Impact investment vehicles/structures in Myanmar involve either corporate entities (either a private company limited by shares, or a company limited by guarantee) incorporated under the Myanmar Companies Law 2017 or Non-Governmental Organizations (**NGOs**) / International Non-Governmental Organizations (**INGOs**) registered under the Organizations Registration Law 2022. These entities attract funding from foreign and local investors in the form of loans, equity, or donations. Additionally, local venture capital funds, incorporated as private limited companies, contribute investments to these entities. Notably, NGOs/INGOs cannot engage in equity investments as they are not considered corporate entities under Myanmar law.

Impact investors should consider Myanmar as a destination for investment due to its vast potential for positive social and economic change. Myanmar boasts abundant natural resources, a young workforce and a strategic geographic location in Southeast Asia. While the country holds significant potential for positive social and economic impact, it is crucial to acknowledge the current hurdles, including a sanctions regime, difficulties in repatriating foreign currency and navigating legal and practical barriers to doing business. In the case of foreign investments in existing social impact entities in Myanmar, foreign investors should carry out proper due diligence of the investee entities to ensure, among other things, that the entity or its management personnel are not sanctioned. In light of the constraints, impact investors can adopt a nuanced approach to investment in Myanmar and focus on investment structures that ensure positive social change and financial returns that can be transferred outside of the country. By engaging with local stakeholders and building resilient partnerships, impact investors can navigate the complexities of the Myanmar market more effectively, ensuring that their investments contribute to long-term sustainable development and social impact. While challenges persist, Myanmar's potential for positive change remains significant, making it a compelling frontier for impact investors committed to driving meaningful social and environmental progress.

KEY INVESTMENT INSTRUMENTS IN MYANMAR

The key investment instruments through which impact investments may be made in Myanmar incorporated/ registered entities are discussed below:

Loan

In Myanmar, the term 'Loan' is defined in the Usurious Loans Act 1918 to mean "a loan whether of money or in kind and includes any transaction which is, in the opinion of the Court, in substance a loan."[483] The Financial

483 Section 2(2) of the Usurious Loans Act 1918.

Institutions Law 2016 defines a 'Credit Facility' to mean "the granting by a financial institution of advances, loans and other facilities where by a customer of the financial institution has access to funds or financial guarantees; or the incurring by a financial institution of other liabilities on behalf of a customer."[484]

» LOAN TYPES: LOCAL AND OFFSHORE; END-USE RESTRICTIONS

Companies incorporated in Myanmar that carry out impact investments may receive loans from financial institutions in Myanmar or from overseas, with or without collateral to fund their investments. The Central Bank of Myanmar (**CBM**) is the financial regulatory authority in Myanmar and formulates the overall monetary policy for Myanmar. Among other things, it sets the approval requirements for offshore loans, interest rates for domestic loans, the permissible types of collateral for loans and so on. The CBM expects the interest rate for offshore loans to align with these rates.

A Myanmar incorporated company that intends to obtain a loan from an overseas financial institution is required to obtain the prior approval from the CBM by submitting relevant documentation (as noted subsequently in this section) in accordance with the Foreign Exchange Management Law 2012 and the Foreign Exchange Management Rules 2014 (collectively the **Foreign Exchange Laws**).[485]

Further, the Myanmar company may receive the loan against collateral or otherwise. As per Myanmar laws, loans that are backed by collateral are referred to as 'secured loans' and those that are not backed by collateral are referred to as 'unsecured loans.' The CBM sets specific interest rates for secured and unsecured loans.

Generally, for loans from international financial entities or investors to Myanmar-incorporated companies, the utilization purpose can be defined through a contractual agreement, as there is no legal mandate for this specification. However, when these loans are extended to companies engaged in microfinance/micro-credit services in Myanmar, operating under a microfinance license issued by the Financial Regulatory Department (**FRD**), the end use of the funds is subject to regulation. These companies can access such loans for the purpose of on-lending or providing 'micro-credit.'[486]

The term 'micro-credit' is defined in the Microfinance Business Law 2011 to mean the 'loan issued without requiring to submit surety/guarantee, to reduce the poverty of basic class people and to improve their socio-economic life.' The micro-credits have to be mandatorily unsecured.[487] There is neither any restriction on the type of foreign entity that may provide a loan to a Myanmar incorporated company nor the amount of loan that such entity may provide.

» OFFSHORE LOAN APPROVAL PROCESS

In late 2016, the CBM published the criteria for offshore loans (**Criteria**) on their website. A Myanmar incorporated company which intends to borrow a loan from an offshore financial institution must submit the following documents to the CBM to seek an approval:

484 Section 2(t) of the Financial Institutions Law 2016.

485 Rule 48 of the Foreign Exchange Management Rules 2014.

486 Section 2(c)(vii) of Notification 2/2016 dated 29 August 2016 issued by the Microfinance Supervisory Committee.

487 Section 2(c) of Notification 3/2016 dated 29 August 2016 issued by the Microfinance Supervisory Committee.

An application which is addressed to "the Central Bank of Myanmar, Office No. (55), Nay Pyi Taw;

Corporate documents (Company Registration Certificate, Form VI, Form XXVI, Memorandum of Association, Memorandum of Articles, etc.);

If the company has been already established, financial statements for the current year and previous year as approved by an external certified auditor, who should be a Certified Public Accountant;

Loan agreement (draft) including repayment schedule for the proposed loan and other relevant data;

A bank credit advice as evidence of equity transferred to the company (borrower). The intention underlying this requirement is to assess the paid-up capital of the borrower in order to ascertain whether it meets the debt-to-equity ratio criteria or the 80% requirement (the latter applicable only in case of companies holding a permit issued by the Myanmar Investment Commission (**MIC**)) as mentioned below. A company in applying before the MIC, is required to propose its equity and loan amounts for the purpose of the project that they are undertaking in Myanmar. Should such company intend to avail a loan for the purpose of the project, it would be required to show, by way of bank credit advices, that 80% of the equity amount proposed has been brought into Myanmar; and

Other documentary evidence.

The abovementioned documents would be scrutinized by CBM to ascertain the following:

- Whether the amount of paid-up equity capital of the applicant exceeds USD 500,000 for companies that have an investment permit issued to them by MIC (the MIC Companies) and USD 50,000 for companies that don't have an investment permit issued to them by MIC (the Non-MIC Companies);[488]
- Whether the applicant (borrower) has regular income in foreign currency in accordance with the provisions of Foreign Exchange Management Law and Foreign Exchange Management Regulations;
- Whether the borrower is able to make full repayment with an income in Myanmar currency and that there are measures to protect against potential changes in exchange rate in the event that the borrower does not regularly have an income in foreign currency;
- Whether the borrower has already transferred 80% of equity committed in MIC permit;
- Whether Debt to Equity Ratio is within a maximum of 3:1 for Non-MIC Companies and 4:1 for MIC Companies;
- Whether there are completion and correctness of terms and conditions mentioned in loan agreement and documents; and
- Whether the loan tenure is medium-term or long-term, and loan repayment schedule is consistent with the clause relating thereto in the loan agreement.

488 The CBM revised the offshore loan approval criteria (the Revised Criteria) published on its website. The Revised Criteria distinguishes the equity commitment and debt-to-equity ratio criteria for companies that have an investment permit issued to them by MIC and those that do not have such permit. The Revised Criteria states the following: regarding equity commitment, MIC Companies are required to have equity capital of USD 500,000. MIC Companies are required to bring in 80% of the equity committed by them in their MIC proposal; Non-MIC companies are required to have equity capital of USD 50,000. With regard to the debt-to-equity ratio, the Revised Criteria states that MIC Companies are required to maintain a debt-to-equity ratio of 4:1; and Non-MIC Companies are required to maintain a debt-to-equity ratio of 3:1.

Note that in the case of loans extended to micro-finance companies in Myanmar, the said companies are required to also apply to the FRD to get a written approval for the loan. In terms of the documents that the micro-finance company must submit, it can replicate the application dossier that it submitted to the CBM; no other specific documentary requirements apply.

Notably, there are no distinct criteria for offshore loans to NGOs/INGOs. Historically, these organizations secured loans from development financial institutions, impact investors, and venture capital funds after receiving approval from the CBM. However, recent political developments, both leading up to and following the events of 1 February 2021, have subjected NGOs/INGOs to heightened scrutiny by the CBM regarding the acquisition and utilization of offshore loans and donations.

» CBM AND THE TREATMENT OF FOREIGN CURRENCY OUTWARD REMITTANCES

The CBM issues notifications and directives from time to time regarding foreign exchange remittances and aspects related thereto (collectively **CBM Directives**). Such CBM Directives also provide that Myanmar banks (including branches of foreign banks) with authorised dealer licences - meaning those banks who have been permitted by CBM to transact foreign exchange related payments in Myanmar - must ensure that all outward foreign currency payments to be made under a loan agreement have been pre-approved by the CBM.

Notably, after the political events on 1 February 2021, the CBM enacted several notifications and directives aimed at regulating the outflow of all foreign currency from Myanmar. One such notification issued by the CBM requires that (i) all foreign currency earnings of Myanmar residents should be deposited into their bank accounts with authorised dealer banks in Myanmar and converted to Myanmar Kyat; and (ii) all payments out of Myanmar must be approved by a special administrative body set up for this purpose namely the Foreign Exchange Supervisory Committee (**FESC**) prior to their repatriation.[489] There is no publicly available information regarding the form of the application required to be submitted or the time taken by the FESC to approve payments in foreign currency out of Myanmar. However, based on our recent experience we have seen approval timelines vary anywhere between 6 months to a year.

Subsequently, in relation to the repayment of offshore loan principal and interest, the CBM issued a directive to authorized dealer banks, instructing them to suspend transactions pertaining to the repayment of loan principal and interest amounts for offshore loans by Myanmar borrowers. The banks were further directed to notify their customers to revise the CBM-approved loan repayment schedules with their respective lenders.[490]

Notably, the directive did not specify an expiry date for such suspension, and as of the present date, there is no publicly available letter or notification rescinding the contents of the aforementioned directive. Consequently, we understand that the moratorium on loan repayments continues. Since the issuance of this instruction from the CBM, we have observed that offshore lenders have, in several cases, settled loan repayments through various commercial means and sought approval from the CBM for the amendment of initially approved loan agreements.

That being said, the FESC has adopted, as a matter of domestic policy, two different systems for handling offshore foreign currency remittance transactions. One of them allows for relatively easy repatriation of foreign currency payments, especially concerning trade transactions. The other relates to loan servicing which is currently not permitted.

489 Notification 12/2022 dated 3 April 2022.
490 Letter No. FE-1/744 (Ka) dated 13 July 2022.

» GREEN FINANCING IN MYANMAR

Currently there is no legal framework that specifically regulates green financing in Myanmar. Banks in Myanmar face challenges in their business model and technical capabilities. Despite the legal, regulatory and experiential shortcomings, there have been a few green financing transactions in Myanmar.

» BONDS MARKET

The bonds market is still at a nascent stage of development in Myanmar. The Government of Myanmar has been issuing securities since 1993. At present, corporate debt securities are not yet being issued in Myanmar. However, the promulgation of the Securities Exchange Law 2013 (**SEL**) and subsequent rules, regulations, notifications, and guidelines is expected to create the necessary and practical legal and regulatory environment for corporate bond issuances. At present, the issuance of debt securities in Myanmar is limited to the Government and such securities are issued in Myanmar kyat only.[491] At this point in time, no specific rules or regulations exist for the issuance of corporate bonds. While the SEL mentions different types of bonds, there is no definition of an asset class or a term for corporate bonds, and no mention of detailed treatment or activities specific to bonds not issued by the government. In addition, the Yangon Stock Exchange, while principally in a position to include debt securities on its markets, has not defined corporate bonds as eligible instruments in its business regulations.[492]

» TYPICAL IMPACT INVESTMENT MODELS: DEBT

Historically, in Myanmar, development financial institutions such as IFC, FMO, DFC, ADB have provided term loans to microfinance companies which are incorporated and licensed by the FRD in Myanmar as microfinance companies (i.e., they provide 'micro-credits' in local currency to a certain section of people in Myanmar as noted in the foregoing paragraphs). The loans from these development finance institutions are backed by corporate guarantees at the parent level and/or security over shares owned by the parent company in the borrower Myanmar microfinance company (please refer to Part 3 for more details about this structure). Such development financial institutions have acquired minority shareholding in some of these microfinance companies as well, as further described in Part 3.

Equity shares

» ORDINARY SHARES

Ordinary shares are the most common type of equity instrument issued by a company in Myanmar which broadly gives the right to the ordinary shareholders to attend and vote at general meetings of shareholders, right to any dividends declared from the profits of the company and any residual profits left on the liquidation of the company.

491 Asian Development Bank. 2018. Characteristics of the Myanmar Bond Market.

492 *Ibid*

» PREFERENCE SHARES

Preference shares are the type of equity instrument that give the holders certain preferential rights over ordinary shares, such as priority in receiving dividends or repayment of capital, or increased voting rights. Such type of shares should be issued on the terms that they are liable to be redeemed.[493]

The company may only redeem redeemable preference shares: (a) if the shares are fully paid up; (ii) out of profits or out of the proceeds of a new issue of shares made for the purpose of the redemption; and (iii) if the directors determine on reasonable grounds that the company would pass the solvency test following the redemption.[494] Rights of shareholders of preference shares will be explicitly specified in the company's constitution (which combines the traditional memorandum and articles of association) or approved by a special resolution of the shareholders of the company.[495]The preference shares may be converted into ordinary shares of the company by a special resolution.[496]

» ANALYSIS OF DIFFERENCES BETWEEN PRIVATE DEBT AND PRIVATE EQUITY

NO.	PARTICULAR	PRIVATE DEBT	PRIVATE EQUITY
1	BENEFITS	**Loans:** Generally, the lender is entitled to the rights to receive principal and interest payments, including any other fees, charges or amounts as agreed under the underlying facility agreement.	**Ordinary Shares:** Ordinary shareholders will be entitled to receive dividends declared by the company and the board and shareholders elect to declare a dividend.[497] **Preference shares:** Preferred shareholders will be entitled to receive dividends declared by the company and the board and shareholders elect to declare a dividend.[498]
2	ASSURED RETURNS	**Loans:** As above, the lender will have the right to receive the principal and interest amounts as agreed under and in accordance with the terms and conditions of the underlying facility agreement (as applicable).	**Ordinary shares and Preference shares:** Returns on equity cannot be assured. Furthermore, under the current foreign exchange legal regime there is substantial difficult in repatriating foreign currency dividends out of Myanmar.

493 Section 74(a) of the MCL.
494 Section 74(c) of the MCL.
495 Section 73 of the MCL.
496 Section 112(a)(v) of the MCL.
497 Section 106 of the MCL.
498 *Ibid*

NO.	PARTICULAR	PRIVATE DEBT	PRIVATE EQUITY
3	CAPITAL REPATRIATION	**Loans:** Currently the CBM has introduced a moratorium on the repayment of principal and interest amounts under an offshore loan. Typically, once CBM approves the offshore loan (including the repayment schedule), no additional approval is required to remit the principal and/or interest payments offshore.	**Ordinary shares and Preference shares:** Capital can be fully repatriated, subject to an approval from the FESC.
4	SOURCES OF PAYMENT	**Loans:** Unless specifically set out under the terms and conditions of the underlying facility agreement of the loans, there is no specific requirement or prohibition as regards the sources of payment.	**Ordinary shares and Preference shares:** Dividends can be paid only if the company has profits available for distribution in accordance with law and accounting rules. Further, the company should satisfy the solvency test after payment of the dividend and such payment should not be unless it is reasonable and fair to the shareholders as a whole and such payment does not materially prejudice the creditors of the company.[499]
5	SECURITY	**Loans:** Loan repayments may be secured by creating security over the tangible and intangible assets of the borrower.	**Ordinary shares and Preference shares:** Generally, equity investments do not involve any form of security rights for shareholders.
6	GOVERNANCE RIGHTS	**Loans:** No governance rights unless the terms and conditions of the underlying facility agreement of the loans provides otherwise.	**Ordinary shares and Preference shares:** Shareholders shall have same level of governance rights as specified under the relevant laws and the constitution of the company, for example: • right to attend and vote at the general meeting of shareholders; • right to request for reviewing minutes and resolution of the meetings the board of directors and shareholders; and • right to request the board of directors to hold the general meeting of shareholders.

499 Section 107 of the MCL.

KEY BUSINESS ENTERPRISES IN MYANMAR

In Myanmar, the most common types of business enterprises are, namely: (i) private company limited by shares (**PLC**); (ii) public company limited by shares; (iii) company limited by guarantee (**CLG**), all of which can be established under the Myanmar Companies Law 2017 (**MCL**), as discussed below. The other forms are branches of overseas corporations and business associations. However, these entities are not the typical forms that are used for impact investments in Myanmar.

Please note that the foreign investors prefer to set up a PLC to do business in Myanmar; therefore, particular emphasis has been put in this type of company in the table below. For carrying out impact investments, foreign investors typically set up a PLC (either as a fully foreign owned company or with a joint venture arrangement with a Myanmar company or individual) and apply for a microfinance business license. Upon obtaining such license, the microfinance company can provide, *inter alia,* 'micro-credit' to the specified class of people mentioned in the Microfinance Business Law 2011.

A CLG is one of the common forms of legal entity incorporated by offshore corporations/not-for profit organizations to carry out religious and humanitarian activities in Myanmar. A CLG can be incorporated with 100% foreign contribution or as a joint venture with a Myanmar company. Under the MCL, a CLG is not required to have share capital. A CLG may have any number of members and the liability of such members is limited to the amount they consent to provide as guarantee to discharge the debts of the company during winding up. The procedure for incorporation of a CLG is straightforward. The investor must apply to the Directorate of Investment and Company Administration (**DICA**) by filling up a prescribed form which must state, among other things, that each member of the proposed company has given their written consent to be a member, and the proposed amount of the guarantee that each member agrees to provide. DICA takes approximately five to seven business days to issue the certificate of incorporation which evidences the completion of the incorporation process. We have discussed this form of company in detail in the table below.

Please note that we have not discussed a public limited company whose shares can be offered to the public, listed and traded on the Yangon Stock Exchange as its characteristics, qualifications and compliance requirements are very detailed. Generally speaking, the governance or disclosure requirements applying to public limited companies could make them less efficient vehicles for impact investing. With respect to partnerships, note that in Myanmar, partnerships are regulated under the Partnerships Act, 1932. The rights and obligations of the partners are based on the agreements between them. A partnership may be registered but it is not compulsory to do so. A partnership is not a very common form of business in Myanmar especially in relation to impact investments.

Analysis of the legal positions of PLC and CLG is summarized below.

	PARTICULARS	PLC	CLG
	General requirements		
1	MEANING	The PLC is a company formed with the capital divided into shares, and the liability of the shareholders is limited to the unpaid amount of the shares respectively held by each of them.[500]	A CLG is a company having the liability of its members limited by the constitution to the amount as the member may respectively undertake to contribute towards the assets of the company.[501]
2	GOVERNING LAW	MCL	MCL
3	CONSTITUTION AND LIABILITY OF THE ENTITY	Any liabilities arising by virtue of the operation of the PLC (are bounded by the PLC). The liability of the shareholders is limited to the unpaid amount of the shares respectively held by each of them.	The liability of the members is limited to the amount of guarantee to be provided by them.
4	CRITERIA FOR SETTING UP	Can be formed with at least one shareholder. The payment of shares can be in cash and/or in kind.	Any director of the foreign entity or a person in Myanmar may be authorized by written authorization or board resolution to register the entity in Myanmar.
5	MINIMUM CAPITAL TO SET-UP	No minimum capital requirement; no par value concept in Myanmar. Note however, that a private limited company having a microfinance license issued to it by the FRD may have to conform to certain minimum capital requirements depending on whether they are a deposit taking or non-deposit taking microfinance company.[502]	Under the MCL, a CLG is not required to have share capital.[503]

500 Section 6(a)(i) of the MCL.

501 Section 6(a)(ii) of the MCL.

502 Deposit taking microfinance institutions must have a minimum of Myanmar Kyat 300 million (~USD 143,000) in paid-up capital and non-deposit taking microfinance institutions must have a minimum of Myanmar Kyat 100 million (~USD 48,000) in paid-up capital.

503 Section 4(a)(iii) of the MCL.

	PARTICULARS	PLC	CLG
6	PARTICULARS REQUIRED FOR ESTABLISHMENT	The foreign entity needs to create an online account on Myanmar Companies Online platform (**MyCO**). After doing so, the foreign entity can prepare the following key documents: • The online form containing placeholders regarding the name of the company, proposed place of business, names of directors, shareholders and so on; • The constitution which would follow the format prescribed by DICA to ensure that the contents therein conform to the legal requirements under the MCL; • Written consent from the proposed directors; • Board of directors resolution authorising the incorporation of the PLC; Submission of the above documents will be online as per an online application form which contains placeholders for information relating to the name and proposed address of the company, the number of shares that will be issued, the currency of payment for the shares and whether they will be paid upon registration and so on.	The foreign entity needs to create an account on MyCO platform. After doing so, the foreign entity can prepare the following documents: • the constitution of the proposed CLG which will include, inter alia, the amount of guarantee to be provided by each member; • the board resolution of the parent company of the CLG for the incorporation of the CLG or member's written consent for the incorporation of the CLG if there is no parent company or organization of the CLG); and • the written consent letter of the members to become members of the CLG. Thereafter, fill in the online application form which contains placeholders for information relating to name and proposed address of the company, proposed amount of guarantee that each member has agreed to provide, constitution of the company in English and Myanmar languages and so on. Subsequently, submit the fully filled-in form by paying the applicable registration fee of MMK 150,000 (~USD 72) to DICA for review. Upon approval of the application, DICA will issue an electronically generated certificate of incorporation/registration of the CLG which will be conclusive evidence of its valid incorporation and registration under the MCL.
7	VALIDITY OF THE REGISTRATION	Indefinite period unless dissolved.	Indefinite period unless dissolved.
8	TIME INVOLVED IN SETTING UP	5-7 business days.	Same as PLC.

	PARTICULARS	PLC	CLG
9	LIABILITIES OF AUTHORIZED REPRESENTATIVES/ DIRECTORS/ PARTNERS	The directors hold fiduciary position to perform their duties with care, exercise diligence and not having conflicting interest, etc. The directors shall be liable for their performance of activities contrary to the law, objectives of the PLC.	The directors hold fiduciary position to perform their duties with care, exercise diligence and not having conflicting interest, etc. The directors shall be liable for their performance of activities contrary to the law, objectives of the CLG.
10	ABILITY TO UNDERTAKE INCOME GENERATING ACTIVITIES	All income arising out of its business activities.	No.
11	MANAGEMENT	A director or directors shall be responsible for the management of the company in accordance with the constitution of the company. At least one director must be an ordinary resident in Myanmar which means he/she should reside in Myanmar for a consecutive period of 183 days in 12-month period commencing from the date of issue of the registration certificate by DICA. The board of directors may appoint a managing director to oversee day-to-day operation of the company.	The MCL allows one individual (i.e., a director) to administer the affairs of the CLG. Such director must be an ordinary resident in Myanmar which means he/she should reside in Myanmar for a consecutive period of 183 days in 12-month period commencing from the date of issue of the registration certificate by DICA.
12	STATUTORY AUDIT	Annual financial statements must be prepared and audited by a qualified accountant.	Like PLCs, a CLG is required to appoint an external auditor to audit their financial statements every financial year.
13	COMPLIANCE	Some of the key compliance obligations are as follows: • Submit annual returns to DICA, • Maintain the minutes of the board of directors and the shareholders' meetings. • Maintain the register of shareholders, directors, mortgages/charges.	Same as PLC.

	PARTICULARS	PLC	CLG
14	MEETINGS	According to the MCL, there are three types of general meetings that need to be held by the CLG, which are: • an annual general meeting (**AGM**) which must be held 18 months from the date of its incorporation and once every calendar year and not more than fifteen months after the holding of the last preceding AGM; • a statutory meeting[504] which must be held within a period of not less than 28 days or more than six months from the date at which the company is incorporated; and • a special general meeting that will be another general meeting of members called pursuant to the rights and procedures set out in the MCL.	Same as a PLC
15	OVERSEAS DIRECT INVESTMENT	A PLC may invest overseas upon receiving the approval of the CBM. This approval has not been historically granted.	Same as PLC.

504 This provision will not apply to the CLG that does not have a share capital.

	PARTICULARS	PLC	CLG
16	CLOSURE	The PLC may be dissolved by the court or voluntarily by the action of the shareholders. A company may be wound up by the Court:[505] • if the company has by special resolution resolved that the company be wound up by the Court; • if default is made in filing the statutory report or in holding the statutory meeting; • if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year; • if the number of members is reduced below one; • if the company is unable to pay its debts; or • if the Court is of opinion that it is just and equitable that the company should be wound up. Voluntary liquidation may be initiated upon the occurrence of any of the following events: • when the period (if any) fixed for the duration of the company by the constitution of the company expires, or the event (if any) occurs on the occurrence of which the constitution provides that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily; • if the company resolves by special resolution that the company be wound up voluntarily; or • if the company resolves by special resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.	Same as PLC.

505 Section 298 of the MCL.

	PARTICULARS	PLC	CLG
	Governance requirements		
17	GENERAL MEETING	General meeting can be called by the chairman of the board of directors or any director or other person mentioned in the company constitution[506] or on the requisition of shareholders holding not less than one-tenth of the votes that may be cast at a general meeting of the company or by at least 100 members who are entitled to vote at a general meeting.[507]	Same as PLC.
18	NOTICE OF THE SHAREHOLDERS' MEETING	A meeting of a company may be called by not less than 21 days' notice in writing (or such longer period provided by the company's constitution).[508] The written notice of the meeting of a company shall be given to every member entitled to vote at the meeting, every director and the auditor. The notice may be given: • personally; • by post or other direct delivery to the member's address recorded in the register of members or such other address notified by the member for this purpose; • electronically to the fax number or electronic address notified by the member for this purpose; or • otherwise in the manner specified in the constitution.[509]	Same as PLC
19	MINIMUM NUMBER OF SHAREHOLDERS FOR MEETING	A general meeting will be quorate if at least two members are present at all times during the meeting (or such larger number as may be specified in the company's constitution).[510]	Same as PLC.

506 Section 151(a)(vi) and Section 151(a)(vii) of the MCL.
507 Section 151(b) of the MCL.
508 Section 152(a)(i) of the MCL.
509 Section 152(a)(ii) of the MCL.
510 *Ibid*.

	PARTICULARS	PLC	CLG
	Rights of shareholders		
20	INFORMATION RIGHTS	• Shareholder has the right to inspect the company's documents, e.g., minutes and resolutions of the meetings of the board of directors and shareholders.[511] • Shareholder may ask for a copy of register of directors and will be entitled to receive said copy without any cost.[512] • Shareholder shall receive a copy of the company's financial statements of the company[513] and attach the audited financial statement with the notice calling the shareholders' meeting at which such statement will be placed.[514]	Same as PLC.
21	RIGHT TO RECEIVE PROFITS	A shareholder has the right to receive dividend declared by the company, in proportion to the amount that the shareholders have paid for each share.[515] Dividend may not be declared (i) unless the company will, immediately after the payment of the dividend, satisfy the solvency test; (ii) the making of the dividend is fair and reasonable to the company's shareholders as a whole; and (iii) the payment of the dividend does not materially prejudice the company's ability to pay its creditors.[516]	No dividend entitlement for the members of a CLG.
22	VOTING RIGHT	Unless otherwise specified by the articles of association of the company, every shareholder has one vote for each share.	Same as PLC.
23	PRE-EMPTIVE RIGHT	This no longer applies unless the company has decided to incorporate this into their constitution.	Does not apply in case of CLG unless it chooses to issue shares.

511 Section 157(d) of the MCL.
512 Section 189(d) of the MCL.
513 Section 268 of the MCL.
514 Section 260(c) of the MCL.
515 Section 70(c) of the MCL.
516 Section 107 of the MCL.

TYPES OF SOCIAL ENTERPRISES IN MYANMAR

In Myanmar, foreign investors looking to set up non-profit oriented organizations may do so by incorporating a CLG under the MCL or register an International Non-Governmental Organization under the Organizations Registration Law, 2022. We have already discussed about CLG in the foregoing section. Below we provide a brief overview of certain aspects pertaining to associations under the Organizations Registration Law 2022 (**ORL**).

NGOs and INGOs differ based on their governance and registration requirements under the law. Per ORL, an NGO is a non-governmental organization established by five (5) or more citizens to undertake social tasks/activities,[517] while an INGO is an international non-government organization which is formed in a foreign country and operates in Myanmar via a 'branch' office, with Myanmar citizens comprising at least 40% of its executive committee[518] to perform said social tasks/activities. Regarding registration, an NGO (being a locally operated association), may apply to the Union Registration Board (**URB**) or any other registration board at the Region or State level[519] (although it is common for them to apply to the URB) while an INGO is required to mandatorily apply to the URB for the purpose of obtaining the registration certificate.[520]

In terms of commonalities, NGOs/INGOs are legally permitted to perform social tasks.[521] NGOs/INGOs are issued registration certificates that are valid for a five-year term,[522] with the option for renewal thereafter. However, NGOs/INGOs with expired certificates are currently encountering significant challenges in securing renewals, thereby impeding banking and operational activities (and resulting in a shortage of funds). The initial registration process for an NGO/INGO typically spans three (3) to six (6) months from the date of application, depending upon the efficiency of the submission and appraisal of the documents by the URB. Presently, this timeline is being further extended due to regulatory hurdles and dissuading potential registrants.

2. OVERVIEW OF THE LEGISLATIVE FRAMEWORK FOR IMPACT INVESTING

In this section, we set out below key legislative frameworks which should be considered when undertaking impact investing in Myanmar.

LAWS THAT A MINORITY INVESTOR IN EARLY-STAGE FUNDING SHOULD KNOW

There are no foreign ownership restrictions in entities carrying out impact investments in Myanmar such as Myanmar incorporated and licensed microfinance companies which has Myanmar nationals/Myanmar national owned companies as shareholders. This means that an offshore financial institution or investor specialising in impact investment may acquire 100% shareholding in such companies.

517 Section 2(c) of the ORL.

518 Section 2(d) of the ORL.

519 Section 7 of the ORL.

520 Section 17 of the ORL.

521 Section 2(g) of the ORL defines the term 'Social Tasks' or 'Social Activities' to mean any task/activity which does not yield any benefit/profit and is carried out with the intention of serving the interests of the majority, without direct or indirect connections to the political, economic, and religious sectors. The term encompasses developmental activities aimed at promoting the welfare of society for the common good.

522 Section 47 of the ORL.

It is worth noting in this regard that the MCL defines a foreign company to mean 'a company incorporated in the Union in which an overseas corporation or other foreign person (or combination of them) owns or controls, directly or indirectly, an ownership interest of more than thirty-five per cent.' Therefore, by implication, a foreign entity can acquire up to 35% of the share capital of the company without that company requiring to undergo the process of change to a foreign company. Usually, we have only seen offshore development financial institutions acquire minority stakes in foreign owned microfinance companies in Myanmar.

With regard to competition law related aspects, while Myanmar does have a law in place however, the Competition Commission, which is endowed with powers to enforce the provisions of the law has not been set up. Therefore, the provisions of the law cannot be enforced at this stage.

That being said, the current legal regime regarding repatriation of foreign currency payments, as noted in the section below, is not encouraging for a foreign investor looking to invest (whether by way of debt or equity) into any company in Myanmar that engages in impact investments. This is because of practical issues in repatriating profits and other payments out of Myanmar in foreign currency.

FOREIGN DIRECT INVESTMENT RELATED LAWS

In 2016, the Government of Myanmar introduced a new Myanmar Investment Law (MIL). The MIL came into effect on 18 October 2016, and consolidated and replaced the previous Foreign Investment Law 2012 and the Citizens Investment Law 2013. The MIL provides the overall legal framework and was followed by the more detailed Myanmar Investment Rules 2017 (MIR) which came into effect on 30 March 2017 as well as two notifications: Notification 13/2017 dated 1 April 2017 (*Classification of Promoted Sector*) and Notification 15/2017 dated 10 April 2017 (*List of Restricted Investment Activities*). Together, these represent the body of the current Myanmar foreign investment laws.

The MIR provides significant additional detail in relation to the operation of the MIL and the business activities in which foreigners are permitted to engage, the restrictions that apply, application procedures, the use of land, the transfer of shares, foreign currency remittance, and the taking of security on land, and buildings and labour relations.

The MIL, the MIR and the MCL are the key pieces of legislation underpinning the Government's efforts to attract foreign investment to Myanmar. Pursuant to the MIL, when doing business in Myanmar, foreign investors can benefit from significant tax exemptions and other benefits. To be eligible, the foreign company will need to apply to the Myanmar Investment Commission (MIC) for either an MIC Permit or alternatively (MIC endorsement).[523]

Note that the impact investment entities in Myanmar, such as microfinance companies, do not qualify for a permit under the MIL/MIR because the scale of investment by these entities do not reach the threshold that would make them eligible for receiving such permit. For the purpose of this Guide, we have therefore not elaborated on the approach taken by the Myanmar Investment Commission in assessing investment proposals.

523 https://www.charltonsmyanmar.com/investment-law/

FOREIGN EXCHANGE LEGAL REGIME

The Foreign Exchange Laws of Myanmar typically creates a distinction between 'current' and 'capital' account payments. The former includes payments in relation to trade and services, interest payments, payments, money transfers abroad for family living expenses and so on. And all other payments were categorized as capital account payments. Current account payments did not require prior approval of the CBM while capital account payments required said approval. However, the current foreign exchange legal regime in its aim to restrict the outflow of foreign currency from Myanmar has blurred the distinction between the two types of payments.

The CBM has, since the political events of 1 February 2021, enacted several notifications/directives towards that end. The most notable is the Notification 12/2022 dated 3 April 2022, which *inter alia* instructed Myanmar residents to remit their foreign earned income to their bank accounts in Myanmar and the banks were instructed to convert the foreign currency into Myanmar Kyat within one day thereafter.

Further, the said notification instructed Myanmar residents to obtain the approval of the FESC prior to remitting foreign currency overseas. Subsequently, there were several other notifications/directives that (i) instructed authorised dealer banks to inform their customers to negotiate with offshore lenders to temporarily suspend repayments of principal and interest payments for offshore loans; (ii) authorised the CBM to approve import quotas being forwarded by the Ministry of Commerce and so on.

Effectively, all foreign currency payments other than trade related payments require the approval of the FESC. This includes dividend payments as well. The uncertainty surrounding the issue of approval by the FESC regarding the repatriation of these payments have deterred potential new investments in Myanmar to a considerable degree. Although, international lenders with their funds trapped in Myanmar have found legally compliant ways to get the funds out of Myanmar but it has often come with considerable haircuts.

TAX REGIME FOR IMPACT INVESTMENTS

All companies and organizations that carry-on business in Myanmar, whether profit or non-profit oriented, are required to comply with the existing tax laws of Myanmar. Such requirement includes tax registration, tax return filing, tax payment, and retention of documents, among other tax requirements as provided under the law. Impact investment entities may be eligible for tax exemptions in accordance with national legislation, international agreements, or bilateral agreements signed by the Myanmar Government.

Under the Myanmar's Income Tax Law, the Myanmar Government may grant tax exemption or relief for: (a) income received from donations by local and foreign donors; (b) income received from donations for social, religion, health, and educational causes in Myanmar; (c) income of assistance and support donated by local and foreign organizations; and (d) interest received from below-market rate loans to the Union Government or from official development aid loans.

Generally, microfinance companies are subject to income tax (based on 22% of the taxable income) unless they are granted with specific tax exemption by the Myanmar Government. Meanwhile, nonprofit organizations can be exempted from income tax subject to certain qualifications. Under MOPFI Notification 79/2020 dated 27 July 2020, a non-profit organization can be exempted from income tax if it meets the following conditions:

- the organization is established for the sole objective or carrying-out charitable activities contributable to the public good such as aid towards education or health and relief activities for the poor and victims of natural disasters, and exclusively performs such activities in line with this objective;

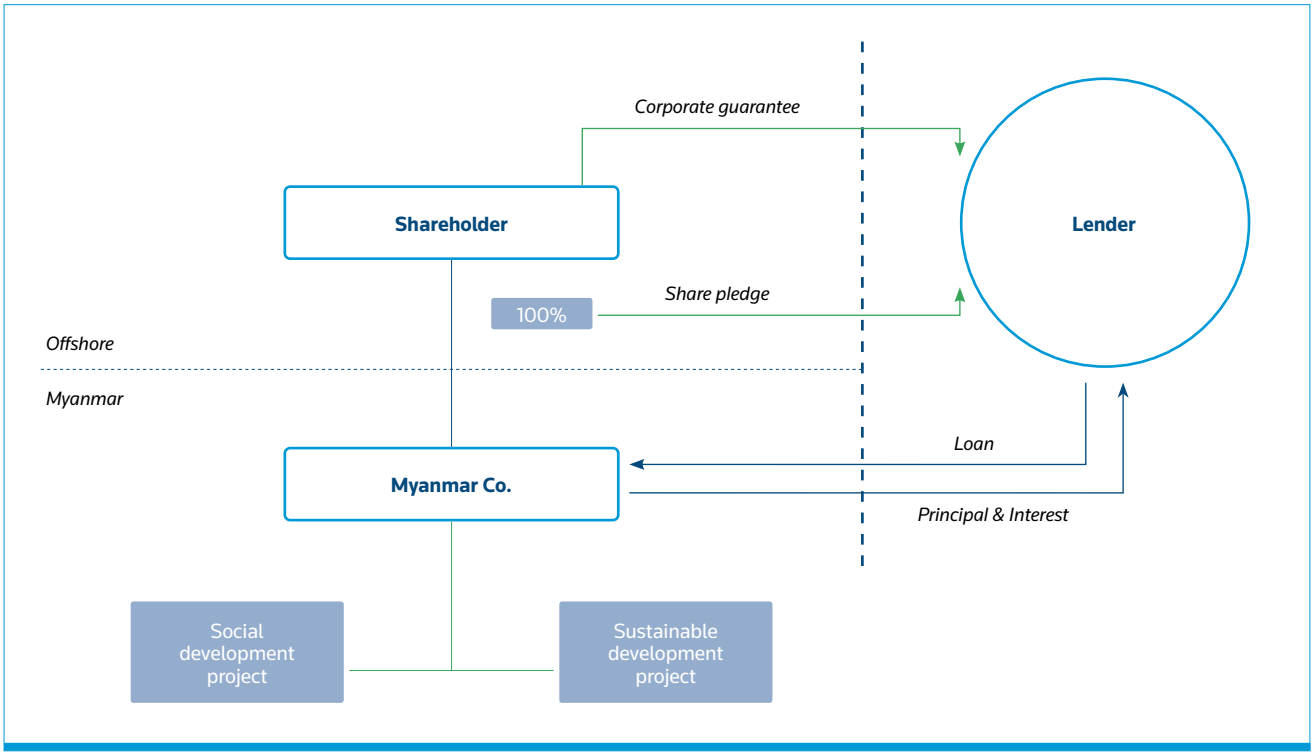
- the constitution reflect such objective;
- the income, funds and assets of the organization are not used for personal benefits by its member/s or any person associated with a member; and
- the remaining money and properties (both movable and immovable properties) left as a result of liquidation of an organization are set to be exclusively used for such charitable activities.

A CLG, NGO, or INGO may qualify for income tax exemption if it meets the above requirements. However, this income tax exemption does not apply automatically. Before the tax exemption may be used, the entitlement must first be certified and approved by the Myanmar tax authorities. The Myanmar tax authorities would review the source of funds of the organization and assess whether such funds are used exclusively for such charitable activities.

Furthermore, the Myanmar tax authorities would often require a notification or approval, as applicable, for any additional tax exemption or relief provided to impact investment businesses (such as those granted under a memorandum of understanding with the Myanmar Government).

3.ILLUSTRATION – AN IMPACT FUND

LOAN FROM AN OFFSHORE LENDER TO A MYANMAR COMPANY



Description

This is a typical (term) loan finance structure in Myanmar involving a Myanmar incorporated fully foreign owned microfinance company. The lender may be an offshore financial institution (including a development finance institution), or an impact investment fund. There are no legal restrictions regarding the form of the offshore entity that may provide a loan to a Myanmar company.

The Myanmar microfinance company receives the loan after applying for and obtaining the approvals from the CBM and the FRD. The regulators approve the loan agreement including the repayment schedule. The lender requests the borrower to procure security/contractual comfort from its shareholder in the form of a pledge over the shares owned by the shareholder in the Myanmar microfinance company or a corporate guarantee.

Advantages

The lender has the comfort of extending the loan based on security in the form of a guarantee or pledge over the shares owned by the shareholder. In the event of any default in the repayment of the loan, the lender may

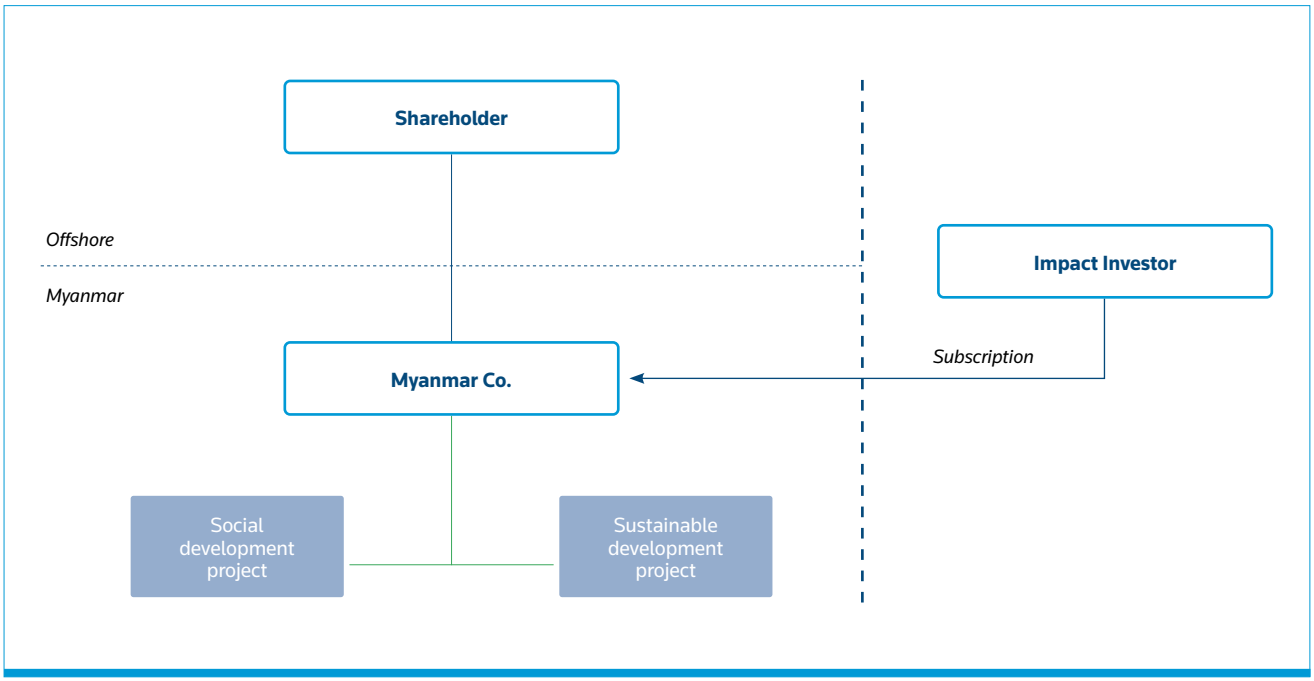
enforce the security. In case of enforcement of the share pledge, the lender will be able to acquire ownership over the shares of the Myanmar company. In case of enforcement of the guarantee, the shareholder will be responsible for repaying the loan instead of the Myanmar company.

In this structure, the lender also has the flexibility to include the shareholder as a co-borrower and take security over the offshore shareholder assets as well. This becomes particularly critical in the current foreign exchange legal regime which entails significant hurdles for the Myanmar company to repatriate the loan repayments to the lender. In case of such hurdles, and if the offshore shareholder was not a party to the original loan agreement, the lender may propose to amend the loan agreement and make the shareholder a co-borrower and consequently recover the loan from the shareholder. Subsequently, the shareholder and the Myanmar company may settle the debts internally in a way that is commercially viable to each of them.

Disadvantages

Before the current foreign exchange legal regime, this structure had few drawbacks. Regulatory approvals lacked a uniform timeline, often taking 4-5 months for both CBM and FRD approvals. The security enforcement regime was untested, and there was no guidance on conditions warranting fresh regulator approval. Changes to the initially approved loan agreement, such as financial adjustments, required notification to CBM and FRD, with their written consent necessary for amendments. In the current regime, a moratorium on principal and interest payments by Myanmar residents adds a new challenge, forcing lenders to seek compliant ways to recover funds.

ACQUISITION OF SHARES BY AN OFFSHORE IMPACT INVESTOR



Description

In this model, foreign investors may, subject to foreign shareholding restrictions, contribute capital in an or subscribe for newly issued shares of a PLC, whose businesses focuses on sustainability or social development projects (e.g., reducing energy consumption, mitigating environmental impact or participating in local community and society development, or provide grants to social enterprises).

Advantages

This model allows the investor to have governance rights in the PLC, subject to the amount of capital participation or shareholding, and may influence the internal policy relating to impact investment, e.g., mitigate environment impact and/or society development, while limits its liability to the remaining unpaid amount of their shares. Particularly, if the investor is specialized in social or environmental impact industry, there might be know-how sharing or synergy arise from the investment.

Disadvantages

The return on this model cannot be assured as the returns/dividends from the investment in a PLC can be paid from profits of the company only and upon satisfaction of the other conditions as already mentioned in the foregoing sections of this Guide. Further, in the current foreign exchange legal regime, the foreign currency dividend will require to be approved by the FESC, which we understand takes substantial amount of time and involves a lot of red tape.

4.OPPORTUNITIES AND CHALLENGES

Considering the legislation currently in force in Myanmar, we understand that the following are the key opportunities and challenges to potential impact investment by offshore based impact investors:

KEY OPPORTUNITIES WHICH CURRENTLY EXIST FOR IMPACT INVESTING IN MYANMAR

There are notable opportunities for impact investors seeking to contribute to social development initiatives. One advantage is the absence of foreign ownership restrictions in companies dedicated to impact investments within Myanmar. This flexibility allows foreign impact investors to actively participate in and collaborate with local entities committed to positive social change. Furthermore, the country presents a substantial demand for funding in the realm of social development, particularly in the initiatives undertaken by existing microfinance companies. These organizations play a crucial role in addressing social needs and fostering economic growth at the grassroots level. For foreign impact investors, this presents a unique chance to align financial goals with impactful social outcomes, tapping into the potential for meaningful contributions to Myanmar's development landscape.

KEY CHALLENGES WHICH CURRENTLY EXIST FOR IMPACT INVESTING IN MYANMAR

Investing in Myanmar as a foreign investor presents a myriad of challenges, making it a complex and uncertain environment. One significant hurdle in the recent times is the uncertainty surrounding the FESC approval for repatriating funds offshore, creating a barrier for investors looking to retrieve their returns.

Despite a recognized need for regulations governing impact investment, Myanmar lacks specific guidelines, limiting the avenues through which impact investors can engage. Impact investors are constrained to providing loans or acquiring equity in companies involved in such initiatives. The jurisdiction's political turmoil since 1 February 2021, further compounds the difficulty, as foreign investors grapple with reputational concerns associated with investing in a country undergoing significant political changes.

Attempting to divest proves challenging due to a lack of willing buyers, coupled with the protracted process of obtaining FESC approval for fund repatriation, demanding considerable time and effort. Media perception adds an additional layer of complexity, as even responsible and legally compliant exits by impact investors can be deemed irresponsible, contributing to potential reputational challenges. The ongoing foreign exchange situation exacerbates the issue, with new foreign currency loans facing stringent approval processes, adding another layer of complexity to the investment landscape in Myanmar.

SECTION 7 »

REUTERS/ Cheryl Ravelo

SECTION 7 » PHILIPPINES

1. IMPACT INVESTMENT STRUCTURES

Between 2020 and 2022, the Philippines is the second-largest impact investing market in the Southeast Asia.[483] It experienced capital deployment of around USD69 million.[484] Majority of the deals have ticket sizes below USD5 million, focusing on seed and pre-seed stages, and in the financial services and information and communication technology sector.[485] These developments and emerging markets are supported by regulator guidelines across various industries, including banking and energy.[486] These being said, the lack of a specific legal framework on impact investing poses a veritable challenge to impact investing in the Philippines.

KEY INVESTMENT INSTRUMENTS IN THE PHILIPPINES

The following instruments may be used for impact investing in the Philippines:

Equity Investment in Corporations

Investors may purchase shares issued by stock corporations either by subscribing for unissued shares or by purchasing shares issued to existing stockholders. A corporation's board of directors may declare dividends out of the unrestricted retained earnings of the corporation and such dividends are payable in cash, property or stock to all stockholders based on their proportions of shareholdings.[487] The rights, privileges and limitations attaching to the shares may be modified through the corporation's articles of incorporation. Shares issued by stock corporations may be broadly classified as common shares, preferred shares or redeemable shares.

» COMMON SHARES

Common shares are a class of shares that are not granted any special economic or political rights. However, they cannot be deprived of voting rights.[488] As a result, holders of common shares are given more control over the actions taken by the corporation than holders of other types of shares.

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483 Investing in Women, UPDATE: IMPACT INVESTING IN THE PHILIPPINES. June 2023.
484 *Id.*
485 *Id.*
486 Department of Energy, Secretary Lotilla lauds BSP moves to encourage more green lending. December 20, 2023.
487 Republic Act No. 11232, Revised Corporation Code of the Philippines (**RCC**), Section 42, February 20, 2019.
488 RCC, Section 6.

» PREFERRED SHARES

Preferred shares are a class of shares with special economic or political rights. Preferred shares may be denied voting rights in relation to the election of the board of directors, but even in such cases will retain the right to vote on fundamental business decisions (for example, regarding the amendment of the articles of incorporation or the dissolution of the corporation).[489]

Since holders of preferred shares may be restricted from voting for members of a corporation's board of directors, corporations usually issue preferred shares with rights and privileges which are more beneficial for investors who are not interested in actively participating in the corporation's conduct of business. This may be in the form of prioritizing holders of preferred shares when the corporation declares dividends or distributes its assets after dissolving and liquidating the corporation.

» REDEEMABLE SHARES

Redeemable shares are shares which may be purchased by the corporation from the holders of such shares upon the expiration of a fixed period. This purchase can occur regardless of the existence of any unrestricted retained earnings in the books of the corporation and upon such other terms and conditions stated in the articles of incorporation and the certificate of stock representing the shares, subject to rules and regulations issued by the Philippine Securities and Exchange Commission (**SEC**). Redeemable shares may only be issued by the corporation when this is expressly provided for in the articles of incorporation.[490]

» CONVERTIBILITY FEATURE

A share may be converted into another class or series of shares if such potential for conversion is provided for in the articles of incorporation of the corporation. The terms and conditions of any such conversion must be stated in the articles of incorporation.

Debt

» LOANS

Another way of investing is by providing loans to businesses. Under the Civil Code of the Philippines (**Civil Code**), a loan is defined as a contract where one of the parties delivers to another either (a) something not consumable so that the latter may use that thing for a certain time and return it, in which case the contract is called a *commodatum*; or (b) money or another consumable thing, upon the condition that the same amount of the same kind and quality shall be repaid, in which case the contract is simply called a loan or *mutuum*.[491]

489 RCC, Section 22.
490 RCC, Section 8.
491 Republic Act No. 386, Civil Code of the Philippines (**Civil Code**), Article 1933, June 18, 1949.

» CONVERTIBLE DEBT

Convertible debt instruments can be converted into equity shares upon meeting certain conditions, or after a certain period of time (based on the type of convertible debt issued). In some circumstances, Investors may determine that the risk profile of an investment is reduced by initially utilising a debt instrument to invest in a business, and then converting such instrument into equity shares in the relevant business at a later date. By utilising such loan instruments instead of making an equity investment, it can be easier for an investor to divest as he/she may opt to just collect the loan extended to a business unlike in the case of purchase or subscription of shares where the funds invested are "locked in" the business until the shares are sold or redeemed or the business is dissolved. There can also be upside for an investor where the market price of the equity shares in a business increase beyond the agreed price payable to convert the debt instrument to equity.

The Revised Corporation Code (**RCC**) permits the conversion of debt to equity by way of payment of the subscription price for newly-issued shares using previously-incurred indebtedness of the corporation.[492]

Investment in Partnerships

An investor may contribute money, property, or industry to a common fund and thereby join a partnership. Please see **Forms of social enterprises and non-profits** on page 201 for a more comprehensive discussion on partnerships.

Funds

Investors may also opt to invest in funds. Funds pool investors' capital using vehicles such as investment companies and trust entities for the purpose of managing funds or investment portfolios. Investment companies are defined as any issuer which is, or holds itself out as, being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities.[493] A trust entity refers to (a) a bank or a non-bank financial institution, through its specifically designated business unit to perform trust functions, or (b) a trust corporation, authorized by the *Bangko Sentral ng Pilipinas* (**BSP**; the Philippines' central bank) to engage in trust and other fiduciary business under Section 79 of Republic Act No. 8791 or the General Banking Law or to perform investment management services under Section 53 of the General Banking Law.[494] A general discussion of the types of funds available to investors is set out below:

» UNIT INVESTMENT TRUST FUNDS

Unit Investment Trust Funds (**UITFs**) are open-ended pooled trust funds denominated in Philippine pesos (**PhP**), or any other acceptable currency, which are operated and administered by a trust entity and made available by participation.[495] A UITF product is governed by a Declaration of Trust (or Plan Rules) which contains the investment objectives of the UITF as well as the mechanics for investing, operating, and administering the fund.

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492 RCC, Section 61(d).

493 Republic Act No. 2629, Investment Company Act ("**ICA**"), Section 4(a), June 18, 1960.

494 BSP Circular No. 884-15, Guidelines on the Establishment and Operation of Trust Corporations, Section 4102T.1(a), July 22, 2015.

495 Manual of Regulations for Banks (**MORB**), Section 403(w).

» MUTUAL FUNDS

Mutual funds are generally administered by mutual fund corporations (**MFCs**) which are open-end investment companies that hold themselves out as being engaged primarily, or propose to engage primarily, in the business of investing, reinvesting, and trading in securities. Mutual funds are formed from funds of individuals and institutional investors which together form a large asset base. That asset base is entrusted to a full-time professional fund manager who develops and maintains a diversified portfolio of security investments.[496] The type of funds administered by MFCs vary depending on: (a) the percentage of the MFC's assets that are utilized to make investments; and (b) the nature of the collective investment schemes (**CIS**) it invests in. For example, the term 'feeder fund' is used to refer to a fund administered by an MFC that invests at least ninety percent (90%) of its net assets in a single CIS, while a 'fund-of-funds' would refer to funds administered by an MFC that invests at least fifty percent (50%) of its net assets in more than one CIS.

Social impact bonds and pay for success contracts

There is no Philippine law or regulation that defines or regulates pay for success contracts (**PFS Contracts**).

Likewise, there is no Philippine law or regulation that defines or regulates Social Impact Bonds (**SIBs**). The SEC has issued the "Guidelines on the Issuance of Social Bonds Under the Association of Southeast Asian Nations (**ASEAN**) Social Bond Standards in the Philippines", which governs the issuance of ASEAN Social Bonds where proceeds will be exclusively applied to finance or refinance, in part or in full, new and/or existing eligible social projects. However, we note that the Guidelines only apply to bonds that will be issued under the ASEAN Social Bond Standards.

More generally, given that PFS Contracts and SIBs are contracts where investors invest their money in a common enterprise (such as a social service project of the government) and are led to expect profits primarily from the efforts of others. PFS Contracts and SIBs may be considered as investment contracts which are governed by the Securities and Regulation Code (**SRC**) and its implementing rules and regulations (**SRC IRR**), which will trigger the registration requirement below.

» CHARACTERISATION AND LIMITATIONS OF SIBS AND PFS CONTRACTS

SIBs and PFS Contracts, by their general definition, are not prohibited by any Philippine laws or regulations. Parties may establish such stipulations, clauses, terms and conditions in SIBs and PFS Contracts as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.[497] Innominate contracts (*i.e.*, contracts that are not specifically defined and regulated by Philippine laws) are regulated by the stipulations of the parties, by the provisions of Titles I and II of Book IV of the Civil Code, the rules governing the most analogous nominate contracts, and by the customs of the place.[498]

Furthermore, bonds, investment contracts, and other securities are regulated by the Philippine SRC and SRC IRR.

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496 Implementing Rules and Regulations of the Investment Company Act (**ICA IRR**), Rule 1(27), December 19, 2017.

497 Civil Code, Article 1306.

498 Civil Code, Article 1307.

Under Section 26.3.5 of the SRC IRR, an investment contract is (a) a contract, transaction or scheme; (b) whereby a person invests his money; (c) in a common enterprise; and (d) is led to expect profits (e) primarily from the efforts of others.

Under Section 3.1 of the SRC, securities are defined as:

Shares, participations or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character. It includes:

I. Shares of stock, bonds, debentures, notes, evidences of indebtedness, asset-backed securities;

II. Investment contracts, certificates of interest or participation in a profit-sharing agreement, certificates of deposit for a future subscription;

III. Fractional undivided interests in oil, gas or other mineral rights;

IV. Derivatives like option and warrants;

V. Certificates of assignments, certificates of participation, trust certificates, voting trust certificates or similar instruments;

VI. Proprietary or non-proprietary membership certificates incorporations; and

VII. Other instruments as may in the future be determined by the Philippine SEC.

Given the foregoing definition, in particular limbs I and II above, PFS Contracts and SIBs may be considered by the SEC as securities that cannot be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the SEC,[499] except when they are deemed as exempt securities or issued in an exempt transaction.

KEY ENTERPRISES IN THE PHILIPPINES

Forms of social enterprises and non-profits.

Social enterprises and non-profits may take the form of: (a) a sole proprietorship; (b) a stock corporation; (c) a non-stock corporation, which includes foundations; (d) a branch of a foreign corporation; (e) a cooperative; or (f) a partnership.

» *SOLE PROPRIETORSHIP*

A sole proprietorship is a form of business organization conducted for profit by a single individual. The proprietor or owner must secure licenses and permits, register the business name, and pay taxes to the national

499 Republic Act No. 8799, Securities and Regulation Code (**SRC**), Section 8.1.

government.[500] It is the simplest and cheapest entity that may be set up for the conduct of business; registration fees are less than for other entities. However, a sole proprietorship exposes the sole proprietor to a greater level of legal risk than with other entities since, unlike a partnership or corporation, a sole proprietorship is not vested by law with a separate legal personality.[501]

In order to set up a sole proprietorship, a person needs to register the business name of the sole proprietorship with the Department of Trade and Industry (**DTI**).[502] Thereafter, the sole proprietorship will have to secure the same permits and licenses required of other business entities which include: (a) a Barangay Clearance from the barangay where the sole proprietorship is operating;[503] (b) a Mayor's/Business Permit from the city where the sole proprietorship is operating;[504] and a (c) Certificate of Registration from the Bureau of Internal Revenue (**BIR**). If the sole proprietorship has employees, the sole proprietorship will also have to register with the Department of Labor and Employment (**DOLE**),[505] the Social Security System (**SSS**),[506] the Philippine Health Insurance Corporation (**PhilHealth**),[507] and the Home Development Mutual Fund (**HDMF**).[508]

Generally, sole proprietorships are subject to income tax at graduated rates from 0% to 35% on net taxable income[509] and VAT at 12% on gross sales/receipts if the gross sales/receipts from the sale of goods or services exceed PhP3,000,000.00 in a taxable year.[510] Sole proprietorships that are non-VAT registered and whose gross sales/receipts and other non-operating income do not exceed PhP3,000,000.00 in a taxable year are exempt from VAT[511] and may opt to be taxed at eight percent (8%) of gross sales/receipts in lieu of the graduated income tax rates.[512]

» STOCK CORPORATIONS

A stock corporation is a corporation that has capital stock divided into shares and is authorized to distribute to the holders of such shares, dividends or allotments of the surplus profits on the basis of and in proportion to the shares held.[513] A distinct feature of a stock corporation is that a corporation is clothed with a personality separate and distinct from the persons composing it which means that generally, stockholders of a corporation enjoy the principle of limited liability: the corporate debt is not the debt of the stockholder.[514]

Another important feature of stock corporations is the marketability of its shares. Shares are personal property and may be freely sold to anyone, subject to any restrictions embedded in the articles of incorporation or by-laws of the relevant stock corporation (such as a right of first refusal). Shares are sold by delivery to the buyer of the certificate/s endorsed by the owner, his attorney-in-fact, or any other person legally authorized to make the transfer.[515]

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500 Mangila v. Court of Appeals, G.R. No. 125027, August 12, 2002.
501 *Stanley Fine Furniture v. Gallano*, G.R. No. 190486, November 26, 2014.
502 Act No. 3883, Business Name Law, Section 1.
503 Republic Act No.7160, Local Government Code, Section 152(c).
504 Tax Code, Section 236.
505 Department of Labor and Employment (**DOLE**), Occupational Safety and Health Standards, Rule 1020, August 11, 1989.
506 Republic Act No. 11199, Social Security Act, Section 9, February 7, 2019
507 Implementing Rules and Regulations of Republic Act No. 7875, Section 13, September 12, 2013,
508 Republic Act No. 9679, Home Development Mutual Fund Law, Section 24, July 28, 2008.
509 Tax Code, Section 24(A)(2)(a).
510 Tax Code, Sections 105, 106, and 108.
511 Tax Code, Sections 109(CC).
512 Tax Code, Section 24(A)(2)(b).
513 RCC, Section 3.
514 *Bustos v. Millians Shoe, Inc.*, G.R. No. 185024, April 24, 2017.
515 RCC, Section 62.

An innovation introduced by the RCC is one person corporations (**OPCs**). An OPC is a stock corporation that comprises of a single stockholder.[516] The single stockholder may act as the OPC's treasurer but is required to submit a bond to the SEC conditioned upon the faithful administration of the OPC's funds and the disbursement and investment of those funds according to the OPC's articles of incorporation.[517] In addition, while an OPC enjoys a separate legal personality from its shareholder, a sole shareholder claiming limited liability has the burden of affirmatively showing that the corporation was adequately financed. If the single stockholder cannot prove that the property of the OPC is independent of the stockholder's personal property, the stockholder shall be jointly and severally liable for the debts and other liabilities of the OPC.[518]

Stock corporations, whether domestic, resident foreign, or non-resident foreign, are generally subject to corporate income tax at twenty-five percent (25%).[519] However, domestic corporations with taxable income of not more than PhP5,000,000.00 and total assets of not more than PhP100,000,000.00 (excluding the land on which the corporation's office, plant, and equipment are located) are subject to corporate income tax at twenty percent (20%).[520] Unless entitled to exemptions, stock corporations are subject to VAT at twelve percent (12%), percentage tax, donor's tax, excise tax, and DST.

» NON-STOCK CORPORATIONS

Generally, a corporation that does not have capital stock divided into shares and is not authorized to distribute dividends to its shareholders is considered a non-stock corporation.[521] Non-stock corporations are formed for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade, industry, agricultural, and like chambers, or any combination thereof.[522] As a corporation, non-stock corporations are also vested with a legal personality separate and distinct from the natural persons comprising them.[523]

Non-stock corporations are comprised of members whose voting rights may be limited, broadened, or denied,[524] unlike shareholders in stock corporations. In stock corporations, while preferred or redeemable shares may be deprived of voting rights, all stockholders continue to retain their right to vote in the case of fundamental business decisions (such as the amendment of the articles of incorporation, merger or consolidation of the corporation or dissolution of the corporation).[525] Membership in a non-stock corporation is also personal and non-transferable, unless the articles of incorporation or the by-laws of the corporation otherwise provide.[526]

While members of a non-stock corporation enjoy limited liability, the primary distinction between a stock and non-stock corporation is that no part of a non-stock corporation's income may be distributed as dividends to its members, trustees, or officers.[527] However, any profit that a non-stock corporation may obtain incidentally to its operations may, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized.[528]

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516 RCC, Section 116.
517 RCC, Section 122.
518 RCC, Section 130.
519 Tax Code, Sections 27(A), 28(A), and 28(B).
520 Tax Code, Section 27(A).
521 RCC, Section 3.
522 RCC, Section, 87.
523 *International Academy of Management and Economics v. Litton and Co., Inc.*, G.R. No. 191525, December 13, 2017.
524 RCC, Section 88.
525 RCC, Section 6.
526 RCC, Section 89.
527 RCC, Section 86.
528 RCC, Section 86.

Non-stock corporations that are not organized primarily for profit (*i.e.*, non-stock non-profit corporations) are exempt from income tax and VAT with respect to net income and gross revenues that are derived from the pursuit of the purposes for which the corporation was organized.[529] However, non-stock non-profit corporations are subject to all internal revenue taxes for income and revenues of any kind and character that are derived from activities conducted for profit at the same rates and in the same manner as stock corporations.[530]

Donations to a non-stock non-profit corporation are exempt from the six percent (6%) donor's tax provided that the non-stock non-profit corporation (a) uses not more than thirty percent (30%) of said donations for administrative purposes; (b) pays no dividends; (c) is governed by trustees who receive no compensation; and (d) devotes all its income to the accomplishment and promotion of the purposes for which it is organized.[531] In addition, the donor can deduct the donation in full provided the donee non-stock non-profit corporation is an accredited donee institution organized and operates exclusively for scientific, research, education, character-building, youth and sports development, health, social welfare, cultural or charitable purposes, or a combination thereof, no part of the net income of which inures to the benefit of any private individual.[532]

To avail of the tax exemption, the non-stock non-profit corporation must file an application for the issuance of a tax exemption ruling with the BIR Revenue District Office (**RDO**) where it is registered.[533] The Certificate of Tax Exemption is valid for a period of three (3) years and may be revalidated for another period of three (3) years.[534] In addition, the non-stock non-profit corporation must secure the endorsement of the Philippine Council for Non-Government Organizations (**NGOs**) Certification (**PCNC**) and the accreditation by the concerned government agency regulating the non-stock non-profit corporation (such as the Department of Social Welfare and Development for social welfare corporations) and apply to the BIR for the issuance of a certification as a donee institution.[535]

» FOUNDATIONS

Foundations are a subset of non-stock corporations. More specifically, foundations are defined as non-stock, non-profit corporations established for the purpose of extending grants or endowments to support its goals or raising funds to accomplish charitable, religious, educational, athletic, cultural, literary, scientific, social welfare or other similar objectives.[536]

As a non-stock corporation, the discussion in the immediately preceding subsection is applicable to foundations. Unlike stock and other non-stock corporations, foundations are subject to a minimum capital requirement of PhP1,000,000.00[537] and are required to submit annually a sworn statement executed by the foundation's president and treasurer, reflecting the following information: (a) the source and amount of funds; (b) planned, ongoing, and accomplished programs and activities; and (c) the application of funds.[538]

529 Tax Code, Section 30.

530 Tax Code, Section 30 & Revenue Memorandum Order No. 38-2019 Part V. A (2) and C.

531 Tax Code, Section 101 (A)(2).

532 Tax Code, Section 34(H)(2)(c). Deductions for donations to non-accredited non-stock non-profit corporations are generally subject to a limit of 10% of taxable income for individual donors and 5% in case of corporate donors.

533 Revenue Memorandum Order No. 38-2019 Part VI.

534 *Id.*, Part VII.

535 Revenue Memorandum Order No. 20-2013.

536 SEC Memorandum Circular No. 08-06, Revised Guidelines on Foundations, Section 1, June 22, 2006.

537 Revised Guidelines on Foundations, Section 2(a).

538 Revised Guidelines on Foundations, Section 4.

» BRANCHES

Foreign corporations (*i.e.*, corporations formed, organized or existing under laws other than those of the Philippines' and whose laws allow Filipino citizens and corporations to do business in its own country or State) may also opt to operate in the Philippines through a branch. A foreign corporation engaged in business in the Philippines is required to secure a license to do business in the Philippines from the SEC.[539] Without such license, the foreign corporation shall not be permitted to maintain or intervene in any action, suit, or proceeding in any court or administrative agency of the Philippines. However, such corporation may be sued or proceeded against before the Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws[540] and shall be subject to administrative penalties.[541]

A branch office is an office that carries out the business activities of the parent corporation and derives income from within the Philippines.[542] It may carry out any business activity except those reserved by the Philippine Constitution or laws to Filipino citizens or corporations.[543] Generally, the branch office is bound by the laws, rules, and regulations applicable to domestic corporations of the same class, except with regard to the creation, formation, organization, and dissolution of corporations or such laws that fix the relations or duties of stockholders or officers of the corporation to each other or to the corporation.[544] It is considered an extension of the parent corporation and its liabilities are the direct liabilities of the parent corporation.

Branches of foreign corporations are resident foreign corporations. They are therefore subject to tax as discussed above under corporations.

Under SEC Memorandum Circular No. 17-2019, branches of foreign corporations are mandated to deposit securities with the SEC in accordance with the following schedule:

(i) Within sixty (60) days after the issuance of its SEC license, securities with an actual market value of at least PhP500,000.00;

(ii) Additional securities shall be deposited within six (6) months after the end of the fiscal year indicated in the Audited Financial Statements (**AFS**) in the following situations:

  (a) if the licensee's gross income within the Philippines for that fiscal year exceeds PhP10,000,000.00, additional securities with an actual market value equivalent of two percent (2%) of the increase in said gross income; and

  (b) if the actual market value of the securities deposit or financial instruments has decreased by at least ten percent (10%) from the time it was deposited, additional securities with an actual market value that would cover the decrease.[545]

» COOPERATIVE

A cooperative is an autonomous and duly registered association of persons, with a common bond of interest, who have voluntarily joined together to achieve their social, economic, and cultural needs and aspirations by making equitable contributions to the capital required, providing their products and services and accepting

539 RCC, Section 141.
540 RCC, Section 150.
541 RCC, Section 170.
542 Implementing Rules and Regulations of Republic Act No. 7042 (**FIA Rules**), Rule I, Sec. 1(c)
543 Republic Act No. 7042, as amended by republic Act No. 11647, Foreign Investments Act (**FIA**), Sec. 5, June 13, 1991.
544 RCC, Sec. 129.
545 SEC Memorandum Circular No. 17, series of 2019, Section 2, July 31, 2019.

a fair share of the risks and benefits of the undertaking in accordance with universally accepted cooperative principles.[546] Similar to corporations, cooperatives are likewise vested with a legal personality upon the issuance by the Cooperative Development Authority (**CDA**) of a certificate of registration under its official seal.[547]

The primary objective of every cooperative is to help improve the quality of life of its members. Towards this end, the cooperative shall aim to: (a) provide goods and services to its members to enable them to attain increased income, savings, investments, productivity, and purchasing power, and promote among themselves equitable distribution of net surplus through maximum utilization of economies of scale, cost-sharing and risk-sharing; (b) provide optimum social and economic benefits to its members; (c) teach its members efficient ways of doing things in a cooperative manner; (d) propagate cooperative practices and new ideas in business and management; (e) allow the lower income and less privileged groups to increase their ownership in the wealth of the nation; and (f) cooperate with the government, other cooperatives and people-oriented organizations to further the attainment of any of the foregoing objectives.[548]

Fifteen (15) or more natural persons who are Filipino citizens, of legal age, having a common bond of interest and who are actually residing or working in the intended area of operation, may organize a primary cooperative.[549] In addition, there are two (2) kinds of cooperative members: regular and associate members. A regular member is one who has complied with all the membership requirements and is entitled to all the rights and privileges of membership. An associate member is one who has no right to vote nor be voted upon and shall be entitled only to such rights and privileges as the by-laws may provide. An associate who meets the minimum requirements of regular membership, continues to contribute to the cooperative for two (2) years, and signifies his/her intention to remain a member shall be considered a regular member.[550]

Cooperatives may invest their capital in the following: (a) in shares, debentures or securities of any other cooperative; (b) in any reputable bank in the locality, or any cooperative; (c) in securities issued or guaranteed by the Government; (d) in real estate primarily for the use of the cooperative or its members; or (e) In any other manner authorized in the by-laws.[551]

Cooperatives, whether transacting with members only or with both members and non-members, with accumulated reserves and undivided net savings (**ARUNS**) of not more than PhP10,000,000.00 are exempt from all taxes, namely, corporate income tax, VAT, percentage tax, donor's tax, excise tax, DST, and all taxes on transactions with insurance companies and banks.[552]

Cooperatives transacting with both members and non-members with ARUNS of more than PhP10,000,000.00 are exempt from corporate income tax and all taxes on transactions with insurance companies and banks, but are subject to VAT, percentage tax, donor's tax, excise tax, and DST.[553]

» PARTNERSHIPS

Under the Civil Code, a partnership is a contract where two or more persons bind themselves to contribute

546 Republic Act No. 6939, as amended by Republic Act No. 9520 (**Cooperative Code**), Article 3, March 10, 1990.
547 Cooperative Code, Article 16.
548 Cooperative Code, Article 7.
549 Cooperative Code, Article 10.
550 Cooperative Code, Article 26.
551 Cooperative Code, Article 78.
552 Joint Rules and Regulations Implementing the Cooperative Code.
553 *Id.*

money, property, or industry to a common fund, with the intention of dividing the profits among themselves.[554] Both general and limited liability partnerships are defined and regulated by the Civil Code. A general partnership has a legal personality separate from the partners.[555] However, unlike a corporation, partners in a general partnership, including industrial ones, are liable *pro rata* with all their property and after all the partnership assets have been exhausted, for the contracts which may be entered into in the name and for the account of the partnership, under its signature and by a person authorized to act for the partnership.[556] A limited liability partnership is the same as a general partnership with the caveat that limited liability partners are only liable to the extent of the capital they have contributed to the partnership, unless they take part in the control of the business of the limited liability partnership.[557] The term "control" contemplates active participation in the management of the partnership business, such as, where the business of the partnership is carried on by a board of directors chosen by the limited partner or where an appointee of the limited partner becomes the managing director of the partnership.[558] Please note, however, that even in a limited partnership, there must always be at least one general partner without the benefit of limited liability.[559]

Start-ups, MSMEs and microfinance NGOs

There is no Philippine law or regulation that defines social enterprises or recognizes B corps.

There are laws that define start-ups (Republic Act No. (**RA**) 11337 or the Innovative Startup Act), and micro, small, and medium enterprises (**MSMEs**) (RA 6977, as amended by RA 9501 or the Magna Carta for MSMEs). However, these laws do not require that start-ups and MSMEs, respectively, have a specific social objective as their primary purpose, meet standards of social and environmental performance, or balance profit and purpose.

Meanwhile, RA 10693, or the Microfinance NGOs Act defines and governs microfinance NGOs.

» MAGNA CARTA FOR MSMES

MSMEs are defined as any business activity or enterprise engaged in industry, agribusiness and/or services, whether single proprietorship, cooperative, partnership or corporation whose total assets, inclusive of those arising from loans but exclusive of the land on which the business entity's office, plant, and equipment are situated, have value falling under the following categories:

MICRO	Not more than PhP3,000,000.00
SMALL	PhP3,000,001.00 – PhP15,000,000.00
MEDIUM	PhP15,000,001.00 – PhP100,000,000.00[560]

The Magna Carta for MSMEs created the Micro, Small and Medium Enterprise Development Council (**MSMED Council**) whose functions include, among others, the establishment of an environment and opportunities

554 Civil Code, Article 1767.
555 Civil Code, Article 1768.
556 Civil Code, Article 1816.
557 Civil Code, Article 1848.
558 SEC-OGC Opinion No. 14-01, February 21, 2014.
559 Civil Code, Article 1843.
560 Republic Act No. 6977, as amended by Republic Act No. 9501, Magna Carta for MSMEs, Section 3, January 24, 1991.

conducive to the growth and development of MSMEs; making recommendations to the President and the Congress on all policy matters affecting MSMEs; and promoting the viability and productivity of MSMEs by providing business training courses, labor-management guidance, and other relevant training.[561] In addition, the Small Business Guarantee and Finance Corporation (**SB Corporation**) was also established. The SB Corporation's main duty is to provide, promote, develop and widen, both the scope and the reach of the services, various alternative modes of financing for small enterprises, including, but not limited to, direct and indirect project lending, venture capital, financial leasing, secondary mortgage and/or rediscounting of loan papers to small businesses on secondary or regional stock markets.[562]

Apart from the establishment of the MSMED Council and SB Corporation, the Magna Carta for MSMEs also declared the second week of July as MSME Week and created presidential awards for outstanding MSMEs in its efforts to further support and strengthen MSMEs.

» INNOVATIVE STARTUP ACT

The Innovative Startup Act provides further incentives for startups and startup enablers. A startup is defined as any person or registered entity in the Philippines which aims to develop an innovative product, process, or business mode[563] while a startup enabler is any person or registered entity in the Philippines registered under the Philippine Startup Development Program that provides goods, services, or capital identified to be crucial in supporting the operation and growth of startups by the DTI in consultation with the Department of Science and Technology (**DOST**), Department of Information and Communications Technology (**DICT**), and other pertinent government organizations and NGOs.[564]

The Innovative Startup Act established the Philippine Startup Development Program which is comprised of programs, benefits, and incentives for startups and startup enablers promulgated through the respective mandates of national government agencies, including those extended by NGOs in partnership with any national government agency.[565]

Apart from the Philippine Startup Development Program, national government agencies such as the DTI, DOST, and DICT are authorized by the law to provide full or partial subsidies as well as benefits and incentives for the purpose of participating in startup events or competitions in favor of startups and startup enablers.[566]

Tech startups and startup enablers, such as incubators and accelerators can qualify for fiscal and non-fiscal incentives under Tier III of the 2022 SIPP.

To further attract foreign investors, the Innovative Startup Act has also mandated the Department of Foreign Affairs to create new categories of visas for startup owners, employees, and investors.[567]

561 Magna Carta for MSMEs, Section 8.
562 Magna Carta for MSMEs, Section 11.
563 Republic Act No. 11337, Innovative Startup Act, Section 3(g), April 26, 2019.
564 Innovative Startup Act, Section 3(h)
565 Innovative Startup Act, Section 4.
566 Innovative Startup Act, Section 7-8.
567 Innovative Startup Act, Section 13.

» MICROFINANCE NGOS ACT

RA 10693, or the Microfinance NGOs Act, defines a microfinance NGO as a non-stock non-profit organization duly registered with the SEC with the primary purpose of implementing a microenterprise development strategy, providing microfinance programs, products, and services, such as microcredit and microsavings, for poor and low-income clients. A microfinance NGO is under the regulatory supervision of the Microfinance NGO Regulatory Council (**MNRC**) and focuses on uplifting low socioeconomic or disadvantaged sectors of society by providing advocacy, training, community organization, research, access to resources and other similar activities. A duly registered and accredited microfinance NGO pays a two percent (2%) preferential tax rate on its gross receipts from microfinance operations in lieu of all national taxes. The non-microfinance activities of a microfinance NGO shall be subject to all applicable regular taxes.

Please see **Annex A** for a comparative table covering the constitution, liability, legal personality, permitted or prohibited activities, registration requirements, minimum capital requirements, required documentation, advantages and disadvantages of each of the business entities mentioned above. In addition, **Annex A** provides a description of compliance and governance requirements for each of the business entities mentioned above.

2. OVERVIEW OF THE LEGISLATIVE FRAMEWORK FOR IMPACT INVESTING

In this section, we set out the key legislative framework which should be considered when undertaking impact investing in Philippines.

RIGHTS OF SHAREHOLDERS

Shareholders in a domestic corporation enjoy political, economic, and remedial rights.

Under the bundle of political rights, shareholders have the right to:

(a) request and/or attend meetings, including the right of minority stockholders under certain circumstances, to call a special meeting;

(b) approve or reject the exercise of special corporate powers or such corporate actions which fundamentally alter the conditions of their participation in the corporation, including:

(i) amendments to the constitutive documents;

(ii) the extension or shortening of the corporate term;

(iii) an increase or decrease of authorized capital stock;

(iv) incurring, creating, or increasing bonded indebtedness;

(v) the denial of pre-emptive rights;

(vi) the disposition of all or substantially all of the corporation's properties and assets;

(vii) the investment of corporate funds in any other corporation, business, or for any purpose other than the primary purpose for which it was organized;

(viii) the declaration of stock dividends; and

(ix) entering into management contracts.[568]

A dissenting stockholder may demand payment of the fair value of their shares in the following instances: (a) in case an amendment to the articles of incorporation has the effect of (i) changing or restricting the rights of any stockholder or class of shares, (ii) authorizing preferences in any respect superior to those of outstanding shares of any class, or (iii) extending or shortening the term of corporate existence; (b) in the case of the sale, lease, exchange, transfer, mortgage, pledge or other disposition of all or substantially all of the corporate property and assets as provided in the RCC; (c) in the case of a merger or consolidation; and (d) in the case of investment of corporate funds for any purpose other than the primary purpose of the corporation.[569]

Shareholders' economic rights consist of the rights to: (a) receive dividends; (b) freely transfer their shares, subject to restrictions or limitations under the constitutive documents of the corporation or under law; and (c) receive residual assets upon full or partial liquidation.

Finally, shareholders may institute action to protect, and seek redress for any violation of their rights.

» RIGHTS OF MEMBERS OF NON-STOCK CORPORATIONS AND PARTNERS IN A PARTNERSHIP

The right of the members of any class or classes to vote may be limited, broadened, or denied to the extent specified in the articles of incorporation or the by-laws. Unless so limited, broadened, or denied, each member, regardless of class, shall be entitled to one vote.

Similarly, the votes of partners in a partnership have similar weight, unless the constitutive documents or agreements of similar import provide otherwise.

» RIGHTS OF INVESTORS IN A MUTUAL FUND OR UITF

Investors in Philippine mutual funds may have the right to vote on such shares, except to the extent so limited by contract or any constitutive agreements. Investors holding units in a UITF do not have a right to vote.

Investors in mutual funds and holders of UITFs have a right to receive notices and disclosures. They also have a right to investigate and assess scheme-related documents and to withdraw, redeem, or liquidate their interests, subject to the procedures and limitations set out in any relevant contracts or agreements.

568 RCC, Title IV.
569 *Id*. Section 80.

» NEGATIVE LIST

The list of investment areas reserved for Philippine nationals is called the "Foreign Investment Negative List" (the **Negative List**). The most recent version of the Negative List is the Twelfth Regular Foreign Investment Negative List which was issued on 27 June 2022.[570]

Foreign investors may generally hold up to one hundred percent (100%) of the equity of a Philippine company, provided that the company is not engaged in any of the activities in the Negative List.

The Negative List comprises two parts, namely: (i) List A – limitations by mandate of the Philippine Constitution and/or specific laws; and (ii) List B – limitations for reasons of security, defense, risk to public health and morals, or protection of local small- and medium-sized enterprises.

Among the activities included in List A are the following:

- No foreign equity investment:
  - Mass media
  - Retail trade enterprises with a paid-up capital of less than PhP25,000,000.00
- Up to thirty percent (30%) foreign equity investment:
  - Advertising
- Up to forty percent (40%) foreign equity investment:
  - land ownership
  - operation of public utilities
  - exploration, development, and utilization of natural resources

» ANTI-DUMMY LAW

The Anti-Dummy Law[571] penalizes the use of various structures for the purpose of circumventing foreign ownership restrictions (as well as the participation of foreigners in the operation and management of a company subject to nationality restrictions in the Philippine Constitution) and imposes both criminal and civil sanctions for violations.

» REGISTRATION OF FOREIGN INVESTMENT

A foreign investor may register its foreign investment with the BSP. BSP registration is not mandatory but will

570 Twelfth Foreign Investment Negative List, Executive Order No. 175 (June 27, 2022).

571 An Act to Punish Acts of Evasion of the Laws on the Nationalization of Certain Rights, Franchises or Privileges, Commonwealth Act No. 108 (1936).

allow the foreign investor to purchase from the Philippine banking system foreign exchange which is needed to service capital repatriation and dividend remittance. In case a foreign investment is not registered with the BSP, foreign exchange for such purposes will have to be purchased from sources outside of the banking system.

» ALTERNATIVE INVESTMENT FUNDS

We understand that an alternative investment fund is a privately pooled investment fund that collects funds from sophisticated private investors and invests the same according to a clearly stated policy. There are no laws or regulations in the Philippines that specifically govern the establishment, operation, and management of alternative investment funds. Thus, an investment fund may be established in the form of:

(i) an ordinary stock corporation (as described in ***item 1.2(a) Stock Corporations***);

(ii) an investment company formed under the Investment Company Act. An investment company is a stock corporation primarily engaged or holds itself out as being engaged primarily, or proposes to engage, in the business of investing, reinvesting and trading in securities;[572]

(iii) a UITF administered by a trust entity (as described in item 1.1(d)(i)(Unit Investment Trust Funds)); or

(iv) a trust or investment management account administered by the trust department of a bank or a trust corporation. A trust account is an account where transactions arising from a trusteeship are kept and recorded.[573] On the other hand, an investment management account is an account where transactions arising from investment management activities are kept and recorded.[574]

» OTHER KEY LAWS AND REGULATION RELATING TO IMPACT INVESTING AND CORPORATE SOCIAL RESPONSIBILITY

Recent regulations on the environmental or social impact of businesses have tended to specifically apply or pertain to publicly listed companies, financial institutions, and issuers of certain classes of registered securities, such as green, social and sustainable bonds, Sustainable and Responsible Investment (**SRI**) Funds, Sustainability-Linked Bonds (**SLBs**), and ASEAN Sustainable and Responsible Funds (**ASEAN SRFs**).

Publicly listed companies are required to have a clear and focused policy on the disclosure of non-financial information, with emphasis on the management of the economic, environmental, social, and governance (**ESG**) aspects of their business, which underpin sustainability. Public-listed companies shall include sustainability reports in their annual reports, which shall contain disclosures on the company's economic, environmental, social, and governance. The issuers of green, social and sustainable bonds, SRI Funds, SLBs and ASEAN SRF) also have separate disclosure and reporting requirements relating to their sustainability or ESG objectives, strategies, and performance or compliance.

These classes of issuers are now subject to detailed requirements on disclosure, reporting, verification, and use of sustainability marks or labelling. The governing regulations also set or require the setting of performance

572 Implementing Rules and Regulations of the Investment Company Act, IRR of Republic Act No. 2629, December 19, 2017.
573 Manual of Regulations for Non-Bank Financial Institutions, Section 201-Q.
574 *Id*. Section 403-Q.

indicators or other metrics for measuring compliance with sustainable investment objectives. As such, there may be more information and greater transparency with respect to these entities offering their investment products, which would allow impact investors to screen and monitor their investments.

Similar regulations and frameworks do not exist for private investments in social enterprises and small and growing businesses. Thus, matters such as disclosure, reporting and performance metrics will have to be provided for in the investment contract between the investor and the investee. This makes impact investing challenging in the Philippines.

» TAX INCENTIVES

The government grants tax incentives to projects or activities that qualify under the Strategic Investment Priority Plan (**SIPP**). The SIPP, which is formulated by the Board of Investments (**BOI**) in coordination with the Fiscal Incentives Review Board (**FIRB**) and approved by the President, contains the list of priority projects or activities and the industry tiers where investments are encouraged. The business enterprise must register its project or activity with an investment promotion agency (**IPA**) such as the BOI or the Philippine Economic Zone Authority (**PEZA**) to be able to avail itself of the incentives.

Under the 2022 SIPP, the qualified activities under the industry tiers include the following:

TIER I	Includes activities that: (a) Have high potential for job creation; (b) Take place in sectors with market failures resulting in the under-provision of basic goods and services; (c) Generate value creation through innovation, upgrading, or moving up the value chain; (d) Provide essential support for sectors critical to industrial development; or (e) Are emerging owing to potential comparative advantages. Some of the activities in Tier I include (i) the establishment and operation of infrastructure such as airports and seaports, mass rail transport system, LNG storage and regassification facility, new pipeline facility for oil and gas, and telecommunications infrastructure; (ii) the commercial development of mass housing units including in-city low-cost dwelling for rent; (iii) business process outsourcing activities such as call centers which provide services for clients abroad and paid for in foreign currency; (iv) industrial tree plantation; (v) publication or printing of books and textbooks; (vi) manufacture of technical aids and appliances for persons with disability including the establishment of special schools, day care centers, homes, residential communities, or retirement villages solely to suit the needs of persons with disability; and (vii) tourism enterprises.

TIER II	Includes activities that produce supplies, parts, and components, and intermediate services that are not locally produced but are critical to industrial development, addressing industry value change gaps, or are import-substituting, including green ecosystems, health-related activities, and food security-related activities. Activities under Tier II include (i) green ecosystems, including electric vehicle (**EV**) assembly, manufacture of EV parts, components and systems, manufacture of energy efficient maritime vessels, renewable energy, energy efficiency and conservation projects, energy storage technologies, and integrated waste management, disposal, and recycling; (ii) national defense related activities; (iii) activities that will address industrial value-chain gaps in steel, textiles, chemicals, crude oil refining, green metals processing, and lab-scale water fabrication; (iv) manufacturing in support of the vaccine self-reliance program and other health-related programs endorsed by the Department of Health; and (v) food security related activities as endorsed by the Department of Agriculture.
TIER III	Includes: (a) Research and development resulting in demonstrably significant value-added, higher productivity, improved efficiency, breakthroughs in science and health, and high-paying jobs; (b) Providing a generation of new knowledge and intellectual property registered and/or licensed in the Philippines; (c) Commercialization of patents, industrial designs, copyrights, and utility models owned or co-owned by a registered business enterprise; (d) Highly technical manufacturing; or (e) Activities that are critical to the structural transformation of the economy and require substantial catch-up efforts. Activities under Tier III include (i) research and development (**R&D**) and activities adopting advanced digital production technologies of the fourth industrial revolution such as robotics; (ii) artificial intelligence; (iii) data analytics; (iv) digital transformative technologies (e.g., cloud computing services, hyperscalers, data centers); (iv) nanotechnology; (v) biotechnology; (vi) production and/or adoption of new hybrid seeds; (vii) internet of things devices and systems; (viii) full-scale wafer fabrication; and (ix) establishment of R&D hubs, Centers for Excellence, science & technology parks, innovation incubation centers, tech startups, startup enables: incubators & accelerators, and space-related structures.

The available incentives depend on the tier and geographic location of the registered activity and whether the production/output is for export or the domestic market. The incentives available to an export enterprise[575] include (a) an income tax holiday (**ITH**) for a minimum of four (4) years and a maximum of seven (7) years; (b) value-added tax (**VAT**) and duty exemption on the importation of capital equipment, raw materials, spare parts, and accessories directly and exclusively used in the registered project or activity for seventeen (17) years from the date of registration with the IPA; and (c) VAT zero-rating on local purchases of goods and services directly and exclusively used in the registered project or activity, also for seventeen (17) years from the date of registration with the IPA.[576] After the lapse of the ITH, and for a period of ten (10) years thereafter, an export enterprise may avail itself of (x) a special corporate income tax (**SCIT**) of five percent (5%) on gross income

575 An *export enterprise* is an enterprise registered with an IPA that exports at least seventy percent (70%) of its total production or output. Implementing Rules and Regulations of Republic Act No. 11534, the Corporate Recovery and Tax Incentives for Enterprises (CREATE IRR), Section 4(M).

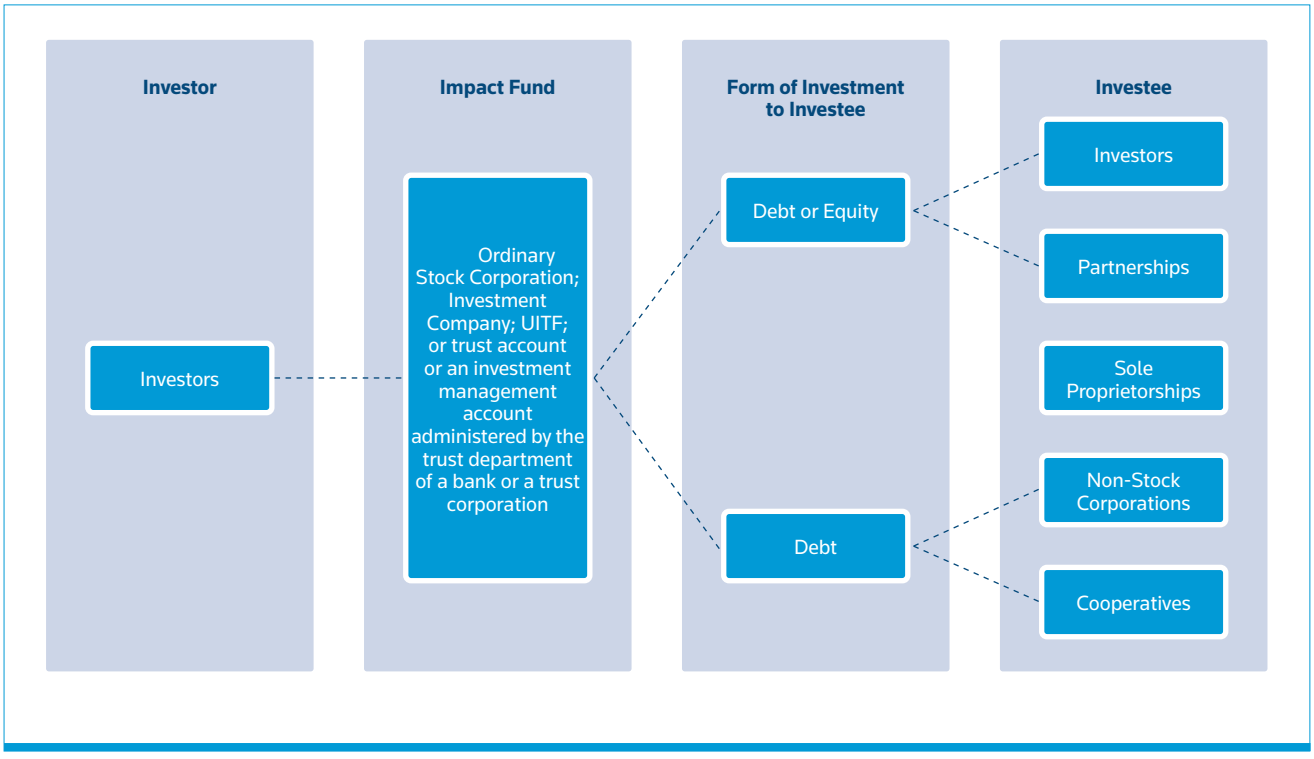
576 Tax Code, Section 294, CREATE IRR, Rule 2, Sections 4 and 5.

earned in lieu of all national and local taxes; or (y) enhanced deductions (**ED**) for items such as additional depreciation, labor expenses, research and development expenses, training expenses, power expenses, and the carrying over of net operating losses.[577] A domestic market enterprise[578] is entitled to the same ITH incentive as an export enterprise but is entitled to duty exemption for only twelve (12) years from the date of registration with the IPA, five (5) years of ED after the lapse of the ITH, but no entitlement to the VAT incentive, and no option to avail of the SCIT.[579]

3. ILLUSTRATION – AN IMPACT FUND

An impact investment fund that will invest in social enterprises or small or growing businesses in the Philippines may be established either in a foreign jurisdiction or in the Philippines. If the impact investment fund will be established in the Philippines, as discussed above under paragraph Alternative Investment Funds, it may take the form of (a) an ordinary stock corporation, (b) an investment company, (3) a UITF, or (4) a trust account or an investment management account administered by the trust department of a bank or a trust corporation.

The investment instruments may be in the form of those discussed in item 1.1 (*Key investment instruments in the Philippines*) above, while the investees may be in the form of those described in the response to item 1.2 (*Key enterprises in the Philippines*) above.



577 Tax Code, Sections 295(B) and 296(A), CREATE IRR, Rule 3, Section 6(A).

578 A *domestic market enterprise* is an enterprise registered with an IPA that does not export at least seventy (70%) of its total production or output. CREATE IRR Section 4(L).

579 Tax Code, Section 296(B), CREATE IRR, Rule 2, Section 4, and Rule 3, Section 6(B).

Investors would typically buy shares or units in an impact fund structured as an ordinary stock corporation, investment company, UITF, trust account or an investment management account administered by the trust department of a bank or a trust corporation. In turn, the impact fund will invest the amount invested in investees.

Depending on the structure of the investee, the impact fund can invest either via debt or via equity, or both.

Investees structured as ordinary stock corporations and partnerships may accept both debt and equity investments.

On the other hand, investees structured as sole proprietorships and cooperatives may only accept debt investments. If a sole proprietorship accepts equity investments, a contract of partnership will be created. In general, cooperatives whose members are natural persons cannot accept equity investments from legal persons.

Non-stock corporations, cannot accept equity investments because such corporations are not allowed to distribute dividends, profit-sharing being essential in an equity investment. However, non-stock corporations may receive contributions in the form of grants.

The impact fund's realization of its return on investments occurs when (1) in the case of an equity investment, either dividends or shares in the profit are distributed or the shares or units have been sold, or both, and (2) in the case of a debt investment, either interests are paid or the debt has been repaid, or both.

On the other hand, the investors of the impact fund would be able to realize their investment depending on the structure of the impact fund. If the fund is dividend-paying, then investors need not sell their shares or units in the impact fund to realize the return on their investments. However, if the fund is not dividend-paying, then the investors would have to sell their units to realize their return on investments.

4. OPPORTUNITIES AND CHALLENGES

Framework Incentivizing MSMEs, Start Ups and Microfinance NGOs

Under the Magna Carta for MSMEs and Innovative Startup Act, an MSME or a startup, respectively, may apply for loans and subsidies.[580] This would lessen the risk for investors as there is more guarantee that the MSME and the startup would have enough funding to start or operate its operations.

As mentioned in ***item 1.2 (b) (Start-ups, MSMEs and microfinance NGOs)***, in relation to ***item 2 (Tax incentives)***, tech startups and startup enablers may qualify for fiscal and non-fiscal incentives under the 2022 SIPP.

An investee set up as a Microfinance NGO which is a duly registered and accredited Microfinance NGO shall pay a two percent (2%) tax based on its gross receipts from microfinance operations in lieu of all national

580 For mSMEs, loans and subsidies may be availed of through the Small Business Corporations website (*See* https://sbcorp.gov.ph/rise-up-tindahan). For start-ups, grants or subsidies may be availed of through the government portal (*See* Start-up Grant Steps *available at* https://startup.gov.ph/dict-startup-grant-fund-invites-interested-startups-to-register-at-the-startup-philippines-website-read-more-to-know-more-about-how-to-register-to-the-psdp (last accessed on September 9, 2023).

taxes. This preferential tax treatment shall be accorded only to NGOs whose primary purpose is microfinance and only on their microfinance operations catering to poor and low-income individuals in line with the main goal of the Microfinance NGOs Act to alleviate poverty.

Emergence of Crowd funding

Crowdfunding offers an alternative way for MSMEs to raise capital. Crowdfunding refers to the offer or sale of securities of a limited scale usually for start-ups and MSMEs done through an online electronic platform.

An issuer may offer or sell securities under the SEC's Rules and Regulations Governing Crowdfunding provided that:

(i) The issuer is an entity organized under the laws of the Philippines or a Filipino natural person, and accredited and/or accepted by a crowdfunding intermediary to utilize its platform;

(ii) The aggregate amount of securities that can be offered and sold by the issuer within a 12-month period shall comply with the following limits:

  (a) the offering of securities with an aggregate value of up to PhP10,000,000.00 within a 12-month period can be offered and sold to any investor;

  (b) the offering of securities with an aggregate value of above PhP10,000,000.00 but not exceeding Php50,000,000.00 within a 12-month period can only be offered and sold to Qualified Investors as defined under the SRC Rules.

(iii) The aggregate amount of securities sold to any investor across all issuers in securities crowdfunding during the 12-month period shall not exceed the following limits set forth:

  (a) Retail Investors with income of up to PhP2,000,000.00 per year may purchase securities through a crowdfunding intermediary at a maximum value of five percent (5%) of their total income per year.

  (b) Retail Investors with income of more than PhP2,000,000.00 per year may purchase securities through a crowdfunding intermediary at a maximum value of ten percent (10%) of their total income per year.

  (c) Qualified Investors are not subject to the limits set forth above, provided that the Qualified Investor complies with qualified buyer rules.

(iv) The issuance of securities is conducted through an intermediary that complies with the requirements for intermediaries and the related requirements under the SEC Rules on and Regulations Governing Crowdfunding, and the issuance of securities is conducted exclusively through the intermediary's platform.

For the purposes of calculating the aggregate amount of securities offered and sold by an issuer and determining whether an issuer has previously sold securities within a 12-month period, the issuer shall include all entities controlled by or under common control with the issuer and any predecessors of the issuer.

KEY CHALLENGES FOR IMPACT INVESTING IN PHILIPPINES

Nationality Restrictions

As mentioned above, there are industries reserved partially or entirely to Filipino entities. Potential foreign investors should be aware of this restriction in structuring their investments, e.g., fixing the maximum equity participation in an entity engaged in nationalized activities.

Taxation

There are no specific tax incentives granted for impact investing in the Philippines. The grant of impact loans, for instance, is not entitled to tax incentives, and is subject to DST at the rate of PhP1.50 for every PhP200.00, or fractional part thereof[581] and the interest income derived from impact loans is generally subject to withholding tax at the rate of twenty percent (20%).[582] While it is possible to avail of a reduced withholding tax rate on interest income (as well as dividends, and for that matter, exemption from capital gains) under an applicable tax treaty, the documentary requirements for obtaining tax treaty relief are numerous and the procedure is cumbersome.

The Philippines grants tax incentives to attract foreign capital or investment in activities and industry sectors that are classified as priority projects under the Philippine Development Plan. The sectors or industries that are included in the SIPP are those determined by the government to be suitable for promoting long-term growth, sustainable development, and the national interest. While impact investing may be included within these parameters, the activities included in the SIPP are those that will entail substantial investments, considerable generation of employment especially in the less developed areas, a considerable amount of net exports, and use of modern, advanced, or new technology, among others. The burdensome registration process and reporting requirements for registered business enterprises, the high VAT rate, the frequency of unreasonable and questionable BIR tax audits, and bureaucratic inefficiency make the Philippines less attractive than its neighbours for foreign investments.

581 Tax Code, Section 179.

582 *See* discussion in *item 1.1(c)*.

Annex A – Comparative Table of Business Entities in the Philippines

	SOLE PROPRIETORSHIP	STOCK CORPORATION	NON-STOCK CORPORATION	BRANCH OF A FOREIGN CORPORATION	PARTNERSHIP	COOPERATIVE
DEFINITION	A form of business organization conducted for profit by a single individual and requires its proprietor or owner to secure licenses and permits, register its business name, and pay taxes to the national government.[583]	A corporation which has capital stock divided into shares and are authorized to distribute to the holders of such shares, dividends, or allotments of the surplus profits on the basis of the shares held.[584]	A corporation that does not have capital stock divided into shares and is not authorized to distribute dividends to its shareholders[585] and formed for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade, industry, agricultural, and like chambers, or any combination thereof.[586] Foundations are a subset of non-stock corporations. More specifically, foundations are defined as non-stock, non-profit corporations established for the purpose of extending grants or endowments to support its goals or raising funds to accomplish charitable, religious, educational, athletic, cultural, literary, scientific, social welfare or other similar objectives.[587]	A branch office carries out the business activities of the parent corporation and derives income from within the Philippines.[588]	A contract where two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.[589]	An autonomous and duly registered association of persons, with a common bond of interest, who have voluntarily joined together to achieve their social, economic, and cultural needs and aspirations by making equitable contributions to the capital required, providing their products and services and accepting a fair share of the risks and benefits of the undertaking in accordance with universally accepted cooperative principles.[590]
GOVERNING LAW	Sole proprietorships are not governed by any specific law but like other business entities, are subject to the rules and regulations promulgated by administrative agencies (*e.g.* LGU, BIR, DTI).	All corporations are primarily governed by Republic Act No. 11232 or the Revised Corporation Code of the Philippines and the rules and regulations promulgated by the SEC.	All corporations are primarily governed by Republic Act No. 11232 or the Revised Corporation Code of the Philippines and the rules and regulations promulgated by the SEC.	A foreign corporation lawfully doing business in the Philippines shall be bound by all laws, rules and regulations applicable to domestic corporations of the same class, except those which provide for the creation, formation, organization or dissolution of corporations or those which fix the relations, liabilities, responsibilities, or duties of stockholders, members or officers of corporations to each other or to the corporation.[591] As such, branches are bound by Philippine laws, including Republic Act No. 11232 or the Revised Corporation Code of the Philippines and rules and regulations promulgated by the SEC.	Partnerships are primarily governed by provisions of Book IV, Title IX of Republic Act No. 386 of the Civil Code of the Philippines.	Cooperatives are primarily governed by Republic Act No. 6938 or the Cooperative Code of the Philippines, as amended by Republic Act No. 9520.

583 Mangila v. Court of Appeals, G.R. No. 125027, August 12, 2002.
584 Republic Act No. 11232, Revised Corporation Code of the Philippines (**RC**C), February 20, 2019.
585 RCC, Section 3.
586 RCC, Section, 87.
587 SEC Memorandum Circular No. 08-06, Revised Guidelines on Foundations, Section 1, June 22, 2006.
588 FIA IRR, Rule I, Sec. 1(c).
589 Civil Code, Article 1767.
590 Republic Act No. 6939, as amended by Republic Act No. 9520, Philippine Cooperative Code (Cooperative Code), Article 3, March 10, 1990.
591 RCC, Section 146.

	SOLE PROPRIETORSHIP	STOCK CORPORATION	NON-STOCK CORPORATION	BRANCH OF A FOREIGN CORPORATION	PARTNERSHIP	COOPERATIVE
CONSTITUTION AND LIABILITY OF THE ENTITY	The sole proprietor is liable for all the obligations of his/her/their business and is the only person who constitutes the sole proprietorship.	Any person, partnership, association or corporation, singly or jointly with others but not more than fifteen (15) in number, may organize a corporation for any lawful purpose or purposes.[592] A corporation is clothed with a personality separate and distinct from the persons comprising it which means that generally, stockholders of a corporation enjoy the principle of limited liability: the corporate debt is not the debt of the stockholder.[593]	There are no limitations on the number of members a non-stock corporation may accept. As a corporation, non-stock corporations are also vested with a legal personality separate and distinct from the natural persons composing them.[594]	There are no regulations on the constitution of a branch office as it is a mere extension of the parent company. As an extension of the parent company, branches are not vested with a separate juridical liability.	While a partnership has a legal personality separate from the partners,[595] unlike shareholders in a corporation, partners, including industrial ones, are liable *pro rata* with all their property and after all the partnership assets have been exhausted, for the contracts which may be entered into in the name and for the account of the partnership, under its signature and by a person authorized to act for the partnership.[596] A limited partner, on the other hand, is not bound by partnership obligations. A limited partnership is one where there is one or more general partners and one or more limited partners.[597]	There are three categories of cooperatives: (i) Primary - The members of which are natural persons; (ii) Secondary - The members of which are primary cooperatives; and (iii) Tertiary - The members of which are secondary cooperatives.[598] Fifteen (15) or more natural persons who are Filipino citizens, of legal age, having a common bond of interest and are actually residing or working in the intended area of operation, may organize a primary cooperative.[599] In addition, there are two (2) kinds of cooperative members: regular and associate members. A regular member is one who has complied with all the membership requirements and is entitled to all the rights and privileges of membership. An associate member is one who has no right to vote nor be voted upon and shall be entitled only to such rights and privileges as the bylaws may provide. An associate who meets the minimum requirements of regular membership, continues to contribute to the cooperative for two (2) years, and signifies their intention to remain a member shall be considered a regular member.[600] Cooperatives are vested with a separate legal entity upon the issuance by the CDA of a certificate of registration under its official seal.[601]
PERMITTED ACTIVITIES	All lawful activities pursuant to the purpose of its formation.	Generally, all lawful activities pursuant to its primary purpose, subject to nationality restrictions.	Generally, all non-profit activities pursuant to the primary purpose of its formation.	All lawful activities pursuant to the purpose of its formation.	All lawful activities pursuant to the purpose of its formation.	All lawful activities pursuant to the purpose of its formation.

592 RCC, Section 10.
593 Bustos v. Millians Shoe, Inc., G.R. No. 185024, April 24, 2017.
594 International Academy of Management and Economics v. Litton and Co., Inc., G.R. No. 191525, December 13, 2017.
595 Civil Code, Article 1768.
596 Civil Code, Article 1816.
597 Civil Code, Article 1843.
598 Cooperative Code, Section Article 23(2)(a).
599 Cooperative Code, Article 10.
600 Cooperative Code, Article 26.
601 Cooperative Code, Article 16.

	SOLE PROPRIETORSHIP	STOCK CORPORATION	NON-STOCK CORPORATION	BRANCH OF A FOREIGN CORPORATION	PARTNERSHIP	COOPERATIVE
MINIMUM CAPITAL TO SET-UP	There is no minimum capital requirement.	Generally, there is no minimum capital requirement, unless otherwise provided by law. Domestic corporations with more than 40% foreign equity engaged in domestic market enterprise are subject to a minimum paid-up capital requirement of USD200,000.00	Generally, there is no minimum capital requirement, except in the case of foundations which must have a minimum contribution of at least PhP 1,000,000.00[602]	The minimum paid-up capital requirement is USD200,000.00	Generally, there is no minimum capital requirement for partnerships.	Generally, the minimum capital requirement is PhP15,000.00 except for multipurpose cooperatives whose minimum capital requirement is at least PhP100,000.00 or as required by the feasibility study, whichever is higher.[603]

602 Revised Guidelines on Foundations, Section 2(a).
603 Memorandum Circular No. 2015-01, Revised Guidelines Governing the Registration of Cooperatives, Article VIII, Section 2.2.

	SOLE PROPRIETORSHIP	STOCK CORPORATION	NON-STOCK CORPORATION	BRANCH OF A FOREIGN CORPORATION	PARTNERSHIP	COOPERATIVE
BASIC DOCUMENTS REQUIRED	Registration of business name with the Department of Trade and Industry. In case the sole proprietorship has employees, it must register with the DOLE,[604] SSS,[605] PhilHealth,[606] and the HDMF[607] as an employer.	1. Name Verification Slip; 2. Articles of Incorporation and By-Laws; 3. Endorsement or Clearance from other government agencies (if the company will engage in a regulated industry); 4. Foreign Investment Application Form F-100 (for subsidiaries of foreign corporations); and 5. Proof of Inward Remittance by Non-Resident Aliens/Subscribers. 6. If there are employees, registration with the DOLE, SSS, PhilHealth, and the HDMF as an employer.	1. Name Verification Slip; 2. Articles of Incorporation and By-Laws; 3. List of members certified by the corporate secretary, unless already stated in the Articles of Incorporation; 4. List of the names of contributors or donors and the amounts contributed or donated certified by the treasurer. There is no fixed amount of contribution required but only such reasonable amount as the incorporators and trustees may deem sufficient to enable the corporation to start operation, except in the case of foundations which must have a minimum contribution of at least One Million Pesos (PhP1,000,000.00);[608] and 5. If there are employees, registration with the DOLE, SSS, PhilHealth, and the HDMF as an employer.	1. SEC Application Form No. F-103 – Application of a Foreign Corporation to Establish a Branch Office in the Philippines; 2. Certified copy of the Board of Resolution of the parent company authorizing the establishment of the branch office and designating a Resident Agent to receive summons and legal proceedings (can be a Philippine resident or a domestic corporation); in the absence of such agent or upon cessation of its operations in the Philippines, any summons or legal proceedings may be served to the SEC as if the same is made upon the corporation at its head office; 3. Latest audited financial statements of the parent company certified by an independent certified public accountant (CPA) and authenticated by the Philippine consulate/embassy; 4. Certified copies of the Articles of Incorporation of the parent company; 5. Certificate of Inward Remittance and Certificate of Bank Deposit of USD200,000.00 or USD100,000.00[609] as initial capitalization; 6. Endorsement or clearance from appropriate government agencies (if applicable); and Resident Agent acceptance of appointment (if agent is not the signatory of the application form); and 6. If there are employees, registration with the DOLE, SSS, PhilHealth, and the HDMF as an employer.	1. Name Verification Slip 2. Articles of Partnership; 3. Endorsement / clearance from other government agencies, if applicable; and 4. If there are employees, registration with the DOLE, SSS, PhilHealth, and the HDMF as an employer.	1. Approved Cooperative Name Reservation Slip; 2. Economic Survey, which is a general statement describing, among others, the structure and purposes of the proposed cooperative; 3. Articles of Cooperation and By-Laws; 4. Surety bond of accountable officers; 5. Treasurer's Affidavit; 6. Certificate of Pre-Membership Education Seminar, and 7. If there are employees, registration with the DOLE, SSS, PhilHealth, and the HDMF as an employer.

604 Occupational Safety and Health Standards, Rule 1020,
605 Social Security Act, Section 9.
606 Implementing Rules and Regulations of Republic Act No. 7875, Section 13.
607 Home Development Mutual Fund Law, Section 24.
608 Revised Guidelines on Foundations, Section 2(a).
609 Section 8 of the FIA, as amended, imposes a USD100,000 capitalization requirement instead of a USD 200,000 requirement if the foreign corporation which is engaged in domestic market enterprise is one of the following:

(1) will involve advanced technology as determined by the Department of Science and Technology;

(2) is endorsed as startup or startup enablers by the lead host agencies pursuant to Republic Act No. 11337, otherwise known as the Innovative Startup Act; or

(3) employs Filipinos as a majority of their direct employees, which, in no case shall be less than fifteen (15). In addition, a registered foreign enterprise employing foreign nationals and enjoying fiscal incentive shall implement an understudy or skills development program to ensure the transfer of technology or skills to Filipinos which shall be monitored by the DOLE.

	SOLE PROPRIETORSHIP	STOCK CORPORATION	NON-STOCK CORPORATION	BRANCH OF A FOREIGN CORPORATION	PARTNERSHIP	COOPERATIVE
VALIDITY OF REGISTRATION	Registration of a business name is valid for five (5) years which may be renewed continuously.[610]	Stock corporations can exist perpetually unless otherwise stated in the Articles of Incorporation.[611]	Non-stock corporations can exist perpetually unless otherwise stated in the Articles of Incorporation.[612]	Branches can exist perpetually until the parent company's license to do business in the Philippines is revoked or the branch is closed.	A partnership may exist indefinitely under the articles of partnership unless it is sooner dissolved. A partnership is dissolved: 1. Without violation of the agreement between the partners: a. By the termination of the definite term or particular undertaking specified in the agreement; b. By the express will of any partner, who must act in good faith, when no definite term or particular undertaking is specified; c. By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking; d. By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners; 2. In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this article, by the express will of any partner at any time; 3. By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership; 4. When a specific thing which a partner had promised to contribute to the partnership, perishes before the delivery; in any case by the loss of the thing, when the partner who contributed it having reserved the ownership thereof, has only transferred to the partnership the use or enjoyment of the same; but the partnership shall not be dissolved by the loss of the thing when it occurs after the partnership has acquired the ownership thereof;	A cooperative shall exist for a period not exceeding fifty (50) years from the date of registration unless sooner dissolved or unless said period is extended. The cooperative term, as originally stated in the articles of cooperation, may be extended for periods not exceeding fifty (50) years in any single instance by an amendment of the articles of cooperation.[613]

610 DTI Administrative Order No. 1807, Revised Rules and Regulations Implementing act No. 3833, Rule VII, Section 3, August 13, 2018.
611 RCC, Section 11.
612 RCC, Section 11.
613 Cooperative Code, Article 13.

	SOLE PROPRIETORSHIP	STOCK CORPORATION	NON-STOCK CORPORATION	BRANCH OF A FOREIGN CORPORATION	PARTNERSHIP	COOPERATIVE
					5. By the death of any partner; 6. By the insolvency of any partner or of the partnership; 7. By the civil interdiction of any partner; 8. By decree of court.[614]	
TIME INVOLVED IN SET-UP	Generally takes 1-2 months to secure all necessary permits and licenses to operate commercially.	Using the regular process of registration with the SEC, it will generally take 4-5 months to incorporate and secure the necessary permits and licenses to operate commercially. By using the Electronic Simplified Processing of Application for Registration of Company which automatically generates simple organization documents, the process is shortened to 1-3 months with the period for incorporation being reduced to 1-2 weeks.	Generally takes 4-5 months to incorporate and secure necessary permits and licenses to operate,	Generally takes 3-4 months to obtain a license to do business from the SEC.	Generally takes 4-5 months to register and secure the necessary permits and licenses to operate commercially.	Generally takes 4-5 months to register and secure the necessary permits and licenses to operate commercially.

614 Civil Code, Articele 1830.

	SOLE PROPRIETORSHIP	STOCK CORPORATION	NON-STOCK CORPORATION	BRANCH OF A FOREIGN CORPORATION	PARTNERSHIP	COOPERATIVE
LIABILITIES OF AUTHORIZED REPRESENTATIVES / DIRECTORS / PARTNERS	Sole proprietor is liable for all the obligations of the sole proprietorship.	Generally, authorized representatives and directors are not liable for the obligations of the corporation, except in the following cases: 1. When directors and trustees or, in appropriate cases, the officers of a corporation: (a) vote for or assent to patently unlawful acts of the corporation; (b) act in bad faith or with gross negligence in directing the corporate affairs; and (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons; 2. When a director or officer has consented to the issuance of watered stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto; 3. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally liable with the corporation; or 4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.[615]	Generally, authorized representatives and trustees are not liable for the obligations of the corporation, except in the following cases: 1. When directors and trustees or, in appropriate cases, the officers of a corporation: (a) vote for or assent to patently unlawful acts of the corporation; (b) act in bad faith or with gross negligence in directing the corporate affairs; and (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons; 2. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally liable with the corporation; or 4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.[616]	Branches are considered an extension of the parent corporation and its liabilities are the direct liabilities of the parent corporation.	While a general partnership has a legal personality separate from the partners,[617] unlike a corporation, partners in a general partnership, including industrial ones, are liable *pro rata* with all their property and after all the partnership assets have been exhausted, for the contracts which may be entered into in the name and for the account of the partnership, under its signature and by a person authorized to act for the partnership.[618]	Directors, officers and committee members - 1. Who willfully and knowingly vote for or assent to patently unlawful acts or 2. Who are guilty of gross negligence or bad faith in directing the affairs of the cooperative or 3. Who acquire any personal or pecuniary interest in conflict with their duty as such directors, officers or committee members shall be liable jointly and severally for all damages or profits resulting therefrom to the cooperative, members and other persons. 4. A director, officer or committee member who attempts to acquire or acquires, in violation of his duty, any interest or equity adverse to the cooperative in respect to any matter which has been entrusted to him in confidence, he shall, as a trustee for the cooperative, be liable for damages and shall be accountable for double the profits which otherwise would have accrued to the cooperative.[619]
ABILITY TO UNDERTAKE INCOME GENERATING ACTIVITIES	Can engage in income generating activities.	Can engage in income generating activities.	Cannot undertake income generating activities. However, any profit which a non-stock corporation may obtain incidental to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose of purposes for which the corporation was organized.[620]	Can engage in income generating activities.	Can engage in income generating activities.	Can engage in income generating activities.

615 Heirs of Uy v. International Exchange Bank, G.R. No. 166282, February 13, 2013.
616 *Id.*
617 Civil Code, Article 1768.
618 Civil Code, Article 1816.
619 Cooperative Code, Article 45.
620 RCC, Section 86.

	SOLE PROPRIETORSHIP	STOCK CORPORATION	NON-STOCK CORPORATION	BRANCH OF A FOREIGN CORPORATION	PARTNERSHIP	COOPERATIVE
EXTERNAL AUDIT / SUBMISSION OF AUDITED FINANCIAL STATEMENTS (AFS)[621]	Sole proprietors are not required to undergo external audit/ submit AFS.	All corporations are required to submit annual financial statements audited by an independent certified public accountant annually. If the total assets or liabilities of the corporation are less than PhP600,000.00, the financial statements shall be certified under oath by the corporation's treasurer or chief financial officer.[622]	Generally required if the total assets or liabilities of the non-stock corporation are PhP600,000.00 or more. Foundations are required to submit an AFS to the SEC regardless of its total assets or liabilities on or before April 15 (for foundations with a fiscal year ending on December 31). For foundations with a fiscal year ending on a date other than December 31, the AFS should be submitted in accordance with the advisory to be issued by the SEC. The following must be submitted together with the AFS: Sworn affidavits and schedules on receipts of income, sources of funds, contributions and donations, and application of funds; and Certificate of existence of program /activity issued by the City/ Municipal Mayor /Barangay Captain, or the Head of the DSWD or Department of Health, or in lieu thereof, notarized affidavit from the head of the foundation or the actual recipients or beneficiaries of the foundation's program/ activity.	Branches are required to submit audited financial statements annually if total assets or assigned capital is PhP1,000,000.00 or more	Required if total assets or liabilities are PhP600,000.00 or more.	Cooperatives are subject to an annual financial, performance and social audit. The AFS is required to be submitted as an attachment to the Cooperative Annual Progress Report (**CAPR**). The financial audit shall be conducted by an external auditor who satisfies all the following qualifications: 1. He is independent of the cooperative or any of its subsidiaries that he is auditing; and 2. He is a member in good standing of the Philippine Institute of Certified Public Accountants and is accredited by both the Board of Accountancy and the CDA. The social audit shall be conducted by an independent social auditor accredited by the CDA. Performance and social audit reports which contain the findings and recommendations of the auditor shall be submitted to the board of directors.[623]
MANAGEMENT	The sole proprietor manages the sole proprietorship.	Generally, the board of directors exercises the corporate powers, conducts all business, and controls all properties of a stock corporation.[624]	Generally, the board of trustees exercises the corporate powers, conducts all business, and controls all properties of a non-stock corporation.[625]	As an extension of a parent company, the management of the parent company controls and manages the branch.	The partner who has been appointed manager in the articles of partnership may execute all acts of administration despite the opposition of his partners, unless he should act in bad faith; and his power is irrevocable without just or lawful cause. The vote of the partners representing the controlling interest shall be necessary for such revocation of power.[626]	Unless otherwise provided in the bylaws, the direction and management of the affairs of a cooperative shall be vested in a board of directors which shall be comprised of not less than five (5) nor more than fifteen (15) members elected by the general assembly for a term fixed in the by-laws but not exceeding a term of two (2) years and shall hold office until their successors are duly elected and qualified, or until duly removed for cause.[627]

621 For entities following the calendar year, the deadline to submit audited financial statements to the SEC is in accordance with the schedule set in the pertinent memorandum circular issued by the SEC every year. For entities that follow a fiscal year, the AFS should be filed with the SEC within 120 calendar days from the end of the entity's fiscal year.
622 RCC, Section177.
623 Cooperative Code, Article 80.
624 RCC, Section 22.
625 Id.
626 Civil Code, Article 1800.
627 Cooperative Code, Article 37.

	SOLE PROPRIETORSHIP	STOCK CORPORATION	NON-STOCK CORPORATION	BRANCH OF A FOREIGN CORPORATION	PARTNERSHIP	COOPERATIVE
REGULATORY COMPLIANCES /PERMITS	Annual barangay clearance Annual Mayor's/Business permit from the LGU	Annual barangay clearance Annual Mayor's/Business permit from the LGU GIS due within 30 days after the annual meeting	Same requirements as a stock corporation. For non-stock non-profit corporations organized and operated exclusively for educational and/or religious, charitable, cultural, social welfare, research, or philanthropic purposes, to avail of tax exemptions or incentives: Accreditation from the government agency regulating the non-stock non-profit corporation (e.g., the DSWD if the corporation will operate social welfare programs or services) Endorsement from the PCNC as a donee institution BIR ruling confirming tax-exempt status; the ruling is valid for 3 years, subject to renewal unless revoked or terminated	Same requirements as a stock corporation.	Annual barangay clearance Annual Mayor's/Business permit from the LGU	Submit to the CDA within 120 days from the end of the calendar year the CAPR with the following attachments: • Social Audit Report including its program of activities; • Performance Audit Report; • AFS; • List of Officers and Trainings Undertaken/Completed.; and • Annual Tax Incentives Report. COE issued by the BIR granting tax exemption to a cooperative, which is valid for a period of 5 years from the date of issuance. A renewal of a COE must be filed with the BIR at least 2 months prior to the date of expiration
TAX FILING	If annual gross sales exceed PhP 3 million, submit AFS to the BIR as an attachment to the annual income tax return (**AITR**). AITR – (a) For calendar year taxpayers, file AITR on or before April 15 of each year covering income for the preceding taxable year; (b) for fiscal year taxpayers, file AITR on or before the 15th day of the fourth month following the close of the fiscal year. VAT – file quarterly VAT return not later than the 25th day following the close of each taxable quarter (whether calendar quarter of fiscal quarter) Monthly Return on Withholding Tax on Compensation – due on the 10th to 15th day following the end of the month, depending on the taxpayer's grouping as provided in RR No. 26-2002	Generally the same as sole proprietorships.	Generally the same as sole proprietorships, except that Foundations are not required to pay VAT and file VAT returns because they are not engaged in the business of selling goods or services	Generally the same as sole proprietorships.	Generally the same as sole proprietorships.	AITR for Exempt Non-Individuals with the same deadlines as stock corporations

	SOLE PROPRIETORSHIP	STOCK CORPORATION	NON-STOCK CORPORATION	BRANCH OF A FOREIGN CORPORATION	PARTNERSHIP	COOPERATIVE
MEETINGS	Not applicable to sole proprietorships.	Regular meetings of the board of directors or trustees of every corporation shall be held monthly, unless the bylaws provide otherwise. Special meetings of the board of directors or trustees may be held at any time upon the call of the president or as provided in the bylaws. Meetings of directors or trustees of corporations may be held anywhere in or outside the Philippines, unless the bylaws provide otherwise. Notice of regular or special meetings stating the date, time and place of the meeting must be sent to every director or trustee at least two (2) days prior to the scheduled meeting, unless a longer time is provided in the bylaws. A director or trustee may waive this requirement, either expressly or impliedly. Directors or trustees who cannot physically attend or vote at board meetings can participate and vote through remote communication such as videoconferencing, teleconferencing, or other alternative modes of communication that allow them reasonable opportunities to participate. Directors or trustees cannot attend or vote by proxy at board meetings.[628]	Same as stock corporations.	Branches are not required to conduct meetings.	Partnerships are not required to conduct meetings.	In the case of primary cooperatives, regular meetings of the board of directors shall be held at least once a month.[629]

628 RCC, Section 52.
629 Cooperative Code, Article 40.

	SOLE PROPRIETORSHIP	STOCK CORPORATION	NON-STOCK CORPORATION	BRANCH OF A FOREIGN CORPORATION	PARTNERSHIP	COOPERATIVE
CLOSURE	Sole proprietors can close their business after obtaining the necessary clearances from administrative agencies.	Stock corporations can be dissolved through the following means: 1. Voluntarily; 2. Shortening of the corporation's term, and 3. Involuntarily, either by the SEC *motu proprio* or upon the filing of a verified complaint by an interest party based on any of the grounds below: a. Non-use of corporate charter as provided; b. Continuous inoperation of a corporation; c. Upon receipt of a lawful court order dissolving the corporation; d. Upon finding by the final judgment that the corporation procured its incorporation through fraud; e. Upon finding by final judgment that the corporation: i. Was created for the purpose of committing, concealing or aiding the commission of securities violation, smuggling, tax evasion, money laundering, or graft and corrupt practices; ii. Committed or aided in the commission of securities violations, smuggling, tax evasion, money laundering, or graft and corrupt practices, and its stockholders knew of the same; and iii. Repeatedly and knowingly tolerated the commission of graft and corrupt practices or other fraudulent or illegal acts by its directors, trustees, officers, or employees.[630]	Same as a non-stock corporation.	Subject to existing laws and regulations, a foreign corporation licensed to transact business in the Philippines may be allowed to withdraw from the Philippines by filing a petition for withdrawal of license. No certificate of withdrawal shall be issued by the SEC unless all the following requirements are met: 1. All claims which have accrued in the Philippines have been paid, compromised or settled; 2. All taxes, imposts, assessments, and penalties, if any, agencies or political subdivisions, have been paid; and 3. The petition for withdrawal of license has been published once a week for three (3) consecutive weeks in a newspaper of general circulation in the Philippines.[631]	A partnership is dissolved: 1. Without violation of the agreement between the partners: a. By the termination of the definite term or particular undertaking specified in the agreement; b. By the express will of any partner, who must act in good faith, when no definite term or particular undertaking is specified; c. By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking; d. By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners; 2. In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this article, by the express will of any partner at any time; 3. By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership; 4. When a specific thing which a partner had promised to contribute to the partnership, perishes before the delivery; in any case by the loss of the thing, when the partner who contributed it having reserved the ownership thereof, has only transferred to the partnership the use or enjoyment of the same; but the partnership shall not be dissolved by the loss of the thing when it occurs after the partnership has acquired the ownership thereof; 5. By the death of any partner; 6. By the insolvency of any partner or of the partnership; 7. By the civil interdiction of any partner; 8. By decree of court.[633]	A cooperative may be dissolved: 1. Voluntarily; 2. Involuntarily, by order of a competent court after due hearing on the grounds of: (a) violation of any law, regulation, or provisions of its by-laws or (b) insolvency; 3. Involuntarily due to failure to organize and operate; 4. By order of the CDA, after due notice and hearing, due to any of the following grounds: a. The cooperative obtained its registration by fraud; b. The cooperative exists for an illegal purpose; c. Willful violation, despite notice by the CDA, of the Cooperative Code or the cooperative's by-laws; d. Willful failure to operate on a cooperative basis, and e. Failure to meet the required minimum number of members in the cooperative.[632]

630 RCC, Section 138.
631 RCC, Section 153.
632 Cooperative Code, Article 67.
633 Civil Code, Article 1830.

SECTION 8 »

REUTERS/ Edgar Su

SECTION 8 » TERM SHEET

INTRODUCTION – KEY ISSUES FOR CONSIDERATION IN A TERM SHEET

The below term sheet is drafted for a scenario where an impact project to be carried on by a private company that has been established or will be established by one party (the **Promoter**), and which will receive investment from another party (the **Investor**). It assumes that the Promoter will retain an equity interest or share in the profits of the Company.

In the interests of keeping the applicability of the term sheet as broad as possible, it is generic in nature. This draft should only be used for reference as a potential starting point in any project. Before being used in any specific transaction, it would need to be tailored to take account of the project, its intended 'impact' metrics, the legal medium through with the project will be executed, the number of parties involved, the intended rights and involvement of the Promoter(s) and Investor(s), and the jurisdiction in which the project will be carried out.

In terms of best practice, we summarise below some key areas of focus from the perspective of a Promoter and an Investor. For both sides, it can be helpful to ensure that the term sheet is not overly detailed – it should summarise all the key terms of the investment (valuation, equity stake, capital structure, governance, exit rights, and anti-dilution provisions) and the principles on which the company is expected to operate. Once they key parameters of the investment are agreed in the term sheet, the finer details can be negotiated in the full form transaction documentation.

When preparing or reviewing a term sheet, Investors should pay close attention to the following:

- Specific impact metrics or key performance indicators. What data will be used to assess whether the project is achieving its impact objectives and how will these relate to the financial performance of the project and its rate of return?

- Further to the above, what information and audit rights will the Investor have? What data needs to be reported by the company, in what form, and how regularly?

- What conditions need to be satisfied prior to the Investor making the investment? These will be the 'conditions precedent' to completion of the subscription agreement. Are the conditions things that arise from the Investor's due diligence and need to be remedied prior to making the Investment (i.e. things that can be fixed internally by the Company/Promoter), or are there approvals required from third parties or regulatory bodies in that jurisdiction? The Investor should discuss with their legal advisors who is responsible under relevant law to receive those regulatory approvals (either the Investor or the Company itself), and it should be specified in the documents who is going to be responsible for satisfying these conditions.

- Assuming that the Promoter is more familiar with the project and will retain primary responsibility for the day-to-day management of the project, what governance controls does the Investor require in addition to governance body (e.g. board of director) appointment rights? If the Investor is taking only a minority stake, then the Investor should carefully consider any negative veto rights or 'reserved matters' that will require Investor consent before they can be taken.

- What is the intended investment horizon and what are the potential exit strategies? In the event the project is not performing as intended, to what extent can the Investors negotiate amendments to the project plan? Does the investor require a right to commence a winding-up of the project in certain circumstances to allow capital to be recycled to other projects?

From the Promoter's perspective, the following issues may be key:

- What data will be used to assess whether the project is achieving its impact objectives? In the event it becomes clear that the project plan needs adjustment, or that a different set of data or metrics may be more appropriate for tracking the performance of the project, what is the process for agreeing those changes with the Investors? How will such changes be reflected into the financial returns of the project?

- In what circumstances, if any, should the Investor be able to arrange the Promoter's exit from the company? For example, should the Investor have a right to commence to compel the Promoter to sell to a third party (i.e. a right of 'drag along'), or should any third party sale be mutually agreed by the Promoter?

- If the Promoter is only retaining a minority stake in the Company following the Investor's investment and if the Investor will control the governance bodies of the Company following completion, then the Promoter should carefully consider any negative veto rights or 'reserved matters' that will require Promoter consent before they can be taken.

- In the period negotiating the term sheet and the definitive transaction documentation, will the Promoter offer exclusivity to the Investor. Investors will generally expect this, in recognition of their time and efforts in pursuing the transaction. The Promoter should consider any needs to maintain flexibility to discuss the investment with other Investors at the same time?

SAMPLE TERM SHEET

SSA/SHA TERM SHEET	
I. Parties	
COMPANY	[●] (the **Company**)
PROMOTER	[●] (the **Promoter**)
INVESTOR	[●] (the **Investor**)
II. Background	
CAPITAL STRUCTURE	The current paid up and issued share capital of the Company amounts to [USD][483] [●], comprising of [●] [ordinary] shares [with a par value of [USD] [●] per share], [and [●] preference shares [with a par value of USD [●] per share][484]. The Promoter currently holds [100%] of the current paid-up and issued share capital of the Company. *Note: to be updated to reflect the capital structure of the Company and the existence of any additional share classes.*
TRANSACTION AND OBJECTIVES	The objectives of the Company shall be: [●]. *Note: Depending on the project and the type of investment, this section may generically describe the objectives of the project or company. In others (particularly where there is any form of 'payment for outcomes'), it may be appropriate to specifically set out the targets against which the project will be measured, the data that will be used for such benchmarking, and the process for using alternative data sources or adapting the operation of the project in the event that impact targets are not being achieved. Such terms could be incorporated into the SHA.* In order to pursue the objectives, the Promoter and the Investor have agreed to enter into this term sheet and to explore an investment by the Investor into the Company on the terms set out in this term sheet and such other terms contained in the definitive documentation (the **Transaction**).
DEFINITIVE DOCUMENTATION; TIMELINE	Share subscription agreement (**SSA**) between the Company, the Investor [and the Promoter]; Shareholders agreement (**SHA**) between the Promoter, the Investor [and the Company] in respect of the Company; and [others]. Subject to negotiation and further due diligence by the Investor, the parties target to achieve signing of the SSA by [*date*] and completion of the SSA by [*date*].

483 Note: in some jurisdictions, equity must be denominated in local currency, e.g. Vietnam and Thailand

484 Note: references to par value to be deleted in jurisdictions where this is not applicable, e.g. Malaysia and Myanmar

III. SSA

SUBSCRIPTION AND ISSUANCE	The Investor shall subscribe for and the Company shall issue [●] [ordinary] shares to the Investor [at [USD][●] per share] (the **New Shares**), being an aggregate subscription amount of [USD][●]. Following the issuance, the capital structure of the Company shall be as follows: Promoter: [●] [ordinary] shares, constituting [●]% of the issued share capital of the Company; and Investor: [●] [ordinary] shares, constituting [●]% of the issued share capital of the Company.
SHARES	The [●] shares shall have the following rights: • in respect of dividends [*any description of the intended dividend policy of the Company in respect of the shares*] • in respect of liquidation, [*any description of the intended liquidation preference (as compared to ordinary shares) in respect of the shares*] • in respect of redemption, [*any description of redemption rights, if any, with respect to any preference shares*] • in respect of conversion to ordinary shares, [*any description of intended conversion rights of any preference shares into ordinary shares*]. *Note: in a scenario where there is only one class of shares and they all rank equally in dividends and distributions, this section could be removed. It is more relevant in the event the Company is expected to issue any different classes of shares, in order to describe the characteristics of each class, e.g. any shares that perceive a preferred dividend or liquidation right, or any convertible shares.*
CONDITIONS PRECEDENT FOR SUBSCRIPTION TO THE SUBSCRIPTION SHARES:	The completion of the subscription by the Investor for the New Shares shall be subject to fulfilment of the following conditions (and the Company and Promoter shall use their best endeavours to procure fulfilment of such conditions): • [completion of legal and financial due diligence of the Company to the satisfaction of the Investor] [*note: ideally this would be completed prior to signing of the definitive documentation*]; • [*specific description of any crucial items identified in the Investor's due diligence that need to be remedied or obtained prior to issuance of the New Shares, for example any essential third party 'change of control' consent requirements identified in the material contracts of the Company*]; • [*specific description of any regulatory permissions required for the investor to acquire the New Shares*][485]; and • [*specific description of any key licences or approvals that the Investor needs the Company to have prior to acquiring the New Shares*]. *Note: this is a generic list and will have to be customised particularly based on diligence findings, the project, and the sector in which it is conducted, and negotiation between the parties.*

485 Note: certain jurisdictions may involve additional regulatory conditions precedent, for example in respect of Vietnam: "The Investor shall have opened an indirect investment capital account (IICA) with a licensed commercial bank in Vietnam, and shall have been issued the M&A approval as required under applicable Vietnamese laws in a form and substance satisfactory to the Investor" – equity investments in Vietnamese companies where a foreign investor acquires less than a majority stake must be made through an indirect investment capital account. Moreover, the investor is generally required to obtain the so-called "M&A Approval" from the department of planning and investment in the province where the Company is based. This is a relatively standard approval that takes 3-4 weeks, though support of the Company is also required.

REPRESENTATIONS AND WARRANTIES	The Company [and the Promoter] shall provide representations and warranties to the Investor with respect to the Company, its operations, and the New Shares. *Note: the scope of representations and warranties depends on the nature of the project and the sector in which the Company operates, diligence findings and negotiations. If the Company is newly formed, this could be dealt with relatively simply with 'clean company' warranties, confirming that it is newly formed and has not conducted any business or activity other than as disclosed to the Investor.*
PRE-COMPLETION ACTIVITY	In the period between signing of the SSA and the issuance of the New Shares (**Completion**), the Company will conduct its activities in the ordinary course of business and in particular will not… [*specific restrictions to be defined*] *Note: specific restrictions will depend on the Company and its current activities (if any), and negotiation. Common restrictions may include entering into material new contracts, acquiring or selling material assets, entering into new financing arrangements, or commencing disputes.*
COMPLETION	Completion of the SSA shall take place on the [third][486] business day following the date on which the last condition precedent is satisfied or waived. The Investor shall make payment to subscribe the New Shares and the Company shall issue the New Shares to the Investor. The Company shall [and the Promoter shall procure that the Company shall] update the share registers, issuance of share certificates in respect of the New Shares, as well as to register the capital increase and issuance of the New Shares with any authorities, as may be required. *Note: completion deliverables will depend on the jurisdiction, due diligence findings, and negotiation between the Promoter/Company and the Investor.*

IV. SHA

BOARD OF DIRECTORS	The board of directors of the Company (the **Board**) immediately upon Completion shall comprise of [●] directors, of which Promoter shall appoint [●] Directors and the Investor shall appoint [●] Directors. *Note: apart from the reserved matters (see below), the parties may include provisions that govern the quorum, notice requirements, and other formalities of any decision-making bodies of the Company. These bodies will depend on the jurisdiction, e.g. the board of directors, any committees of the board, the board of commissioners (if relevant, such as in Indonesia), and the shareholders/members of the Company. Parties should take local advice on whether local law imposes requirements on directors or commissioners being resident in or nationals of the Company's jurisdiction.*
FUNDING AND ISSUANCE OF SHARES	The shareholders shall have pre-emptive rights with respect to any fresh issue of shares by the Company, each shareholder shall have a pro rata right to participate in any future issue of shares by the Company, on the same terms and conditions (including price) as offered to the other shareholders/party(s). Any shareholder that elects to not participate in such issuance will be diluted.

486 *Note: to be updated depending on complexity of completion* steps

RIGHT OF FIRST REFUSAL (ROFR)/ RIGHT OF FIRST OFFER (ROFO)	In the event that the [minority shareholder] intends to sell their shareholding in the Company to a third party, then such selling shareholder shall first offer its shares to the [majority shareholder], and if [majority shareholder] makes an offer, the [minority shareholder] may not sell their shares to any third party at a lower price than the one offered by the [majority shareholder] (ROFO). Alternatively, the [minority shareholder] may be entitled to negotiate the price and terms of sale with a third party first but may not execute such sale without offering to sell to the [majority shareholder] at the same price offered by the third party (ROFR). *Note: depending on the parties and the size of the stake taken by the Investor, these rights may be reciprocal.*
RESERVED MATTERS	Board [and/or shareholder] reserved matters: the Company shall not be permitted to pass any resolution or take any decisions on certain reserved matters at both the Board [and/or shareholder] level, unless the [Promoter/Investor]'s directors [and/or the Promoter/Investor] has provided its consent to such reserved matter. The reserved matters shall include: [●]. *Note: such list will depend on the shareholding of the respective parties and the negotiation between them. The intention is to provide certain 'veto' controls for whichever shareholder does not control the Company's decision making bodies. Depending on the jurisdiction of the Company, certain resolutions (e.g. a winding up or merger of the company) may require a certain higher percentage of shareholders in order to approve that matter (e.g. shareholders representing 66%, or 75% of all shares).*
INFORMATION RIGHTS	The [shareholders/Investor] shall receive from the Company: [(i) quarterly financial statements within [30] calendar days from the end of the preceding quarter, (ii) annual (audited) financial statements within [60] calendar days following the closure of the preceding Financial Year and (iii) operating / business plan within [30] calendar days from the end of the preceding Financial Year.
TAG-ALONG/ DRAG-ALONG RIGHTS	*Optional clause:* Drag-Along Right: in the event the [majority shareholder] intends to sell their shares to a third party, the [majority shareholder] shall have right (but not the obligation) to require the [minority shareholder] to sell to the third party to whom the [majority shareholder] is transferring its shares at the same price per share and on substantially the same terms. *Optional clause:* Tag-Along Right: in the event the [majority shareholder] intends to sell [all or some of] their shares to a third party, then the [minority shareholder] shall have the right (but not the obligation) to require the [majority shareholder] to ensure that such third party shall purchase the [all or an equal proportion of the] shares held by the [minority shareholder] in the Company at the relevant time at the same price per share and on substantially the same terms.
EXIT	*Note: to include any specific agreed exit provisions that are agreed (e.g. IPO or trade sale) with certain parameters and/or a long stop date by which it must occur. Failure of the Company/Promoter to meet such conditions may trigger additional rights of the Investor, e.g. a put-option or commence a period in which the Investor can invoke a drag-along.*
TRANSFER RESTRICTIONS	[Subject to the expiry of the [●] year lock-up period,] the shareholders may transfer their shares only in the following circumstances: • [to their affiliates; or • to the other shareholder in accordance with the terms of the SHA; or • to another third party with the consent of the non-transferring shareholder]. *Note: to be considered whether a lock-up period is appropriate and whether it should be mutual or only apply to the Promoter.*

PUT/CALL OPTIONS	*Note: optional clause to describe the terms of any put or call options held by the Promoter/ Investor in respect of each other's shares, including the timing of exercise, pricing, and any other pre-conditions to exercise of the options. (e.g. sometimes a put or call option will only be triggered by default by a party under the SHA).*
ESCALATION AND DEADLOCK RESOLUTION	*Note: optional clause to describe the process for escalating any issues in the event that the Promoter/Investor cannot agree on a reserved matter. Initial escalation may involve referring to senior managers of each party.* *If a serious deadlock cannot be resolved, possible solutions may include put/ call options/ third party sale/ winding up, but these will require careful thought and depend on negotiation.*
NON-COMPETE	*Note: optional clause to prohibit the Promotor (and, depending on negotiation, the Investor) to compete with the Company. The scope of the business, territories and the parties that will be subject to this non-compete clause must be thoroughly considered, especially if the Promoter arranges other similar projects in addition to the project/business carried on by the Company, or if the Investor or its affiliates invest in other companies operating the same or similar businesses. To be noted that non-compete obligations are subject to enforceability risks in a number of jurisdictions and the substance of any non-compete should be reviewed with input from legal counsel in the relevant jurisdiction.*

V. General

TERM	This term sheet shall be in effect from the date of signing until [●], or until signing of the definitive documentation in respect of the Transaction, whichever is earlier.
EXPENSES	Each party shall bear their own expenses of negotiating and entering into the Transaction.
CONFIDENTIALITY	The parties shall keep the existence and the negotiations in respect of the Transaction, and any confidential information received by it in the course of the Transaction, confidential shall not make or allow any announcement or disclosure of such confidential information without the prior written approval of the other party, save in respect of disclosures or announcements: i) to a bank or regulator for the purpose of completing the Transaction; ii) which may be required by any law or regulation or court or arbitral order; and iii) any disclosures to each party's consultants, advisors, employees/directors (or by the Investor to its Affiliates and/or their employees/ directors/ advisors/ consultants) on a need-to-know basis.
EXCLUSIVITY	The Company and the Promoter agree that following [90-120] days from the execution of this Term Sheet, they shall not solicit, discuss and/ or encourage subscription in the Company by any other person in any manner and will not provide any information relating to the Company to any other potential investor.
NON-BINDING NATURE	This term sheet is intended to summarise the principal terms and conditions of the proposed Transaction and does not constitute a legally binding agreement or commitment by any party, except for the provisions of Section I (Parties) and V (General), which are binding and enforceable in accordance with their terms. The execution of this term sheet does not obligate any party to enter into any definitive agreements or to consummate the Transaction, and no party shall have any rights or obligations with respect to the Transaction unless and until such definitive agreements are executed and delivered by all parties. Each party reserves the right to terminate discussions and negotiations in respect of the Transaction at any time, without liability to the other parties.

GOVERNING LAW	This term sheet [and the terms of any definitive documentation entered into in connection with the Transaction] shall be governed by the laws of [●].
JURISDICTION/ DISPUTE RESOLUTION	[The courts of [●]] OR [Any controversy or claim arising out of this term sheet shall be referred to arbitration. The number of arbitrators shall be [●]. The seat of arbitration shall be at [●]. The arbitration shall be administered by [*arbitration body*] pursuant to the [*arbitration body's rules*] arbitration rules. Any award given by the arbitrator shall be final and binding on the parties.] *Note: investors in cross-border investments very commonly select dispute resolution under arbitration rather than local courts.*

REUTERS/ Bazuki Muhammad

SECTION 9 » TERM SHEET FOR THE ESTABLISHMENT OF AN IMPACT INVESTING FUND

The below term sheet is drafted for a scenario where an asset manager (the Promoter) establishes a pooled investment vehicle with an impact investing strategy, targeting passive investors (the Investors). The term sheet is jurisdiction neutral i.e. it does not consider the legal and regulatory requirements of a particular jurisdiction but rather provides a high-level overview of the main commercial terms relating to the structuring of impact investing funds based on market practice.

In the interests of keeping the applicability of the term sheet as broad as possible, it is generic in nature. This draft should only be used for reference as a potential starting point in any project. Before being used in any specific transaction, it would need to be tailored to take account of the project, its intended 'impact' metrics, the legal structure through which the project will be executed, the number of parties involved, the intended rights and involvement of the Promoter(s) and Investor(s), and the legal and regulatory rules governing fund establishment and fundraising in the jurisdiction that the Fund will be domiciled.

In terms of best practice, we summarise below some key areas of focus mainly from the perspective of a Promoter and explain whether a certain position is more investor friendly. For both sides, it can be helpful to ensure that the term sheet is not overly detailed – it should summarise all the key terms of the investment (investment strategy, impact targets, capital structure, governance and investor rights). Once the key parameters of the investment are agreed in the term sheet, the finer details can be negotiated in the full form transaction documentation.

TERM SHEET

Investment vehicle details and Fund structure

NAME	[***] (the "**Fund**")
CURRENCY	[***]
PROMOTER	[****]
FUND'S MANAGER	[****]
STRUCTURE	[Open-ended] **OR** [Close-ended] alternative investment fund established as [regime] in the form of [corporate or contractual form] [organised as an umbrella fund with [***] sub-funds]. **OR** A company in the form of [corporate or contractual form].

Investment/ Impact Strategy and Targets

INVESTMENT STRATEGY	The Fund will seek to provide its investors (the "**Investors**", each an "**Investor**") with attractive risk-adjusted investment returns by investing in companies that intentionally aim to create positive and measurable environmental or social impacts (the "**Target Companies**"). The Fund targets to deliver long-term growth by investing in [equity, equity-like] AND/OR [debt] securities and other financial instruments, [including convertible bonds] issued by the Target Companies. In assessing the Target Companies, the Fund Manager will rely on the UN Agenda for Sustainable Development that set outs certain Sustainable Development Goals ("**SDGs**"). The Fund Manager will also evaluate the Target Companies in the context of the UN Principles of Responsible Investment ("**UNPRI**"), including by seeking information from Target Companies regarding adoption of/ adherence to relevant norms, standards, codes of conduct or international initiatives (such as the UN Global Compact). In particular, it is intended that the Fund's investments will focus on Target Companies that are involved in [sustainable energy], [climate change mitigation and adaptation], [pollution prevention and control], [sustainable use and protection of water], [health and social care], [education and employment] with the aim of meaningfully contributing towards the achievement of the following SDGs: [***] (the "**Impact Targets**"). These Impact Targets will be measured across the following milestones [***] (the "**Impact Milestones**"). [The attainment of the Impact Targets will be measured through a scoring system developed by the Fund Manager and described in the offering document/constitutive documents of the Fund (the "**Scoring System**").] **OR** [The attainment of the Impact Targets will be measured through utilizing available tools such as the Impact Reporting & Investment Standards (IRIS) , the Global Impact Investing Rating System (GIIRS) or other IRIS+ aligned standards (the Scoring System or such other test under this paragraph being the "**Impact Test**").] The Fund's Manager will further assess during the due diligence phase whether the Target Companies comply with minimum social safeguards as set out in the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights.
INVESTMENT RESTRICTIONS	*Concentration limit:* No more than [***] of the aggregate commitments in the Fund will be invested in securities of the same issuer. *Geographic limit:* No more than [***] of the aggregate commitments in the Fund will be invested in Target Companies outside [emerging market countries]. No more than [***] of the aggregate commitments in the Fund will be invested in cash management investments.
BENCHMARK	[The Fund will not use a reference benchmark] **OR** [The Fund will use [GIIN's impact performance benchmarks] to analyze the impact performance of the Fund's investments within a sector and compare its performance to peers and to the change needed to achieve the SDGs]
IMPACT DATA AND REPORTING	The achievement of the Impact Targets will utilise data received from Target Companies on a [quarterly basis]. The Fund shall provide, as part of its annual report, an impact report describing the Fund's attainment of the Impact Targets, including the degree to which (as a percentage) the Impact Test was satisfied as of the end of the period covered by that report (an "**Impact Report**"). The Impact Report [will/will not] be audited by a third-party organisation with relevant expertise.

Size, Commitment and Borrowings

TARGET SIZE	[***]
MINIMUM COMMITMENT	[***] or lower at the Fund manager's discretion.
PROMOTER'S COMMITMENT	The Promoter shall hold [***] of the aggregate commitments of the Fund as at the Final Closing.
BORROWINGS	[The Fund, may enter into borrowings for any purpose of the Fund, including in order to facilitate the acquisition of investments or for working capital purposes, provided that any borrowings of the Fund shall not exceed the undrawn commitments of the Investors and shall not remain outstanding for longer than [***] months ("**Fund Borrowings**"). The Fund may also provide guarantees, indemnities, covenants and undertakings in respect of Fund Borrowings.] OR [The Fund may enter into long-term borrowings provided that such borrowings do not exceed [%] of the gross value of the Target Companies. The Fund may also enter into short-term borrowings (including subscription facilities) provided that the principal amount under such borrowings does not exceed the undrawn commitments of the Fund.]

Admission of Investors/ Capital structure

CLOSING	The initial closing of the Fund is expected to occur in [***] (the "**Initial Closing Date**"). Additional Investors may be admitted to the Fund at the discretion of the Board at one or more closings after the Initial Closing Date (the "**Subsequent Closing Date**"). The final closing will occur no later than [***] months following the Initial Closing Date, subject to an extension of up to [***] months in the sole discretion of the Board (the "**Final Closing Date**"), as defined below.
EQUALISATION	Investors admitted at Subsequent Closing Dates will be required to pay i) the aggregate of all amounts that would have been drawn down from that Investor had all Investors (including Fund Investors being admitted at the Subsequent Closing) been admitted to the Fund on the Initial Closing Date and ii) an equalization premium of [***]%.
SHARES	The Investor shall make an investment of an amount equal at least to the Minimum Commitment by way of subscription to equity shares (the "**Shares**"[487]). The Board retains the discretion to issue different classes of shares.
CONDITIONS PRECEDENT FOR SUBSCRIPTION FOR SHARES:	(a) Investor shall provide the KYC/AML documentation reasonably required by the Fund Manager in accordance with the AML/CTF laws applicable to the Fund. (b) To the extent relevant, the Fund shall proceed with all the necessary marketing notifications and obtain any regulatory permissions, approvals or consents required in relation to the Investor's acquisition of the Shares. (c) Investor shall provide a duly completed and executed subscription agreement together with any other agreements and documents that may be deemed necessary by the Fund Manager.

487 Depending on the corporate form of the Fund, reference to Shares may need to be replaced with references to units or interests.

USE OF PROCEEDS FROM THE SUBSCRIPTION FOR SHARES AND RETURN OF CONTRIBUTION	The Fund shall utilize the proceeds from the subscriptions for Shares in accordance with the Investment Strategy of the Fund. In the event that, any portion of the capital contributions received pursuant to any capital call by the Fund, are not used for their intended purpose in accordance with the Investment Strategy, the Fund shall return the portion of the capital contributions that has not been so used to the Investors in proportion to the respective capital contributions made by them pursuant to such capital call (in which case the undrawn commitments shall be increased accordingly and shall be subject to recall pursuant to subsequent capital calls) by redeeming the number of Shares credited to each Investor. If the capital of the Fund is not deployed in accordance with the Investment Strategy within [***] years from the Final Closing Date (the "**Investment Period**"), the Fund Manager shall redeem the Shares of the Fund and proceed with the liquidation of the Fund.

Governance

BOARD	The Fund shall be managed by a board of directors (the **Board**)[488].
FUND MANAGER	The Fund Manager is entrusted with the portfolio management and risk management of the Fund.
IMPACT COMMITTEE	The Fund Manager will establish an Impact Committee whose role is to oversee the development of the impact strategy and achievement of the Impact Targets, as well as to monitor compliance with the Fund's PRI related commitments. The Impact Committee has an advisory function only and shall make its recommendations to the Fund Manager.
INVESTOR ADVISORY COMMITTEE	Investors holding the [***] higher commitments in the Fund or as otherwise selected by the Fund Manager in its sole discretion will be entitled to appoint a representative at the Investor Advisory Committee. The Investor Advisory Committee will be consulted on a regular or ad hoc basis (as further specified under the Fund documents) particularly in relation to potential investments in Target Companies or conflicts of interests of the Fund Manager.

Investors' rights/ Transfers of Shares

AMENDMENT TO THE INVESTMENT STRATEGY	The Fund cannot amend the Investment Strategy of the Fund without obtaining consent of the Investors representing 75% of the aggregate commitments as at the time that the amendment is sought.
TRANSFERS	Transfers of Shares are subject to the consent of the Board. In the event that an Investor intends to sell its Shares or a portion of it to a third party, then such selling Investor shall first offer its Shares or a portion of it as the case maybe to the existing Investors at the same price as it had offered to the third party. The existing Investors, at their sole discretion shall decide whether to exercise their right of first refusal and whether to exercise their right over all the Shares offered for sale by the selling Investor or a portion of it.

488 Reference here should be made to the appropriate governing body depending on the corporate form.

DRAWSTOP RIGHT[489]	The Investor shall be permitted to immediately cease to make payments to the Fund if there is a failure by the Fund or any Portfolio Company to comply with the Environmental & Social requirements set out at [Appendix 1 hereto]. Following any such breach, if the Investor's concerns are not resolved to its satisfaction within 60 Business Days of any such breach or failure then the Fund shall fully co-operate with the Investor to enable it to transfer all of its interest in the Fund on reasonable terms as promptly as possible.

Reporting and Investor Information

REPORTS	(a) Audited annual financial statements within hundred and twenty (120) days following the close of each financial year; (b) Unaudited quarterly financial statements within thirty (30) days of the end of each quarter; (c) Quarterly report in the specified format detailing the progress made in respect of the impact KPIs and the attainment of the Impact Targets.
FURTHER INFORMATION RIGHTS	An Investor shall have the right at any reasonable time during normal business hours, to examine, make reasonable copies of and inspect the books and records maintained by the Fund at the Fund's registered office at such Investor's expense and with reasonable prior written notice. If not already undertaken by the Fund Manager, [***]% of the Investors may request the verification of the Fund's performance in relation to the attainment of the Impact Targets by a third party provider.

Fees and expenses

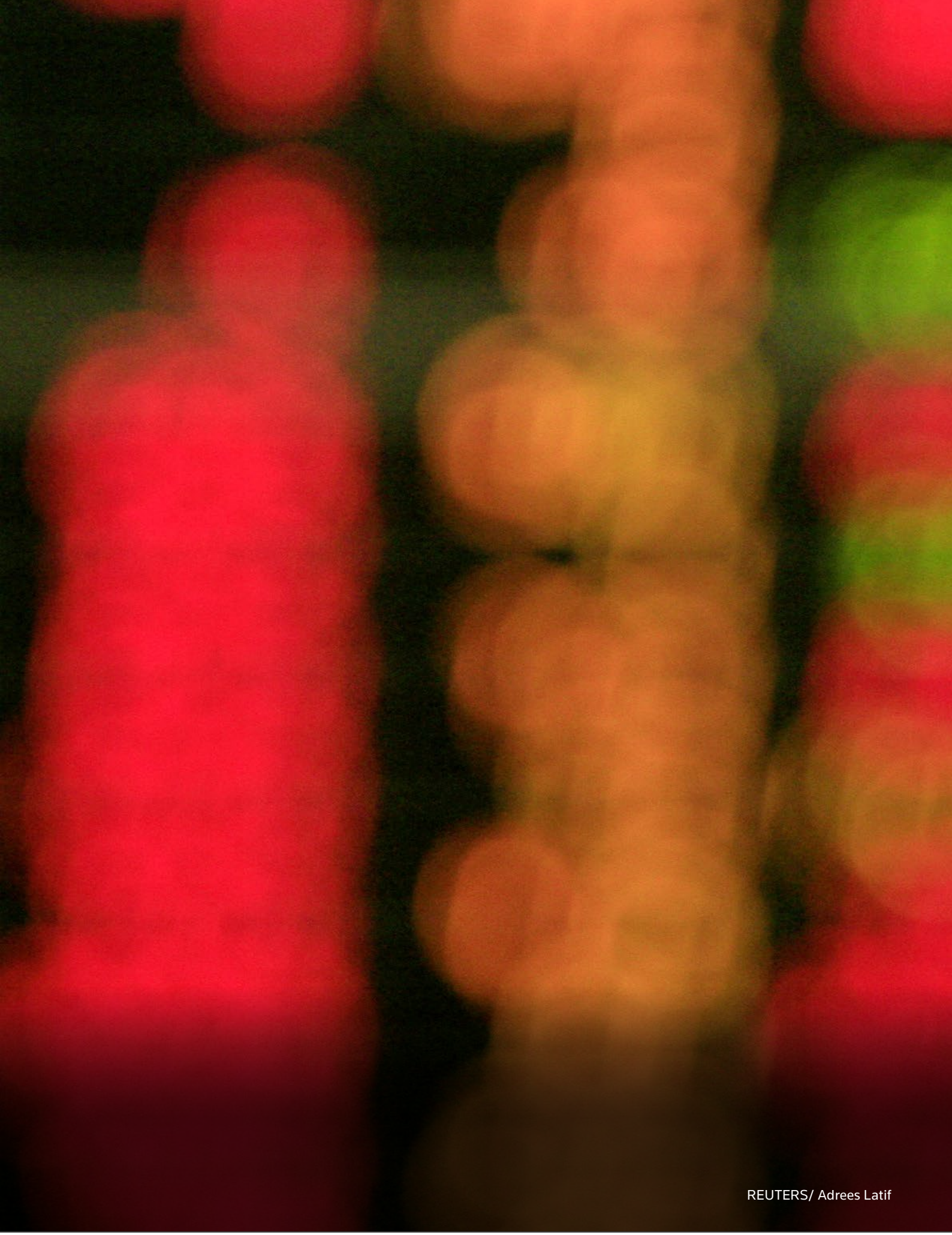
MANAGEMENT FEE	[***]% of the Commitments during the Investment Period and [***] of the invested capital after the Investment Period.

489 Please note that this is a particularly investor-friendly position, although the right to stop funding and transfer upon breach of specific environmental and social requirements is a market standard request for certain development finance institutions. Such rights will be negotiated on an investor-by-investor basis, rather than included in the main fund documents.

IMPACT PERFORMANCE REMUNERATION	Net distributable proceeds will be distributed as follows: (a) firstly, 100% to the Investor until the Investor has received an amount of distributions equal to its contributions; (b) [secondly, 100% to the Investor until the Investor has received an aggregate amount of distributions equal to an IRR of [8]% per annum, compounded annually, on its contributions; and] (c) [secondly]/[thirdly], (i) [80]% to the Investor and (ii) [20]% to the Fund Manager (such distributions to the Fund Manager being the "**Impact Performance Remuneration**"), with the Impact Performance Remuneration being distributed to the Fund Manager only to the extent that doing so does not cause (x) the aggregate distributions of Impact Performance Remuneration to the Fund Manager, as a percentage of total Impact Performance Remuneration (whether distributed or not), to exceed (y) the percentage by which the Impact Test was satisfied as set forth in the most recently delivered Impact Report. For the avoidance of doubt, the Fund Manager is not required to return any previously distributed Impact Performance Remuneration if the percentage by which the Impact Test is satisfied decreases after a distribution of Impact Performance Remuneration has been made. If at the time of the Fund's final liquidating distribution there is undistributed Impact Performance Remuneration that the Fund Manager is not permitted to receive under item (c)(ii), the Fund Manager shall cause the Fund to distribute that Impact Performance Remuneration to one or more non-profit organizations as set out in the constitutional documents of the Fund (each, a "**Non-Profit**"). Until the first Impact Report is issued, the Impact Test is deemed to be 0% satisfied for the purposes of the Impact Performance Remuneration.
EXPENSES	The organisation expenses up to a total of cap of [currency] will be borne by the Fund. The Fund Manager will pay its entire normal operating expenses incidental to the provision of its day-to-day administrative services to the Fund, including its own overheads. The Fund will pay all costs, expenses and liabilities in connection with its operations, including, but not limited to, the fees of the service providers (administrator, depositary, auditor), accountants and consultants and the fees related to fund accounting and reporting (including impact investing reporting) and regulatory compliance.

Miscellaneous

GOVERNING LAW	The laws of [***].
JURISDICTION	[The courts of [***]] OR [Any controversy or claim arising out of this Term Sheet or the Fund documents shall be referred to three arbitrators (one to be appointed by the Investor, one by the Fund Manager and the arbitrators so appointed will appoint the third arbitrator). The seat of Arbitration shall be at [●]. The arbitration shall be administered by [e.g. the London Court of International Arbitration (the "**LCIA**") in accordance with the LCIA Arbitration Rules]. The Award given by the arbitrator shall be final and binding on the parties hereto.



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