

Impact Economy Digital Edition 2021



Mauritius

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LEGAL AND POLICY FRAMEWORK

Legislation

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

Principles of ESG factors are not incorporated in Mauritius whether in banking, finance or corporate law, nor is there any Mauritius legislation addressing the pursuit of other non-financial objectives by companies or investors.

There is a corporate social responsibility (CSR) programme in place under which profitable local companies have an obligation to allocate 2 per cent of their book profits to CSR activities. A CSR programme is defined, under section 2 of the Mauritius Income Tax Act, as a programme having, as its main objective, the alleviation of poverty, the relief of sickness or disability, the advancement of education of vulnerable persons or the promotion of any other public object beneficial to the Mauritian community.

Furthermore, a national Code of Corporate Governance (the Code) was issued in 2016. The Code provides a set of principles and recommendations aimed at improving governance practices in businesses in the country. The Code is binding on every public interest entity (PIE), which includes all listed companies, regulated financial institutions, companies whose turnover exceed US\$12.5 million or have an asset base of more than US\$25 million, but leaves it to the boards of such businesses to decide how to apply each principle. Although it applies to PIEs, the Code also aims at encouraging all other companies to give due consideration to its application.

In the real estate sector, the Mauritius Investment Promotion (Smart City Scheme) Regulations (the Smart City Regulations) were issued in 2015, setting out conditions for companies intending to develop 'smart cities'. These are real estate developments comprising a mixed use of office, business, residential and entertainment components, focusing on innovation, sustainability, efficiency and quality of life. Among its objectives, a smart city is meant to promote:

- proper management, development and conservation of natural and man-made resources to promote the social and economic welfare of the community and a better environment; and
- ecologically sustainable development.

A smart city project requires both an environmental impact assessment and a social impact assessment to be carried out, providing an appraisal of the impact on the day-to-day quality of life of the immediate communities whose environment is affected by the proposed project.

Similarly, under the Property Development Scheme (PDS), which is a scheme for the development of residential properties of high standing

and ancillary leisure and management services, an applicant for a PDS certificate must submit, among other things:

- a social impact assessment to identify the impact of the PDS project on its neighbouring community together with a written undertaking that the benefits of the PDS Project shall accrue to the neighbouring community and to small entrepreneurs generally in terms of employment and business opportunities; and
- an assessment of the social needs of the neighbouring community of the PDS project in terms of social amenities, community development and other facilities together with a description of the social needs to be met by the applicant as well as the costs of and the time frame for meeting these needs.

A PDS company is also required to set up a PDS social fund to implement the social programme identified in the social needs analysis and provide for social amenities, community development and other facilities for the neighbouring community.

Policy guidance and development

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

Although there is no consolidated approach to regulating ESG, impact investing or purpose-driven companies in Mauritius, some businesses opt to include ESG policies in their constitutive documents. ESG is common in structures in which development financial institutions or international donor organisations invest or provide funding. It is usually a condition of such funding or investment that ESG policies be included as part of the investment mandate.

INVESTMENT

Regulatory and fiduciary duties

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

No, there is no general legal obligation on institutional investors or financial intermediaries to consider ESG factors or non-financial principles or objectives when making investment decisions in Mauritius except in the context of specific development schemes for smart cities and the Property Development Scheme, where an environment impact assessment or a social impact assessment is required.

Voluntary standards and best practices

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

The national Code of Corporate Governance (the Code) sets out eight corporate governance principles. One of them is the need for the board of a company to present a fair, balanced and understandable assessment of the organisation's financial, environmental, social and governance position, performance and outlook in its annual report and on its website. Hence, the boards of directors of public interest entities must address ESG in their annual reports. However, they are at liberty to determine how adherence to these principles is demonstrated.

Some companies have an ESG action plan incorporated in their constitutional documents or transactional documents even though this is not required by law, as part of their agreement with their shareholders. Such plans tend to be based on the requirements of such shareholders. The contractual arrangements may provide for sanctions for non-compliance with such standards such as the activation of redemption rights of the investors. For many of these companies, including ESG in their business mandate is a means of making their business conducive for investment from donor organisations and developmental finance institutions.

Measurement, reporting and disclosure

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

The following are recommendations that are set out in the Code:

- boards of directors should regularly evaluate the ESG impact of their company on society and report their findings in the corporate governance section of the company annual report; and
- boards of directors must consider reporting on environmental issues, health and safety issues, social issues, corporate social responsibility, charitable and political contributions and governance in the company annual reports.

Under the PDS scheme, the promoters of the scheme must provide an implementation plan as part of the social needs programme and provide quarterly progress reports on the implantation of the programme.

Ratings, indices and guidelines

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

There are no formal ESG ratings, indices or guidelines used in Mauritius. The Stock Exchange of Mauritius (which is the main stock exchange in Mauritius and operates the Official Market and the Development and Enterprise Market (DEM)) has launched the SEM Sustainability Index (SEMSI), which tracks the price-performance of those companies listed on its Official Market or on the DEM that demonstrate strong sustainability practices.

SEMSI provides a measure of listed companies against a set of internationally aligned and locally relevant ESG criteria. It is used as a tool for domestic and international investors with an appetite for responsible investment in frontier markets.

Incentives, benefits and financial support

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

There are no fiscal incentives or other benefits available in Mauritius to encourage institutional investors or financial intermediaries to integrate ESG or other non-financial factors into their investment decision-making.

Impact investing

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

Investors may impose specific requirements on impact investment strategies to be included into the constitutive documents of their investee company. A common form of impact investing in Mauritius is through the provision of private equity capital in unlisted companies, typically in small and medium enterprises (SMEs). Private investments in SMEs attempt to achieve the greatest social impact on local economies with a backbone driving entrepreneurship, economic growth and job creation.

PURPOSE-DRIVEN COMPANIES

Legal recognition and certification

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

Mauritius does not classify legal forms or statuses specifically for purpose-driven companies. There is no certification for companies that pursue social or environmental purposes.

Entities that have charitable purposes are usually structured as trusts and foundations under the laws of Mauritius, and these are tax exempt as long as they have charitable objects. A trust or foundation has charitable status when it has, as its exclusive purpose or object, one or more of the following:

- the relief of poverty;
- the advancement of education;
- the advancement of religion;
- the protection of the environment;
- the advancement of human rights and fundamental freedoms; and
- any other purpose beneficial to the public in general.

Companies limited by guarantee are typically used for non-profit organisations. A company limited by guarantee is formed on the principle of having the liability of its members limited by its constitution to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.

Purpose and mission

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

There are no rules in Mauritius governing the establishment of companies' social or environmental purposes or mission. The objectives of a company will generally be set out in its constitution. The constitution may also set out restrictions in the activities of the company. The company, its directors and shareholders are all bound by the provisions of the constitution. A constitution may generally be amended by the shareholders. In the case of trusts and foundations, the objectives are set out in the trust deed or foundation charter. These documents would also set out the manner in which the objects can be altered.

Profit distribution, winding up and remuneration

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

There are no specific rules or restrictions that govern profit distributions for purpose-driven companies in Mauritius. Rights of the members of a company in relation to profit distributions will generally be set out in its constitution, which may also set out any restrictions on profit distributions.

In the case of a charitable trust or foundation, there cannot be any distribution of profit to the settlors or founders of the trust or foundation. All profits must be applied towards the charitable objects.

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

There are no specific rules or restrictions governing the winding up of a purpose-driven company prescribed under Mauritius law. Such rules and restrictions are generally set out in the company's constitution.

Where a charitable trust is terminated, the balance of the trust property which is held for a charitable purpose or the remainder of the property, as the case may be, must be held for such other charitable purpose, as the court, on the application of the Attorney General, the trustee or the enforcer of the trust, may declare to be consistent with the original intention of the settlor of the trust.

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

There are no specific rules or restrictions governing the remuneration of directors, officers, employees and third parties for purpose-driven companies. These are contractual in nature. Remuneration of directors of a purpose-driven company (like any other company in Mauritius) must be approved by ordinary resolution of shareholders unless otherwise provided in the constitution.

Measurement, benchmarking and reporting

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

Purpose-driven companies have no obligation under Mauritius law to measure, benchmark and report the social and environmental impact of their businesses. Such requirements (if any) would generally be set out in the constitutive documents of the companies.

However, if a company falls under the definition of a public interest entity, its board of directors has the obligation to present a fair, balanced and understandable assessment of the organisation's financial, environmental, social and governance position, performance and outlook in its annual report as required by the Code of Corporate Governance.

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

There are no statutory or voluntary standards, guidelines or best practices prescribed for purpose-driven companies in relation to the measurement and reporting of ESG and other non-financial factors. Companies that incorporate ESG standards in their mandates tend to be guided by the ESG requirements of the institutional investors and donors from whom they receive funding.

Director liability and private enforcement

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

Since there are no specific rules governing purpose-driven companies, the social and environmental standards and principles will usually be set out in the constitution of the company. The directors of a purpose-driven company are required to comply with the rights and obligations set out in the constitution of the company and to exercise their powers in accordance with the limits and subject to the conditions and restrictions established by the company's constitution.

State supervision

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

The Mauritius Companies Act does not differentiate between purpose-driven companies and other types of company. Hence, there is no form of state supervision of purpose-driven companies in relation to their social and environmental purposes. Corporate social responsibility is treated as a tax and enforced in the same manner by the Mauritius Revenue Authority. The Economic Development Board, being the statutory body granting Property Development Scheme (PDS) certificates, would monitor compliance by promoters with undertakings given as part of the social needs implementation programme and undertakings given as part of their PDS certificates.

Incentives and benefits

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

There are no fiscal incentives or other benefits available specifically for purpose-driven companies in Mauritius. Charitable trusts, foundations and institutions are exempt from Mauritius income tax. Interest from debentures, bonds or sukuk issued by a company to finance renewable energy projects, the issue of which has been approved by the Mauritius Revenue Authority, is exempt from Mauritius tax.

Public procurement

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

There are no public procurement rules or policies in Mauritius that confer any advantages on companies for pursuing social or environmental purposes.

The bidding document (which is the document issued by a public body on the basis of which bidders prepare bids) may provide for a margin of preference to domestic suppliers or to domestic small and medium enterprises.

Economic sustainability and market competition

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

Since the laws do not provide for a specific framework for such types of companies, there is no public information on economic sustainability and market competition of purpose-driven companies.

GOVERNMENT, NGO AND SUPRANATIONAL SUPPORT

Government support

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

While there are agencies that pursue the social and environmental functions of government, there are no governmental actors in Mauritius that are specifically dedicated to promoting and supporting socially and environmentally responsible investment practices or purpose-driven companies.

NGO support

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

Although many NGOs in Mauritius promote social works and environmental awareness in Mauritius, none are specifically dedicated to promoting and supporting socially and environmentally responsible investment practices or purpose-driven companies.

Supranational support

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

There are no supranational actors in Mauritius that are specifically dedicated to promoting and supporting socially and environmentally responsible investment practices or purpose-driven companies.

FINANCIAL TOOLS

Equity funds and loans

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

Mauritius regulates funds and the offering of securities and financial products. The definition of securities was amended in 2019 to include green bonds; however, there is not yet a specific regulatory framework relating to their issuance. There are no regulations in force in relation to equity funds or other financial tools such as loans designed to scale up companies with social or environmental objectives.

Outcomes funds

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

Mauritius does not regulate 'pay for success' investing models such as outcomes funds, and there are no specific mechanisms in relation to such investing models.

Social and development impact bonds

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

Mauritius does not regulate 'pay for success' investing models such as social impact bonds and development impact bonds and there are no specific mechanisms in force or in progress at this time in relation to such investing models.

Crowdfunding

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

Crowdfunding has only recently been introduced in the Mauritius context. While it is a regulated activity, there is no regulation specific to crowdfunding for companies with social or environmental objectives.

UPDATE AND TRENDS

Update and trends

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

The government of Mauritius has recently established the COVID-19 Solidarity Fund, which aims to strengthen the preparedness and response of the nation to face covid-19 type situations. The key objectives of the COVID-19 Solidarity Fund are to contribute to the financing of projects, programmes and schemes related to the covid-19 and other related public health issues, and to provide financial support to citizens and organisations affected by the covid-19 virus. Public enterprises, statutory bodies, private sector, national and international organisations have been encouraged to contribute to the COVID-19 Solidarity Fund.

In the longer-term, the government is looking towards establishing a market for 'green bonds'. The Mauritius Financial Services Commission signed the Marrakech Pledge in 2019 and has reiterated its wish to have Mauritius develop a platform for the raising of green finance for African businesses.

Recommendations

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

There is a need for a comprehensive policy decision, followed by regulatory intervention in relation to social finance and purpose-driven companies to encourage the development of these activities. The government may attract both retail and institutional investors to social investment through the following measures:

- conducting campaigns to instil investor activism to promote social objectives alongside profit;
- providing a means of measuring and assessing financial and social and environmental performance of social investment products; and
- providing attractive fiscal policies.

It is also recommended to define social investment in the law and to provide regulations and policy guidance with regard to the priority areas for investment and development. Businesses should also be provided a comprehensive framework to include environmental and social considerations in their operations. They need clear standards and incentives to achieve identified milestones, whether in terms of business facilitation, access to finance or fiscal incentives and rebates. We consider that private enterprises should be allowed to set up their own corporate social responsibility programmes (as opposed to being compelled to pay corporate social responsibility as a levy) so that they have a greater incentive to incorporate ESG within their business operations.

Further we recommend that the Mauritius Public Procurement Act be amended to provide that:

- bidders should include ESG within their tenders and submit an ESG implementation plan as part of their proposal; and
- public bodies should select consultants, where appropriate, who have a track record on corporate environmental and social performance to carry out ESG impact assessments in relation to a proposed public infrastructure project that is to be tendered out.

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