PANORAMIC

ESG AND IMPACT INVESTING

South Korea

LEXOLOGY

ESG and Impact Investing

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Legance

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LEGAL AND POLICY FRAMEWORK

Legislation

Has your jurisdiction enacted any laws or regulations 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?

There are various laws addressing environmental, social and governance (ESG) factors and other non-financial objectives as follows.

Environmental

The Framework Act on Carbon Neutrality and Green Growth in Response to the Climate Crisis (the Carbon Neutrality Act, effective from 25 March 2022) requires companies to assess their impact on climate change when carrying out major government plans or development projects and allows the government to operate a climate response fund. Pursuant to article 10 of the Carbon Neutrality Act, the government adopted the first Basic Plan in April 2023, setting a mid-to-long-term greenhouse gas emissions reduction target of 436.6 million metric tons by 2030 (40 per cent reduction from 2018 emissions).

The Ministry of Environment (MoE) amended the Framework Act on Resource Circulation to the Act on Promotion of Transition to Circular Economy and Society (the Circular Economy Society Act), which became effective from 1 January 2024. While the previous law focused on waste prevention and proper waste disposal, the Circular Economy Society Act moves further into facilitating circular economy. For example, the Circular Economy Society Act designates wastepaper, metal scraps, waste metal cans, aluminium, copper, waste EV batteries and waste glass as ‘circular resources’, exempting them from certain waste regulations.

Disclosure

On 30 April 2024, the Korea Accounting Standards Board (KASB) released the Draft ESG Disclosure Standards. The KASB has developed the Korean Sustainability Standards based on the International Sustainability Standards Board (ISSB)’s Sustainability Disclosure Standards but with some optional and transitional provisions adapted to the circumstances of Korean companies. The Draft ESG Disclosure Standards are composed of three parts: (1) the General Requirements for Sustainability-Related Financial Information Disclosures; (2) Climate-Related Disclosures; and (3) Additional Disclosures for Policy Purposes. Parts (1) and (2) are mandatory disclosure standards, requiring disclosures of information on general sustainability and climate-related risks and opportunities, respectively. Part (3) is an optional disclosure standard that allows companies to decide whether to apply or disclose in detail the matters proposed by the government departments in light of their policy objectives.

As the non-financial disclosures are being emphasised, the awareness of greenwashing is also on the rise. On 31 October 2023, the MoE and Korea Environmental Industry & Technology Institute released Ecofriendly Business Activities Labeling and Advertising Guideline. Also, the Fair Trade Commission (FTC) amended the Environment-Related Labeling and Advertising Guideline, effective from 1 September 2023. The key amendments are: (1) the introduction of the clarity principle (expressions and methods must be precise and unambiguous and not likely to mislead consumers); (2) the introduction of the completeness principle (the facts that significantly impact the consumers' purchases and choices should not be omitted, concealed or understated); and (3) the prohibition of the representation and advertising of environmental improvements at some stages if they are offset in light of the entire life cycle of the product.

Social

The Severe Accidents Punishment Act (effective from 27 January 2022) applies first to the companies with 50 or more full-time employees and gives a two-year grace period for companies with fewer than 50 employees. As of 27 January 2024, after the grace period, the Severe Accidents Punishment Act applies to the companies with five or more full-time employees, requiring SMEs to establish and implement safety and health management systems. For reference, a severe accident is defined as a situation resulting in (1) one or more deaths, (2) two or more injuries from the same accident requiring medical treatment for more than six months or (3) three or more cases of occupational diseases caused by the same hazard within one year.

Law stated - 3 6□ 2024

Policy guidance
How would you describe the general level of policy guidance regarding ESG and sustainability issues in your jurisdiction?

ESG

Recently, the Ministry of Trade, Industry and Energy (MoTIE) has released Industry-Specific K-ESG Guidelines in December 2023. As the industry-specific standards are developed by international standard-setting organisations like the Global Reporting Initiative (GRI), the Task Force on Climate-Related Financial Disclosures (TCFD) and Sustainability Accounting Standards Board (SASB), the MoTIE has developed the Industry-Specific K-ESG Guidelines for four key industries in Korea: automotive, steel, petrochemical and semiconductor. Also, the National Commission for Corporate Partnership (NCCP) amended the SME ESG Standard Guideline in June 2023, reflecting the European Sustainability Reporting Standards (ESRS) to prepare for the ESG due diligence on global supply chains.

On 7 November 2023, the MoE announced the new measure to manage single-use plastics. The new measure shifted from 'imposition of fines' policy to 'voluntary participation' policy to ease the burdens on small businesses. The new measure focuses instead on building the culture of using alternatives to plastic bags (such as biodegradable bags), promoting the growth of the market for alternatives to plastic straws and improving the recycling rate of single-use paper cups.

Impact investing

In October 2023, the Financial Supervisory Service (FSS) adopted ESG Funds Disclosure Standards, which impose reporting and disclosure obligations on the funds that are labelled as ESG or otherwise claim to be ESG.

According to the Special Act on the Promotion of Business Conversion in Small and Medium Enterprises, SMEs must obtain approval from the Ministry of SMEs and Startups (MSS) to operate a business in a new industry under certain circumstances, such as difficulties arising from the changes in the economic environment. However, on 16 May 2023, the law was amended to allow MSS to give prioritised approvals of the business conversion plans of SMEs that plan to convert their businesses for ESG purposes. The expectation is that if the companies that improve their ESG performance can have their business conversion approved quickly, those companies would more easily attract investments.

Purpose-driven companies

Since the Social Enterprise Promotion Act was enacted in 2007, support for social enterprises, a type of purpose-driven companies, certified by the Ministry of Employment and Labour has grown. The previously governing Democratic Party had announced the revitalisation of the social economy as one of its 100 policy agenda and introduced the policies to expand social finance and public procurement, while implementing the infrastructure for social economic growth. However, Three Laws on the Social Economy, including the Framework Act on the Social Economy, are still in the legislative process in the National Assembly and have not been passed yet.

Law stated - 3 6□ 2024

INVESTMENT AND FINANCIAL SERVICES

Regulatory and fiduciary duties

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

In principle, institutional investors and financial intermediaries are governed by corporate laws when managing their own assets and the Capital Markets Act or the Trust Act when managing others' assets as investment trusts or funds. These laws do not yet require companies to consider ESG factors when making an investment decision.

With respect to pension funds, pension-related laws such as the National Pension Act may be applicable. Under the National Pension Act, there are provisions that expressly allow for the consideration of ESG factors as far as it is premised on profit maximisation. Article 102(4) stipulates that in order to increase a stable long-term revenue, ESG factors about an investment target may be considered. Under article 103-3, the Trustee Responsibility Special Committee of the National Pension Fund Management Committee reviews and deliberates on ESG considerations.

Law stated - 3 6□ 2024

Voluntary standards and best practices

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

The Stewardship Code Guideline by the Korea Corporate Governance Service (KCGS) was amended in March 2024, seven years after its publication.

One of the underlying principles of the Stewardship Code is that institutional investors should regularly inspect investment target companies to enhance their mid-to-long-term values, thereby preserving and raising their investment values. For this purpose, the amendment adds that the institutional investors should inspect whether the target companies are establishing, implementing and communicating their strategies for enhancing their mid-to-long-term values, including the participation in the government's value-up programs.

As of May 2024, there are 226 institutional investor participants, including pension funds, insurance companies, asset management companies, private equity firms, financial advisory firms, banks and the National Pension Service.

Law stated - 3 6 2024

Measurement, reporting and disclosure

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

From 2019, listed companies with net assets of 2 trillion won or more are mandated to disclose corporate governance reports. From 2022, the above threshold is lowered to listed companies with net assets of 1 trillion won or more and from 2024, to listed companies with net assets of 500 billion won or more. From 2026, all KOSPI (Korea Composite Stock Price Index)-listed companies would have to disclose corporate governance reports.

Other than corporate governance reports, ESG disclosures are usually voluntarily made through sustainability reports. To encourage voluntary disclosure by companies, the Korea Exchange (KRX) released in January 2021 the Guidance on Disclosure of ESG Information, which outlines the fundamental principles of ESG information disclosure and advisory disclosure guidelines.

Mandating ESG disclosure is being discussed by FSC. Considering the US and other key countries' delays in mandating ESG disclosure, FSC is currently planning on mandating ESG disclosure from 2026 (on 2025 information).

Additionally, it can be noted that on 14 December 2023, a legislative bill amending the Capital Markets Act to mandate disclosures of climate-related opportunities and risks, emissions and emissions reduction targets on the financial statements was initiated.

Law stated - 3 6 2024

Ratings, indices and guidelines

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

ESG ratings

KCGS, Sustinvest and Daishin Economic Research Institute are known as the major domestic ESG rating agencies and most capital market participants, when making their investment decisions, refer to the annual ESG ratings that they release. Also, the international ESG ratings provided by global assessment indicators, such as the Dow Jones Sustainability Indexes and Morgan Stanley Capital International (MSCI) ESG Indexes, are cited as important sources. On 1 September 2023, KCGS, Sustinvest and Korea ESG Research Institute started implementing ESG Evaluation Agency Guidance, which the three agencies devised together to improve the transparency and reliability of the ESG ratings market.

Disclosure indices

Although not mandatory, many listed companies voluntarily publish and disclose their sustainability reports. Most companies use various international indices for disclosure such as the GRI, TCFD and SASB. For sustainable management disclosure verification, the international standards such as AA1000AS and ISAE3000 are used.

Government guidelines

MoTIE released K-ESG Guidelines (December 2021), Supply Chain K-ESG Guidelines (December 2022) and Industry-Specific K-ESG Guidelines (December 2023) pursuant to the Industrial Development Act, tailored to the Korean business environment while corresponding to the international criteria.

Law stated - 3 6□ 2024

Incentives, benefits and financial support

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

The Korea Credit Guarantee Fund (KCGF), a public financial institution, and the Industrial Bank of Korea, a state-run bank with the goal of revitalising SMEs, have various mechanisms in place to provide benefits such as guarantees and interest rate cuts. KCGF has operated the ESG Management Competency Assessment Guarantee System since February 2022, in which ESG-oriented companies are given a preference in their vetting process. Based on its review of the applicants' ESG management, KCGF provides benefits such as raising the guarantee limit and lowering the guarantee fees.

In April 2022, the Industrial Bank of Korea and the Korea Chamber of Commerce and Industry (an organisation established pursuant to the Chambers of Commerce and Industry

Act to promote the interests of the private commerce and industry sector) introduced sustainability-linked loans (SLL). A bank adjusts the interest rate of SLL based on the borrower's level of ESG management. SLL provides incentives for SMEs to raise the level of ESG management by offering discount rates on loans in milestones in accordance with their achievement of ESG goals.

Under article 10-4 of the Environmental Technology Act, the MoE may take actions to support and promote environmentally responsible investments, which includes establishing the Korean green classification system, the K-Taxonomy. The MoE has been supporting issuance of Korean green bonds, corporate bonds subject to K-Taxonomy, by covering the interest expenses (for 2024, 0.4 per cent of the bond issuance amount for SMEs and 0.2 per cent for large corporations and public institutions). The MoE amended the Korean Green Bond Guideline in December 2022.

Law stated - 3 6□ 2024

Impact investing

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

The government provides policy-oriented investment support and tax benefits to certified social enterprises. In addition, the government creates various funds to revitalise impact investment and promote preferential investment of public funds in certified social enterprises. Under the Tech Incubation Program for Startups (TIPS), once venture capital and accelerators verify the growth potential of certain innovative start-ups, the government provides them with follow-up support. To drive the growth of SMEs and venture enterprises, the government set up the Korea Fund of Funds (KFoF) in 2005 for indirect investment in venture capital. According to a media report in April 2022, the new presidency with the new ruling political party announced that it plans to expand the KFoF and TIPS from the previous administration.

Law stated - 3 6□ 2024

CORPORATE GOVERNANCE AND PURPOSE-DRIVEN COMPANIES

Legal recognition and certification

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

A 'purpose-driven company' is not expressly materialised under Korean law, but social enterprises and social ventures may be deemed as purpose-driven companies as they require certain social or public interest purpose under the relevant laws.

Social enterprises

Under the Social Enterprise Promotion Act, a 'social enterprise' refers to an enterprise certified by the Minister of Employment and Labour and pursues social objectives such as providing social services or job opportunities for the vulnerable groups. A social enterprise may be formed as a company pursuant to the Commercial Code, or as a non-profit corporation, association or public interest corporation under the Civil Code.

Social ventures

A 'social venture' is a business venture that pursues social and economic values holistically and was newly defined under the Act on Special Measures for the Promotion of Venture Businesses (the Venture Business Act) in April 2021. Social ventures must score at least 70 points each in 'social elements' and 'innovative growth potential' requirements. For the 'social elements' requirement, social elements criteria no. 1 allocates 100 points for companies certified by the government as social enterprises or for companies with B-Corp certification.

Law stated - 3 6▯ 2024

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

General

Under the Commercial Code, most companies including stock companies are allowed to state public interest as their purpose of incorporation in addition to their main business purpose in the articles of incorporation.

Social enterprises

To be certified as a social enterprise, an entity must specify a social purpose such as the provision of job opportunities or social services to the underprivileged. The purpose of a social enterprise may be changed through the amendment of the articles of incorporation as far as the Ministry of Employment and Labour is informed within 14 days of the date of amendment.

Social ventures

For social ventures to be eligible for financial support from the MSS, their purpose must specify their social purpose in the articles of incorporation.

Law stated - 3 6▯ 2024

Profit distribution, winding up and remuneration
What rules and restrictions govern profit distributions for purpose-driven companies in your jurisdiction?

A social enterprise must include a provision on the use of profits for a social purpose in their articles of incorporation. At least two-thirds of the distributable profits generated each fiscal year must be used for a social purpose, primarily for improving the working conditions and expanding social contribution projects. Performance-based pay for the representatives, executives and lineal ascendants and descendants, donations to religious groups and missionary budgets are not recognised as a use for social purpose.

For social ventures, social elements criteria no. 5 requires the companies' profit distribution principles to reflect social values and the actual implementation of the principles.

Law stated - 3 6□ 2024

Profit distribution, winding up and remuneration
What rules and restrictions govern the winding up of purpose-driven companies?

A social enterprise must donate at least two-thirds of the distributable remaining assets upon dissolution or liquidation to other social enterprises or public interest funds.

A social venture, if it is in the form of a stock company under the Commercial Code, must undergo the liquidation procedures stipulated thereunder. For example, a general meeting of shareholders should be convened to resolve dissolution and a liquidator should be appointed to execute the liquidation-related affairs, such as debt repayment. The remaining assets after the debt repayment should be equally distributed to the shareholders. Also, social elements criteria no. 5 requires the companies' winding up principles to reflect social values and the actual implementation of the principles in the case of winding-up.

Law stated - 3 6□ 2024

Profit distribution, winding up and remuneration
What rules and restrictions govern the remuneration of directors, officers, employees and third parties?

As for social enterprises and social ventures that are deemed a stock company, unless otherwise indicated in the articles of incorporation, their directors' renumeration should be determined by a resolution of the general shareholders' meeting pursuant to the Commercial Code.

Law stated - 3 6□ 2024

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

There is no statutory obligation for purpose-driven companies to measure, benchmark or report on the social and environmental impacts of their business. However, social enterprises are required to submit a business report that includes non-financial information such as their social purpose (social services and job opportunities offered to the underprivileged) to the Minister of Employment and Labour by the end of April and October of each fiscal year. If a social enterprise neglects its obligation to, or fails to, prepare or submit a report, or fraudulently or unlawfully prepares or submits the report, then it will be subject to a fine of up to 5 million won.

Law stated - 3 6[illegible] 2024

Measurement, benchmarking and reporting

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?

Apart from the statutory requirement to submit a business report pursuant to the Social Enterprise Promotion Act, a certified social enterprise may participate in the government-run voluntary business management disclosure system. The participants are asked to disclose details such as the industry type and the description and history of the business, as well as its mission and vision, profiles of the social entrepreneurs and the state of resource allocation. The Ministry of Employment and Labour encourages participation by providing consulting or marketing services and incentives. The number of social enterprise participants in the Ministry of Employment and Labour's voluntary business management disclosure system in 2023 was 1,010.

For social ventures, social elements criteria no. 2 allocates 70 points for companies without any certification that still address social issues in line with the K-SDGs (Korean Sustainable Development Goals), established in 2018 by the Korean government in alignment with UN SDGs.

Law stated - 3 6[illegible] 2024

Director liability and private enforcement

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

Under the Civil Code, the director of a social enterprise or a social venture has a duty of care. If a director neglects their duty of care, they must compensate the company for the damages that they cause. If a social enterprise or a social venture is formed as a stock company, its director bears the duty of loyalty pursuant to the Commercial Code, together with the duty of care. The director has a duty to actively strive to pursue the interests of the company and if the interests of the company and their own interests conflict, they cannot put their own interests first. If a director of a stock company intentionally or negligently violates the laws or the articles of incorporation, or acts contrary to their duty of care or duty of loyalty, the director should be liable for damages to the company; and the minority shareholders may file a derivative lawsuit asking the director to be responsible. The recent amendment to the Commercial Code has allowed the minority shareholders of a parent company to file a derivative lawsuit against the director of its subsidiary.

Law stated - 3 6□ 2024

State supervision

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

Under the Social Enterprise Promotion Act, the Minister of Employment and Labour has the authority to certify social enterprises and may revoke the certification if the initial certification requirements are breached. The Minister of Employment and Labour guides and supervises social enterprises and, if necessary, may order them to submit reports or related documents necessary for their business or to make corrections thereon.

MSS is responsible for the supervision of social ventures. The support policies and guidances for social ventures are communicated through the platform named Social Venture Square.

Law stated - 3 6□ 2024

Incentives and benefits

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

Under the Social Enterprise Promotion Act, the benefits available to certified social enterprises are:

- management support (including professional advice and information necessary for the establishment and operation of business) and training;
- support and loans for land purchase and facility costs;
- tax reduction and exemption; and
- support for social insurance premiums and social services.

Under the Venture Business Act, the benefits available to social ventures are:

- technology guarantee and investment; and
- finding and nurturing of prospective entrepreneurs or founders.

Law stated - 3 6□ 2024

Public procurement

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

To promote the sales and self-sufficiency of social enterprises, when public institutions purchase goods and services, those of certified social enterprises are given a priority pursuant to article 12 of the Social Enterprise Promotion Act. A public institution may purchase goods and services by directly entering into a contract with a social enterprise or indirectly by using a voucher. The social enterprise procurement in 2023 was 3.08 per cent, which was an increase compared to the social enterprise procurement in 2022 (2.75 per cent).

As for social ventures, there is no public procurement support system, but they receive indirect support through social venture competitions held by the government and the private sector.

Law stated - 3 6▯ 2024

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

Social enterprises

Social enterprises are becoming more self-sufficient and competent. The total revenue of social enterprises in 2022 was 6.85 trillion won. The total revenue of social enterprises has continued to increase from 2020 to 2022 (5.29 trillion won in 2020 and 5.97 trillion won in 2021). Social enterprises' five-year survival rate reached 87.9 per cent (from 2007 to 2022). However, since social enterprises are statutorily required to reinvest two-thirds of their profits, they need to think of ways to create more business opportunities as well as to limit investment losses.

Social ventures

With the recent expansion of ESG management, the awareness and investment value of social ventures seem to have heightened and this trend is expected to continue. The total number of social ventures identified by the MSS as of 2022 is 2,448, which has increased from the previous year (2,184). Also, the average revenue of a social venture as of 2022 was 2.8 billion won, which has increased by 450 million won from the previous year. The MSS developed Social Value Index (SVI) to measure social ventures' social performance and released the SVI Utilization Manual in February 2024.

Law stated - 3 6▯ 2024

GOVERNMENT, NGO AND SUPRANATIONAL SUPPORT

Government support

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

Korea Social Enterprise Promotion Agency

Pursuant to the Social Enterprise Promotion Act, Korea Social Enterprise Promotion Agency (KoSEA) was established as a sub-agency of the Ministry of Employment and Labour. KoSEA helps with the growth and commercialisation of social enterprises, including but not limited to: conducting a training for social enterprises and searching a model social enterprise; and monitoring and evaluating social enterprises.

Others

Each administrative agency of the Korean government implements social economy-related projects and some departments jointly form a task force to prepare ESG-related policies. For example, the MSS operates an evaluation system to nurture social ventures and certain programmes to bolster their capacities.

Also, the Presidential Commission on Carbon Neutrality and Green Growth was formed in accordance with article 15 of the Carbon Neutrality Act. The Commission's roles under article 16 of the Carbon Neutrality Act include reviewing and deciding on the basic direction of the policies for the transition to a carbon-neutral society and the promotion of green growth.

Law stated - 3 6 2024

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

Non-profit organisations such as Good Neighbours Global Impact Foundation, B Lab Korea and Root Impact are widely known. In collaboration with corporations, they raise public awareness of ESG and funds to support purpose-driven companies.

As an impact investor and accelerator established in 2012, the Korea Social Investment Foundation provides investments, management consulting and accelerating services for all types of business entities that have a social purpose. Also, there are public interest lawyers' organisations such as Duru, Dongcheon and Sun that provide free legal support to purpose-driven companies.

In addition to the Stewardship Code and the ESG Evaluation Agency Guidance, one of the most credible ESG rating agencies KCGS has been establishing and amending the Codes of Best Practices for Environmental Management, Socially Responsible Management and Corporate Governance. KCGS's materials are referred by most companies in Korea as credible sources of guidance on ESG management.

Law stated - 3 6 2024

Supranational support

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

On 16 October 2023, Invest Korea, the national investment promotion agency within Korea Trade-Investment Promotion Agency, was awarded the United Nations Investment Promotion Awards (UNIPA) by the United Nations Conference on Trade and Development (UNCTAD). For the 2023 UNIPA, UNCTAD focused on organisations' efforts to attract investments to accelerate energy transition in response to climate change. Invest Korea's efforts to attract investments to climate-related high-tech industries was recognised by the UNCTAD. Throughout 6–8 November 2023, Invest KOREA Summit, the largest investment promotion event in Korea, was held at BEXCO in Busan. Foreign investors, business leaders, industry experts and government officials participated in the event. One of the main themes of 2023 Invest KOREA Summit was Korea's eco-friendly transformation through attracting investments in sustainable high-tech industries.

Law stated - 3 6 2024

FINANCIAL TOOLS

Equity funds and loans

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

There is no sectoral law that governs ESG finance per se. Loans, funds and venture capital with social or environmental objectives are treated similarly to those without social or environmental objectives under financial laws. Depending on the type of financial institution or fund, various laws including the Banking Act, the Act on Registration of Credit Business and Protection of Finance Users, the Capital Markets Act, the Venture Investment Promotion Act and the Specialized Credit Finance Business Act may be applicable. In an applicant screening process, a financial institution or an asset management company refers to the applicant's internal guidelines, international ESG assessments and certifications (eg, social ventures).

Public funds and Korea Fund of Funds (KFoFs) with a public purpose that actively support sustainable finance are regulated by sectoral laws such as the Korea Credit Guarantee Fund Act. The Korea Credit Guarantee Fund Act is applicable to the Korea Credit Guarantee Fund (KCGF), which plays an increasingly active role in sustainable finance by issuing or guaranteeing ESG bonds and providing a preferential guarantee to ESG-oriented businesses.

Law stated - 3 6월 2024

Outcomes funds

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

Currently, there is no comprehensive law on performance-based funds and individual social impact bond (SIB) projects are approved based on local government ordinances. A private SIB-operating institution receives private investments to carry out a public project and the government, local governments or public institutions evaluate its achievements ex post facto. If found successful, the SIB-operating institution receives performance-based pay (including the investment principal and incentives).

From 2019 to 2021, several bills such as the Act on Promotion and Revitalization of Social Performance Compensation Project have been proposed to serve as the institutional basis for a comprehensive law on SIBs and discussions of other relevant bills continue.

In Seoul, the Social Performance Compensation Project for the Seoul Metropolitan City Child Welfare Facilities, the first of its kind in Asia, was approved and has been promoted since around 2016. The project successfully achieved its intention of improving the emotional and cognitive abilities of children in child welfare facilities. Further, the project has not only recovered the principal but also generated profits and allowed for reinvestment in other projects. Similar social performance compensation projects are underway in other provinces to lower the number of individuals reliant on the Basic Livelihood Security Program and to rehabilitate the elderly with mild cognitive impairment pre-dementia.

Law stated - 3 6월 2024

Social and development impact bonds

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

Social impact bonds and development impact bonds are governed by the Capital Markets Act.

The sustainability-linked-bond (SLB) that links ESG success with financial terms such as the interest rate was included as ESG bond in September 2022 and KRX ESG bonds now include green bonds, social bonds, sustainability bonds and SLBs. ESG bonds issuance had been increasing for four years until 2021, but it fell in 2022. The biggest drop was in bonds and sustainability bonds, the cause of which is believed to be fluctuating energy supplies due to the instability of international politics and the consequential slowdown in the issuance of renewable-energy-related bonds.

Law stated - 3 6월 2024

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

Equity-based crowdfundings and their brokers (investment model) have been regulated as small online investments and their brokers under the Capital Markets Act since 2016. The requirements for public offering of securities under the equity-based crowdfunding model are relatively loose compared to the conventional requirements set out under the Capital Markets Act. This allows small-scale funds to be conveniently raised through equity-based crowdfunding. Crowdfunding with any social or environmental objectives is eligible.

On the other hand, donation-based crowdfunding (non-investment model) including sponsorship for social and environmental objectives is governed by the Act on Collection and Use of Donations (the Donations Act) in general. Under the Donations Act, social or environmental goals are permitted as a purpose of solicitation of donations.

Law stated - 3 6□ 2024

LITIGATION AND ENFORCEMENT ACTIVITY

Recent activity
Has your jurisdiction seen any ESG-related litigation or enforcement activity?

Not applicable.

Law stated - 3 6□ 2024

UPDATE AND TRENDS

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

Key recent developments in regard to ESG are the rising interests in impact investments and prevention of greenwashing. The scale of ESG finance (investments, loans, bonds and financial products) in Korea is consistently on the rise. In 2018, the scale of ESG finance was 284 trillion won, which increased to 405 trillion won for 2019, 612 trillion won for 2020, 786 trillion won for 2021 and 1,098 trillion won for 2022. Along with the rising interest in ESG investments, awareness of the problems with greenwashing is also on the rise, and the Korean government, in response, has established regulations and guidances against greenwashing. As part of the effort to prevent greenwashing, the MoE is going to review and update K-Taxonomy every two to three years.

Law stated - 3 6□ 2024

Recommendations

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

With the EU and the US as frontrunners, ESG-related regulations that used to be considered as only soft laws are becoming hard laws as the international standards are being reflected in the legislations passed by various countries. These regulations, such as CSDDD (Corporate Sustainability Due Diligence Directive), CSRD (Corporate Sustainability Reporting Directive) and SEC (Securities and Exchange Commission) Climate Disclosure Rules, also affect Korean companies and the Korean government is actively discussing policy responses to these new trends. The key challenges that the government faces are, among others, difficulties in enforcing voluntary ESG standards, difficulties for stakeholders such as investors and shareholders to acquire accurate information for decision-making due to the lack of normative standards, possible compromises of the accuracy and reliability of ESG certifications and verifications because of the proliferation of private agencies. In this respect, the Korean government will have to establish a clear legal framework for integrating ESG into business practices. However, to prevent undue infringements on enterprises' freedom of business, the stakeholder engagement and discussion in establishing the legal framework would be critical.

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