A LEGAL FRAMEWORK FOR IMPACT

A legal framework for the consideration of sustainability impact in investor decision-making
Within the next decade, assessing and accounting for the sustainability impact of investment decision-making needs to be a core part of investment activity. This new project, *A Legal Framework for Impact*, will support this transition.

This project will:

- **Form a reference group of experts** from investment firms that will help support the research, test the legal analysis and implement the final recommendations.
- **Collaborate with a major law firm** to publish analysis of the legal framework for investors to consider sustainability impact in five major economies.
- **Propose practical recommendations** for investors and policy-makers on how policies, regulation and investment practice may evolve to achieve the systematic integration of sustainability impact in investment decision-making.
- **Support wider implementation** of the recommendations through investor and policy-maker outreach.

Launched in January 2019 by the PRI, UNEP FI and The Generation Foundation, *A Legal Framework for Impact* will prepare and publish legal analysis, as well as practical recommendations, for investors seeking to assess and account for sustainability impact in investment decision-making as a core part of investment activity.
In the 2000s, investors began to understand the importance of ESG issues to their investment decisions—best articulated by the 2005 Freshfields report—which found that investors could incorporate financially material ESG issues as part of their fiduciary duties. The Freshfields report contributed to the launch of the PRI.
Despite growing awareness, an implementation gap remained with capital markets often not accounting for the sustainability-related risks and opportunities associated with ESG issues such as climate change. In 2015, *Fiduciary Duty in the 21st Century* clarified that ESG integration is not just permissible but required. Since publication, financial regulators in Brazil, France, EU, Ontario, South Africa and UK have clarified (or have committed to clarify) ESG requirements in legislation.
However, as currently defined, fiduciary duties do not require a fiduciary to account for the sustainability impact of their investment activity, beyond its financial performance. In other words, fiduciary duties require consideration of how sustainability issues affect the investment decision, but not how the investment decision affects sustainability issues.

The Paris Agreement and the SDGs have significantly raised awareness within the investment community of global sustainability challenges.

The third generation of responsible investors are beginning to measure, account for and integrate the real-world sustainability impact of their investment activity.
There are emerging ‘pockets of excellence’ in technical understanding, including methodologies and disclosure requirements on the integration of impact in investment decision-making.

**However, fundamental legal questions remain:**

- Are there legal impediments to investors adopting ‘impact targets’—for example—that an investor’s investment activity is consistent with no more than 1.5 degrees of warming?
- Are investors legally required to integrate the sustainability impacts of their investment activity in their decision-making processes?
- On what positive legal grounds could or should investors integrate the realisation of the SDGs in their investment decision-making?
As such, investors have multiple duties: A fiduciary duty to integrate all financially material factors, including ESG factors and an impact duty to, in example 1, decarbonise portfolios, in example 2, incorporate quality of life, and in example 3, incorporate wider society.

The study will understand how investors should manage their multiple duties within existing legal frameworks. In some jurisdictions, the legal analysis may find that there are legal impediments to incorporating sustainability impact, in which case the project will recommend policy change.
TIMELINE

Launch Reference Group

Partner with lead law firm
Conduct legal analysis

Engage investors on the integration of impact in investment decision-making

Launch Impact Legal Framework and recommendations

Q1 | Q2 | Q3 | Q4 | Q1 | Q2 | Q3 | Q4

2019 | 2020

Launch
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Group

2019

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Launch Impact Legal Framework and recommendations
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