MACEDO VITORINO

WHAT WE CAN DO

GREEN FINANCE

SETTING NEW STANDARDS

"EXCELLENT. VERY GOOD LAWYERS WITH THE ABILITY TO PROVIDE TAILOR MADE SOLUTIONS, AND A DIFFERENT APPROACH TO PROBLEM SOLVING."

THE EUROPEAN LEGAL 500

INTRODUCTION

Sustainable financing, with an emphasis on "green" financing, reveals the growing concern with new environmental, social and governance (ESG) challenges.

Sustainability has a tangible financial dimension that has been growing at an exponential rate. According to Refinitiv, in 2021 sustainable bonds reached a global value of $1 trillion, which represents 10% of the global debt market.

Because we believe that sustainability is an essential aspect of company's business purpose and will become a pre-condition for accessing financial markets in the future, MACEDO VITORINO has created a Green Finance Team dedicated to the development and financing of green projects.

Our Green Finance Team has deep knowledge of the energy sector and the key regulatory and financial issues in preparing and structuring up green finance transactions.

The pace of development of the green debt and equity markets means that green finance will become dominant in the medium term. In the long term, companies that do not meet sustainability requirements will face increasing difficulties in accessing the financial markets.

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GREEN FINANCE

THE NEW FRAMEWORK

BACKGROUND

The transition to an emission neutral and environmentally sustainable economy is underway. The European "Green Deal", with the Portuguese PNEC, the European taxonomy and green finance mark the beginning of a new approach to financial investments.

According to McKinsey, to prevent a rise of more than 1.5°C, no more than 400 gigatons can be emitted, which means cutting present emissions levels by two-thirds over the course of the decade.

In 2019, the European Union (EU) approved the "European Green Deal" with the aim of transforming Europe’s economy and set the following objectives:

- NEUTRAL GREENHOUSE GAS EMISSIONS BY 2050
- REDUCTION OF GREENHOUSE GAS EMISSIONS BY AT LEAST 55% (COMPARED TO 1990) BY 2030

The Portuguese National Plan for Energy and Climate (PNEC) establishes the following goals for 2030:

- REDUCE GREENHOUSE GAS EMISSIONS BY 45-55% COMPARED TO 2005
- INCREASE TO 47% THE SHARE OF ENERGY FROM RENEWABLE SOURCES IN GROSS FINAL ENERGY CONSUMPTION
- REDUCE PRIMARY ENERGY CONSUMPTION BY 35% COMPARED TO 2005

GREEN FINANCE
THE NEW FRAMEWORK

In 2021, sustainable bonds represented 10% of overall global debt market activity and by 2022 this percentage is expected to increase. Sustainability requirements will impose a new green framework for financing.

McKinsey estimates that to reach a net-zero transition between 2021 and 2050, requires a capital spending on physical assets for energy and land-use systems of about $275 trillion, an average of $9.2 trillion per year.

Investors are increasingly interested in green finance. According to Refinitiv, in 2021 "sustainable" bond issuance will exceed the $1 trillion mark for the first time, representing a 45% increase in debt when compared to 2020.

Sustainable bonds accounted for 10% of overall global debt market activity, which exceeds the 6.6% of 2020 by large.

The global value of green bonds reached $488.8 billion, almost doubling the 2020 levels. In number of issues, green bonds have increased by 54% compared to 2020.

Europe accounted for 54% of the sustainable bond market, compared to 22% for America and 18% for the Asia Pacific region.

THE ICMA PRINCIPLES

The Green Bond Principles are a set of principles established by ICMA (International Capital Market Association) that help to identify green projects, which are eligible for green finance.

- **Use of proceeds**. Bond proceeds should be utilised in eligible green projects (*i.e.* projects with clear environmental benefits that should be assessed and, if possible, quantified by the issuer).

- **Project evaluation and selection**. The issuer should communicate to investors the environmental sustainability objectives, the process for determining the eligibility of projects and the complementary procedures by which it identifies and manages the environmental and social risks associated with the project.

- **Management of proceeds**. Bond proceeds should be credited to sub-accounts or accounts controlled by a formal internal process to ensure that the proceeds are utilised in eligible green projects and can be audited by the issuer and external auditors.

- **Reporting**. Issuers should disclose, and keep available information about, the use of proceeds, projects and their impact, on an annual basis or whenever there is a material change, including qualitative and, where possible, quantitative performance indicators.

ELIGIBLE INVESTMENTS

The definition of eligible projects for green finance is one of the key aspects of the structuring and the documentation of the financing.

The main types of 'green' investments identified by ICMA are, among others:

- Renewable energy, including production, transmission, appliances and products;
- Energy efficiency, such as in new and refurbished buildings, energy storage, district heating, smart grids, appliances and products;
- Pollution prevention and control;
- Clean transportation, such as electric, hybrid, public, rail, infrastructure for clean energy vehicles and reduction of harmful emissions;
- Sustainable water and wastewater management;
- Climate change adaptation, including information support systems such as climate observation and early warning systems; and
- Green buildings.

THE EU TAXONOMY REGULATION

The Taxonomy Regulation creates a secure, precise and rigorous classification of eligible project types and the objectives of sustainable projects.

Regulation (EU) 2020/852 on the establishment of a regime for the promotion of sustainable investment (referred to as the "Taxonomy Regulation") qualifies an economic activity as environmentally sustainable if that economic activity:

- Contribute substantially to one or more environmental objectives, i.e. (i) climate change mitigation, (ii) adaptation to climate change, (iii) sustainable use, (iv) protection of water and marine resources, (v) transition to a circular economy, (vi) prevention and control of pollution and (v) protection and restoration of biodiversity and ecosystems;
- Not significantly impair any of the environmental objectives listed in Article 17 of the Taxonomy Regulation;
- it is developed in accordance with certain minimum safeguards; and
- Satisfy the technical assessment criteria set by the Commission in Delegated Regulation (EU) 2021/2139.

REQUIREMENTS OF THE TAXONOMY REGULATION

The requirements set by the Taxonomy Regulation provide the basis for the concrete definition of the commitments that should be at the heart of green finance.

The Taxonomy Regulation requires projects to comply with the following requirements:

- Identify the most relevant potential contributions to the environmental objective and the minimum requirements that must be met to avoid significant harm to any relevant environmental objectives;
- Be quantifiable or, when this is not possible, use sustainability indicators;
- Be based on conclusive scientific evidence and the precautionary principle;
- Take life-cycle considerations into account by considering the environmental impact of the economic activity and the environmental impact of products and services resulting from that activity, the nature and scale of the economic activity, and the potential market impact of the transition to a more sustainable economy; and
- Covering all relevant economic activities in a specific sector and ensuring that these activities are treated equally.

THE FUTURE GREEN BOND REGULATION

Although the green bond regulation has not yet been approved it can already be used in the preparation of green bond issues.

The European Commission's proposed Green Bond Regulation sets out the following requirements for bonds to receive the designation "European Green Bond“ or “EuGB”:

- The proceeds of the bonds should be allocated to activities that comply with the Taxonomy Regulation (Regulation (EU) 2020/852)
- Before issuing EuGB, issuers must complete a factsheet in accordance with the model attached to the Regulation, obtain external certification and publish both documents;
- Issuers must prepare an annual report on the allocation of the proceeds until they are fully used and a report on the environmental impact of the use of the proceeds at least once during the lifetime of the bonds; and
- Issuers should obtain a post-issuance verification of the report regarding the allocation of revenues by an external entity.

WHAT WE CAN DO

Responsiveness to environmental, social and governance (ESG) challenges will, in the near future, be one of the critical factors in obtaining finance for all types of companies.

We can help funders and promoters with all legal aspects of funding, including:

- Identify eligible projects against the European Taxonomy and the ICMA Principles
- Strategic advice on the definition of project eligibility criteria
- Define "green" commitments regarding the application of funds and the project
- Preparation of the technical file and financial documentation required for financing
- Collaborate with technical advisors in the certification and auditing of the project
- Monitor and verify compliance with "green" commitments throughout the life of the contract

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