UNEP FINANCE INITIATIVE
PRI Principles for Responsible Investment
generation foundation

A LEGAL FRAMEWORK FOR IMPACT

A legal framework for the consideration of sustainability impact in investor decision-making

ABOUT THIS PROJECT

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.

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.

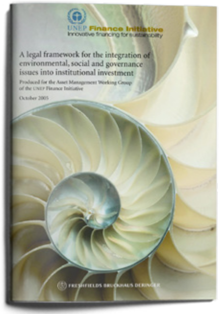
Project background:

THE FIRST GENERATION

of responsible investment

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.

A legal framework for the integration of environmental, social and governance issues into institutional investment



Project background:

THE SECOND GENERATION of responsible investment

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.

Fiduciary duty in the 21st century

Project background:

THE THIRD GENERATION of responsible investment

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.

THE THIRD GENERATION

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?

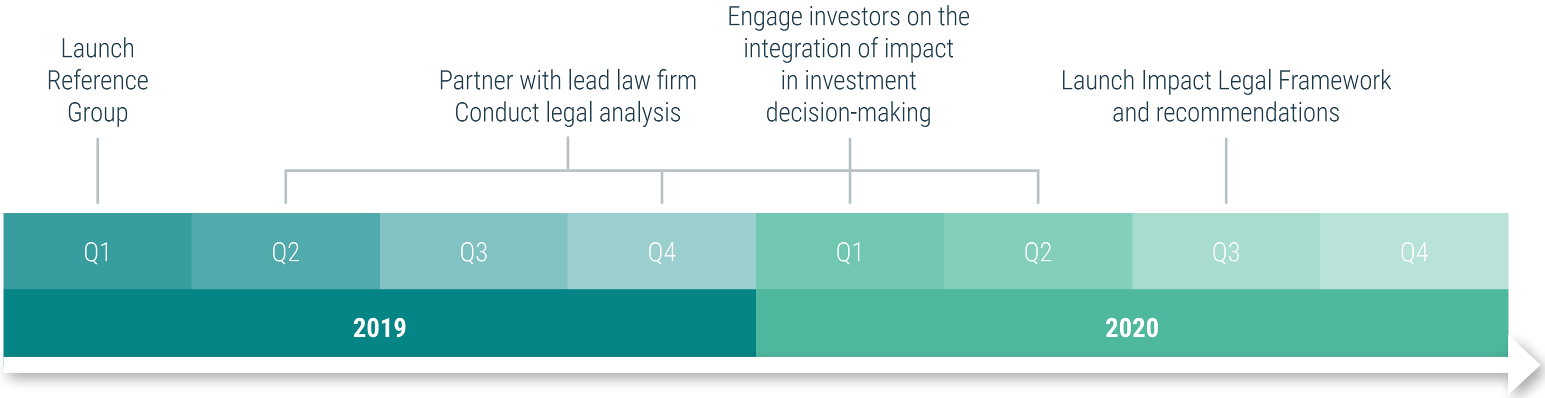
THE THIRD GENERATION

Example 1:	Example 2:	Example 3:
Investors may incorporate decarbonisation targets into their duties, and as such have an impact duty to measurably decarbonise their portfolio.	Investors may incorporate quality of life in retirement into their duties, and as such have an impact duty to incorporate whether and how the investment decision contributes to quality of life.	Investors may incorporate the wider society into their duties, and as such have an impact duty to incorporate whether and how the investment decision has an impact on the wider society.

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

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