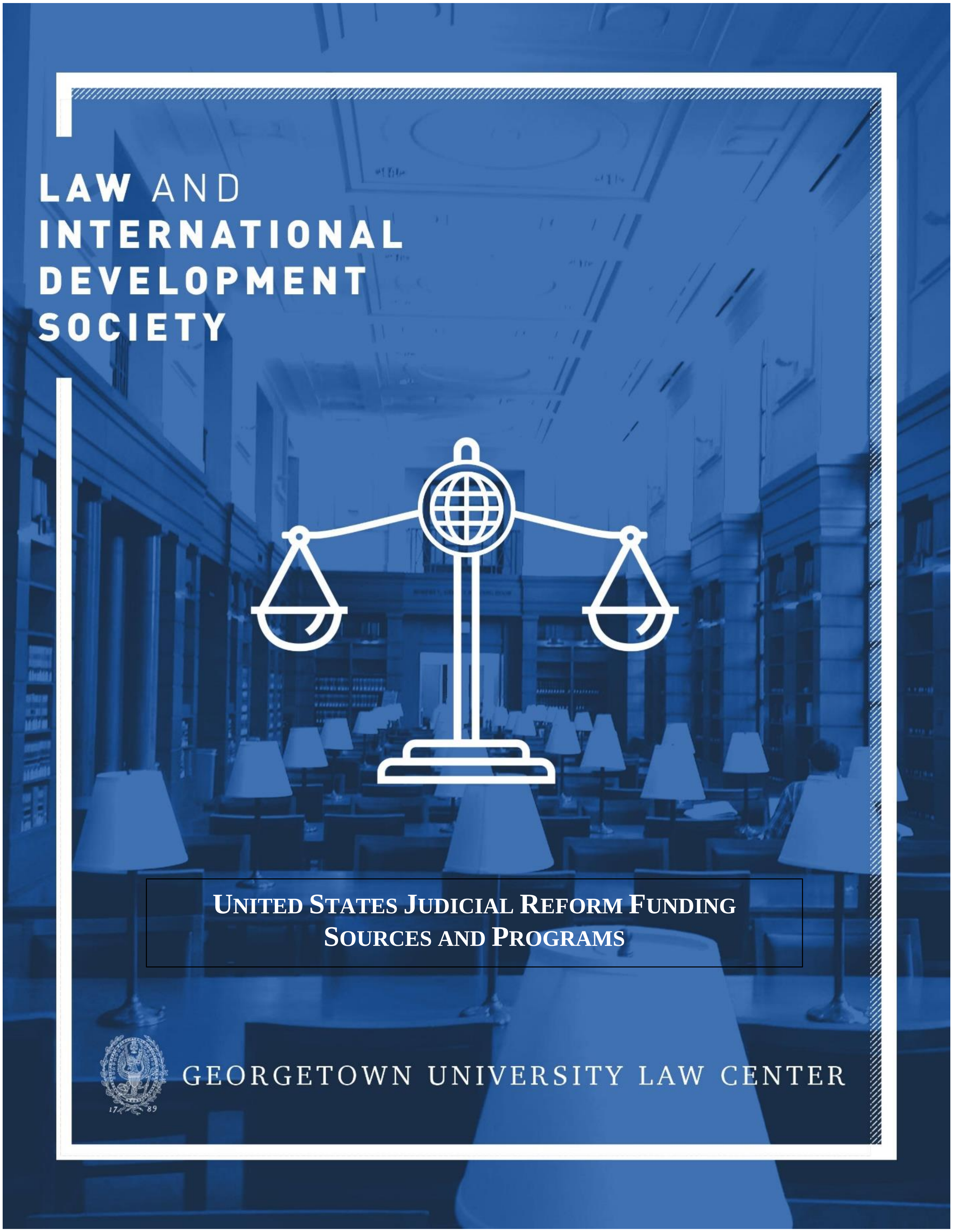

LAW AND INTERNATIONAL DEVELOPMENT SOCIETY

UNITED STATES JUDICIAL REFORM FUNDING SOURCES AND PROGRAMS

GEORGETOWN UNIVERSITY LAW CENTER

DISCLAIMER

IMPACT INVESTMENT MEMORANDUM

INTRODUCTION

Justice Ventures International (JVI) seeks information regarding how impact investing is being used in initiatives combating modern day slavery and other human rights abuses. This report consists of three parts. Part I discusses the main strategies impact investors use to empower marginalized communities and describes the key investors pursuing these goals and their respective projects. Part II is divided into two parts where we have tried to discuss the legal provisions found in impact investment agreements to give JVI a broad overview on the approach to take walking into the process of deal documentation, Part II also covers legal standard where we focused on the measurement of social impact. Part III recommends a general approach and specific legal language JVI can use in their agreements and proposals.

PART I - STRATEGIES AND KEY COMPANIES

A. Strategies

Impact investors like Omidyar Network aim to address forced labor and trafficking through investment in initiatives that focus on providing economic opportunity to low-income workers and supporting start-ups dedicated to sustainable, ethical supply chains. They also focus on developing opportunities for entrepreneurship, especially in vulnerable communities, or providing access to job training and education so that workers can acquire the capital to escape exploitation and participate in the market under fair conditions. Many of the other organizations like Omidyar Network also participate in research and advocacy work in an effort to incentivize government regulatory action and increase corporate accountability for abuses.

In recent years, there have been several Socially Responsible Investing (SRI) Mutual Funds through which impact investment is done. Traditional SRI funds excluded companies that made money from alcohol, tobacco or gambling. Over time, some funds adopted more bars, disallowing firms involved with military weapons, nuclear power and, lately, fossil fuels, among other things. Investors want to see not only good returns, but also measurable social benefits. For example, TIAA-CREF Social Choice Bond holds a bond that helped a non-profit, GAVI the Vaccine Alliance, provide vaccinations to 440 million children. Those vaccinations will help prevent as many as 6 million deaths.

The Global Impact Investing Network (GIIN) Initiative for Institutional Impact Investment supports institutional asset owners seeking to enter, or deepen their engagement with, the impact investing market, by providing educational resources, performance research, and a vibrant community of practice.[1] Every year, GIIN, a nonprofit organization dedicated to increasing the scale and effectiveness of impact investing, publishes a survey of the current state of the impact investing sector.[2] Of the respondents to the 2018 GIIN Impact Investor Survey, 59 percent were fund managers. While some funds are strictly impact investors (e.g., Omidyar, Acumen), more than half are conventional families of mutual funds, asset managers, and private equity and debt funds. These conventional funds, in addition to their normal, profit-generating portfolios, are increasingly investing in more socially conscious opportunities.

There are a variety of factors that dictate the manner in which a fund invests, including in the arena of impact investing. The size of the investment also matters in impact investing. Many of these funds are used to investing tens of millions of dollars at one time, and it is often viewed as an inefficient use of time to undertake the required due diligence and potential legal work for a small deployment of capital that is normal in impact investing.

The fund managers and their investors all want to understand and quantify the actual impact of their investment, which is often difficult to do. Thus, many of GIIN's publications are precisely about Impact Measurement & Management (IMM).[3] The ability for some investment sectors to lend themselves to easier or more accurate measurement increase the desirability of investing in those sectors.

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[1] https://thegiin.org/
[2] https://thegiin.org/research/publication/annualsurvey2018
[3] See, e.g., https://thegiin.org/imm

All of these funds are operating on sliding scales balancing risk, rate of return, and the impact of the investment. As for-profit funds, they are all looking to generate some sort of return, ranging from a market rate to merely a return of their initial investment.

In terms of their impact, the funds have a range suited to their investors' needs. BlackRock, for instance, has three levels of "sustainable investing":[4]

- Exclusionary Screens: Funds that avoid exposure to companies who operate in controversial sectors such as fossil fuels, tobacco or weapons.
- ESG Factors: Funds which invest in companies whose practices rank highly by Environmental, Social and Governance (ESG) performance standards.
- Impact Targets: Invest in companies whose products and solutions target measurable social or environmental impact.

Another factor dictating how a fund invests capital is the structure of the fund. Generally, mutual funds can only invest in publicly traded securities which can be easily sold in case of investor redemptions. Thus, the largest holdings in BlackRock's Impact U.S. Equity Fund are Apple, Microsoft and Facebook.[5]

In contrast, private equity and debt funds are much more flexible in how they can invest, yet they have their own challenges. For one thing, these investment teams are often sector specific and are very thorough in their diligence. Thus, they might not feel sophisticated enough to invest in certain opportunities. Additionally, private equity funds must always have a sense of their exit strategy when they invest. Somebody—either another private buyer or the public in an initial public offering—will need to buy the fund's shares at some point.

Finally, geography plays a role in investing. Some funds may be global or committed to emerging markets, while others might just be trying to make a difference in North America. Obviously, this makes a difference in the investments and the impacts because different regions have different

[4] https://www.blackrock.com/investing/investment-ideas/sustainable-investing
[5] https://www.blackrock.com/investing/products/279570/blackrock-impact-us-equity-fund-class-a

resources and needs. Goldman Sachs, for instance, has an Urban Investment Group which focuses on neighborhood building, job creation and social enterprising, and social innovation financing in American cities.[6] In contrast, J.P. Morgan Chase has partnered with the Nature Conservancy to invest in forest conservation, ocean protection, sustainable water and agriculture, and green infrastructure for cities around the world.[7]

B. *Key Companies*

- *Omidyar Network*

Omidyar Network is one of the original key actors in impact investing. It uses a flexible capital model that funds both for-profit investments and charitable contributions. It has incubated two Omidyar Group organizations, which began as internal initiatives and became independent once they reached a critical level of development. One initiative focused on domestic political issues and the other on global human rights.[8]

- *UBS Optimus Foundation*

UBS Optimus Foundation supports underprivileged or vulnerable children around the globe in education, early childhood development, health, child protection, and emergency response. The Network receives funds from UBS clients, UBS employees, and UBS and disburses grants to its program partners. They work with independent, external evaluators to determine if a program is delivering the maximum possible impact for children.[9]

- *Overseas Private Investment Corporation (OPIC)*

OPIC is the U.S. government's development finance institution. It aims to provide businesses with financing, political risk insurance, and advocacy, and partners with private equity investment fund managers. It supports hundreds of active projects around the globe furthering a variety of social goals including education, financial inclusion, health, and sustainability.[10]

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[6] https://www.goldmansachs.com/what-we-do/investing-and-lending/impact-investing/
[7] https://www.jpmorganchase.com/corporate/Corporate-Responsibility/es-naturevest.htm
[8] https://www.omidyar.com/our-work/impact-investing
[9] https://www.ubs.com/microsites/optimus-foundation/en/about-us/annual-report.html
[10] https://www.opic.gov/who-we-are/overview

- *The Netherlands Development Finance Company (FMO)*

FMO is the Dutch development bank, and is a public-private partnership, with 51% of its shares held by the Dutch State and 49% held by commercial banks, trade unions, and other members of the private sector. In addition to supporting environmental initiatives, they pursue inclusive business aimed at people earning less than 7 USD per day, often including women and smallholders.[11]

- *Acumen*

Acumen began by opening Rwanda's first microfinance institution and now invests in early-stage companies whose products and services directly impact the lives of low-income communities. Rather than investing traditional capital, they invest philanthropic capital that provides startups with the flexibility and security to grow their business and reach as many poor customers as possible, while also providing these businesses with the expertise to expand.[12]

- *AHL Venture Partners*

AHL Venture Partners invests through two vehicles - the AHLCF, one of the longest standing permanent capital vehicles in Africa, and the AHL Growth Fund. They focus on business models where increased profits creates increased impact, and vice versa, applying strict impact management and measurement across all aspects of its work, from due diligence to exit.[13]

- *Deutsche Asset Management Global Social Finance Group*[14]

GSF focuses on private debt investments into early and growth-stage projects across a variety of sectors, including energy, microfinance, and healthcare. Specifically, in healthcare, GSF has invested in healthcare facilities that provide affordable surgery and optical surgery. In Europe, GSF has financed wind parks and is participating in public-private partnerships with governments to combat climate change.

[11] https://www.fmo.nl/impact
[12] https://acumen.org/approach/
[13] http://www.ahlventurepartners.com/
[14] https://iris.thegiin.org/users/profile/global-social-finance-deutsche-asset-management

- *Nuveen, a TIAA Company*[15]

Nuveen currently manages several mutual and exchange-traded funds devoted to responsible investing across asset classes and regions. Aligning with the UN's ESG platform, Nuveen has focused on climate change by making their real estate portfolio more energy efficient and reforesting trees in Brazil. On the social front, Nuveen had invested in affordable housing, microfinance, and community and economic development.

- *Elevar Equity*

Elevar is an early stage investor focused on generating outstanding investment returns by delivering essential services to underserved, low-income communities. Founded by four partners with a combined 60 years-experience in venture capital, private equity, emerging markets, corporate law and impacting investing, Elevar is one of the most seasoned, commercially focused fund managers in the impact space.

- *Capria Ventures LLC*[16]

Capria is a global investment firm leading the largest network of fund managers collaborating to deliver superior returns in emerging and frontier markets, using flexible capital, advanced investment systems, and deep partnerships. Capria is advancing the next generation of small business finance institutions ("SBFIs" or "fund managers") that will invest in hundreds of small and growing businesses ("SGBs") in Africa, Latin America and Asia.

- *Gavi*[17]

Created in 2000, Gavi is a global Vaccine Alliance, bringing together public and private sectors with the shared goal of creating equal access to new and underused vaccines for children living in the world's poorest countries.

C. Ongoing Project Descriptions

[15] https://www.nuveen.com/responsible-investing
[16] https://www.impactassets.org/ia50_new/fund.php?id=a014400000oXQ0AAAW
[17] https://www.gavi.org/investing/innovative-financing/iffim/

1. Humanity United

Humanity United, an Omidyar Network initiative, and now a public-private partnership with the U.S. government, focuses on two major contributors to human exploitation: forced labor in corporate supply chains, and the vulnerability to trafficking that results from labor migration. They support documentation, advocacy, awareness-raising and tool development, working with corporations to discover and implement new policies and tools that can mitigate their risk of enabling forced labor.[18]

2. UBS Optimus Foundation

UBS Optimus Foundation supports a variety of child protective organizations, particularly collaborating with the Freedom Fund to fight against child trafficking and modern slavery. In 2017, Freedom Fund offered access to recovery services, placed over 34,000 at-risk children in school, assisted in over 2,400 legal cases and helped start over 10,000 microenterprises.[19]

3. OPIC 2X Women's Initiative

OPIC (US Govt investment development fund) will invest $350 million in projects, lending to women-owned businesses, female entrepreneurs, as well as women-owned and women-led emerging market private equity funds. Through gender lens investing, OPIC focuses on providing women in the developing world access to finance, jobs, and services that enhance economic opportunity.[20]

4. Smallholder Finance Facility (SFF)

FMO's Smallholder Finance Facility supports investments in crucial value chains, co-financing smallholder farmers – together with supply chain actors – to improve productivity and thus livelihoods. SFF intends to invest up to $50 million into upstream supply chain

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[18] https://humanityunited.org/portfolios/human-trafficking-in-labor-migration/

[19] https://www.ubs.com/microsites/optimus-foundation/en/stories/changing-the-game-together.html (See Annual Review 2017)

[20] https://2x.opic.gov/

projects over the next five years through technical assistance, conditional grants and debt instruments.[21]

5. *Acumen Financial Inclusion and Workforce Development*

In addition to other sectors of market development, Acumen's financial inclusion and workforce development sectors invest in companies providing low-income students and job seekers the training and tools they need to access job placement services and succeed in building careers. Through these development initiatives, they aim to break the cycle of poverty for low-income families and communities.[22]

6. *AHLCF's Financial Inclusion Initiative*

AHL Venture Partners invests through the AHLCF, one of the longest standing permanent capital vehicles in Africa. Their financial inclusion initiative invests in companies throughout Africa that provide essential financial services, capacity-building support and assets to individuals and entrepreneurs.[23]

7. *Deutsche Asset Management Global Social Finance Group Sustainable Investments*[24]

GSF, within Sustainable Investments, employs a series of emerging-market-focused microfinance and social enterprise private debt strategies that finance the working capital needs of socially motivated investees, while offering investors an opportunity to place "impact capital" into new and innovative business models providing access to goods and services for low-income populations. The mission of GSF is to mobilize impact capital to finance enterprises and projects that directly benefit the poor and underserved communities.

8. *Nuveen/TIAA*

Nuveen seeks investments that work to close the gap between the spending power of low-income consumers and the cost of quality products in the supply and demand of basic needs, taking a slightly longer-term view given the focus on private markets.

[21] https://www.idhsustainabletrade.com/initiative/smallholder-finance-facility/
[22] https://acumen.org/companies/sectors/workforce-development/
[23] http://www.ahlventurepartners.com/ahlcf/
[24] https://iris.thegiin.org/users/profile/global-social-finance-deutsche-asset-management

Most progress on impact measurement has been made in the affordable housing portfolio, where the team tracks and measures impact on an ongoing basis using a range of commonly-used social and environmental performance metrics.

9. Prudential UNICEF Bridge Fund[25]

Prudential began along the path of responsible investing by focusing on investments in their home city of Newark, New Jersey. They have since expanded their reach to social purpose enterprises, financial intermediaries, and real assets around the U.S., including a sizeable investment in B Lab, a non-profit which provides the "B" (for beneficial) certification for corporations. Additionally, they have partnered with the UNICEF Bridge Fund to provide emergency care to children worldwide.

10. KKR[26]

One of the newest and largest entrants in the field of impact investing, private-equity giant KKR announced the launch of its fund in early 2018. While the specific investments and results are still to be seen, its announcement identified the following goals: "adapting to climate change, supporting better agriculture, managing resource constraints, investing in infrastructure, treating and preventing disease, and focusing on employees."

11. Bain Capital Double Impact Fund[27]

Bain Capital makes buyout and control investments in mission-oriented for-profit lower middle market companies in North America. It partners with companies that offer products, services or business models that can create positive social impact at scale. It focuses on self-identified mission-oriented companies as well as more traditional businesses that create positive social impact. Its impact themes include sustainability, health and wellness, and community building. Currently, its portfolio includes Arosa, by CHLOE., Impact Fitness, Living Earth, Penn Foster, SpringWorks Therapeutics, and Sustainable Restaurant Group.

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[25] https://www.prudential.com/links/about/corporate-social-responsibility/impact-investing
[26] http://www.kkr.com/businesses/global-impact
[27] https://www.baincapitaldoubleimpact.com/

12. Credit Suisse[28]

Credit Suisse established its Impact Advisory and Finance Department in 2017 to unify its impact investment platform which had previously been divided by sector. Currently, its focuses include financial inclusion, higher education, conservation finance, fair agriculture, and social enterprises. It also engages in green finance and sustainability-related research.

13. AXA[29]

AXA Investment Managers, seeking to raise capital from large investors interest in impact investing, releases an annual report on responsible investment. Their primary focus has been on reducing their carbon footprint and investing in green bonds. Additionally, they have made a substantial private equity investment in a pharmaceutical company developing a cholera vaccine for developing countries. They are also prioritizing public equity investment in emerging markets, where they feel capital is most needed.

14. Citi Inclusive Finance [30]

In 2005, Citi created Citi Microfinance, which leverages Citi's businesses to serve more than 100 MFIs, networks, and investors in more than 40 countries as clients. Citi Foundation aims to promote economic progress and improve the lives of people in low-income communities around the world. Amongst other investments, Citi Foundation also focuses on catalyzing job opportunities for the youth and health projects.

15. Vox Capital Health[31]

Vox Capital looks for companies that act directly or indirectly for prevention and aid of mental and oral health; control chronic non transmissable diseases risk factors and make available easier forms to diagnose and monitor these conditions; efficiency and resolution applied to health management; health professional training; solutions to prevent dissemination of

[28] https://www.credit-suisse.com/corporate/en/responsibility/banking/sustainable-products-services.html
[29] https://www.axa-im.com/en/responsible-investing
[30] https://www.citigroup.com/citi/foundation/about/2018-Citi-Foundation-Guidelines.pdf
[31] https://www.impactassets.org/ia50_new/fund.php?id=a014400000oXPzbAAG

communicable diseases. Vox Capital also invests in series A and B rounds on high potential start-ups that are serving the Brazilian low income population with solutions that are helping to improve their lives. Solutions must use technology to tackle specific problems on health, education and financial services. Our goal is to deliver both competitive financial return and sizable social impact.

16. *The International Finance Facility for Immunisation (IFFIM)*

Gavi launched IFFIM, which uses long- term donor pledges to issue vaccine bonds on the capital markets. The money raised from investors helps fund Gavi programmes to meet immediate country demand for vaccines. This ensures a near-term positive impact on public health that strengthens and protects future generations. IFFIm has thus been able to raise US$ 5.7 billion from investors, helping Gavi shift predictable donor funding through time.

The proceeds of vaccine bonds help ensure predictable funding and more efficient operations for Gavi, which nearly doubled its spending on immunisation programs since IFFIm was launched in 2006. It also provides predictability for countries' vaccine programs. Vaccine bonds also provide investors with a socially responsible investment opportunity.

17. *UE LifeSciences (UELS)*

Capria invests in UELS, an India-based developed the world's first portable easy-to-use, cloud-enabled, radiation-free breast cancer (BC) scanning device that can be operated extremely cost-effectively in rural and other unserved areas. Less than 1% of Indian women undergo BC screening, primarily because of lack of access to timely and affordable services. UELS addresses an unmet $2B opportunity in India ($20B globally), with the potential to become the "standard of care" for BC early detection in many emerging markets. FDA-approved and clinically validated, UELS is operating multiple at major public and private customer sites across India, with a strong pipeline of public health customers and a target patient base of millions of women in India. In Q4 2017, UELS announced a global distribution partnership with GE, bringing its innovative solution to other emerging markets. UELS raised Series A of $3M in 2015 and is planning to raise Series B financing in 2018.

18. Elevar Equity Investment in Afluenta[32]

Our investment in Afluenta exemplifies our thesis in both financial services and creating new platforms for access. Afluenta directly connects lenders and borrowers over its proprietary, secure and user-friendly technology platform. These lenders and borrowers are based in underserved communities across Latin America that incur exorbitant borrowing rates through traditional banking services and have few attractive and convenient financing alternatives. Further, includes investors who lack access to traditional investment instruments that deliver attractive returns. The platform bypasses traditional financial service providers and middlemen and offers lower-cost efficient consumer credit loans to mid/low income borrowers who reduce their financial expenses and primarily use the loan for home improvement, auto repairs and growing their businesses. At the same time, Afluenta delivers attractive yields to lenders/investors who participate in the platform. Afluenta has originated over 9,600 loans worth $19 million to approximately 6,000 investors on its platform, with 135% YoY growth.

PART II: LEGAL PROVISIONS AND STANDARDS

A. Legal Provisions

The impact-investing sector is highly varied in terms of the type of entities it invests in, the asset classes and instruments it invests through and the myriad of investors who invest in the sector. Because of the vast scope of the sector itself, legal documentation has to be done diligently and on a case-by-case basis. This part of the memorandum focuses on the various types of legal provisions commonly found in impact investment and loan agreements that are used to achieve the social and economic goals of an impact investor. Although the structure of the agreement – a key to understanding a company's growth – may vary based on the financial and social goals of the investors, we have set out the provisions found in standard impact investment agreement which can be customized based on the goals of the investor. In addition to the legal provisions, we have also attempted to set out the legalities surrounding the structural legal aspects of impact investments.

[32] https://www.impactassets.org/ia50_new/fund.php?id=a014400000oXPz2AAG

PRE-DEAL DOCUMENTATION DECISIONS:

1. **Investment Vehicle**: Impact investing brings together investors that (a) pursue various return expectations; (b) have a range of risk appetites; and (c) are of various legal forms (nonprofit and for-profit). Increasingly, these investors come together when investing in a pooled structure – fund or vehicle managed by a fund manager[33]. Investment funds are the most common vehicle used in impact investing and investors are attracted to this type of investment vehicle because they provide a broader selection of investment opportunities, greater management expertise and lower investment fees than what investors might be able to obtain than their own.
2. **Kind of Entity**: it is very important to look into the kind of entity that investment is being made through. Two important aspects to consider are:
    a. **Limited Liability**: the investee entity should preferably have limited liability so as to protect the fund as well as the investors of the fund whether is it a partnership, a company, or any other entity.
    b. **Tax Exemptions**: For developing countries, the investors and their legal counsel will hugely benefit from the various structural, tax, economic, and governance implications that emerge from this kind of industry. Many countries have tax benefits for organizations involved in charitable causes. Depending on the country and the exemptions available, the most favorable structure for the investee company has to be chosen.
3. **Instruments**: As a first step into deal structuring, the fund manager or investor has to assess what is the most appropriate instrument to through which to invest. These may vary from preferred stock, common stock, warrant, participating loans, and convertible debt and mezzanine finance.[34] The fund may look into the kind of the instruments normally used by impact investors or regular investors in that target investee's domestic market, and then choose the mort preferable and commonly used instrument/asset class in terms of the statutory and regulatory structure surrounding such asset class. The fund should also consider the kind of

[33] Impact Investing in the Context of a Diversified Portfolio by Tim Macready, CIMA and Simba Marekera
[34] https://thegiin.org/structuring-the-deal

role the investor wants to play in the management of the entity - if they want to play an active role, with voting rights and management responsibilities, or if they want to be a passive shareholder in the company. This will also help them in ascertaining the kind of instrument they want to invest through.

SPECIFIC LEGAL PROVISIONS IN DEAL DOCUMENTATIONS

1. **Due Diligence**: The investor and the concerned parties may reach the stage of negotiations of the agreement after doing a thorough due diligence of the company it is partnering with. The inconsistencies and compliance issues found in the investee company's documents ,whether it be any non-compliance with applicable law, any registration requirement, pending tax payments, rectification of the contractual obligations, must be addressed at the due diligence stage. They also must be added as pre-closing obligations in the deal documentation.
2. **Portfolio Selection**: Most impact investments create exposure to a shared set of risks, including illiquidity risk, exit risk, geopolitical risks, and social environmental outcome risk. Like any asset class, to be successful, an impact portfolio must offer sufficient internal diversification so as to minimize idiosyncratic risk.[35] This is particularly important in a portfolio that is less exposed to more traditional risk (market risks) and more exposed to niche risks (geopolitical risk, climate risk, liquidity risk).[36]
3. **Valuation of the Shares**: The funds must have in place effective policies and procedures for valuing investments that they hold. Investors will want to receive copies of any policies referenced in the fund's operating agreement which will typically include the fund's valuation policy. Funds usually adopt U.S. GAAP (Generally Accept Accounting Principles) or IFRS (International Financial Reporting Standards) to determine the fair value of any fund investment or interest in the fund.[37]
4. **Use of Funds**: The investors, the fund, and the investee company must align on how the funds may be used by the investee committee. The purpose of investment and the objective of the

[35] Impact Investing in the Context of a Diversified Portfolio by Tim Macready, CIMA and Simba Marekera
[36] Ibid.
[37] Ibid.

company must be clearly set out in the agreement and to the extent possible in the Articles and the Memorandum of the investee company as well.

5. **Returns**: The preferred return step is also known as the “return of capital” step, whereby the distributions available are applied against capital contribution made with respect to the investment generating the distribution proceeds.
6. **Events of Default**: A common provision seen in many loan and investment agreements is the ability of the investor to terminate the agreement when there is an occurrence of an event of default. The event of default may include provisions such as non-compliance with applicable laws, misappropriation of funds and breach of any material terms of the agreement. This may be crucial to ensure that the entity always in compliance with agreed terms as well as applicable law. This element can be especially important in impact investing relationships.
7. **Governance Term**s: One of the key features of an impact investment agreement is its investment policy that sets out the key terms of governing, including investing restrictions. Some of the key governance issues to consider and incorporate into an investment agreement include: setting out the structure of the management of the company, setting up an advisory committee to monitor investee company, setting up a reporting structure within the company, deciding on the investment period and scope of investment, internal dispute resolution process in case of any conflict, governing law, voting based on the capital investment, anti-bribery and money laundering guidelines as per applicable law.
8. **Representations and Warranties**: Undertaking, representations, and warranties are particularly important in an impact investment agreement as they give the investors protection against the false statements made by the investee company about their legal standing in the country of registration/incorporation. This is information on which the investors have relied on while making a decision to make the investment. These clauses are almost always heavily negotiated.
9. **Liability/Indemnification**: The documents should invariably include provisions that require the investee company indemnify the investors or at the least the investor representative on the management board of the company to the extent it is allowable under applicable law. Appropriate indemnification and exculpation are regarded as essential because the process of disposing of investment involves a certain degree of litigation risk. Indemnification is not often granted for fraud, willful misconduct, or gross negligence.

10. **Exit Rights**: An exit strategy should be developed when an investment is made and then adjusted through the life of the investment. This means selecting financial instruments that facilitate exit opportunities aligned with the expectation of the entrepreneur, which requires ongoing communication. Methods of exiting an investment include a trade sale, sale by IPO, write-off, sale to another investor, sale to a financial institution, or a management buyout.[38]

B. Legal Standards

In measuring the social benefit generated by their investment efforts, investors seek to fulfill two main goals: monitor the impact to improve the program and evaluate the impact to prove the social value. For those two objectives, different measurement methods may be used, each having advantages and drawbacks.

Three methodologies will be highlighted based on a study of Ivy So and Alina Staskevicius: Expected Return, Theory of change and logic model and Mission aligment methods[39]. Moreover, we will discuss the use of standardized metrics to measure the impact.

1. Expected returns

In this category, several similar methodologies can fit: the Social Return on Investment (SROI), the Benefit Cost Ration (BCR), and the Economic Rate of Return (ERR). The first is the most common.

SROI Process: The SROI aims at putting a monetary value on the social impact and comparing it to the initial investment amount [SROI ratio = (Present Value of Impact) / (Value of Inputs)]. The process involves several steps prior to the comparison of the value of the impact and the value of the inputs.[40]

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[38] https://thegiin.org/structuring-the-deal
[39] Measuring the ‘’impact’’ in impact investing, Ivy So and Alina Staskevicius, 2015
[40] GIIRS & SROI Network. “GIIRS and SROI: What is the relationship?” February 2013

- Definition of the scope of the analysis - It must be assessed what is the organization's intended impact and who should benefit from it. Then must be established the relationship between the organization's activity and the actual benefits for each stakeholder (e.g. the organisation aims at fighting homelessness)
- Quantification of the impact - The impact of the activity must now be measured based on an indicator. The impact will then be compared to what would have been the present situation without the organization's activity. (e.g. the number of people that would be homeless but for the organization's activity).
- Monetary value of the outcome - Once the impact is quantified it must be given monetary value which will be compared to the initial input. This may be achieved, for instance, by establishing the price that the government would have paid to achieve the same result (e.g. the price of a public campaign that would have achieved the same result).

Uses and benefits: The SROI can be used in two different ways: either as a forecast instrument, which will indicate the expected social return of an investment, or, as a monitoring instrument, which will indicate the actual social impact of an investment. The former application is the most common as investors generally use SROI because it provides a common language to rank potential investments.

Giving a monetary value to social investments is also beneficial to impact investment as a whole by highlighting the potential benefits to the private sector. Moreover, private investors will usually be familiar with this method, which is an adaptation of the classic Return on Investment formula.

Drawbacks: This comparison may divert impact investment from the most challenging problems. Indeed, on the same issue, an investment in an urban area will have a better SROI than an investment in a rural area because of different pre-existing infrastructure for instance. This does not necessarily mean than one is less worthwhile than the other.

2. Theory of change:

The goal of this methodology is to create a map of the process through which the impact is intended to occur. This is established by showing the links (or causality) between the inputs, activities, outputs, outcomes, and impacts. The ultimate measurement of the intended results falls in the last three categories.

The inputs are the resources invested in the activity at the beginning of the operation (capital and human). Those are used for the development of the activity (eg. the development of a shelter), the actions of the investees which lead to a particular output, the tangible product of the activity (eg. the number of people that use the shelter). The outcome is the changes that result from the activity on the targeted population (eg. an increase employment in the community). The impact is ultimately the ‘’broader change occurring in communities or systems resulting from the activity’’ (eg. a decrease in poverty).

With regards to the fight against modern slavery, it can be said that the effort will involve a multiplicity of tasks (eg. access to education, sheltering people that leave slavery). It will also involve a complex theory of change because multiple factors are at play in the fight against modern slavery. The effect of each operation may not always be clear (eg. of a clear cause-effect operation: bringing drugs to cure an disease outbreak). In the light of both elements (ie. complex operational strategy and complex theory of change) some scholars[41] would classify '‘fight against modern slavery’’ as an ecosystem result. This means that outcomes and impacts are the most appropriate levels to measure for this specific social investment.

Uses and advantages: The process may be used as a tool to select the best investment, to identify at which step of the process there might be issues, or to plan and monitor the organization’s activity.
The measurement is easy to understand and creates a clear roadmap which is particular useful to communicate with investors. It is also flexible and may adapt to different situations.

Drawbacks: The main concern raised having regard to this method concerns the rating of the outcome. This is close to the issue of « How to monetize the social value of the activity when using SROI ? ».

[41] Ebrahim, Alnoor and V. Kasturi Rangan. “The Limits of Nonprofit Impact: A Contingency Framework for Measuring Social Performance.” Working Paper. Harvard Business School. May 2010

It is also argued that the establishment of a linear process over-simplifies social change, leading to a misconception of the usual struggle behind such activities.

3. **<u>Mission alignment methods</u>**

It usually entails two types of measures:

1. ''Social value criteria'' is a way to evaluate an investee's activity overtime. It takes the shape of a survey evaluating the organization's performance on several criteria and often taking into account beneficiary feedback.
2. A scorecards that monitors the Key Performance Indicators (KPIs) of the organization. It usually permits to compare the evolution of several indicators with the baseline, the forecast or the rest of the industry. B Analytics is a platform that creates scorecards. Those include a score that evolves depending on the practices of an organization

Uses and benefits: It has been recognized a high (good) cost/efficiency ratio as the use of survey is quite straightforward and inexpensive. Moreover the use of scorecards as a way to present KPIs is a practice known by the private sector. This will have the result enhancing clarity.

Drawbacks: The use of this method will be meaningful only to the extent that the social value at stake is actually measured by a KPI. Also, KPI may represent imperfectly the impact aimed by the organization.
Furthermore, for one issue, multiple KPIs may be used (see Standardized Metrics). This may create an issue of common language across investments, thus harming the ability to compare the efforts of different investments.

4. **Standardized metrics**:

Most of the methodologies highlighted above provide for ways of measuring the impact but do not specify how to translate the output of the activity into metrics. This is the role of KPIs which are ''measurable value that demonstrates how effectively a company is achieving key business objectives. Organizations use KPIs to evaluate their success at reaching targets'' (Klipfolio definition). In the field of impact investing, those standards have been developed mainly by the Global Impact Investigating Rating System (GIIRS), the Impact Reporting and Investment Standards (IRIS), and B Analytics. The evident benefit of using those metrics is that they provide for a common language for investors and investees.

In the context of child labor, the IRIS provides for three different standards: Supplier Screening Ratio (PI3016), Supplier Screening Policy (OI4739), and Forced Labor Policy: Child Labor (OI4432).

The first standard, Supplier Screening Ratio, is intended to capture the number of active suppliers used by the reporting organization that have gone through a social/environmental screening process. The screening can include negative practices, for instance ‘‘no child labor’’, or positive practices ‘‘excellent labor environment’’. This indicator takes the shape of [(number of suppliers screened)/(number of suppliers)]. On a practical basis, an investor imposing the use of this indicator to its investees will be able to identify the investees that comply the most with child labor rules. It may also be used to monitor the evolution of a company’s practices.

PART III – PROPOSALS AND RECOMMENDATIONS

1. **General Approach**: To improve impact and reflect the importance of social returns in addition to financial returns, language should be included that explicitly defines the intended impact and ties the allocation of funds to the stated aim.[42]

   Language that requires rigorous reporting is also essential to achieving greater accountability. Reliable metrics that tie performance of the investment with the performance of its impact mission allows for maximum transparency and impact for both financial and social returns. Inclusion of general core metrics to track performance is helpful in defining and measuring these impact goals. For example, if the aim is the financial inclusion of women, a possible set of core metrics according to GIIN’s IRIS might be:

[42] http://www.undp.org/content/sdfinance/en/home/solutions/impact-investment.html

- Client Individuals: Female
- Client Individuals: Active and Female, Detail (by Type of Product)
- Active Clients Detail (by Delivery Channel: Digital)
- Non-Financial Support Offered to Female Clients
- Average Balance by Financial Product for Female Clients
- Percentage of Female Clients with Increased Business Income[43]

Additional metrics may be added or modified to reflect the initiative's particular goals, but the inclusion of these metrics that track the social goal's performance in addition to the financial goals is useful in emphasizing the importance of social returns.

2. **Legal Provisions**: JVI should preferably incorporate the legal provisions given in Part II as they are generally found in impact investment agreements that strive to achieve both social and financial goals. They should specifically focus on provisions such as (a) Use of Funds, (b) Exits provisions, (c) Indemnity Clause, and (d) Governance Terms. Some of the language that can be used is as enumerated below:

- Use of Funds Clause: *"The Company may use all Contributions received or held by it under the Plan for the purpose set out in the Articles or Memorandum of the Company."*
- Indemnity Clause: *"To the maximum extent permissible under the Applicable Law, the Company shall indemnify the Investor or Investor Director from and against all and any Losses which may be suffered, incurred, or paid by the Investor Directors as a result of, in connection with, or arising out of any action of such Directors in his official capacity."*
- Governance Terms: *"Subject to applicable law, the Company shall endeavour to comply with all best practices in corporate governance for a company of its size, and shall cause the Board to constitute an audit committee, assets and liabilities management committee, compensation committee, and any other committees deemed advisable by the Investors."*
- Exit Terms: *"The Company and the Promoters shall, on or prior to the expiry of 48 (Forty Eight) months from the Closing Date ("Exit Maturity Period"), either (i) consummate a Qualified IPO of the Company in accordance with Clause 11.2 below, or (ii) provide an exit*

[43] https://navigatingimpact.thegiin.org/strategy/fi/increasing-gender-equality-through-financial-inclusion/

to the Investors and Domestic Investors through a transaction, approved by a Majority Decision, by which all of the Shares of the Company, including the Investors' Shares and Domestic Investors' Shares, or substantially all of the Assets of the Company, are purchased by any Person(s) ("Strategic Sale") (collectively "Liquidity Events"). It is hereby agreed that all expenses in connection with such Liquidity Events shall be borne by the Company.

3. Legal Standards:

a. Pre-Investment: An expected return calculation, using the SROI method, should first be used to establish a forecast of the intended impact. This can be coupled with the use of a logic model which would underline the process the organizations intend to follow to achieve the impact, showing the clear road map from the financial input to the ultimate impact. Notwithstanding the importance of a road map, it should be kept in mind that when using the logic model to assess the impact of an investment in the field of modern slavery, the outcome and impact levels will be the most relevant stages to study.

b. During the investment: A scoreboard should be held to compare the ''scores'' of various local organizations having regard to modern slavery and highlight their evolution. This could include the use of a common indicator, the Supplier Screening ratio for instance. Such a tool will allow the investor to establish the extent of the social impact at an early stage, and monitor its evolution throughout the investment. Each organization could use tools comparable to those provided by B Analytics Improve. Those would permit to highlight the individual steps taken by each organization in order to act against modern slavery. The score of the organization will then reflects its efforts.

c. Choice of Standards: Regarding the scoreboard, the investor and the investees will have to select the KPIs they want to use. As of the choice of the the indicator, it should be common to all investees and relevant to the impact sought. The indicator should be chosen on a respondent-centric perspective. This means the data should be useful to the investors in his relations with his clients.