

Opinion Article

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New Regulation on Thematic Bonds



• LEGAL & TAX •

Article

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1. Background

2016 was a historic year in the fight against climate change. 196 countries including the European Union, which are parties to the United Nations Framework Convention on Climate Change, also known as the UNFCCC, met in Paris to agree on a set of principles about how to curb greenhouse gas emissions and cope with climate change. This milestone was called the Paris Agreement.

The overall goal of the Paris Agreement is to reduce greenhouse gas emissions, ensure that global temperatures do not rise more than 2 °C above pre-industrial levels, and ultimately aim for a scenario where the temperature rise stays below 1.5 °C.

To achieve this goal, taking into account that the countries have different circumstances, resources, and capacities, it was agreed that each one defines its commitment, in terms of objectives, and contribution to the universal agreement. These country commitments are called “Nationally Determined Contributions” or NDCs.

Bolivia is part of the Paris Agreement, ratified by Law No. 835 of September 17, 2016. As such, Bolivia assumes an international commitment to the Peoples of the World to preserve the integrity of Mother Earth.

2. Green Economy

At the end of 2008, the United Nations Environment Programme (UNEP) introduces the initiative called Green Economy, which takes a preponderant impulse from the Paris Agreement. UNEP defines Green Economy as an economy that leads to the improvement of human well-being and social equity, while significantly reducing environmental risks and ecological scarcity, in addition to achieving economic development and efficient resource consumption.

The main objective of the Green Economy is to achieve a social, economic, and environmental balance, so that production processes generate wealth in societies and do not harm the environment. A paradigm shift on the current economic model.

In this context, sustainable finance has played a fundamental role in recent times in promoting initiatives to mitigate the devastating effects of the climate crisis. Among them, the Thematic Bonds, also called Green Bonds, and Social Bonds, and Sustainable Bonds, which constitute a type of responsible financing with society and the environment, stand out.

3. What are Thematic Bonds and what are they for?

Thematic Bonds are stock market certificates of debt issued by public or private entities to finance projects that generate social and environmental benefits. With these financial instruments, the promoters of projects of this type obtain long-term liquidity in exchange for returning the initial amount invested to investors along with a previously fixed interest. The issuers of these bonds are generally supported by an investment bank to reach the stock market and place the bond to attract funds from investors, although they can also be issued directly by the issuers.

These types of bonds have a particularity concerning others. They have a social and sustainable objective and must be used to finance projects that help alleviate the consequences of climate change to preserve the environment or have a social impact

4. International experience in issuing Thematic Bonds (Green, Social, and Sustainable Bonds)

The first issuance of Thematic Bonds took place in 2007 by the European Investment Bank (EIB) and marked one of the great milestones in the commitment to build responsible banking.

In the region, Chile was one of the first countries in Latin America to regulate this sector. Chilean regulations authorize its Public Debt Office as the entity authorized to issue green bonds, and the Ministry of Finance is in charge of its implementation. Payments of capital and interest on issuances made under this regulatory framework are made by the Chilean Treasury and are not conditioned on the selection or performance of eligible projects, which means that the investor does not assume any risk on the investment.

This legal framework has been developed following the standards of the green bond market and is aligned with the Green Bond Principles (2018), as well as under the Nationally Determined Contributions (NDCs) of the Paris Climate Agreement.

In the case of Colombia, the strategy is the use of three main debt financing sources: i) issuance of public debt securities in the domestic capital market through long-term and short-term Treasury Bonds (TES), ii) issuance of public debt securities in the international capital market through the placement of global bonds, and iii) loans with multilateral and bilateral development banks. The financing strategy is based on a wide diversification of sources, borrowers, strategic alliances, and local and foreign investors. Based on the above, Colombia issues sovereign green, social, and sustainable bonds as a public policy tool to give clear signals in the markets regarding Colombia's commitment to promoting sustainable finance mechanisms that allow the development of an economy low in carbon, oriented to the preservation of ecosystems and biodiversity, attracting more and more socially and environmentally responsible investors to the country.

For its part, Brazil implemented an innovative idea for the sustainable production of soybeans and corn. In June 2021, the Responsible Commodities Facility launched low-interest lines of credit on the London Stock Exchange, for Brazilian soybean and corn

farmers who commit to using degraded pastures and avoiding the clearing of native forests and grasslands. The initiative offers an important complement to official credit lines for beneficiaries. Since then, the fund has already attracted significant investments. It is expected to finance the sustainable production of more than 180 million tons of soybeans and corn, worth approximately US\$43 billion over the next decade.

5. New Regulation of Thematic Bonds in Bolivia

Bolivia has taken the initiative to regulate the issuance of Green, Social, and Sustainable Bonds (jointly called “Thematic Bonds”) through the Resolution ASFI/1392 of December 30, 2022, which approves and puts into effect the modifications to the Regulations of the Stock Market Registry and Related Regulations, informed by Circular 749/2022 of December 30, 2022, and issued by the Financial System Supervision Authority (ASFI). By these regulations, Thematic Bonds are fixed-income securities that represent a long-term debt obligation contracted by an Issuing Entity whose resources will be exclusively used to finance or refinance Social, Sustainable, or Green Projects. In this sense, the standard defines these projects according to the following:

- Green Projects: These are activities whose purpose is the environmental benefit, such as renewable energy, energy efficiency, pollution prevention and control, sustainable management of natural resources, and land use.
- Social Projects: These are activities with social purposes, such as basic services infrastructure, access to essential services, affordable housing, job creation, food security, and socioeconomic and empowerment advances.
- Sustainable Projects: These are those that seek to generate positive environmental and social impact.

In accordance with ASFI/1392 Resolution, ASFI will be responsible for assuring investors that their resources are being properly used and by the requirements of this norm. In the regulation, there are incorporated provisions related to:

1. The registration and authorization of the issuance of the Green, Social, and Sustainable Bonds, including guidelines related to the documentation that must be submitted to ASFI, before and after the issuance of the bonds, as well as the loss of its status as such, and the suspension and cancellation of the public offer.
2. The characteristics and requirements that the issuer must meet for the issuance of these Bonds.
3. The general and specific requirements for the authorization and registration of External Review Companies, and the grounds for rejection of registration applications.
4. The provisions relating to the content of the prospectus and the obligations that the issuer of the Thematic Bonds must have.

5. The incorporation of a Regulation for carrying out External Review Work, establishing the responsibilities and guidelines for Entities that carry out External Review work.
6. The introduction of a Sanctions Regime in accordance with Executive Order 26156 of 12 April 2001.

The regulation on Thematic Bonds approved by Resolution ASFI/1392 constitutes an important advance regarding the fulfillment of the commitments assumed by Bolivia in its NDCs in the Paris Agreement and constitutes a fundamental factor to attract new investments in environmentally sustainable and socially responsible projects. In addition, it places us for the first time in the international context as part of the countries that want to give a greater boost to the green economy.

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they work assertively to provide exceptional service, sophisticated advice, and creative, practical solutions.

PPO is the law firm with the largest geographical coverage in Bolivia, with its own offices in five cities: La Paz, Cochabamba, Santa Cruz, Sucre and Cobija.

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