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Global Alliance of Impact Lawyers

GAIL Africa Presents:

ESG Requirements Accompanying
International Investments

The Role of Impact Lawyers

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Key Areas of ESG Diligence & Focus

JESSE ZIGMUND

General Counsel and Director of Compliance,
M-KOPA

We Finance Progress

Our goal is to make financing for everyday essentials accessible to everyone

M-KOPA's target customers are under banked and struggle to save up or access credit. Instead of having to pay in full and upfront for an asset, M-KOPA allows customers to buy products over time by paying an initial deposit followed by daily micro installments payments for usage



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Highlights



3,000,000+

Cumulative customers



\$1,000,000,000

Credit deployed to underbanked customers



20,000+

Active sales agents

1.5x increase YoY



>50 million

Individual payments received in Q3 22

New customers: sales to first-time customers

Active agents: agents who have made at least one sales in the last 30 days

M-KOPA Overview

- Investors include **BII, IFC, FMO, Generation Investment Management, SunFunder, Lion's Head** and other leading Impact Investors.
- Raised one of the largest sustainably linked debt facilities in 2023.

generation__



FMO

Finance for Development

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Key Areas of ESG Diligence and Focus

Health and Safety	<ul style="list-style-type: none">• Policies & Procedures• Risk Assessments & Action Plans• Incident Management• Management Systems & Governance• Third Parties• Training & Awareness• Audit & Review• Stakeholder Engagement and Grievances
Labor	<ul style="list-style-type: none">• Policies & Procedures• Diversity and Gender• Codes of Conduct• Child and Forced Labor• GBV / Safeguarding• Compliance with ILO and IFC Standards• Grievance• Ownership
Environment	<ul style="list-style-type: none">• Air• Water• Wastewater• Solid waste• E-waste

Key Areas of ESG Diligence and Focus

Governance	<ul style="list-style-type: none">• Board Make up and Composition• Diversity• Terms of Reference / Charter• Committees and Delegation• KPIs and Oversight• Reporting Lines and Independence
BI	<ul style="list-style-type: none">• ABC• AML• Sanctions• Terrorist Financing
Third Party Risk	<ul style="list-style-type: none">• Risk Assessment• Supplier Selection and ESG Standards• Contracting• Adherence• Monitoring

ESG Diligence and Compliance Tips

- **Get prepared and Organised**
 - Policies, Procedures, Implementation
 - Reporting
 - Governance
- **Look to Standards**
- **Avoid Check the Box Mentality**
- **Be Open and Transparent**
- **Collaborate on Timelines / Set Realistic Expectations**
- **Understand Risks of Non-Compliance**
- **Dedicated Team and Investment**
- **Understand Alignment of Priorities**

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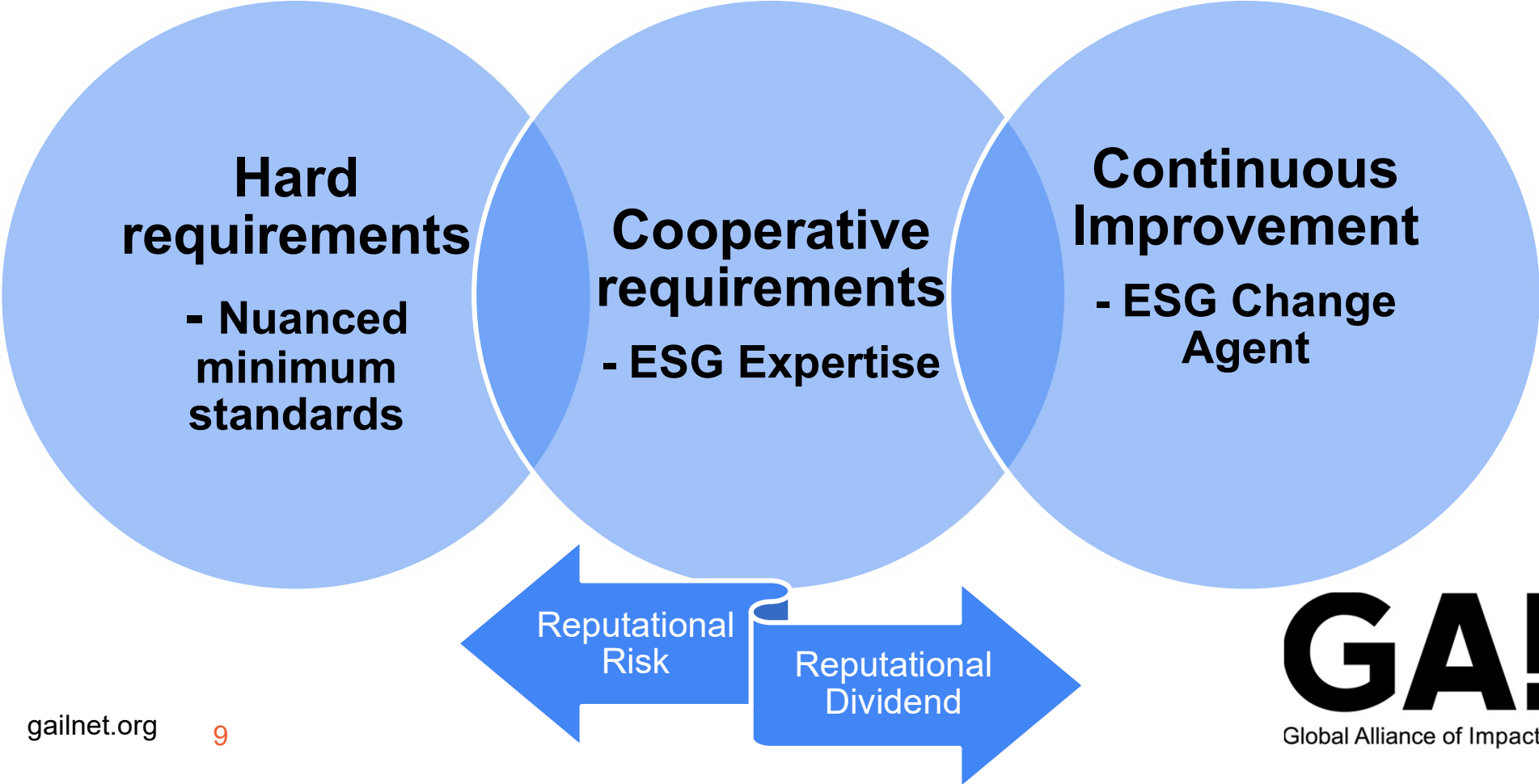
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Contracting for ESG – The FMO Perspective

RUTHERFORD HUBBARD

Manager – Private Equity and Structured Finance, Legal, FMO

Contracting for ESG – the FMO Perspective



Responsible Exits

Debt

- Limited Control – focus on growing ESG capacity

Direct Equity

- Control over purchaser
- Adding value through ESG

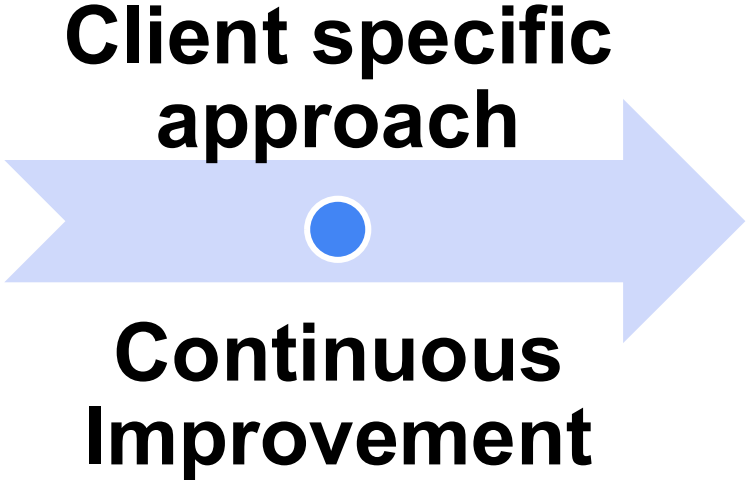
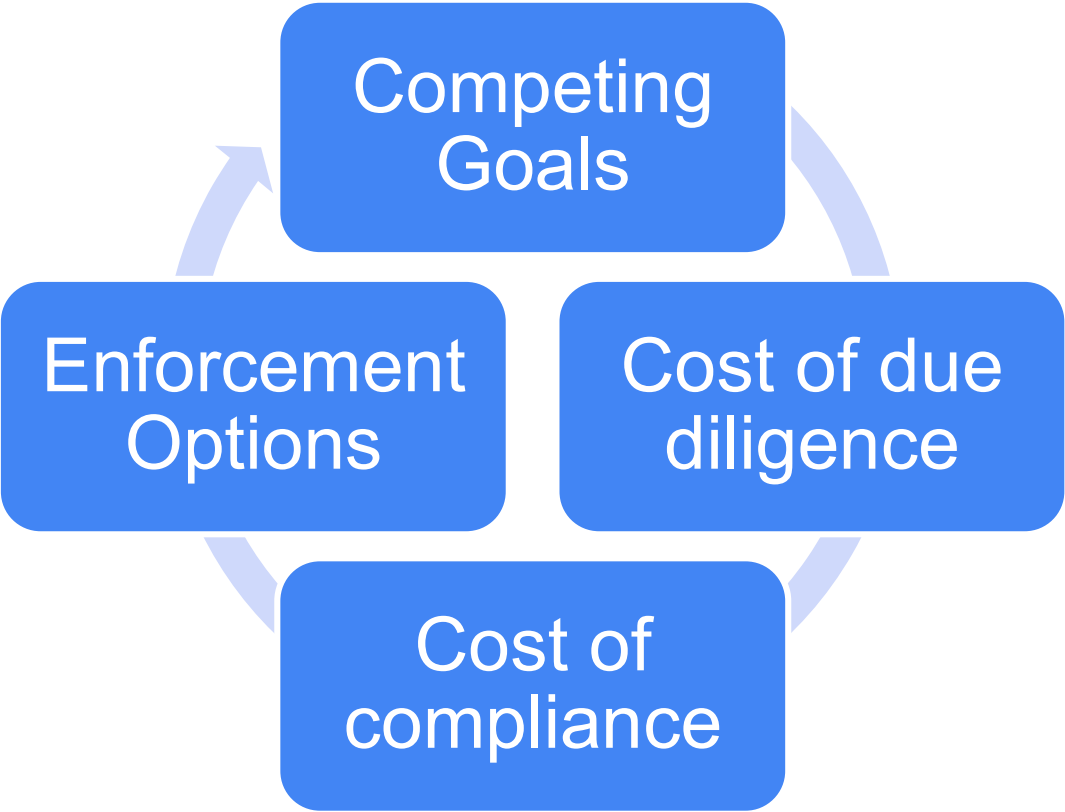
Funds

- Limited role in secondaries market
- Strengthening fund managers

Distressed Assets

- **Higher ESG impact often means higher ESG risk**
- **Responsible exits may not be financially optimal**
- **Mobilizing collective investor responsibility**
- **Impact = Impact**

Solar Supply Chain Dilemma



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Preparing for Investments

Investor Expectations vs. Real-world Challenges

Christina Nduba-Banja

Partner– Bowmans Kenya



CASE STUDY

THE GOOD

XYZ is a company operating in a number of EA countries that offers solar powered solutions to small scale farmers in rural areas. XYZ's rapid growth is attributed to the strong entrepreneurial skills of its female founder and CEO. The company has a diverse board from a gender perspective. XYZ's initial investors included angel investors and concessionary grants, and it was preparing for its first significant fundraising round.

Impact LLP is a fund that was interested in investing in XYZ. It was highly impressed with everything it found in the IM and on paper, XYZ met several criteria they were looking for = desire to expedite the transaction closure.

THE BAD

DD revealed a failure to factor in ESG considerations in its operations:

- XYZ was not compliant with regulations in a number of countries;
- Issues with how they contract employees – non-compliance with contracts for local employees;
- Board hardly met and had no real oversight;
- Key supplier was sited in a potential exploitation scandal and was under investigation for tax non-compliance. (“related” company and contracting arrangement not arms length)

Role of In-House Counsel/ Impact lawyers advising targets

Ensuring legal compliance

- ESG regulations and standard
- Incorporating ESG into contracts and agreements
- Monitoring changing ESG requirements

Risk assessment and management

- Identifying ESG risks and opportunities
- Mitigation strategies
- Impact on reputation and valuation

Advising on ESG Strategy

- ESG framework development
- Aligning with business goals
- Providing guidance on responsible practices



Practical Steps to prepare for investments

- Conduct an ESG audit
 - ✓ Assessing current ESG performance
 - ✓ Identifying strengths and weaknesses
 - ✓ Evaluating regulatory compliance
- Resource allocation- get on it early;
- Implementing internal reporting
 - ✓ track progress
 - ✓ build in reporting into governance structure

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ESG Considerations in Investment Agreements

CHUKS IBECHUKWU

Partner, Olaniwun Ajayi (UK) LLP



We advise impact investors

- Financial Sustainability
- Social and Environmental Impact

Scale of the impact investing market in Africa is evident in ESG-related terms in investment agreements

- Agreements now go beyond compliance with law
- Demonstrate intentionality
 - ESG Management Systems
 - ESG Action Plans
 - Ongoing Monitoring and Reporting
 - Remedies Breach



Approach, Priorities and Drivers in Negotiations Vary

Development Finance Institutions

- Embedded in investment decision-making
- Mandated by internal policies and procedures
- Policy Matters
- Reputational Risk
 - Conditions Precedent
 - Monitoring and reporting
 - Remedies

Other Impact Investors (including investment funds)

- Stated impact objectives
- Requirements of their LPs, shareholders, lenders
- 'Back-to-back' exercise

Investee companies (borrowers, targets)

- Operational considerations
- Does the investor have any flexibility?
 - Reporting format
 - Timing periods for reporting, implementation (e.g., of ESAP deliverables)
 - CP or CS
 - Cure periods