INSIGHT: THE BRAZILIAN SUSTAINABLE DEBT MARKET – A CROSS-BORDER REGULATORY PERSPECTIVE

Sustainable debt issuances by Brazilian companies in both domestic and international markets have steadily increased. Abroad, the combined volume of green, social, and sustainability bonds issued by Brazilian corporates, financial institutions, and the federal government rose from approximately USD 15.5 billion in 2023 to approximately USD 17.6 billion in the first nine months of 2024.[1] Domestically, the aggregate issuance of sustainable debentures has also continued to rise, reaching a record BRL 94.5 billion (approximately USD 19 billion) in green debenture issuances in 2024, exceeding the previous record set in 2021 by more than 30%.[2] Brazil has also recently emerged as a regional leader in the issuance of blue bonds (e.g., use-of-proceeds bonds dedicated to financing the conservation of marine and freshwater ecosystems). Although this category still accounts for a small share of total labeled debt globally, blue bonds gained notable traction in 2024, with Latin America – and Brazil in particular – standing out.[3] These trends reflect rising global demand for sustainable investments and demonstrate that the Brazilian market is evolving to take advantage of these funding opportunities.

Key Concepts

- **Use-of-proceeds bonds:** Net proceeds of bond offerings must be used for green or social projects, including renewable energy, clean transportation, and education. Issuances must comply with local regulation, which may vary in stringency depending on jurisdiction, and are generally aligned with international principles, such as those adopted by the International Capital Markets Association ("ICMA").
- **Sustainability-linked bonds (SLBs):** Allow proceeds to be used for general corporate purposes or any other purpose, but the payment terms of the bonds are directly tied to achieving predefined sustainability performance targets ("SPTs"). According to the ICMA principles, the SPTs are determined by reference to key sustainability performance indicators ("KPIs"), which should be relevant, measurable or quantifiable, externally verifiable, and able to be benchmarked. Common KPIs among Brazilian issuers include carbon emissions reduction, renewable energy adoption, and workforce diversity.

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[1] Reuters, October 2024 – "Foreign debt financing by Brazilian issuers surges in 2024," https://www.reuters.com/world/americas/foreign-debt-financing-by-brazilian-issuers-surges-2024-2024-10-23/?utm_source=chatgpt.com.

[2] *Fast Company Brasil*, May 2024 – "Títulos verdes batem recorde de emissão no Brasil em 2024," https://fastcompanybrasil.com/impacto/titulos-verdes-batem-recorde-de-emissao-no-brasil-em-2024/.

[3] *Climate Bonds Initiative*, *Global State of the Market Report 2024*, May 2025 – https://www.climatebonds.net/files/documents/publications/Climate-Bonds-Initiative_Global-State-of-the-Market-Report_May-2025.pdf; *S&P Global Ratings,* March 2025 – "Panorama para títulos sustentáveis em 2025: América Latina lidera caminho para financiamento da natureza," https://www.spglobal.com/_assets/documents/ratings/pt/pdf/2025/2025-03-10-panorama-para-titulos-sustentaveis-em-2025-america-latina-lidera-caminho-para-financiamento-da-natureza.pdf.

SLBs and use-of-proceeds bonds are further categorized by the type of sustainability goal involved – green, social, sustainability, blue, transition – depending on the nature of the use of funds or KPIs.

Brazil's Path to ESG Integration: Regulatory Insights

Brazil does not have a defined taxonomy or regulatory framework specifically governing ESG debt financing. However, international standards, particularly those related to use of proceeds, eligible activities, and expected environmental and social benefits (such as the ICMA Principles), are commonly followed in connection with debt issuances. As in other jurisdictions, the classification of a financial instrument as green, social, sustainable, or another ESG-labeled category (e.g., "blue") typically requires verification through a second-party opinion.

Despite the absence of a formal or mandatory taxonomy, Brazil has been at the forefront of ESG-related developments, having introduced important regulations over the years, as summarized below:

- **2011 – Law No. 12,431 (Incentivized Debentures):** Introduced incentivized debentures aimed at financing infrastructure projects in strategic sectors of the Brazilian economy, which offer tax exemptions to certain investors. Many of these projects are aligned with environmental or social objectives, including renewable energy infrastructure, basic sanitation, and low-income housing. In these instances, these issuances are usually labeled ESG debentures. However, it is important to note that the tax benefits associated with these instruments are not granted based on the ESG nature of the project itself but, rather, based on the type of instrument and the fulfillment of specific eligibility criteria unrelated to the ESG label.
- **2022 – CVM Regulation (Public Offerings):** With respect to public offerings, Brazilian Securities Commission ("CVM") Resolution No. 160 introduced specific requirements for public offerings of green, social, or sustainable bonds, mandating that prospectuses disclose the assumptions and third-party methodologies supporting the ESG classification. Apart from this, the regulatory treatment of thematic bonds remains largely the same as that of conventional bond offerings. Current regulations provide no additional rules or penalties for noncompliance with ESG commitments. As a result, market practice has focused on contractual or disclosure remedies. These typically include removal of the ESG label or a step-up in interest rates rather than events of default or acceleration, an approach consistent with guidance from ANBIMA (*Associação Brasileira das Entidades dos Mercados Financeiro e de Capitais*), Brazil's financial and capital markets self-regulatory body.
- **2023 – CVM Regulation (Disclosure Obligations):** CVM began addressing ESG matters in 2011 with CVM Instruction No. 480 (currently replaced by CVM Resolution No. 80), which recommended that public companies disclose social and environmental practices in their annual report (*Formulário de Referência*). As of 2023, specific ESG disclosures in the annual report became mandatory for public companies.[4] CVM also introduced the possibility of voluntary disclosure of sustainability reports aligned with the International Sustainability Standards Board (ISSB) standards (IFRS S1 and S2), which become mandatory starting January 1, 2026. These rules only establish periodic disclosure obligations for issuers and do not directly regulate public offerings of ESG-labeled debentures.

[4] Pursuant to CVM Resolution No. 59, which amends CVM Rule No. 480 (currently replaced by CVM Resolution No. 80).

- **2023 – B3 Stock Exchange:** In 2023, B3 introduced mandatory ESG practices through Annex B of its Issuers' Regulation, establishing "comply or explain" obligations on board diversity, executive compensation disclosures, and ESG policy transparency. However, these rules do not impose specific requirements on ESG-labeled debenture offerings.
- **2024 – Law No. 14,801 (Incentivized Bonds and Infrastructure Debentures):** Introduced "infrastructure debentures"[5] and created "incentivized foreign bonds," thereby expanding the legal framework for tax-advantaged instruments used to finance infrastructure, innovation, and technology projects under certain conditions. The result is a richer landscape of financing options, offering complementary mechanisms and additional tools to attract foreign investment.[6] With the enactment of Law 14,801, incentivized and infrastructure debentures linked to projects with significant environmental or social benefits are eligible for a streamlined review process and priority analysis while also being subject to stricter requirements, such as external evaluation and ongoing monitoring. This balance seeks to promote credible sustainable finance, enhance legal certainty, and prevent greenwashing. It should be emphasized once more that tax benefits are determined based on the instrument type and regulatory compliance, not by the project's ESG characteristics.
- **2024 – Decree No 11,964 (Regulation of Incentivized and Infrastructure Debentures):** Enacted to promulgate new rules for issuing incentivized and infrastructure debentures, specifying a strict list of eligible sectors. This list focuses on ESG-related industries and projects, excluding oil and gas, which were covered under previous regulations. This measure reflects the Brazilian government's commitment to sustainable development and aligns with growing global interest from impact investors and the expanding thematic bond markets.
- **2024/2025 – Brazilian Sustainable Taxonomy:** Between December 2024 and March 2025, the Ministry of Finance held a public consultation on the Brazilian Sustainable Taxonomy (*Taxonomia Sustentável Brasileira* or "TSB"). The initiative aims to provide clarity on the classification of sustainable activities and guide investments aligned with national and international sustainable development goals.[7] With TSB's implementation, Brazil will join the ranks of nations that have adopted a framework to guide the green economy, such as the European Union, which uses a similar approach. The final version of the first edition is expected by August 2025.
- **2024 – Eco Invest Platform:** The Brazilian government's program that offers four credit lines to support sustainable investments, including an innovative FX hedging platform that mitigates currency risk, a major barrier for foreign investors in emerging markets. It provides FX swaps, liquidity credit lines, and hedging tools to protect against currency depreciation, improving the bankability of projects in areas like reforestation, resilient infrastructure, low-carbon agriculture,

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[5] These instruments grant the issuer a tax benefit, allowing for a deduction of an additional 30% of the interest paid to bondholders from the taxable base of Corporate Income Tax (IRPJ) and Social Contribution on Net Profits (CSLL). Generally, income received by holders of the new infrastructure debentures is subject to regular income tax rates applicable to fixed income investments, with some exceptions for specific public and private investment funds. This differs from the current incentivized debentures regime (Law No. 12,431/11), wherein the tax benefit is granted to the bondholder rather than to the issuer. It is important to note that infrastructure debentures do not replace incentivized debentures.

[6] For example, infrastructure debentures may include a foreign exchange rate adjustment clause, subject to authorization by the federal Executive Branch, which enhances their appeal to foreign investors.

[7] TSB establishes criteria for classifying economic activities as sustainable, with a focus on climate, environmental, and social objectives. It incorporates such principles as "do no significant harm" (DNSH) and minimum safeguards, aligned with existing national and international standards. The taxonomy applies across multiple sectors, including agribusiness, extractive industries, manufacturing, electricity and gas, water and sanitation, waste management, construction, transport and storage, and social services. Beyond traditional environmental aspects like climate change, TSB places strong emphasis on social dimensions, addressing such issues as indigenous rights, social equity, and sustainable economic development.

green hydrogen, and energy transition. While not specifically aimed at the debt capital markets and without direct tax benefits, Eco Invest's credit and FX risk solutions indirectly support local bond-financed projects, particularly those with foreign investors concerned about currency risk.

Cross-Border ESG Regulation: U.S. and EU Perspectives

United States

In the United States, there is no specific federal regulation exclusively governing sustainable or ESG-labeled bond offerings. However, ESG disclosures have increasingly fallen under the scope of general securities laws:

- **2010 – Guidance Regarding Disclosure Related to Climate Change:**[8] Since the publication of the 2010 Securities and Exchange Commission ("SEC") Guidance Regarding Disclosure Related to Climate Change, the SEC has emphasized that existing disclosure obligations under Regulations S-K and S-X may require issuers to report material ESG-related risks, especially those related to climate, litigation exposure, and transition costs. While this guidance is principles-based, it set forth the foundation for greater scrutiny relating to ESG-related statements in offering documents, including bond prospectuses.
- **Climate Disclosure Rules:** In March 2022, the SEC proposed expansive rules mandating climate-related disclosures. These rules were formally adopted in March 2024 but quickly faced legal challenges. By March 2025, the SEC announced it would not defend the final rules against the ongoing litigation challenge. Despite this, the 2010 Commission Guidance Regarding Disclosure Related to Climate Change remains in effect.
- **SEC Enforcement and ESG Claims:** The SEC has intensified its enforcement activity against greenwashing and misleading ESG claims. In recent years, the SEC brought several cases against companies and investment funds for overstating their ESG credentials or failing to substantiate ESG-related metrics disclosed in offering materials. For issuers of sustainable bonds, this underscores the importance of consistency between ESG claims and underlying corporate practices, as well as the use of third-party verification when labeling an offering as "green," "social," or "sustainable."
- **U.S. National Securities Exchanges:** NYSE, Nasdaq, and other U.S. securities exchanges do not impose specific ESG disclosure requirements. ESG reporting remains voluntary, guided by market standards, such as the ICMA Principles and second-party opinions, rather than listing rules.

European Union ("EU")

The European Union has developed a robust sustainable finance framework that also affects foreign issuers accessing the EU capital markets. Recent regulations – including the Corporate Sustainability Reporting Directive (CSRD), the Sustainable Finance Disclosure Regulation (SFDR), the EU Green Bond Regulation, and the EU Taxonomy – have raised investor expectations for transparency, alignment with EU standards, and third-party verification. By way of example:

- **2014 – Non-Financial Reporting Directive ("NFRD"):** Required large public interest entities (PIEs) in the EU to disclose environmental and social information. This directive laid the foundation for corporate ESG transparency in the EU.

[8] *See* https://www.sec.gov/files/rules/interp/2010/33-9106.pdf.

- **2022 – Corporate Sustainability Reporting Directive ("CSRD"):** Adopted in 2022 to replace the NFRD. It significantly expands the scope of mandatory ESG disclosures and requires the use of European Sustainability Reporting Standards (ESRS). The directive comes into force on a phased basis from 2024 through 2026 although the scope and content of CSRD is currently under review with amendments expected to reduce the number of in scope companies and the obligations on them.
- **2023 – EU Green Bond Regulation (Regulation (EU) 2023/2631):** Applicable since December 2024 – establishes the first voluntary but standardized regime for green bond labeling in the EU. To use the "European Green Bond" (EuGB) designation, issuers must, subject to certain exceptions, allocate 100% of proceeds to environmentally sustainable activities aligned with the EU Taxonomy and comply with detailed disclosure and verification requirements. Although the use of the label is optional, the regulation is setting a market benchmark and increasing expectations for transparency and consistency, even in non-labeled sustainable bond offerings.
- **Ongoing – SFDR, EU Taxonomy Regulation and the Listing Act:** These regulations require financial market participants to disclose the sustainability characteristics of their products and portfolios. Although they apply mainly to financial institutions and asset managers, they exert indirect pressure on corporate issuers to provide robust ESG data, especially those seeking to attract sustainability-focused capital. In addition, the new EU Listing Act is expected to bring in additional mandatory ESG disclosures for debt securities subject to the Prospectus Regulation which are advertised as taking into account ESG factors or pursuing ESG objectives effective in 2026.

This note is part of a series of practical legal insights on the international debt markets for Brazilian companies. Follow our page for future updates.

Resources

- Climate Bonds Initiative Global State of the Market Report, 2024, available at https://www.climatebonds.net/resources/reports/state-market-2024.
- ANBIMA and ICMA official guidelines and reports.
- EU Official Journal, Regulation (EU) 2023/2631.
- ICMA Green Bond Principles (GBP), available at https://www.icmagroup.org/sustainable-finance/the-principles-guidelines-and-handbooks/green-bond-principles-gbp/.
- ICMA Social Bond Principles (SBP), available at https://www.icmagroup.org/sustainable-finance/the-principles-guidelines-and-handbooks/social-bond-principles-sbp/.
- ICMA Sustainability Bond Guidelines (SBG), available at https://www.icmagroup.org/sustainable-finance/the-principles-guidelines-and-handbooks/sustainability-bond-guidelines-sbg/.

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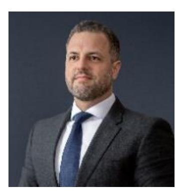

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