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## **THE RECOMMENDATIONS FOR CORPORATIONS IN PROMOTION OF ENVIRONMENTAL PROTECTION TAKING INTO ACCOUNT ENVIRONMENTAL LAW ASPECTS**

**Abstract:** A study was conducted of the formation and use of the principles of environmental and legal regulation of sustainable development in the context of large-scale climate change and the transition from the “brown” economy model to the “green” economy model. The subject of the study is the general and special principles of environmental law and green economics.

Particular attention is paid to recommendations for corporations to promote environmental protection, taking into account aspects of environmental law.

The focus is on green bonds and their legal regulation, as well as ESG principles and standards. It is also considered that the fundamental legal basis for the transition to a “green” economy, and especially for corporations, will be general legal and ESG principles. The “green” agenda is becoming a tool for competition. Corporations are actively promoting the ESG concept, taking into account the Strategy for achieving carbon neutrality in the Republic of Kazakhstan until 2060.

**Keywords:** environmental law, environmental protection, ESG investing, sustainability bonds, green economy

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## **Рекомендации для корпораций по содействию охране окружающей среды с учетом аспектов экологического права**

**Аннотация:** Проведено исследование формирования и использования принципов эколого-правового регулирования устойчивого развития в условиях масштабных климатических изменений и перехода от модели «коричневой» экономики на модель «зеленой» экономики. Предметом исследования являются общие и специальные принципы экологического права и «зеленой» экономики.

Особое внимание уделяется рекомендациям для корпораций по содействию охране окружающей среды с учетом аспектов экологического права.

Фокус направлен на зеленые облигации и их правовому регулированию, а также ESG принципам и стандартам. Также рассмотрено что фундаментальным правовым базисом перехода к «зеленой» экономике, а особенно для корпораций будут служить общеправовые и ESG принципы. «Зеленая» повестка становится инструментом конкурентной борьбы. Корпорации активно продвигают концепцию ESG, с учетом Стратегии достижения углеродной нейтральности до РК до 2060 г.

**Ключевые слова:** экологическое право, охрана окружающей среды, ESG-инвестирование, зеленые облигации, зеленая экономика

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## **Экологиялық құқық аспектілерін ескере отырып, қоршаған ортаны қорғауды ынталандыру бойынша корпорацияларға ұсыныстар**

**Аннотация:** Климаттың ауқымды өзгеруі және «қоңыр» экономика моделінен «жасыл» экономика моделіне көшу жағдайында тұрақты дамуды экологиялық-құқықтық реттеу принциптерін қалыптастыру және пайдалану мәселелері бойынша зерттеу жүргізілді. Зерттеу пәні экологиялық құқық пен жасыл экономиканың жалпы және арнайы принциптері болып табылады.

Қоршаған ортаны қорғау заңнамасының аспектілерін ескере отырып, корпорацияларға қоршаған ортаны

қорғауды ынталандыру бойынша ұсыныстарға ерекше назар аударылады.

Жасыл облигацияларға және олардың құқықтық реттелуіне, сондай-ақ ESG принциптері мен стандарттарына назар аударылады. Сондай-ақ, «жасыл» экономикаға көшудің іргелі құқықтық негізі, әсіресе корпорациялар үшін жалпы құқықтық және ESG принциптері болады деп саналады. «Жасыл» күн тәртібі бәсекелестік құралына айналуға. Корпорациялар Қазақстан Республикасында 2060 жылға дейінгі көміртегі бейтараптығына қол жеткізу стратегиясын ескере отырып, ESG тұжырымдамасын белсенді түрде алға жылжытуда.

**Түйін сөздер:** экологиялық құқық, қоршаған ортаны қорғау, ESG инвестициясы, жасыл облигациялар, жасыл экономика

The recommendations for corporations in promotion of environmental protection taking into account environmental rights aspects

In the earlier chapters the main aims of Kazakhstan NDC and the general behavior of companies towards sustainable development goals were identified. As recommendations for achieving the goal established in the NDC as well as compliance with the UN sustainable development goals, the implementation of various green instruments is advised. The ESG investing, green bonds and social responsible bonds.

### The ESG investing

The key method for corporations not only in Kazakhstan, but also globally for maintaining environmental protection would be the ESG investing, which stands for Environmental, Social and Governance investing. The underlying principle behind the idea of the ESG investing is influencing positive changes into society[1].

In order to evaluate company's ESG objective, the company shall comply with three main criteria, namely:

- Environment - the impact the company has on the environmental protection. This could include the issuance of green bonds, incorporation of sustainability agenda into the corporate governance principles of the company as well as mitigation of carbon emissions rates and green-house gases.

- Social - the social impact within and beyond the company's scope of business. It may involve the equality of the company's executives and staff, supply chain labour standards, workplace health, safety, non-discrimination and diversity matters.

- Governance - the impact of the adopted changes by the management of the company. It consists of overall interaction amongst shareholders and the management, board composition and structure, risk management, bribery and corruption.

In order to successfully implement the ESG investing, it should be properly addressed on

the level of corporate governance and higher management within a company. For instance, the initiatives investors could propose on the corporate governance area could include establishment of a new dedicated ESG team, internal policies on specific sustainability issues, engagement with shareholders along the investment chain, establishment of a governing body to provide executive leadership, etc. However, most investors are torn between responsibility to the planet and society and their responsibility towards clients. To be precise, 75% of the investors said that it is worth companies sacrificing short-term profitability to address ESG issues [2].

While on the other hand only one percent stated that they are not willing to accept a lower rate return in exchange for social and environmental benefit. 25% of the investors remained neutral [3].

Moreover, ESG investing is the most popular sustainable investing strategy, pursuant to the GSIA report, as it increased up to 15% between 2018-2020 and to 55% since 2016. Other sustainable investing strategies involve negative/exclusionary screening which worldwide interest equals to 40%, corporate engagement and shareholder action holds 33%, norms-based screening equals to 25%, sustainability themed investing is 10%, positive/best in-class screening holds 5% and impact/community investing attracted 2.5% investing. Negative/exclusionary screening is the largest sustainable investment strategy in Europe. ESG investing is mostly common in the United States.

The most inconvenient issue in relation to the ESG investing is a disclosure part. It is not clear whether investors in fact distribute the proceeds for environmental or social projects. Clear and meaningful reporting improves confidence in the information presented by an entity. Being able to well articulate company's ESG strategy enhances corporate reputation [3]. T

here are various types of disclosure designed for the most common spheres of ESG investing. As an example, Greenhouse Gas Protocol sets main standards for carbon accounting for companies. Greenhouse Gas Protocol standards and guidance enables companies to measure, manage and report greenhouse gas emissions from their operations and value chains. Greenhouse Gas Protocol distinguishes three scopes of emissions, whereby there are direct emissions from activities of a company, which may constitute from gas boilers, fleet vehicles, etc. Second scope includes indirect emissions from electricity purchased and used by company. Third scope involves all other indirect emissions from activities of a company occurring from sources the company does not own or control. Third scope is usually the greatest source of carbon emissions, which companies mostly do not disclose[4].

The ESG investing as was pointed out earlier is a relatively new instrument for Kazakhstan. Kazakhstan in its NDC only set one goal on an economy-wide target of 15% - 25% reduction in greenhouse gas emissions by 2030 compared to 1990. However, by following the path of the United Kingdom of Great Britain and Northern Ireland's NDC Kazakhstan could also implement into its NDC a plan on devoting more attention to green finance as well as imposing on the level of corporate governance specifically designated body, which will guide and influence on adoption of an ESG investing [5]. The Department for Business, Energy and Industrial Strategy is a responsible governmental body for strategic oversight of the United Kingdom's international climate, energy policy and business associated corporate governance matters. Despite that it is unreasonable to compare a developed country and a developing country in this particular case, but as Kazakhstan set in its NDC and as national agenda to become one of the thirty most developed countries by 2050, it is an excellent example to follow in order to perform the goal.

### Sustainability Bonds

Sustainability Bonds are any sort of bond instruments whose proceeds or comparable amount will be distributed to finance or re-finance a combination of green and social projects. The four core components of both the GBP and the SBP are connected with Sustainability Bonds, with the former being notably important to

underlying Green Projects and the latter to underlying Social Projects. In fact these two investing types are interrelated [6]. Certain Social Projects are known to have environmental co-benefits, as well as certain Green Projects are meant to have social co-benefits. This type of bonds would assist companies, but especially SK Group companies as most of them have already adopted sustainable development goals [7].

A green bond is a type of debt security instrument that is specifically intended to raise money for climate and environmental projects [8]. The main difference between green bond and a regular bond is that the financing will be targeted to environmental projects. However, in some countries as China and India there is a specific regulation, under which a bond could fall under the definition of green.

Moreover, the European Union is also in the process of creating the European Union Green Bond Standards. The main criteria under which green bonds could be a subject to issuance is that green bonds shall meet the Green Bond Principles (GBPs) established in 2014 by the International Capital Markets Association (ICMA). The GBP aims to assist issuers in funding environmental and long-term initiatives that contribute to a net-zero emissions economy and environmental protection. The GBPs constitute from four main principles, namely:

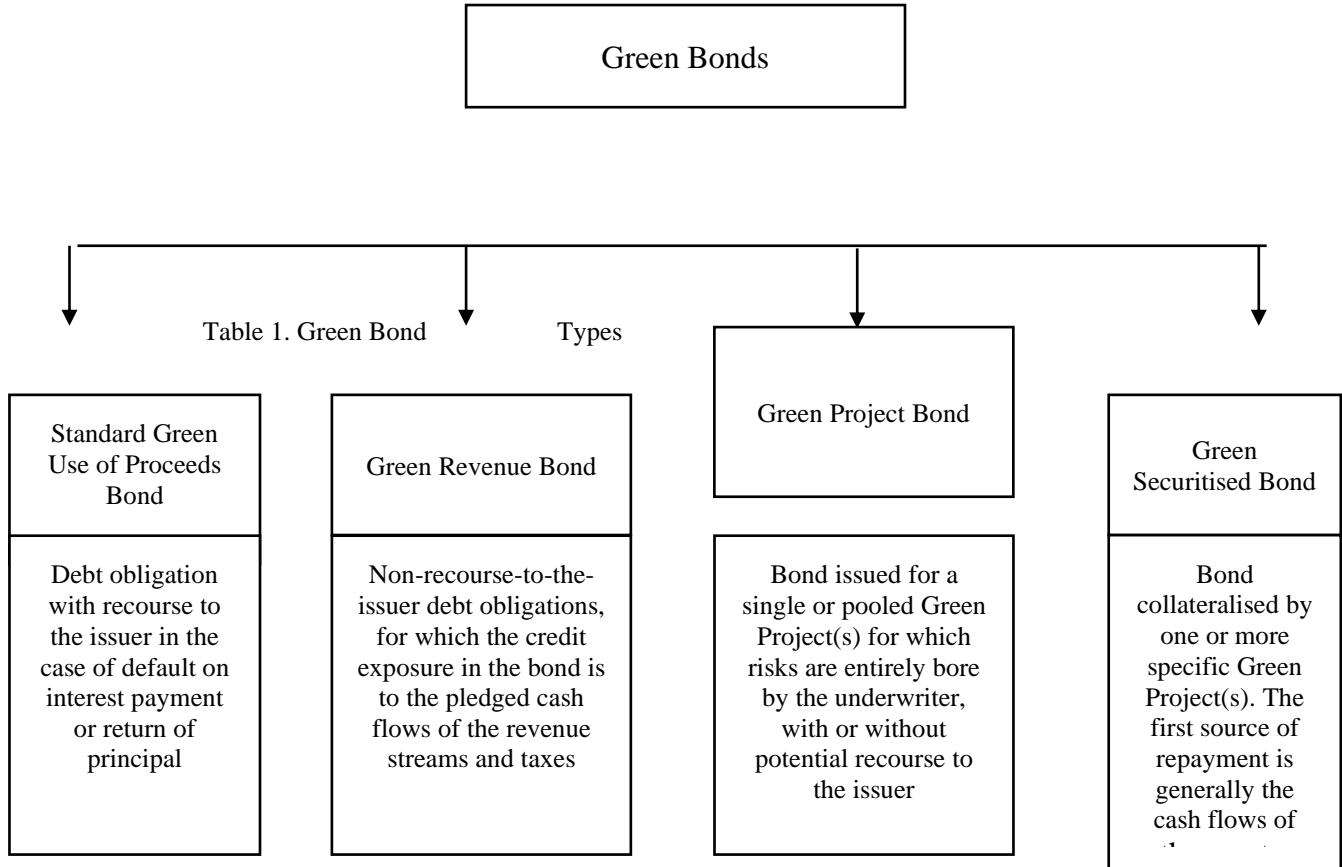
- Use of proceeds;
- Process for Project Evaluation and Selection;
- Management of Proceeds; and
- Reporting.

Under the use of proceeds, the ICMA describes eligible Green Projects, which shall be appropriately described in the legal documentation of the issuing security. The GBPs only recognize several broad categories of eligibility for Green Projects, which contribute to environmental objectives such as, climate change mitigation, climate change adaptation, natural resource conservation, biodiversity conservation, as well as pollution prevention and control [9]. However, the GBPs also contain eligible Green Project categories, which include:

- Renewable energy;
- Sustainable water and wastewater management;
- Pollution prevention and control;

- Environmentally sustainable management of living natural resources and land use;
- Terrestrial and aquatic biodiversity, etc. The second principle advises green bond

issuers that they should clearly communicate to investors, i.e the investor



According to Climate Bonds Initiative’s database, the total number of green bonds issued has increased from one in 2007 to more than 2000 issued green bonds in 2017, a spectacular annual growth of more than 113% within the same period. In 2017, the United States,

China, and France accounted for 56% of global green bond issuance. Moreover, the goal for striving of development of green economy through issuance of green instruments also highlighted in the NDCs of the latter countries [10].

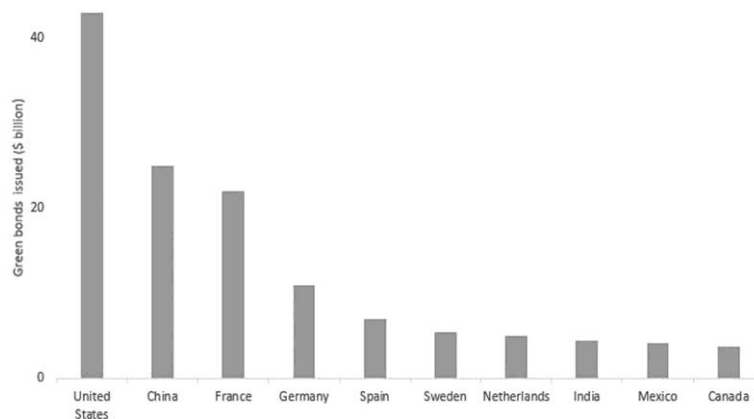


Figure 1. Top 10 issuers of green bonds, January-November 2017

Source: Banga Josué (2019)

Pursuant to the Climate Bonds Initiative’s database, there is no available data on the issuance of green bonds by developing countries. Nonetheless, due to the adoption of Paris agreement in 2015 as well as due to the agreement made at the G20 summit held in Hangzhou in 2016, the political leaders have agreed to maintain the growth of local green bond markets and encourage international collaboration to make green bond investments more accessible across borders [11].

This initiatives will only facilitate strengthening of the green bond market development, especially in advanced and emerging countries. In the case of Kazakhstan the green bonds are relatively new instrument of investing. The first green debt security

instrument was issued in 2020 and pioneer in this sphere was JSC "Entrepreneurship Development Fund "Damu" (Damu Fund). Damu Fund issued the green bonds in cooperation with the United Nations Development Programme (UNDP) on the AIX in the amount of KZT 200 million with a maturity of 36 months [12].

The green bond complied with the AIX’s Green Bond Rules. Despite the fact that in Kazakhstan green bonds are relatively new instrument of investment, the number of companies which prefer to issue green instruments are developing each year. The more detailed description is provided in the following figure:

**SUSTAINABLE FINANCE MARKET IN KAZAKHSTAN**

**STABLE BOND MARKET EXCEEDS \$250 MILLION IN KAZAKHSTAN**

ISSUER / LENDER	CATEGORY	VOLUME	DATE OF ISSUE	MATURITY DATE	COUPON, %
Halyk Bank	Green loan	7 900 000 000 KZT	30.11.21		
JSC "Samruk-Energy"	Green bonds	18 400 000 000 KZT	25.11.21	25.05.28	11,4
Development Bank of Kazakhstan	Green loan	16 950 000 000 KZT	22.11.21	22.11.35	
Eurasian Development Bank	Social bonds	20 000 000 000 KZT	05.11.21	05.11.24	10,6
Eurasian Development Bank	Green bonds	20 000 000 000 KZT	21.09.21	04.10.24	10,5
Eurasian Development Bank	Green loan	3 600 000 000 KZT	20.09.21		
Entrepreneurship Development Fund "Damu"	Social bonds	1 000 000 000 KZT	15.09.21	15.09.26	11,9
Asian Development Bank	Social bonds	8 400 000 000 KZT	15.02.21	17.12.30	10,15
Asian Development Bank	Green bonds	3 875 505 000 KZT	19.11.20	22.10.22	10,12
Asian Development Bank	Green bonds	10 097 018 000 KZT	19.11.20	22.01.23	10,1
Entrepreneurship Development Fund "Damu"	Green bonds	200 000 000 KZT	10.08.20	11.08.23	11,75

Figure 2. Sustainable finance market in Kazakhstan

Source: The AIX website

The companies mostly prefer to issue green bonds as well as green loans. The sustainable finance market in Kazakhstan evolving and the issuance of green instruments would only increase in demand.

In order for company to be eligible to issue its green instruments in the market, the company shall comply with some steps. First of all, the company should be registered in the preferred stock exchange, i.e it could be either Kazakhstan Stock Exchange or Astana

International Stock Exchange. Secondly, the company prior to issuing the instrument shall go through the process of classification. Classification involves marking bonds as social, green or sustainable. Thirdly, the most crucial part in this process is disclosure. The company shall disclose where proceeds would be distributed, which principles and guidances the company applied during the preparation for issuance, i.e GBPs, AIX Green Bond Principles, etc. Finally company shall undermine the

obligation to regularly submit reports regarding the transparency on distribution of proceeds [13]. The situation in the financial market at AIX shows that there is auspicious climate conditions for investors to enter into green finance market. Companies shall strive for evolving the market, which in turn would develop the market conditions. Kazakhstan shall consider developing two of its stock exchanges as KASE and AIX and implement green bond principles for further development.

The challenges for green bond markets in developing countries

The key moment for facing with challenges in issuance of green bonds in developing countries is indeed market issue. Not well-developed market includes the issue of minimum value that a green bond should bear, the currency of issuance and high transaction costs associated with green bond issuance. The United Nations Development Programme points out that minimum value, i.e small projects are more cost-effective than large-scale projects, especially in rural areas, which could be not so attractive for investors. Therefore, underlying projects which are coordinated and implemented by the World Bank and the United Nations Development Programme were launched to promote projects of a minimum value and in result develop green market [14].

One of the possible solutions for development of green bond market in developing countries could be establishment of green investment banks. Pursuant to the OECD, green investment bank is a public or quasi-public entity established to facilitate private investment into domestic low-carbon, climate-resilient infrastructures. A well-designed green banking model could indeed be an effective tool for channeling private investments towards adaptation and mitigation projects. However, given the high costs of opening a new bank, it would be more efficient to make use of existing multilateral and national development banks as well as existing climate funds could be the best solution. In the short to medium term, it is important to not only further research on the technical implementation of the green banking model but also to improve data collection for future empirical-based research on the green bond market in developing countries [15].

The Green Economy

United Nations Environment Program (UNEP) defines green economy as an economy targeted to implement low carbon, resource efficient and socially inclusive principles which aims for sustainable development. In a green economy, public and private investment in economic activities, infrastructure and assets allow for lower carbon emissions and pollution, improved energy and resource efficiency as well as impact on preservation of biodiversity and ecosystem services, which drive employment and income growth [16]. Attracting investments through private financing on domestic level shall be done by taking into account NDC and the goal described in it.

Green investments shall be enabled and supported by targeted public expenditure, policy reforms, tax and regulatory improvements, Green economy does not replace sustainable development, it rather focuses on the economy, investment, capital, infrastructure, jobs and skills as well as positive social and environmental results. The UNEP developed following three main approaches through which green economy would be an efficient tool for investments [17].

- *Policy Mainstreaming.* It presumes developing and adopting on domestic level various policies related to green economy. These would include strategic environmental assessments, social impact assessments, ESG standards, low carbon development strategies as well as environmental and climate evaluations. Policies would be aimed to support development of green economy and shall be implemented through green economy policies on national level;

- *Economic Instruments.* This approach would maintain and promote green financial sector regulations to foster the transformation process towards green economy. In result, new financing mechanisms as well as new business models would be evolved; and

- *Capacity building.* Under capacity building long term institutional knowledge and skills shall be developed. This should be completed through policy dialogues, trainings and application of tools with the purpose of strengthening organizational commitment and capacities. Development of capacity building would facilitate initiatives and

activities to address immediate green economy knowledge gaps, needs and policy priorities [18].

There three main areas for the current work on Green Economy, namely: advocacy of macro-economic approach to sustainable economic growth through regional, sub-regional and national fora, demonstration of green economy approaches with a central focus on access to green finance, technology and investments and support to countries in terms of development and mainstreaming of macro-economic policies to support the transition to a green economy. As an example of the latter, the UNEP is supporting Mongolia in the implementation of the National Green Development Policy, integration of green economy into local level development plans, the UN sustainable development goals indicators and greening of key sectors [19]. Instead of National Green Development Policy, Kazakhstan in turn tries to promote green economy on domestic level by adopting the Concept on Green Economy.

In order to mitigate such emissions, the various mechanisms of environmental protection were analyzed as part of a third research question. The mechanisms include the ESG investing, SDGs and the green bonds. Also, it is crucial to develop the green economy to promote the aforementioned mechanisms. As a result, it was discovered that the ESG investing could be an ultimate tool for prosperity of green finance and green economy in Kazakhstan and key mechanism in achieving Kazakhstan's goal highlighted in NDC. Through application of the ESG investing and its principles the chance for the companies to observe the environmental requirements would be managed via participation of effective

corporate governance mechanism. The issuance of green bonds or SDGs would also facilitate development of green market in the country. Damu fund was a pioneer in issuing of green bonds in the country and there are more options for investors to develop any four types of green bonds. However, it was discovered during the research that the UNEP as well as the AIX highlight that Kazakhstan within its field of development of green economy and green instruments faces the two major problems. First one, is one a legal framework level. There are no normative-legal acts which will regulate the green instruments and disclosure related matters, i.e. no real information available whether proceeds in fact distributed for the benefit of environment. Secondly, the problem with capacity constraints, which include knowledge gap between public and private sectors and limited visibility of green economy. Kazakhstan shall better devote its attention to development the AGFC. With the proper distribution of funds and investments the AGFC would facilitate both economy and green economy of Kazakhstan through attraction of foreign investment. While AGFC will draft disclosure terms and other normative documents, the AIX could deal with the placement of the securities and green instruments on the stock exchange. The chart of sustainable finance market in Kazakhstan demonstrates that companies are ready for implementation of green instruments. The market is only going to develop, if the investors would be ready to contribute into it.

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