

# How, And Why, To Become An Impact Investment Lawyer

By **Chintan Panchal** (November 29, 2022)

Who would have thought before the pandemic that impact investing would now be part of the mainstream conversation?

For the first time, the global market for impact investing has topped the \$1 trillion mark at \$1.16 trillion,[1] and the industry is weathering its first large-scale controversy.

What's more, the war in Ukraine has greatly accelerated our clean energy transition. As Bloomberg recently wrote about the global climate conference COP27, all of a sudden "it's a whole new ballgame." And with institutional players like BlackRock Inc. starting to carry the torch[2] for the impact investing sector, there can be no doubt that we are at a new moment in time.



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But the legal community has failed to evolve with the times. Many firms still relegate impact investing to the pro bono category, suggesting that they have yet to recognize the sophistication of the work taking place in the industry or the opportunity to address the needs of the growing sector. Not evolving as a legal community does clients a disservice.

So it's worth posing the question: What does it mean to be an impact lawyer? Is there even such a thing?

Experience tells us that if you want to add value as an attorney, you have to know the industry, the players and the outcomes you're trying to achieve.

The best venture lawyers, for example, need to know about the life cycle of an entrepreneurial privately held company, the broader startup economy, and how seed- and growth-stage investors think about the drivers of success and failure. Lawyers in this field have to know what they're doing and why they're doing it. The same is true in impact investing.

What people get wrong most often about the practice of law when it comes to impact investing is that they think it's just like doing another venture deal or an M&A transaction. It's not.

As someone who's been involved in impact investing for more than a decade, I can say with certainty that there is indeed something called an impact lawyer, and we need more of them for this sector to continue to scale.

The good news is that this field is coming into its own at a time when practicing at BigLaw firms has become less inspiring for many young lawyers. Impact law can offer lawyers an exciting and fulfilling career in many ways.

Here are some of my thoughts on what it takes to be a great impact lawyer.

## **Being an impact lawyer starts with you.**

You can be a good sports lawyer and not care much about football or baseball. A great real estate lawyer can have little interest in architecture and design. Not so with impact

investing.

Being an impact lawyer means more than just mastering your own corner of the law. It's about having the ability to create impact in the world.

Whether you want to work on investable transactions designed to help combat climate change, drive the clean energy transition, support minority-owned businesses, remediate plastic waste or accelerate green infrastructure, to name just a few, the place you need to start as an impact lawyer is with yourself.

You can only be an impact lawyer if you actually care about using your legal skills in the service of solving some of the big challenges facing people and our planet. And to solve these challenges, you have to become part of the impact investing community to understand truly what your client and its stakeholders seek to accomplish.

Finally, it's a mindset. Practicing law in impact investing comes with a greater sense of responsibility as a field builder helping the industry grow and mature. This can be incredibly rewarding and validating in itself.

This is a relatively young field, having only come on the scene around 2007. The opportunities to innovate, shape industry norms and drive policy are significant, and they carry with them a special sense of responsibility.

### **Being a great impact practitioner calls for an expanded legal toolbox.**

Most corporate finance deals are about driving financial growth. But when it comes to impact investing, there are often other outcomes that you are trying to produce as an impact lawyer. A given transaction might also attempt to address one of the United Nations Sustainable Development Goals and create a positive change in society or the environment.

To do this well, you often need more tools than you'd use as an M&A attorney, a securities lawyer or real estate counsel.

For starters, you can't successfully insert standard corporate finance deals into impact scenarios. In impact investing, understanding and solving for the outcomes a client is trying to achieve is just as important as nailing down the financial objectives.

You have to start by understanding the impact objectives and the impact outcomes that the parties desire. Only then can you bring to bear your knowledge as a sophisticated corporate finance lawyer. This impact-oriented perspective weaves through structuring, diligence, drafting, negotiations, closing and even enforcement.

What's more, it's multidisciplinary, it's cross-jurisdictional and it's often uncharted waters. Some of the tools you need to drive impact outcomes haven't been built yet. So an impact lawyer needs to think creatively and be able to question and reimagine the traditional way of doing things.

For example, there are no established accounting systems for measuring impact, although it is one of the multiple, and often co-equal, bottom lines in these kinds of transactions. People within the industry aren't yet always speaking the same financial language; we barely have measurement tools and impact metrics. Yet all impact transactions need to build these outcomes into the four walls of a contract. There's no template for this. That's the job of an impact attorney.

Blended finance is another area where impact attorneys must be creative and innovative. There are an increasing number of private capital transactions in the impact space turning to so-called blended finance structures that bring together financing from a variety of for-profit and not-for-profit organizations across the capital spectrum.

These actors normally operate in entirely separate spheres but come together in blended finance deals in pursuit of a common goal, using more novel financial structures to solve a particular social or environmental challenge.

These novel financial structures often have to exist in a binary — debt or equity, the for-profit or nonprofit world — though they don't fit neatly into any of these boxes. Building them is complex and again, existing templates often offer barely a starting point.

Navigating these complexities successfully so a diverse group of actors can come together to meaningfully produce positive change in the world is the job of an impact attorney.

Impact investing is also highly cross-border. Globally, capital often flows from the North to where development needs are most acute, many times in the South. An impact lawyer often works across borders, legal and regulatory systems, languages, and cultures. Thus, impact counsel needs the knowledge and experience to navigate the ever-changing landscape of social enterprise law, emerging markets and development financing.

These are just some of the ways an impact lawyer may blaze new trails for clients. To me, this is one of the most exciting aspects of the profession.

### **Why a pro bono approach to impact lawyering doesn't work.**

Being an impact lawyer isn't philanthropy, though philanthropic actors often engage in impact investing. It's sophisticated, complex corporate finance with an additional dimension: the impact element.

The fact is that impact investing is hard to do. It takes bold thinking and the ability to think holistically.

Impact investors are in the market to make real returns, often by capitalizing on traditional blind spots. They need capable, sophisticated attorneys with a strong underlying facility, the tools and structures of traditional corporate and finance law, and a serious legal effort. If you're an impact lawyer, you have to go meta: Impact is bigger than you, bigger than your client and bigger than the deal you're working on.

Of course, as with any growing industry, controversies are bound to arise. Impact is currently in the throes of its first big political dust-up.<sup>[3]</sup> Opponents of climate change have launched a coordinated attack to undermine environmental, social and governance investing as woke and a marketing scam, with some going so far as to call for legislation banning it.

Are some of these criticisms valid? The industry is arguably in need of better measurement standards and transparency. This is too rich a topic to explore fully here, but the point is that controversies, like the current debate about ESG, call for attorneys who are well informed about the universe where they operate and can structure deals that can withstand this sort of scrutiny.

In my opinion, attorneys have a duty to help this industry grow and a shared responsibility

to help achieve the impact a client is seeking. When I see firms engaging in sophisticated impact transactions pro bono, it's often, but not always, staffed by junior attorneys who are learning the ropes, the last item on a long to-do list for the attorneys involved and some form of a marketing or recruitment exercise.

Setting aside these firms' glaring lack of authentic commitment to achieving impact, the above approach risks the success of the transaction through poorly conceived structuring, documents that need additional drafts and delayed work product.

### **Being an impact lawyer lets you have it all.**

The best-kept secret of impact law may be that it lets lawyers have it all: great, cutting-edge work in a meaningful career that pays well.

An impact mindset demands creativity and big-picture thinking on top of mastery of corporate law. To cultivate these, you need to be in a good headspace. For an impact lawyer, work-life balance, fulfillment and teamwork aren't just nice to have: They're absolutely necessary to do this work and do it well.

I would encourage any attorney who's excellent at their craft but looking for something more fulfilling to consider a career in impact law. Join the growing cadre of impact lawyers that are part of this exciting and enlarging specialty.[4]

It's incredibly rewarding, and the field needs you.

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[1] <https://thegiin.org/research/publication/impact-investing-market-size-2022/#:~:text=The%20GIIN%20estimates%20the%20size,the%20USD%201%20trillion%20mark.>

[2] [https://www.bloomberg.com/news/articles/2022-09-07/blackrock-pushes-back-on-gop-s-inaccurate-attacks-against-esg?sref=yd0nN7M9.](https://www.bloomberg.com/news/articles/2022-09-07/blackrock-pushes-back-on-gop-s-inaccurate-attacks-against-esg?sref=yd0nN7M9)

[3] [https://www.wsj.com/podcasts/opinion-potomac-watch/the-growing-suspicion-of-esg-investing/0ca0c7fd-af68-42dc-b2b6-15b07f4265f3.](https://www.wsj.com/podcasts/opinion-potomac-watch/the-growing-suspicion-of-esg-investing/0ca0c7fd-af68-42dc-b2b6-15b07f4265f3)

[4] For more on the growing impact legal community, see: <https://gailnet.org/> and <https://www.law.nyu.edu/centers/grunin-social-entrepreneurship>.