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Academic Paper

New Legal Frameworks for Purpose-driven Organisations:

A Comparative Law Analysis of Dual-purpose Companies

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1. The Corporate Governance Debate

Businesses are the source of wealth, economic prosperity, and innovation, but their activities have the potential to impose losses on a wide cross-section of actors in the economic system and society, as well as on the planetary boundaries (ie, climate change, biosphere integrity, land-system change, freshwater change, biogeochemical flows, ocean acidification, atmospheric aerosol loading, stratospheric ozone depletion, introduction of novel entities) regulating the stability and resilience of the Earth system within which humanity can continue to develop in the future[1].

Businesses can contribute to cause social inequalities and dysfunctions, as well as environmental and nature degradation[2], without these large-scale costs being internalised into their profit function. This is due on one side to the failure of the legal and regulatory system to properly control and account for negative corporate externalities (through contract, tort liability and regulation)[3], and on the other to the distorted use of the 'shareholder value' management paradigm between the 20th and the 21st century[4]. The latter leads to the increasing role of market value and the goal of its maximisation as a success measure[5], short-termism and excessive risk-taking, paving the way to unsustainable corporate practices and ethics-based corporate scandals[6].

It must be stressed that the shareholder primacy model[7], principally developed in the US corporate context (considered as a social norm by some scholars[8], or as an existing legal mandate by

[1] On the planetary boundaries framework developed by scientists within the context of the Stockholm Resilience Centre see Rockström, Steffen, Noone, et al. 2009, 472-475; Steffen, Richardson, Rockström, et al. 2015, 736- 747. For an update on the current rate of transgression of the planetary boundaries see Richardson, Steffen, Lucht, et al. 2023.
[2] Mayer 2023, 719.
[3] See Armour and Gordon 2014, 234-252.
[4] On the issue see Siciński 2020, 71-78.
[5] See Hart and Zingales 2017, 247-274.
[6] See for example the numerous scandals involving the protection of the environment and human rights, especially in the supply chain, such as the Apple–Foxconn scandal (where poor work conditions at Foxconn, a Chinese major manufacturer of Apple products, brought several employees to commit suicide in 2010), or the 2013 Rana Plaza collapse in Bangladesh, where more than a thousand garment workers lost their lives in the collapse of the building housing a number of garment factories employing around 5,000 people (on the issue, Labowitz 2014).
[7] Shareholder primacy is a shareholder-centric model of corporate governance according to which companies should be run for the benefit of shareholders who provide risk capital to companies, and the shareholders' interest must be primarily considered in decision-making. Generally speaking, the focus of shareholder primacy is on maximising the value of shareholders before considering the interests of other stakeholders of the corporation. On the contrary, in the stakeholder model companies should be run for the benefit of all the stakeholders, those who can affect the company and can be affected by the company activity; all the interests of stakeholders need to be considered in the decision-making process. On the birth of the two models of shareholder and stakeholder primacy see the seminal debate between Berle and Dodd: Berle 1931 (in which the author states that managers are only bound to pursue the interests of shareholders); Dodd 1932 (which states the need for the corporation, as an institution, to also pursue public interests); Berle 1932 (in which, responding to Dodd's criticism, the impossibility for managers to be accountable to parties other than shareholders is reaffirmed). Numerous influential scholars and economists have supported the shareholder primacy doctrine over the years, framing it as essential for ensuring corporate accountability and efficiency, among them: Berle and Means 1932; Friedman 1970; Jensen and Meckling 1976, 305-360; Easterbrook and Fischel 1991; Hansmann and Kraakman 2001, 439-468; Bainbridge 2003, 547-606; Bebchuk 2005, 833-914.
[8] See eg, Smith 1988; Stout 2008, 171; Allen, Kraakman, and Subramanian 2009, 298 sqq.; Sneirson 2009, 995-1007; Stout 2012; Millon 2013, 191 sqq.

others[9]), has relatively recently[10] become the predominant accepted model in corporate practice[11] and company law, even though the pursuit of some form of public interest has been one of the core elements of business corporations since their birth as chartered companies in the 16th century[12].

Despite the existence of different 'varieties of capitalism'[13] and the birth of new theories such as stakeholderism[14] or communitarianism[15], UK and other common law systems were permeated by the Anglo-Saxon liberal market approach and the shareholder primacy principle. Continental Europe's legal systems, typically characterised by a more significant interaction of firms with other stakeholders[16] (such as trade unions, financial lenders and other actors), have also been encouraged to move towards the Anglo-American model[17] due to the growing role of capital markets and financialisation[18].

This happened to the extent that a great convergence was observed at the end of the last century among major Western legal tradition countries[19], and more generally at a global level[20]. Together with economic globalisation[21] and the influence of global capital market actors, one of the drivers for this general convergence towards shareholder primacy, which occurred particularly from the end of the nineties onwards, was the activity of international organisations, such as the Organisation for Economic Co-operation and Development (OECD), the World Bank, the International Monetary Fund (IMF) and the United Nations (UN). Their non-binding but highly influential reports, guidelines and recommendations to states served as benchmarks for policymakers, especially in developing countries. A primary role was

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[9] Eg, Bainbridge 1993, 1423 sqq.; Strine 2012, 135 sqq.; Strine 2014a, 453 sqq.; Strine 2014b, 236 ss.; Strine 2015, 761 sqq.; Bainbridge 2015, § 9.2.
[10] Shareholder primacy was popularised by economist Milton Friedman: see Friedman 1962; Friedman 1970.
[11] See eg, Bainbridge 1996, 657, 717; Davis 1988, 7 sqq.; Lund and Pollman 2021, 2563 sqq., describing the United States 'corporate governance machine' as a complex governance system composed of law, markets and culture that orients corporate decision-making towards shareholder primacy.
[12] Williston 1888, 105, 109-112.
[13] The 'Varieties of Capitalism' framework, developed by political economists Peter Hall and David Soskice, refers to the fact that capitalism is not a 'one-size-fits-all' model but varies significantly across countries. Indeed, capitalist economies take distinct forms based on specific institutional arrangements, which influence how companies, workers, governments and other economic actors interact. See Hall and Soskice 2001 eds; Hall and Soskice 2001.
[14] On the evolution of the 'stakeholder primacy' *v.* 'shareholder primacy' debate and of Berle's thoughts see Berle 1954, 169; Berle 1959, ix–xii. On the issue see Sommer 1991, 33 sqq.; Bratton and Wachter 2008, 99 sqq. Among pioneering works on stakeholderism, see Mitroff 1983; Freeman 1983, 88 sqq.; Freeman 1984.
[15] The term 'communitarianism', borrowed from Amitai Etzioni's communitarian thesis which stressed the importance of moral, social and political foundations of society, is here used to indicate those company law scholars who criticise the contractarian theory; see eg, Millon 1993, 1373 sqq.; DeBow and Lee 1993, 393 sqq.
[16] See Hopt 2011, 7, 28-29.
[17] Collison, Cross, Ferguson, Power, and Stevenson 2011, 9-11. On the issue, Lane 2003, 79-100; Goergen, Martynova, and Renneboog 2005, 243-268.
[18] Financialisation can be described as "the increasing importance of financial markets, financial motives, financial institutions, and financial elites in the operation of the economy and its governing institutions, both at the national and international level"; see Epstein 2019. On the issue Arrighi 1994; Aglietta and Reberioux 2005; Sneirson 2019, 83-84.
[19] Hansmann and Kraakman 2001, 439-441 (noting a "large degree of uniformity [on shareholder primacy] across developed market jurisdictions", and that "[t]here is no longer any serious competitor to the view that corporate law should principally strive to increase long-term shareholder value").
[20] On the general global convergence towards shareholder primacy see Martynova and Renneboog 2010; Samanta 2019. See also Shleifer and Vishny 1997; Rubach and Sebora 1998; Braendle and Noll 2006.
[21] On the issue see eg, Luo 2005.

played by the *G20/OECD Principles of Corporate Governance*[22], published for the first time in 1999, which in their original version reflected the shareholder primacy model, with only limited consideration of stakeholders[23]. The Principles have been only recently revised, in 2023, introducing recommendations on sustainability and resilience to help companies manage climate-related and other sustainability risks and opportunities[24].

Looking at the **Far East legal systems**, shareholder primacy has not formally become the prevailing model in the corporate governance structure of major Asian global economies, such as China, Japan and India[25]. As prescribed by domestic legal and regulatory frameworks, companies are characterised by a unique ownership structure with the prevalence of family or state-owned businesses, and have historically had purposes other than maximising shareholder value. They are more long-term and stakeholder oriented, incorporating some aspects typical of the corporate social responsibility domain (eg, public good, environmental protection, social public interests). However, the law in books does not always directly translate into the law in action.

These different approaches did not avoid the occurrence of problems or societal costs (like environmental degradation, precarious labour conditions) and the implementation of stakeholderism in practice has been a challenge, sometimes leading to the application of shareholder value due to political interference, the functioning of enforcement mechanisms, the expansive role of capital markets, and the prevalence of corporate philanthropy rather than a stakeholder approach in decision-making[26].

The **United Arab Emirates** (UAE) seems also in a certain way oriented towards the shareholder primacy model, even though their mixed legal system is strongly influenced by Islamic Sharia principles, prone to socioeconomic justice, consideration of others' needs and interest, and the social function of businesses[27].

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[22] Through the Reports on the Observance of Standards and Codes (ROSC), the World Bank and the IMF conduct national corporate governance system assessments measuring practices and compliance against the *G20/OECD Principles of Corporate Governance*. See Soederberg 2003.
[23] Samanta 2019, 850.
[24] See the 2023 *G20/OECD Principles of Corporate Governance*, available at https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2023_ed750b30-en. The revised *G20/OECD Principles of Corporate Governance* mark a significant and renewed international consensus to strengthen guidance on companies' sustainability and resilience. The *Principles* provide a global benchmark for legal, regulatory and institutional frameworks for corporate governance, and the revision includes new and updated guidance on shareholder rights, the role of institutional investors, corporate disclosure and transparency, the responsibilities of boards, and, for the first time, on sustainability and resilience to help companies manage climate-related and other sustainability risks and opportunities.
[25] According to Rajan and Zingales 1998, 40-48, corporate governance systems in East Asia are "relationship-based" as opposed to the "arms-length market-based" systems in the developed economies.
[26] For a different perspective on the issue see Puchniak 2022, 14 sqq.
[27] See eg, Rice 1999; Abdul Jabbar, Ali, Mohamed, and Jalil 2018.

Corporate governance systems of **African countries** are subject to multiple conflicting pressures. On the one side they are strongly influenced by the shareholder primacy model. Indeed, they have their roots in the countries' colonial past[28], with the prevalence of Anglo-Saxon and European corporate governance models. Moreover, they are subject to the influence exercised by international financial organisations (ie, OECD, IMF, World Bank) and capital market actors, especially Western credit rating agencies, through which nature and ideology are typically shaped alongside the shareholder primacy model.

On the other side, it must be stressed that even though countries formally adopt corporate governance systems inspired by the Anglo-Saxon model to meet international standards, this has not always produced substantial changes in practice[29]. Additionally, local initiatives (at domestic and regional levels), led in particular by the African Development Bank, are trying to develop more tailored corporate governance systems inclined towards the stakeholder approach to reflect the peculiar cultural, socioeconomic and political features of the African business environment[30].

In **Latin American countries**, corporate governance systems are not completely homogeneous, but they have common denominators[31]. Their roots have been influenced by different colonisation and migration processes (from Europe and North America), as well as by the 'Washington Consensus'[32] inspired market-based reforms advised by international financial institutions (like the IMF and World Bank), and by the OECD activities promoting the implementation of the *G20/OECD Principles of Corporate Governance*[33].

The shareholder-oriented corporate governance model prevails in Latin American countries, with a few exceptions[34]. Indeed, corporate directors are required to act in the best interest of the corporation, but this has been generally interpreted as a mandate to act in the best interest of the shareholders as a whole[35]. Even though some stakeholder-oriented provisions are envisaged by the different regulatory frameworks, and nothing prevents shareholders from promoting actions creating positive effects on society, the level of stakeholder orientation

[28] Okike 2004, 705 sqq.
[29] As highlighted by Khanna, Kogan, and Palepu 2006, 69 sqq.
[30] On the issue see Adegbite and Amaeshi 2010; Yakasai 2001, 239-240.
[31] For a general overview of the issue see Callund, Jiménez-Seminario, and Pyper, 2023.
[32] Williamson 2003, 1475-1481.
[33] See for example the OECD–Latin America Roundtable on Corporate Governance launched in 2000 to facilitate public and private sector policy dialogue by providing a forum for the exchange of experiences between senior policymakers, regulators and market participants from all countries in the region, and policy advice and practical input to promote good corporate governance policies and practices consistent with the *G20/OECD Principles of Corporate Governance*.
[34] See for example Brazil, which refers to "requirements of the public at large", the "community", and the "social role of the corporation" as provided in articles 116 and 154 of the Brazilian Companies Act, ie, Law No. 6.404, 15 December 1976.
[35] On this, Gurrea Martínez 2022.

remains law[36], and generally non-shareholder interests can be pursued to the extent that they are aligned with the interest of the corporation and create long-term shareholder value[37].

Although some overall convergence has been achieved since the nineties onwards, the operation of the shareholder primacy norm and its implementation in practice is still distinguished by different degrees of intensity due to countries' specificities and cultural path dependence[38].

In the last decades especially, due to global economic and financial crises, increased inequality, corporate scandals, the rise of awareness on climate change and breach of planetary boundaries[39] and risks[40], a profound reconsideration of the validity of the shareholder primacy model and the current economic and capitalist system has begun. This is apparently slowing down the convergence towards shareholder primacy[41] and pointing to the need for a new 'stakeholder' or 'responsible capitalism', in which businesses produce profit not as an end in itself but as a byproduct of creating value for wider society[42].

The convergence towards shareholder primacy, thus, did not actually materialise in the 'end of the history of corporate law', intended as a high degree of uniformity and general consensus on the dominance of a shareholder-centred ideology[43]. What we are facing instead is a new developing chapter in the history of corporate law, demonstrating that it is still evolving.

[36] On the issue, Dhaliwal, Radhakrishnan, Tsang, and Yang 2012, 723-759; Husted and De Sousa-Filho 2019, 220-221.
[37] OECD (2023), Sustainability Policies and Practices for Corporate Governance in Latin America, Corporate Governance, OECD Publishing, Paris, https://doi.org/10.1787/76df2285-en, at 42.
[38] On the distinction between a *de jure* and *de facto* convergence see Khanna, Kogan, and Palepu 2006, pp. 69-90.
[39] On the concept of planetary boundaries in business and corporate law see, among others, Whiteman, Walker, and Perego 2013, 307 sqq.; Sjåfjell 2020, 6245 sqq.; Veldman and Jansson 2020; Heikkurinen, Clegg, Pinnington, Nicolopoulou, and Alcaraz 2021, 267 sqq.
[40] Eg, see the relevance of environmental risks in the last years' Global Risks Reports of the World Economic Forum, available at https://www.weforum.org/publications/series/global-risks-report/.
[41] See Samanta 2019, 864 sqq.
[42] See the many contributions on the issue published in the ECGI Blog available at https://www.ecgi.global/publications/ecgi-blog/blog-collections/responsible-capitalism, where 'responsible capitalism' is described as an economic system that accommodates private ownership and the pursuit of market opportunities while achieving societal goals. A more detailed definition is offered by the FIRST Responsible Capitalism Programme, according to which responsible capitalism "requires a fundamental integration of the needs of the wider community, care for the communities in which the business operates, environmental initiatives and support for the arts and culture, with the business's goals and processes. Above all, it is about how successful business leaders apply the principles of moral and social responsibility in the running of their business, combining social commitment with business acumen and innovation, and building a coherent philosophy in which the company's success is judged over the long-term by criteria that include sustainability, equity, and moral justice as well as standard financial benchmarks." See the organisation dedicated website available at https://responsible-capitalism.org/what-is-responsible-capitalism/.
[43] Here recalling the work of Hansmann and Kraakman 2001; according to which the 'standard shareholder-oriented model' is characterised by the fact that "ultimate control over the corporation should rest with the shareholder class; the managers should manage the corporation in the interests of its shareholders; other corporate constituencies, such as creditors, employees, suppliers, and customers, should have their interests protected by contractual and regulatory means not through participation in corporate governance; noncontrolling shareholders should receive strong protection from exploitation at the hands of controlling shareholders; and the market value of the publicly traded corporation's shares is the principal measure of its shareholders' interests" (see 440-441).

A new chapter is emerging in which we continue to see a certain level of convergence among countries with different legal traditions. However, this slowly emerging convergence is in attempting to move away from the shareholder primacy ideology as understood until now[44] (even in the enlightened perspective[45]), towards new paradigms (like 'shareholder welfare maximisation'[46]) rooted in the existence in reality of prosocial human behaviour[47] and in the now inescapable concept of 'sustainable development'[48], which is at the heart of the political agenda of international organisations and governments around the world[49].

At this juncture, it should be acknowledged that recent geopolitical tensions, energy security concerns, armed conflicts and growing international economic competition have increasingly challenged the advancement of sustainability-oriented policies and regulatory initiatives. In several jurisdictions, these dynamics have contributed to a partial reconsideration of sustainability obligations, driven by concerns regarding economic competitiveness, strategic autonomy and regulatory burdens for businesses.

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[44] For an analysis of the global emerging sustainability-related legal trends in corporate governance, corporate law and financial regulation see Mocanu and Ventura 2023.

[45] 'Enlightened shareholder value' is a concept developed with the new section 172 of the UK Companies Act 2006 according to which directors must promote the long-term success of the company for the benefit of its members as a whole, and in doing so have regard to a broad range of interests, interests of shareholders and other stakeholder interests, including the promotion of environmental, social and governance (ESG) objectives. According to scholars, the new paradigm, which captured some aspects of corporate governance pluralist approaches and the long-term perspective, does not represent a substantive change, it does not compel directors to act based on stakeholders' interests. In literature see, among others, Keay 2007; Harper Ho 2010; Zhao 2011; Keay 2012; Williams 2012. Critics on its usefulness in creating value for society, eg, Keay 2011; Bebchuk, Kastiel, and Tallarita, 2022.

[46] See Hart and Zingales 2017; Ventura 2018; Hart and Zingales 2022; Ventura 2022a.

[47] Fehr and Fischbacher 2003; Gintis, Bowles, Boyde, and Fehr 2003; Fehr and Schmidt 2006, 615 sqq.

[48] The legal concept of sustainability was born within the context of the international community. Sustainable development was described by the Brundtland Report of 1987 as the "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". The Report also specifies that sustainable development "is not a fixed state of harmony, but rather a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development, and institutional change are made consistent with future as well as present needs". See Brundtland Commission, Report to the World Commission on Environment and Development (WCED), *Our Common Future*, United Nations, 1987, transmitted to the General Assembly as an Annex to document A/42/427, in particular §27 and §30. The concept evolved further through United Nations activities and from an environmental-focused definition, it now refers to the triple bottom line approach, which poses at the centre the integration of the economic, environmental and social dimensions. On the definition of sustainable development in international law see, among others, Viñuales 2021, 285.

[49] See eg, the UN 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs), A/RES/70/1, *Transforming our world: the 2030 Agenda for Sustainable Development*, Resolution adopted by the United Nations General Assembly of 25 September 2015. It represents a fundamental change of paradigm of sustainable development's international policies, which now must be implemented through a strong co-operation between governments, the private sector and civil society. In this context, the essential role of business organisations in creating sustainable and inclusive economic growth and in achieving the SDGs is undisputable, considering the significant impact businesses have on people's lives (as employees, suppliers, consumers, investors) or on society at large. Thus, if sustainable development initially refers to a set of obligations directed at states and mainly focused on environmental protection, it is nowadays grounded on the interconnection between the economic, environmental and social dimensions, and targets not only states but also private subjects. We are witnessing a 'transformation' of the legal concept of sustainability: from a general principle of public international law, providing obligations governing states' conduct, to a principle shaping specific rules of private law and in particular rules aimed at guiding private companies' behaviour.

Yet, these recent developments should not obscure the broader and longer-term transformation of sustainability into a foundational legal principle that increasingly informs the regulation of private economic actors.

The legal concept of sustainability, in fact, has evolved from a general principle of public international law governing states' conduct into a principle shaping specific rules of private law, particularly those aimed at guiding corporate behaviour[50]. As a matter of fact, a multilevel system of sources, comprising both international and domestic soft and hard law, currently impose various sustainability-related obligations upon companies and their directors.

The issue of sustainability has therefore taken centre stage in the debate on corporate governance[51] of business companies, and the discussions on the managerial and legal concept of 'corporate purpose' have intensified among business and legal scholars[52], especially in Western legal tradition countries[53].

Apart from the social and economic reconsideration of the capitalist system, this debate has both influenced and been shaped by a number of legal developments. Among these are, on the one hand, increasing pressures to reinterpret directors' fiduciary duties in light of sustainability considerations and, on the other hand, recent legislative and regulatory developments at the international and national levels aimed at addressing environmental and social challenges and giving legal expression to the concept of corporate purpose[54]. The following paragraphs briefly examine these developments.

1.1 Developments in directors' duties

According to company law provisions, directors' duties are generally owned by the 'company as a whole'[55] but as mentioned before, in practice this has often been interpreted in such a way as to give priority to the interests of shareholders.

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[50] On the issue see Ventura 2025.
[51] According to the Cadbury Report of 1962 'corporate governance' refers to "the system by which companies are directed and controlled", and the *G20/OECD Principles of Corporate Governance* describe corporate governance as "the system by which business corporations are directed and controlled" and "the corporate governance structure specifies the distribution of rights and responsibilities among different participants in the company, such as the board, managers, shareholders, and other stakeholders, and spells out the rules and procedures for making and monitoring decisions on corporate affairs. By doing this, it also provides the structure through which the company objectives and strategy are set, and the means of attaining those objectives and monitoring performance".
[52] On the corporate purpose debate see Mayer 2013; Mayer 2017; Mayer 2018; The British Academy, *The Future of the Corporation: Principles for Purposeful Business* (2019), available at https://www.thebritishacademy.ac.uk/publications/future-of-the-corporation-principles-for-purposeful-business/
; Bebchuk and Tallarita 2020; Mayer 2020; Rock 2020; Fisch and Davidoff Solomon 2020; Edmans 2020; Fleischer 2021; Lund and Pollman 2021; Strine 2021; Mayer 2024. Against the shareholder primacy doctrine see also Lipton 2019; Lipton 2020; Lipton 2022.
[53] See Puchniak 2022,14 sqq.
[54] Several policy proposals have been advanced within the context of company and financial law, see eg, the say-on-purpose vote proposal of Edmans (Edmans 2020, 206 sqq.) or the one of Mayer (Mayer 2018, 200-202) to mandate companies to anchor their corporate purpose in their articles of association, and to provide entrepreneurs with a broader range of corporate forms characterised by different purposes (for example, introducing the benefit corporation legal form).
[55] Mocanu and Ventura 2023, 64-67.

Currently, we see an increasing pressure to reinterpret the content of directors' duties in terms of sustainability and thus requiring directors to take into account the interests of stakeholders and, more generally, of society as a whole[56]. This reinterpretation of their duties has the effect of expanding the board's legal risk beyond ordinary fiduciary responsibility and tort liability, creating ground for actions against directors for the breach of their duty of care, diligence, and oversight for violation of existing sustainability obligations and commitments arising from different sources[57].

The drivers of this trend are the spread of new voluntary or industry standards contemplating environmental, social and governance (ESG) factors[58], the growth of ESG-led shareholder activism[59], the surge of sustainability-related lawsuits[60] (also enabled by the emergence of ESG, climate and human rights

[56] See for example the developments in Canadian corporate law where the Canada Supreme Court, in revisiting the issue of directors' fiduciary duties, seems to shift away from the traditional model of shareholder primacy, embracing a more pluralistic approach to the 'best interests of the corporation'. See *Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68, [2004] 3 SCR 461 (according to which, factors other than maximisation of the value of the corporation may also be relevant to directors in soundly managing with a view to the best interests of the corporation, and that it may be legitimate, given all the circumstances of a given case, for the board of directors to consider, *inter alia*, the interests of shareholders, employees, suppliers, creditors, consumers, governments and the environment); and *BCE Inc. v. 1976 Debentureholders,* 2008 SCC 69, [2008] 3 SCR 560 (in which the court expanded the scope of directors' duty under the Canada Business Corporations Act, §122(1)(a), and discussing the 'fair treatment' component of the fiduciary duty, including a fiduciary duty to ensure that the corporation meets its statutory obligations, and a fiduciary duty to ensure that the corporation is a 'good corporate citizen', allowing corporate directors and officers to consider the interests of stakeholders other than shareholders, also in case of change of control). See eg, Bradley 2010.

[57] On this issue see Peter and Rocher 2023.

[58] Environmental, social and governance (ESG) are the key criteria used to evaluate the sustainability and ethical impact of companies or organisations. ESG criteria are increasingly used by investors, regulators and companies to assess investment decisions, risks and opportunities in alignment with sustainable and responsible business practices. In the last years there was proliferation of ESG standards developed by international private standard setters, such as the Global Reporting Initiative (GRI), the International Integrated Reporting Council (IIRC), the Carbon Disclosure Project (CDP), the Climate Disclosure Standards Board (CDSB), the Sustainability Standards Accounting Board (SASB), or the United Nations with the UN Sustainable Development Goals (SDGs) and the Task Force on Climate-related Financial Disclosures (TCFD).

[59] See Katelouzou 2015, 789 sqq.; Castañón Moats, DeNicola, and Malone 2021; Vanderford 2022; Hart and Zingales 2022; Mocanu and Ventura 2023, 61-62; Aguilera 2024; Licht 2024.

[60] See for example *Milieudefensie et al. v. Royal Dutch Shell plc*, District Court of The Hague, 26 May 2021, Case No. C/09/571932 / HA ZA 19-3, in which the Court ordered Shell to reduce its greenhouse gas (GHG) emissions by 45 per cent by 2030 from 2019 levels on the grounds that Shell's existing carbon mitigation strategy was not concrete, full of conditions and disclaimers, and not aligned with the Paris Agreement. The decision, which recognised that "Shell group is responsible for significant CO2 emissions all over the world", is based on the violation of the unwritten standard of care laid down in Book 6 Section 162 of the Dutch Civil Code ("acting in conflict with what is generally accepted according to unwritten law is unlawful") and of international law prescriptions such as the Paris Agreement, the UN Guiding Principles on Business and Human Rights, and the OECD Guidelines for Multinational Enterprises. The decision has an indirect effect on the interpretation of directors' fiduciary duties, implicitly creating a duty to design business strategies in compliance with applicable sustainability and climate international targets. See Williams and Mulholland 2021. See also a Colombian landmark decision on the environmental responsibility of corporations, *Arrocera la Palma Laserna y otros vs. Cementos Diamante*, Colombia Supreme Court of Justice, Decision SC1256-2022, 27 May 2022. A group of Colombian rice farmers, the plaintiffs, filed claims against a cement producer alleging that particles emitted by the defendants' factory caused a decrease in rice production. Besides the *acción popular* to obtain the installation of an electrostatic filter on the plant's chimneys, they started a claim based on general tort liability asking reparation for damages caused by the particles emitted, which was decided by the Colombian Supreme Court. It awarded over 4 million dollars in damages to the rice farmers, affirming that in evaluating environmental liability the proof standard for causality is not that of 'beyond all possible doubt' but rather probable causation. The Court established that when a company affects the right to a healthy environment and there is evidence of a particular damage suffered by the plaintiff, there is no need to demonstrate negligence or lack of due diligence, because the harm to the collective right to a healthy environment plus probable causation are sufficient award damages. For further examples of case law see Mocanu and Ventura 2023, 52-59.

litigation funds that facilitate access to justice[61]) with mixed results in terms of sustainability outcomes[62], and legislative and regulatory framework developments.

As for the latter, it must be stressed that attempts to reform the legislation governing directors' duties are still limited at the moment, but they are nevertheless significant because they give precisely the idea of a possible evolution of company law towards new paradigms. Among them, it is worth mentioning the 2019 French reform of company law, the UK Better Business Act campaign, and the European Union attempt to harmonise fiduciary duties through the European Commission proposal of 2022 for a Corporate Sustainability Due Diligence Directive (CSDDD).

In 2019, with the so-called Loi PACTE[63], France launched a broad reform of corporate law aimed at, among others, redefining, through the amendment of the Civil and Commercial Codes, the enterprise and its purpose. The reform that was drawn up based on the Notat-Senard Report[64] and previous academic studies[65] addresses both managerial duties and new optional legal forms, which will be the focus of the next paragraphs.

As for directors' duties, the reform amended article 1833 of the Civil Code[66] containing the general provisions shaping the juridical definition of a company and introduced a new paragraph, applicable to all company types provided for by French law, which enshrines the jurisprudential notion of 'company interest'[67] and expands it in view of sustainability

[61] Among the major litigation funds pursuing ESG investments see Therium, Deminor, Woodsford, North Wall Capital, and Litigation Lending Services.

[62] In the UK, in the specific field of directors' duties, see eg, the negative outcomes for sustainability issues of *ClientEarth v. Shell Plc and Ors (Re Prima Facie Case)* [2023] EWHC 1137 (Ch), where the England and Wales High Court dismissed ClientEarth's application for permission to bring a derivative action against Shell's directors in respect of their alleged failures to properly address the risks of climate change; and *McGaughey & Anor v. Universities Superannuation Scheme Ltd & Ors* [2023] EWCA Civ 873, where the England and Wales Court of Appeal rejected an appeal brought by academics requesting permission to bring a derivative claim against the directors of a university pension scheme for its alleged failure to divest from fossil fuels. Furthermore, it must be stressed that the litigation lever can operate in opposing directions, ie, to increase adherence to sustainability practices, or to deter such activities, as is the case of the United States where, because of the politicisation of the environmental issue, the anti-ESG backlash is a growing trend. According to the Pleiades report on *2024 Anti-ESG State Legislation Outlook* (available at https://drive.google.com/file/d/1PnT7GZ3TiAsEtSWV2dbc62XVVI_OwWLV/view), 318 pieces of anti-ESG legislation were introduced in 38 US states between 2021 and 2023, and 37 bills in 17 states became law, most of them watered down from their original scope due to strong opposition from business, labour, financial officers and environmental advocates.

[63] Law No. 2019-486 of May 22, 2019, *Plan d'action pour la croissance et la transformation des entreprises* (*Loi Pacte*), art. 169 and 176.

[64] Senard and Notat 2018.

[65] Segrestin and Hatchuel 2012; Segrestin, Roger, and Vernac 2014; Segrestin, Levillain, Vernac, and Hatchuel 2015; Levillain 2017.

[66] Art. 1833, paragraph 2, Code Civil: "*La société est gérée dans son intérêt social, en prenant en considération les enjeux sociaux et environnementaux de son activité*".

[67] The reference is to the concept of 'enterprise' as opposed to that of 'company', and to the institutional conception of the company, as opposed to the proprietary and contractual one. A consolidated case law in France states the superiority of the 'company interest' (or 'enterprise's interest') as the independent common interest of the company, other than the interest of shareholders, which is not a juxtaposition of stakeholder interests, nor those of its associates. According to this conception of 'company interest', a company must take into consideration the interest of its stakeholders. See on the issue Hiez 2023, 572-

considerations, providing a general obligation for boards to manage the company in the 'company interest' (*intérêt social*), "taking into consideration the social and environmental challenges of its activity"[68]. Even though interpretations vary as to the actual relevance of the legislative amendment[69], it can nevertheless be regarded as a step forward in legally providing a new management paradigm where social and environmental dimensions enter the decision-making process, and directors are at least explicitly required to consider them in their activity[70].

Moreover, amending article 1835 of the Civil Code, which outlines the basic content of the company articles of incorporation, the reform allowed any company to include and specify in its articles of association (so-called 'statuts')[71], on a voluntary basis, a '*raison d'être*'[72] (literally the 'reason for being') – the principles the company is endowed with that it wants to pursue in its business[73] and for the pursuit of which it intends to allocate means (eg, through investment or innovation strategies)[74].

The consequence of the French reform is that directors should consider the social and environmental dimensions as well as the *raison d'être* (if existing) in setting the strategic direction of the company's activities[75].

Regarding remedies, it is worth noting that neither the infringement of art. 1833 of the Civil Code, which extends the 'social interest' (or corporate interest) to social and environmental issues, nor the violation of the directors' duties to consider the *raison d'être* in the decision-making process, constitutes grounds for the nullity of the company, or the invalidation of

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573; Cohen 2019, 50-54. On the concept of 'enterprise' see Levillain, Segrestin, and Hatchuel 2019, 490 sqq.; Segrestin, Hatchuel, and Levillain 2021), 1 sqq.

[68] Art. 1833, paragraph 2, Code Civil: provides that "*La société est gérée dans son intérêt social, en prenant en considération les enjeux sociaux et environnementaux de son activité*". It seems that the law, therefore, recognises the existence of a superior social interest of the company itself, distinct from that of the members, employees, customers or creditors, extended to other considerations than the financial ones. On the issue, see the Report of the working group Association Française Des Entreprises Privées (AFEP) and Conseil National Du Patronat Français (CNPF), *Le conseil d'administration des sociétés cotées*, July 1995, at 8; Heinich 2018, 568; Schmidt 2021, 743.

[69] Some scholars question the concrete consequences of such amendment, considering that the social and environmental dimensions are not part of the 'company interest', but they represent additional considerations. Thus, the directors' decision must follow the company interest while social and environmental consequences need only to be taken into account. For this analysis see Hiez 2023, 578.

[70] Commercial Code, art. L. 225-35 and L. 225-64, as amended by the Loi PACTE.

[71] The amendment of the *statuts* to include or delete a *raison d'être* usually requires a decision by an extraordinary general meeting, with unanimity or a reinforced majority as provided by the law for each company type.

[72] The *raison d'être* shapes the identity and vocation of a company, and it must be consistent with the general principle of creating a positive impact on society and the environment provided by art. 1833, paragraph 2 of the Civil Code. It entails those guiding principles that determine the long-term strategic orientation of a company and integrates the economic dimension of the corporate purpose. See the description provided by the Conseil d'État in its *Avis sur un projet de loi relatif à la croissance et la transformation des entreprises*, No. 394.599 and 395.021, 14 June 2018, p. 39, which describes it as "… *un dessein, une ambition, ou tout autre considération générale tenant à l'affirmation de ses valeurs ou de ses préoccupations de long terme*".

[73] As suggested by scholars, the *raison d'être* must be sufficiently precise to support the decision-making and cannot be merely anecdotal because it can impact the activity and corporate decisions. It must be used to clarify the corporate purpose and its extension. See Desbarats 2021, 742.

[74] Art. 1835 Civil Code: "*Les statuts peuvent préciser une raison d'être, constituée des principes dont la société se dote et pour le respect desquels elle entend affecter des moyens dans la réalisation de son activité*".

[75] Commercial Code, art. L. 225-35 and L. 225-64, as amended by the Loi PACTE.

corporate acts and resolutions adopted in breach thereof[76]. However, if directors fail to take into consideration the *raison d'être* in the management of the company, they disregard the company's articles of incorporation, and this may lead to their dismissal by members and justify an action for liability of directors vis-à-vis the company, initiated by the company itself or its members[77].

In the UK, a discussion on shareholder primacy was handled during the preparatory work of the 2006 Companies Act reform[78], which codified directors' fiduciary duties, previously mainly regulated by case law (according with a shareholder-oriented common law duty). In particular, the new section 172 of the Companies Act 2006 imposes on directors the duty to "promote the success of the company for the benefit of its members as a whole" and introduced the so-called 'enlightened shareholder value' providing that directors have regard to a broad range of interests, balancing the interests of shareholders with other stakeholder interests, including the promotion of environmental, social and governance (ESG) objectives[79].

The provision, which captured some aspects of corporate governance pluralist approaches and the long-term perspective, does not represent a substantive change; it does not compel directors to act based on stakeholders' interests (they are only required to 'have regard' to them). Since its enactment, section 172 has occupied a relevant space in policy and academic discussions in the UK and abroad[80], but the mainstream interpretation of the new provision sees the preservation of shareholder primacy as a key principle of UK company law[81].

For that reason, to better align the interests of shareholders with those of society and the environment, the Better Business Act campaign was launched in 2021 to further amend section 172, providing that the duty of a director is to "advance the purpose of the company" to benefit its members as a whole and wider society and the environment, having regard to the interests of the stakeholders and reducing or eliminating the harms the company creates, or costs it imposes on them[82].

[76] See art. 1844-10 Civil Code, and L.235-1 Commercial Code.
[77] To hold directors liable is necessary to identify a clear breach of the company's *raison d'être* causing harm to the company itself (eg, to its image) that cannot be justified by the pursuit of the company's interest.
[78] Great Britain Company Law Review Steering Group, *Modern Company Law, For A Competitive Economy: Developing the Framework*, Department of Trade and Industry, London, 2000.
[79] UK Companies Act 2006, § 172 – Duty to promote the success of the company: "(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to — (a) the likely consequences of any decision in the long term, (b) the interests of the company's employees, (c) the need to foster the company's business relationships with suppliers, customers and others, (d) the impact of the company's operations on the community and the environment, (e) the desirability of the company maintaining a reputation for high standards of business conduct, and (f) the need to act fairly as between members of the company."
[80] Among others, Harper Ho 2010, 59 sqq.; Ho 2010; Zhao 2011.
[81] Williams 2012, 360.
[82] See Better Business Act Campaign, available at https://betterbusinessact.org, according to which § 172 of the Companies Act 2006, dedicated to "Duty to advance the purpose of the company", shall be amended and replaced in its entirety as follows:

The Better Business Act coalition continues to attract support from businesses and to advocate legislative reform[83].

As for the **European Union**, company law harmonisation directives do not mention the 'success of the company' and have not so far dealt with the definition of 'corporate purpose' and the content of directors' fiduciary duties, a matter largely left to the competence of the Member States.

After the publication of the highly criticised *Study on Directors' Duties and Sustainable Corporate Governance*[84], an attempt was made to take a step in this direction with the European Commission's proposal for a Corporate Sustainability Due Diligence Directive (CSDDD)[85] published in February 2022[86]. Indeed, apart from supply chain due diligence requirements, its initial aim was also to harmonise some aspects of directors' duties in European companies, broadening the interests to be taken into consideration by directors in the decision-making process.

The original text of the proposal prepared by the European Commission provided at art. 26 a specific duty to put in place and oversee the implementation and integration of due diligence into corporate policies and strategy[87]. Also, at art. 25, a broad duty of care mandating that directors, in fulfilling their duty to act in the best interests of the company, should have

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"(1) A director of a company must act in the way the director considers, in good faith, would be most likely to advance the purpose of the company, and in doing so must have regard (amongst other matters) to the following considerations — (a) the likely consequences of any decision in the long term, (b) the interests of the company's employees, (c) the need to foster the company's business relationships with suppliers, customers and others, (d) the impact of the company's operations on the community and the environment, (e) the desirability of the company maintaining a well-deserved reputation for trustworthiness and high standards of business conduct, and (f) the need to act fairly as between members of the company."

[83] For more information see https://bcorporation.uk/news-stories-and-events/news/3-000-businesses-back-the-better-business-act/.

[84] See *Study on Directors' Duties and Sustainable Corporate Governance: Final Report* (2020), 29 July 2020, available at https://op.europa.eu/en/publication-detail/-/publication/e47928a2-d20b-11ea-adf7-01aa75ed71a1/language-en. The study commissioned by the European Commission (the 'EY Study') identifies several policy proposals to foster the development of sustainable corporate governance and sustainable value creation. Among them, the extension of directors' duties to include the interests of stakeholders, the increase in long-term shareholders' voting rights, the need of sustainability planning and disclosure, tying executive compensation to sustainability metrics, considering sustainability in board nominations, requiring mechanisms for engaging with stakeholders in dealing with sustainability risks, and allowing stakeholders to bring suits in courts for alleged violations by directors of the duty of care and loyalty. It has been strongly criticised by famous corporate law scholars for, among others, failing in defining the problem correctly and addressing the relevant academic research. See eg, Roe, Spamann, Fried, and Wang 2020, which criticises the EY Study because, according to the authors, it: (i) fails on defining the problem properly (it focuses only on short-termism as the main corporate governance problem without taking into consideration other aspects such as negative externalities and distributional concerns); (ii) presents inapposite evidence (it focuses on rising gross payouts to shareholders while the more relevant payout measure to assess corporations' ability to fund long-term investment is net payouts); (iii) fails to address the relevant academic research (only picking studies supporting its views on short-termism); and (iv) neglects problems of its policy proposals.

[85] Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, of 23 February 2022, COM(2022) 71, 2022/0051 (COD) [hereinafter 2022 Proposal for a Directive on Corporate Sustainability Due Diligence].

[86] On the European Commission Proposal see Corgatelli and Agostini 2022; Ventura 2023.

[87] 2022 Proposal for a Directive on Corporate Sustainability Due Diligence, art. 26.

considered the consequences of their decisions for sustainability matters (including human rights, climate change and environmental consequences) and across the short, medium and long term. However, the provisions on directors' duties, together with a vague provision on the link between directors' variable remuneration and climate change obligations[88], were removed from the final text approved by the EU institutions in May 2024.

To conclude, the topic of corporate purpose and directors' duties has historically been at the centre of scholarly debate, but in the legal sphere no substantial radical reforms can be observed, with a few exceptions, like the 2019 French reform. However, looking at the issue from a systematic perspective, the erosion of shareholder primacy as well as the recent development of the law in books and the law in action allow us to identify a growing tendency towards the expansion of directors' duty boundaries, which nowadays increasingly entail, or as a minimum legitimise the inclusion of sustainability considerations in decision-making and in setting the company's strategy and policies.

1.2 Legislate and regulatory framework developments

The debate on corporate purpose and sustainable corporate governance has been driven by legislative and regulatory developments of recent years aimed at addressing environmental and social challenges. Among the most significant are *i)* the expansion of sustainability reporting and disclosure requirements; *ii)* the emergence of a new generation of mandatory supply chain due diligence laws; and *iii)* the introduction of hybrid legal entities for purpose-driven organisation, particularly dual-purpose companies.

Taken together, these developments illustrate a broader corporate sustainability regulatory trajectory that has unfolded through different phases. Following a period of significant legislative expansion, between 2019 and 2024, characterised by the adoption of ambitious legislative initiatives, especially in Europe, the regulatory landscape has more recently entered a phase characterised by implementation, consolidation, and partial regulatory retrenchment. Although recent reforms have moderated the pace, scope and intensity of certain sustainability-related obligations, they have not completely reversed the incorporation of sustainability considerations into contemporary corporate regulation and governance.

This new phase has been driven by a combination of geopolitical developments, competitiveness concerns, and efforts to reduce regulatory burdens that have led several jurisdictions to reconsider these initiatives. A prominent example is provided by the European Union, where the Omnibus simplification package has scaled back certain elements of the sustainability framework by narrowing the scope of the

[88] Art. 15, paragraph 3 of the EU Commission 2022 Proposal for a Directive on Corporate Sustainability Due Diligence provided that when setting variable remuneration, "if linked to the contribution of a director to the company's business strategy and long-term interests and sustainability", companies should have duly considered the fulfilment of such climate change obligations. However, the provision was not supported by enforcement measures and was not sufficiently clear about the mandatory nature of the climate target as part of variable remunerations.

Corporate Sustainability Reporting Directive, postponing its application for many companies, and simplifying several obligations under the Corporate Sustainability Due Diligence Directive, while preserving the core architecture of both instruments[89].

A comparable backlash has emerged in the United States, where several States, including Texas, Kentucky, West Virginia, Oklahoma, and Florida, have enacted so-called anti-ESG legislation restricting the consideration of non-pecuniary factors in public investment decisions or limiting public investments and contracts involving financial institutions deemed to boycott the fossil-fuel industry[90]. By penalising financial firms for allocating capital away from fossil fuels, these states have weaponized state contracts and public funds as regulatory sticks, effectively forcing a structural choice between state market access and corporate environmental positioning. This state-level resistance has reverberated at the federal level, where in May 2026 the Securities and Exchange Commission (SEC) proposed a formal withdrawal from the March 2024 Climate Disclosure Rule[91] that was stayed shortly after its adoption and has never entered into force[92]. However, the state-level interventions have increasingly faced severe constitutional scrutiny, serving as a primary battleground for the intersection of state procurement power and protected corporate expression[93].

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[89] On 26 February 2025, the European Commission issued its Omnibus Simplification Package, a legislative proposal that aims at amending and clarifying several cornerstone sustainability regulations with the aim of streamlining compliance and lessening administrative burdens on businesses. The package revises the EU Taxonomy Regulation, the Corporate Sustainability Reporting Directive (CSRD), and the Corporate Sustainability Due Diligence Directive (CSDDD), among other key instruments. For more information see https://ec.europa.eu/commission/presscorner/detail/en/ip_25_614 and https://finance.ec.europa.eu/publications/commission-simplifies-rules-sustainability-and-eu-investments-delivering-over-eu6-billion_en.

[90] See, for example, Texas Senate Bill 13 (2021), which restricts certain public entities from investing in financial companies deemed to boycott energy businesses and limits public contracts with such companies; the relevant provisions are codified in Chapters 809 and 2274 of the Texas Government Code and are now under courts scrutiny. Kentucky Senate Bill 205 (2022), Chapter 120, provides for the creation of a list of financial companies engaged in “energy company boycotts” and permits state entities to divest their holdings in those companies. West Virginia Senate Bill 262 (2022) establishes a list of “restricted financial institutions” considered to boycott energy companies and authorizes the State Treasurer to exclude them from state banking contracts; the legislation is codified in Chapter 12, Article 1C, of the West Virginia Code. Oklahoma House Bill 2034 (2022), the Energy Discrimination Elimination Act, introduces listing, divestment, and contracting restrictions concerning financial companies deemed to boycott the energy sector. Florida House Bill 3 (2023), Chapter 2023-28, requires public investment decisions to be based on “pecuniary factors” and restricts the use of social, political, or ideological considerations in the management of public funds and contracts.

[91] The March 2024 Climate Disclosure Rule (The Enhancement and Standardization of Climate-Related Disclosures for Investors, Securities Act Release No. 33-11275, Exchange Act Release No. 34-99678, 89 Fed. Reg. 21,668 (Mar. 28, 2024) (codified at 17 C.F.R. pts. 210, 229, 230, 232, 239, and 249)) would have required public companies to disclose comprehensive climate risks and greenhouse gas emissions.

[92] The SEC has effectively reverted to a traditional, principles-based disclosure framework under which public companies are shielded from rigid environmental metrics and are only required to report climate-related factors if they meet the strict, traditional threshold of financial materiality for retail investors.

[93] The most significant of these disputes centers on Texas Senate Bill 13. In *American Sustainable Business Council v. Hegar* No. 1:24-CV-01010-ADA (W.D. Tex. Feb. 4, 2026*)*, a federal district court in February 2026 struck down the statute, declaring it unconstitutional and entering an injunction against its enforcement. The court held that SB 13 was facially overbroad under the First Amendment because its prohibition on «taking any action that is intended to penalize» fossil fuel businesses inherently swept up protected expressive activities, such as climate-risk advocacy and association with environmental organizations. Furthermore, the court found the statute impermissibly vague under the Fourteenth Amendment’s Due Process Clause, noting that the text lacked objective metrics for determining what constitutes a "boycott" and invited discriminatory enforcement by the state comptroller. However, this legal landscape remains highly volatile. In May 2026, the U.S. Court of Appeals for the Fifth

It is worth noting that, unlike the European Union, where the recent recalibration concerns an already well-developed sustainability regulatory framework, the United States has experienced a backlash primarily against ESG-related investment practices rather than the rollback of an equally comprehensive body of sustainability legislation.

These developments should therefore be understood as a recalibration of the regulatory approach rather than a reversal of the broader direction of travel. The principal legislative instruments adopted over the past decade remain largely in force, albeit in some cases with a narrower scope of application, delayed implementation, or reduced regulatory intensity.

The following sections briefly examine the first two of these legislative developments, sustainability reporting and disclosure requirements, and mandatory supply chain due diligence laws. The remainder of this Report focuses on the third development, namely the emergence of hybrid legal entities, and in particular dual-purpose companies.

i. Sustainability reporting and disclosure requirements

Sustainability reporting and disclosure requirements in the last years have moved from the domain of corporate voluntary self-regulation to mandatory legal obligations prescribing the use of specific standards. The European Union legislative activity in this field is one of the main examples of this change, especially with the recent Corporate Sustainability Reporting Directive (CSRD)[94].

The main aim of this shift is to promote transparency on companies' impacts and improve comparability between companies' sustainability information. To that end, together with national laws, several harmonisation initiatives of sustainability-related reporting standards have been developed at the international and regional level[95].

Examples are the increasing number of countries mandating the alignment of climate risk disclosures with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD)[96], like the UK[97]; the adoption of the International Sustainability Disclosure Standards (IFRS SDS) elaborated

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Circuit [No. 26-50111 (5th Cir. May 29, 2026)] granted a stay of the district court's injunction pending appeal, temporarily restoring Texas's ability to enforce the blacklist and spend public funds in accordance with the statute while the broader constitutional merits are litigated.

[94] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

[95] On the necessity to define common metrics for sustainable value creation see eg, World Economic Forum, *Measuring Stakeholder Capitalism. Towards Common Metrics and Consistent Reporting of Sustainable Value Creation*, White Paper (September 2020).

[96] In 2015, the Financial Stability Board (FSB) created the TCFD to develop recommendations on the types of information that companies should disclose to support investors, lenders and insurance underwriters in assessing and pricing risks related to climate change. The TCFD's recommendations report was published in 2017. It contains recommended disclosures around four thematic areas (governance, strategy, risk management, and metrics and targets) that should help investors and others understand reporting and assessing climate-related risks and opportunities. In 2023, the TCFD was disbanded and the International Financial Reporting Standards (IFRS) Foundation is now in charge of monitoring the progress of companies' climate-related disclosures. More information available at https://www.fsb-tcfd.org/.

[97] The UK, since 2022, has mandated TCFD-aligned disclosure for large entities in the private sector, like large companies and LLPs, publicly traded companies, banking and insurance companies, companies with an annual turnover of more than GBP 500

by the International Sustainability Standards Board (ISSB) in June 2023[98]; or the birth of the European Union Sustainability Reporting Standards (ESRS) developed by the European Financial Reporting Advisory Group (EFRAG) [99].

At the **European** level, the shift from voluntary to mandatory sustainability reporting and disclosure resulted at first in the 2014 Directive on Non-Financial reporting (NFRD)[100], imposing on certain large public-interest companies[101] reporting requirements on sustainability-related matters on a 'comply or explain' basis. In the following years the Regulation on Sustainability-related disclosure in the financial services sector (SFDR)[102], the Taxonomy Regulation on the establishment of a framework to facilitate sustainable investment decisions and tackle greenwashing[103], and the 2022 Corporate Sustainability Reporting Directive (CSRD)[104] have been enacted.

The latter replaced the 2014 NFRD to ensure the reporting of reliable and comparable sustainability information to investors and other stakeholders. The main objectives of the CSRD were: (i) to extend the scope of reporting requirements of non-financial information to all large

million and more than 500 employees, issuers, asset managers with more than GBP 5 billion of assets under management, and occupational pension schemes with more than GBP 1 billion of assets under management.

[98] To meet the demand of high-quality, transparent, reliable and comparable reporting on environmental, social and governance matters, in November 2021, the International Financial Reporting Standards Foundation announced the creation of the new International Sustainability Standards Board (ISSB), which was established at COP26, to develop a comprehensive global baseline of sustainability disclosures. In June 2023 (effective from January 2024), using the starting basis of Integrated Reporting, CDSB, SASB and TCFD, the ISSB issued its first two IFRS Sustainability Disclosure Standards, IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information, and IFRS S2 Climate-related Disclosures. More information at https://www.ifrs.org/news-and-events/news/2023/06/issb-issues-ifrs-s1-ifrs-s2/.

[99] In July 2023, the EU Commission adopted the European Sustainability Reporting Standards (ESRS) covering the full range of environmental, social and governance issues (including climate change, biodiversity and human rights) to be used by all companies subject to the Corporate Sustainability Reporting Directive (CSRD). The ESRS, which took account of discussions with the International Sustainability Standards Board (ISSB) and the Global Reporting Initiative (GRI) to ensure interoperability, provided information for investors to understand the sustainability impact of companies. For more information about the ESRS see https://finance.ec.europa.eu/news/commission-adopts-european-sustainability-reporting-standards-2023-07-31_en. However, following the EU Omnibus Package (see European Commission, *Omnibus I: Proposal for a Sustainability Simplification Package*, Brussels, 26 February 2025, including COM(2025) 80 final, COM(2025) 81 final and related legislative proposals) the EFRAG's main role was to revise and simplify the ESRS. In December 2025, EFRAG officially delivered its technical advice and draft simplified ESRS to the European Commission, which has to adopt them through a delegated act.

[100] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

[101] Directive 2014/95/EU was applicable to large EU public-interest entities, and to public-interest entities which are parent companies of a large group that have more than 500 employees and, alternatively, a total balance sheet exceeding EUR 20 million or a net turnover exceeding EUR 40 million.

[102] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector.

[103] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.

[104] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

undertakings (whether listed or not)[105] and all undertakings with securities listed on EU regulated markets (except listed micro-enterprises)[106]; (ii) to require an assurance of the sustainability information reported through a limited audit (related to compliance with the Directive requirements and the applicable reporting standards) carried out by statutory auditors or audit firms, or by Member State authorised independent assurance service providers; and (iii) to assure the comparability of non-financial information, ending flexibility[107] in reporting methods and introducing detailed and standardised mandatory reporting standards based on the 'double materiality' principle[108], ie, the EU Sustainability Reporting Standards (ESRS) drafted by the European Financial Reporting Advisory Group (EFRAG).

The EU's 2025 'Omnibus Package'[109] significantly reshapes the CSRD by reducing its scope (only on very large corporations)[110], delaying timelines of application by two years, and simplifying reporting obligations (eg, through the simplification of the ESRS, the elimination of sector-specific standards, lighter value-chain reporting requirements for small and medium-sized enterprises (SMEs) and smaller suppliers, providing for less stringent assurance requirements). The aim of the reform is to cut regulatory burden and improve EU competitiveness while keeping core sustainability objectives intact.

[105] The reference was made to undertakings meeting at least two out of the three following criteria: (i) a net turnover of more than EUR 40 million; (ii) balance sheet assets greater than EUR 20 million; and (iii) more than 250 employees. Insurance undertakings and credit institutions will be required to comply regardless of their legal form, provided they meet the relevant size criteria. Non-European companies with substantial activity in the EU (ie, a net turnover over EUR 150 million in the EU) would also have to report according to the Directive.

[106] Micro-enterprises are defined by art. 3 of the Accounting Directive (2013/34/EU) as undertakings that do not exceed the limits of at least two of the three following criteria: (a) balance sheet total: EUR 350,000; (b) net turnover: EUR 700,000; (c) average number of employees during the financial year: 10. Nonetheless, listed micro companies and non-listed small-medium enterprises (SMEs) can apply the provisions on a voluntary basis.

[107] The 2014 Non-Financial Reporting Directive allowed significant flexibility with respect to the reporting method to be used. Undertakings were allowed to use international, European or national frameworks to produce their non-financial statements. The Directive Recital 9 referred, eg, to national frameworks, Union-based frameworks such as the Eco-Management and Audit Scheme (EMAS), or international frameworks such as the United Nations (UN) Global Compact, the Guiding Principles on Business and Human Rights implementing the UN 'Protect, Respect and Remedy' Framework, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the International Organisation for Standardisation's ISO 26000, the International Labour Organisation's Tripartite Declaration of principles concerning multinational enterprises and social policy, and the Global Reporting Initiative. Knowing the problem, and trying to minimise this flexibility, the European Commission published voluntary Guidelines to help companies disclose environmental and social information in 2017 and Guidelines on reporting climate-related information in 2019.

[108] Ie, covering both the outside-in and the inside-out perspectives, ie, the impacts of external factors on a company and the impacts of a company on society and the environment.

[109] See European Commission, *Omnibus I – Sustainability Simplification Package*, Brussels, 26 February 2025, and in particular European Commission, *Proposal for a Directive amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements*, COM(2025) 80 final, Brussels, 26 February 2025; and European Commission, *Proposal for a Directive amending Directive 2013/34/EU, Directive 2006/43/EC, Directive (EU) 2022/2464 and Regulation (EU) 2020/852 as regards certain corporate sustainability reporting and due diligence requirements*, COM(2025) 81 final, Brussels, 26 February 2025.

[110] Under the Omnibus reform, the new threshold for mandatory CSRD application is: more than 1,000 employees, and more than EUR 450 million net annual turnover.

Although the CSRD and other mandatory sustainability disclosure requirements provided in other jurisdictions are expected to improve sustainability-related disclosure significantly, they are usually not underpinned by any substantial obligation to consider sustainability issues in the decision-making process. Besides transparency improvement, their goal is to push companies to do it, but from the *ex post* perspective of disclosure requirements. They usually only indirectly regulate companies' behaviour. Given that limit, other initiatives in the field of company law are needed to influence and entirely legitimate directors' sustainability-oriented approach in decision-making. An example of these complementary initiatives is represented by supply chain due diligence statutes.

ii. Supply chain due diligence laws

In recent years, a similar shift from voluntary initiatives to mandatory requirements took place in the context of supply chain due diligence[111]. After a first generation of issues with specific statutes protecting specific industry sectors or areas of human rights through disclosure requirements, a new generation of more comprehensive statutes have been enacted providing general protection against violations of human rights and environmental damages through disclosure and substantive oversight obligations, characterised by extraterritorial application and thus a potential global impact.

Among the various domestic sector-specific laws addressing supply chain due diligence, it is worth mentioning eg, statutes regulating child labour, such as the 2019 Dutch Child Labour Due Diligence Law[112], or statutes requiring companies to make disclosures regarding their general efforts to eradicate slavery and human trafficking from their supply chain[113], such as the 2010 California Transparency in Supply Chains Act[114], the 2015 UK Modern Slavery Act[115], or the Australia 2018 Commonwealth Modern Slavery Act[116]. Similar modern slavery statutes are under consideration in other jurisdictions[117].

The first state to enact a statute in the field of 'modern slavery' was **California**, with the 2010 Transparency in Supply Chains Act[118], which requires large retailers and manufacturers (ie, companies with annual worldwide gross receipts of more than USD 100 million) doing business in

[111] See McGaughey, Voss, Cullen and Davis 2022; Palombo 2019.
[112] Netherlands Kamerstukken I, 2016/17, 34 506, A. According to the Dutch Child Labour Due Diligence Law, all companies (whether domiciled in the Netherlands or not) operating in the country are required to issue a statement declaring that they have exercised due diligence to prevent their goods and services being made using child labour.
[113] There is no universally agreed definition of modern slavery; it is an umbrella term which refers to several activities in which one person obtains or holds another person in compelled service and labour. It includes serious violation of an individual's dignity and human rights, such as human trafficking, slavery, servitude, forced labour, debt bondage and forced marriage.
[114] Cal. Civ. Code, § 1714.43 (West).
[115] Modern Slavery Act 2015 (2015 c.30).
[116] Modern Slavery Act 2018, No. 153, 2018.
[117] Eg, New Zealand is considering the introduction of a specific legislation requiring businesses to report publicly on transparency in supply chains, see Modern Slavery Bill 2026 (NZ), Member's Bill 242–1, introduced in the House of Representatives on 9 February 2026; and Ministry of Business, Innovation & Employment, *Combatting Modern Forms Of Slavery – Draft Plan of Action against Forced Labour, People Trafficking and Slavery 2020-25*, September 2020, at 11 and 13,; Hong Kong has no standalone Modern Slavery Act currently in force but has been trying to implement one since 2017 with the Draft Modern Slavery Bill, finalised in March 2019 as the Crimes (Amendment) (Modern Slavery) Bill 2019, not yet adopted.
[118] See among others, Prokopets 2014; Greer and Purvis 2016; Koekkoek, Marx, and Wouters 2017; Birkey, Guidry, Islam, and Patten 2018.

California to disclose on their websites their efforts to eradicate slavery and human trafficking from their direct supply chain. Such disclosure covers five specific areas such as verification[119], audits[120], certification[121], internal accountability[122] and training[123]. The Act requires businesses to make the mandatory disclosures even if they do little or nothing to safeguard their supply chains. The Attorney General has the exclusive authority to enforce the Act and may file a civil action for injunctive relief.

The UK Modern Slavery Act of 2015[124] is predominantly a criminal law statute that establishes an independent Anti-Slavery Commissioner and contains provisions to prevent modern slavery and protect modern slavery victims. In particular, corporate governance and supply chain disclosure requirements are entirely encapsulated within Section 54, Part 6), (Transparency in Supply Chains) of the Act. It requires certain commercial organisations (with an annual turnover above the threshold of GBP 36 million and a demonstrable business presence in the UK) to prepare and publish an annual statement setting out the steps they take to prevent modern slavery in their business and their supply chains[125].

Information that should be included in such a statement is indicated by Section 54(5) of the Act, among which: the organisation's structure, its business and its supply chains; its policies and due diligence processes in relation to slavery and human trafficking; the steps taken to assess and manage the risk of slavery and human trafficking taking place in its business and supply chains, as well as their effectiveness; and the specific training on the matter available to its staff.

Like the California statute, the UK Act requires organisations to produce the statement even if they have not adopted any procedure to oversee their supply chain, without this leading

[119] At a minimum, disclose to what extent, if any, the retail seller or manufacturer engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party; see California Department of Justice, *The California Transparency in Supply Chains Act. A Resource Guide* (2015), at 4..

[120] At a minimum, disclose to what extent, if any, the retail seller or manufacturer conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit; see California Department of Justice, *The California Transparency in Supply Chains Act*. *A Resource Guide* (2015),at 4.

[121] At a minimum, disclose to what extent, if any, the retail seller or manufacturer requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business; see California Department of Justice, *The California Transparency in Supply Chains Act*. *A Resource Guide* (2015), at 4.

[122] At a minimum, disclose to what extent, if any, the retail seller or manufacturer maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking; see California Department of Justice, *The California Transparency in Supply Chains Act. A Resource Guide* (2015),, at 4.

[123] At a minimum, disclose to what extent, if any, the retail seller or manufacturer provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products; see California Department of Justice, *The California Transparency in Supply Chains Act*. *A Resource Guide* (2015), at 4.

[124] See Jason 2016; Rae, Kirkpatrick and Low 2017; Mantouvalou 2018; Voss, Davis, Sumner, Waite, Ras, Singhal, and Jog 2019; Islam and Van Staden 2022.

[125] Organisations with turnovers of less than GBP 36 million are encouraged to produce such a statement voluntarily.

to the application of any sanction. In case of non-compliance with the disclosure requirement, the Secretary of State has the authority to bring civil proceedings in the High Court for an injunction (or, in Scotland, for specific performance of a statutory duty). However, the greatest deterrent is the reputational risk arising from non-compliance with the Act.

In **Australia** the 2018 Modern Slavery Act of the Commonwealth [126] requires certain entities (those with annual consolidated revenue of AUD 100 million or more per financial year) carrying out at least part of their business in Australia to produce yearly a modern slavery statement to demonstrate the effort taken to reduce or eradicate modern slavery within their operations and supply chains. If an entity fails to prepare the modern slavery statement, the relevant minister has the power to issue a written request, but failure to respond to the request does not attract a penalty; the only risks arising from non-compliance are reputational risks.

With regard to statutes aimed at protecting human rights and the environment from a general and comprehensive perspective, an example is offered by the 2017 French Duty of Vigilance Law[127] and the 2021 German Act on Corporate Due Diligence Obligations in Supply Chains[128], but the latter has a more limited scope insofar as it does not establish a specific cause of action for civil liability arising from its violation. Indeed, Section 3(3) of the Act expressly states that violation of the Act does not itself create a new basis for civil liability.

The **French** Duty of Vigilance Law has been the first law providing a general mandatory due diligence requirement for human rights and environmental impacts[129]. It imposes a duty of vigilance on certain large French companies (employing, by the end of two consecutive financial years, at least 5,000 employees in France, or 10,000 employees worldwide, through their direct or indirect subsidiaries) and their subsidiaries[130], subcontractors and businesses in their supply chain.

Those companies shall establish and effectively implement a 'vigilance plan' developed with the company's stakeholders, which shall include reasonable due diligence measures to identify risks and prevent serious violations of human rights and fundamental freedoms as well as

[126] In literature see eg, Fellows and Chong 2020, 209-214; Redmond 2020; Sinclair and Nolan 2020, 164-170.
[127] Law No. 2017-399, 27 March 2017 (*Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*). The law introduced Articles L. 225-102-4 and L. 225-102-5 into the French Commercial Code.
[128] See *Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (Lieferkettensorgfaltspflichtengesetz* – "*LkSG*"), 16 June 2021, Bundesgesetzblatt (BGBl) I 2021, 2959.
[129] In literature, see eg, Cossart, Chaplier, and Beau De Lomenie 2017), 317-323; Moreau 2017, 792-797; Schiller 2017; Schilling-Vacaflor 2021; Savourey and Brabant 2021, 141-152.
[130] The concept of control is intended within the meaning of art. L. 233-16, paragraph II, of the French Commercial Code.

adverse environmental impacts resulting from the company's activities, those of the companies it directly or indirectly controls[131], and the activities of subcontractors or suppliers with which it has an "established commercial relationship"[132], where these activities are linked to that relationship.

The law, thus, limits the scope of a company's liability based on the nature of the relationship. The reference is to subcontractors and suppliers that have an established commercial relationship with the company. Under French law the concept has been defined by courts in the different context of the protection of commercial parties in the event of abrupt termination of established commercial relationships[133]. An established commercial relationship exists when it is continuous, stable and habitual, and when the parties can reasonably anticipate a certain continuity of business flow in the future with their business partner.

The Duty of Vigilance Law provides for two mechanisms to ensure its application. In the case of a company's failure to establish a vigilance plan, any person with a justified interest in taking action (eg, a non-governmental organisation, trade union or affected populations) may give it formal notice to comply with its obligations. After three months from the notice, the competent court may, at the request of any person who can prove an interest in taking action, order it to comply with the requirements of the law subject to a daily fine for delay where appropriate (*astreinte*)[134].

In addition, a particularly important innovation in terms of remedies is that the company violating the vigilance law can be held liable for compensatory damages under tort law in case of a breach of its obligations[135]. The obligation of the company is not an obligation of result, since the parent company cannot have operational control over its subsidiaries and their economic partners and is only bound by a reasonable duty of vigilance.

With regard to the implementation of the law, it must be noted that, to this date, some legal actions have been introduced before the competent court[136].

[131] The concept of control is intended within the meaning of art. L. 233-16, II, of the French Commercial Code.
[132] See Brabant, Michon, and Savourey 2017, 3–4; Savourey and Brabant 2021, 141, 145.
[133] According to art. L. 442-6-I paragraph 5° of the French Commercial Code.
[134] Originally, the law included provisions relating to the payment of a 'civil penalty' ('*amende civile*') but they were censured by the Constitutional Court (Conseil Constitutionnel No. 2017-750 DC, 23 March 2017) on the grounds that the obligations incumbent on the companies were not sufficiently clear and precise for a penalty to be imposed in the event of a breach without contravening the principle of the legality of offences and penalties according to which a person can only be convicted of a criminal offence on the basis of a clear and precise criminal statute (*nullum crimen, nulla poena sine lege*, ie, 'no crime, no penalty, without a law').
[135] According to articles 1240 and 1241 of the French Civil Code, regulating tort law based on fault, negligence or imprudence, the claimant shall prove the existence of a damage, a breach of the obligation provided by the law, and a causal link between the damage and the breach to have compensation. The French Constitutional Court ruled that there is no separate civil liability for the parent company based on the fault of other entities in their supply chains, and there is no criminal liability; see Conseil Constitutionnel No. 2017-750 DC, 23 March 2017, § 27.
[136] See eg, La Poste case, Tribunal judiciaire de Paris, 5 décembre 2023, *SUD PTT c. La Poste* (which led to the issuance of an injunction against La Poste, requiring it to supplement its vigilance plan), and Cour d'appel de Paris, pôle 5 – chambre 12, 17 juin 2025, RG n° 24/05193, *SUD PTT c. La Poste*; the case against EDF Renewables (an Électricité de France subsidiary), Cour d'appel de Paris, 18 juin 2024, *EDF c. associations et collectivités territoriales*; the cases brought by two French organisations (Friends of the Earth France and Survie) and four Ugandan groups (AFIEGO, CRED, NAPE/Friends of the Earth Uganda and NAVODA) against Total's project in Uganda and Tanzania, see Cour d'appel de Paris, 18 juin 2024, *Les Amis de la Terre France et*

The **German** Federal Act on Corporate Due Diligence Obligations in Supply Chains (*Lieferkettensorgfaltspflichtengesetz* – LkSG)[137] was enacted in 2021 and entered into force on 1 January 2023. Initially, it applied to companies with at least 3,000 employees in Germany; since 1 January 2024, the threshold has been lowered to companies with at least 1,000 employees. The Act applies to enterprises regardless of their legal form that have their central administration, principal place of business, administrative headquarters, statutory seat or a branch office in Germany[138].

The Act imposes due diligence obligations based on the 'best effort' standard aimed at protecting human rights and certain environment interests throughout the supply chain. Companies in scope are required to establish an effective risk management system, designate responsible persons within the company, conduct regular risk analyses, adopt a policy statement on human rights strategy, and implement preventive and remedial measures to identify, prevent, minimise or end risks and violations relating to human rights and environmental obligations.

The due diligence obligations primarily concern the company's own business operations and those of direct suppliers. With regard to indirect suppliers, obligations arise only when the company obtains substantiated knowledge (*begründete Kenntnis*) of possible human rights or environmental violations. Moreover, the Act also provides for documentation and annual reporting obligations concerning the due diligence measures adopted.

Enforcement is entrusted to a public authority, the German Federal Office for Economic Affairs and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle* – BAFA), which has extensive supervisory and investigative powers. BAFA may initiate administrative offence proceedings, order companies to comply with their obligations, impose administrative fines (up to EUR 800,000 or, for companies with an average annual global turnover exceeding EUR 400 million, up to 2 per cent of global annual turnover), and exclude non-compliant companies from participation in public procurement procedures for up to three years.

As regards private enforcement, companies are required to establish an internal complaints procedure. However, the Act does not create a new, independent basis for civil liability; existing civil liability rules under general tort law remain unaffected and applicable[139].

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autres c. TotalEnergies SE; the case against Vigie Groupe, formerly Suez Group, deemed inadmissible in view of the lack of formal notice (Paris Judicial Court, n° 22/07100, 1 June 2023).

[137] In literature see Maihold, Müller, Saulich and Schöneich 2021; Guercini 2022; Gustafsson, Schilling-Vacaflor and Lenschow 2023; Koos 2022, 111-115; Tomin 2022; Ruhl 2024.

[138] See § 13d of the German Commercial Code (Handelsgesetzbuch – HGB).

[139] See § 823(1) of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB).

Discussions and proposals for mandatory human rights and environmental due diligence laws have also been initiated in other countries[140], but the most important development in this field is the European Union Corporate Sustainability Due Diligence Directive (CSDDD)[141]. The text approved in 2024 required large companies to identify, monitor, prevent or mitigate actual or potential human rights and environmental harms arising from the companies' own operations, subsidiaries or suppliers, and provided for a specific hypothesis of civil liability for companies violating their due diligence duties.

However, the EU's 'Omnibus I' simplification initiative adopted on 26 February 2025[142] reshapes the content of the CSDDD by narrowing its scope, focusing mainly on very large companies, postponing obligations to 2029, reducing several compliance burdens for companies and weakening the harmonised civil liability regime.

Over the past years, the **European Union** has adopted binding legislations to spread sustainable business practices across the supply chain in sectors traditionally worst affected by the violations of human rights and environmental harms, but such requirements were only directed to sectors such as timber[143] and minerals (tin, tantalum, tungsten and gold) included in the Conflict Minerals Regulation[144], or other minerals used for electric vehicle and industrial batteries[145]. Recently, the emergence of more general due diligence legislations in several Member States has given rise to the need to harmonise the laws in this field, aligning them with international standards on due diligence[146] and ensuring a level playing field within the EU internal market to avoid distortions of competition.

[140] See eg, Switzerland, in which according to the Swiss due diligence and transparency law providing obligations in relation to minerals and metals from conflict-affected areas and child labour, companies whose seat, head office or principal place of business is located in Switzerland must comply with obligations of due diligence in the supply chain and report if: (i) they place in free circulation or process in Switzerland minerals containing tin, tantalum, tungsten or gold or metals from conflict-affected and high-risk areas; or (ii) they offer products or services in relation to which there is a reasonable suspicion that they have been manufactured or provided using child labour. See articles 964 j to 964 l of the Swiss Code of Obligations, and Ordinance on Due Diligence and Transparency in Relation to Minerals and Metals from Conflict-Affected Areas and Child Labour, 3 December 2021.
[141] Directive 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859.
[142] See European Commission, *Omnibus I: Proposal for a Sustainability Simplification Package*, Brussels, 26 February 2025, including COM(2025) 80 final, COM(2025) 81and related legislative proposals (EU Omnibus Package).
[143] Regulation (EU) No. 995/2010 of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market.
[144] Regulation (EU) No. 2017/821 of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas.
[145] Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC (Text with EEA relevance).
[146] See the UN Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the "Protect, Respect and Remedy" Framework* (UNGPs), HR/PUB/11/04, 2011, and the 2011 amendment to the OECD Guidelines for Multinational Enterprises.

In 2020, as part of the European Green Deal and according to Action 10 of the Action Plan on Financing Sustainable Growth[147], the EU Commission launched and published a study on due diligence requirements throughout the supply chain[148], and in February 2022, the European Commission announced a proposal for a Corporate Sustainability Due Diligence Directive (CSDDD) [149].

Interinstitutional negotiations on the proposed Directive lasted for several months. Although a provisional political agreement was reached in December 2023, the proposal faced significant criticism concerning, *inter alia*, the breadth of due diligence obligations and civil liability provisions, the potential compliance costs and administrative burdens for companies – particularly small and medium-sized enterprises (SMEs) – as well as disagreements regarding the scope of application and concerns about the possible negative impact on the competitiveness of European businesses. These disagreements led to a temporary deadlock in the adoption process. Following further negotiations, a revised and less stringent version of the original proposal was eventually approved by the Council of the European Union in May 2024. The Directive was formally adopted as Directive (EU) 2024/1760 and published in the Official Journal of the European Union on 5 July 2024[150].

The main areas regulated by the CSDDD were: (i) corporate sustainability due diligence obligations concerning companies' chains of activities; and (ii) obligations relating to climate change mitigation. As mentioned above, the content and scope of the Directive have subsequently been reconsidered in the context of the EU Omnibus Package, aimed at enhancing the competitiveness of EU undertakings and reducing regulatory and administrative burdens[151]. The proposed amendments substantially scale back the initially broader and more ambitious due diligence framework, moving towards a more limited regime primarily applicable to large multinational undertakings, with less extensive compliance obligations and narrower civil liability exposure.

In particular, as for supply chain due diligence, the Directive targets both EU and non-EU large undertakings within its scope. While previous drafts captured companies with more than 1,000 employees and a net worldwide turnover exceeding EUR 450 million for two consecutive financial years (including the ultimate parent company[152] of a group meeting such thresholds), the scope has now been restricted to companies exceeding 5,000 employees and EUR 1.5 billion

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[147] See the Communication on *Action Plan: Financing Sustainable Growth* of 8 March 2018, COM/2018/097, which mandates to carry out "analytical and consultative work with relevant stakeholders to assess: (i) the possible need to require corporate boards to develop and disclose a sustainability strategy, including appropriate due diligence throughout the supply chain, and measurable sustainability targets; and (ii) the possible need to clarify the rules according to which directors are expected to act in the company's long-term interest".

[148] *Study on Due Diligence Requirements Through the Supply Chain: Final Report* (2020), 20 February 2020, available at https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en.

[149] 2022 Proposal for a Directive on Corporate Sustainability Due Diligence,.

[150] Directive 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 [hereinafter 2024 Directive on Corporate Sustainability Due Diligence].

[151] See Directive (EU) 2026/470 of the European Parliament and of the Council of 26 February 2026 amending Directive (EU) 2022/2464 and Directive (EU) 2024/1760 as regards corporate sustainability reporting and due diligence requirements.

[152] According to articles 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council.

in net worldwide turnover[153]. The Directive requires these in-scope entities to integrate specific plans and strategies, developed through effective stakeholder engagement[154], into their corporate policies and risk management systems. The purpose of these measures is to identify, assess, monitor, prevent, mitigate, bring to an end, or minimise[155] actual or potential human rights and environmental adverse impacts[156] arising from the companies' own operations, those of their subsidiaries[157], and those of their business partners across their chains of activities (upstream and downstream business partners)[158].

An annual report on due diligence activities shall be prepared and published[159].

It is worth noting that the revised approach adopted in the CSDDD (see Article 8(2)) appears to focus due diligence obligations more closely on direct business partners. In this

[153] SMEs are not included but can be indirectly affected as a result of large companies' actions across their value chains, even though according to art. 2, paragraph 2a of the 2024 Directive on Corporate Sustainability Due Diligence, as amended by Directive (EU) 2025/794 of the European Parliament and of the Council of 14 April 2025, and Directive (EU) 2026/470 of the European Parliament and of the Council of 24 February 2026 [hereinafter the Revised 2024 Directive on Corporate Sustainability Due Diligence], companies may request information from business partners only where that information is necessary, and, in the case of business partners with fewer than 5,000 employees, only when the information cannot reasonably be obtained by other means. The directive also provides specific thresholds for companies/parent companies that entered into franchising or licensing agreements in the Union in return for royalties, if they had a net worldwide turnover of more than EUR 275 million in the last financial year and royalties amount to more than EUR 75 million in the last financial year. See art. 2 of the Revised 2024 Directive on Corporate Sustainability Due Diligence. With a few exceptions, financial institutions will be required to comply with the Directive; see the Revised 2024 Directive on Corporate Sustainability Due Diligence, art. 3(a)(iii). It is worth noting that the initial scope of application was already highly restricted, indeed according to the original text proposed by the EU Commission, the Directive was applicable to 'large companies' (with more than 500 employees and a net worldwide turnover of more than EUR 150 million in the last financial year) and mid-size 'high impact sectors companies' (with more than 250 employees and a net worldwide turnover of more than EUR 40 million, the 50 per cent of which generated in sectors with a high risk of adverse impacts, like textiles and leather, agriculture, forestry and fisheries, minerals with their related products and activities); see 2022 Proposal for a Directive on Corporate Sustainability Due Diligence, art. 2.
[154] Revised 2024 Directive on Corporate Sustainability Due Diligence, art. 13.
[155] Revised 2024 Directive on Corporate Sustainability Due Diligence, articles 5 to 11.
[156] The adverse impacts covered are the ones resulting from the violation of rights, prohibitions and obligations provided by international human rights and environmental conventions listed in the Annex to the Directive. According to scholars, thus, on one side the Directive exposes third countries to accepted European legal standards in the field. On the other, international standards usually reserved for states are made legally binding for companies in scope, regardless of whether the jurisdictions in which the alleged violations take place have ratified the international conventions listed; see on the issue Enriques and Gatti 2022.
[157] A subsidiary is a 'controlled undertaking' as defined in Article 2(1)(f) of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC. In particular, the reference is to an undertaking (i) in which a natural person or legal entity has a majority of the voting rights; or (ii) of which a natural person or legal entity has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question; or (iii) of which a natural person or legal entity is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights, respectively, pursuant to an agreement entered into with other shareholders or members of the undertaking in question; or (iv) over which a natural person or legal entity has the power to exercise, or actually exercises, dominant influence or control.
[158] The reference is to direct and indirect business partners, entities performing upstream or downstream (in the latter case excluding distribution, transport, storage being subject to export control specific rules) business operations related to the operations, products or services of the company. See Revised 2024 Directive on Corporate Sustainability Due Diligence, art. 3(f) and 3(g).
[159] Revised 2024 Directive on Corporate Sustainability Due Diligence, art. 16.

respect, the Directive seems to reflect a risk-based model of due diligence, under which enhanced assessment obligations arise where the company has plausible information indicating potential adverse impacts within its chain of activities, rather than imposing a general obligation of exhaustive value-chain mapping.

Companies are not required to guarantee, in all circumstances, that adverse impacts will be avoided, as their obligations are generally characterised as 'obligations of means' rather than 'obligations of result'. Accordingly, companies are required to take all appropriate measures reasonably capable of achieving the objectives of the due diligence obligations by effectively identifying, preventing, mitigating and bringing to an end adverse impacts, taking into account the severity and likelihood of the relevant adverse impact[160].

As regards climate change obligations, the original objective of the Directive was to integrate the goals of the European Green Deal into the governance and strategic decision-making of large companies operating within the European Union. In its initial version, the CSDDD required certain companies to adopt and implement a climate transition plan[161] aimed at ensuring, on a best-efforts basis, that the company's business model and strategy were compatible with the transition to a sustainable economy and with the objective of limiting global warming to 1.5°C, in line with the Paris Agreement[162] and the climate neutrality targets established under the European Climate Law[163]. The transition plan was also required to include time-bound targets and a description of the progress achieved towards their attainment. However, within the context of the subsequent Omnibus simplification initiatives and the final political compromise, the climate transition plan obligations were progressively weakened and, in the final amending text adopted in 2026, the specific obligation under Article 22 of the CSDDD was ultimately removed.

Both public and private enforcement mechanisms are provided in the event of breaches of the Directive's provisions. The public enforcement system is based on the supervision exercised by national supervisory authorities co-ordinated through a European network of supervisory authorities[164]. These authorities are empowered to investigate potential infringements, require companies to comply with their obligations, adopt interim measures, and impose effective, proportionate and dissuasive penalties. Under the original framework of the CSDDD, pecuniary sanctions could amount to up to 5 per cent of the company's net worldwide

[160] Revised 2024 Directive on Corporate Sustainability Due Diligence, Recital 19.
[161] According to art. 22 of the original 2024 Directive on Corporate Sustainability Due Diligence, the transition plan should have contained: (a) time-bound targets related to climate change for 2030 and in five-year steps up to 2050 based on conclusive scientific evidence and including, where appropriate, absolute emission reduction targets for greenhouse gas for scope 1, scope 2 and scope 3 greenhouse gas emissions for each significant category; (b) a description of decarbonisation levers identified and key actions planned to reach targets referred to under point (a), including where appropriate changes in the undertaking's product and service portfolio and the adoption of new technologies; (c) an explanation and quantification of the investments and funding supporting the implementation of the transition plan; (d) a description of the role of the administrative, management and supervisory bodies with regard to the plan.
[162] See art. 2.1 (a) of the Paris Agreement to the United Nations Framework Convention on Climate Change, 12 Dec. 2015, T.I.A.S. No. 16-1104.
[163] Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (European Climate Law).
[164] Revised 2024 Directive on Corporate Sustainability Due Diligence, articles 24 to 28.

turnover, and supervisory authorities were also entrusted with oversight functions concerning the adoption and implementation of climate transition plans. However, the subsequent Omnibus simplification reforms reduced the degree of harmonisation of the sanctions regime and substantially weakened, and ultimately removed, the specific climate transition plan obligations, thereby correspondingly limiting the related supervisory functions.

The private enforcement framework was originally based on complaints and notification mechanisms, together with a harmonised civil liability mechanism. Following the Omnibus simplification reforms, it relies primarily on complaints and notification mechanisms, while civil liability remains largely governed by applicable national legal systems. Companies are required to establish and maintain a complaints procedure allowing affected or potentially affected persons, trade unions or workers' representatives, and civil society organisations to submit substantiated concerns regarding actual or potential adverse impacts directly to the company.

In addition, companies must provide for an accessible notification mechanism enabling individuals and organisations to submit information or concerns, including confidentially or anonymously, where permitted under national law, relating to actual or potential adverse impacts[165]. These complaint and notification mechanisms are intended to facilitate the early identification of risks and enable companies to adopt appropriate preventive or remedial measures in accordance with the Directive.

As regards civil liability, the original version of the CSDDD introduced a harmonised EU-level liability regime under which companies could be held liable for damages caused to natural or legal persons as a result of intentional or negligent failures to comply with specific due diligence obligations aimed at preventing, mitigating, bringing to an end or minimising adverse impacts arising from the company's own operations, those of its subsidiaries, and, where relevant, its chain of activities. However, companies could not be held liable solely for damage caused by business partners within the chain of activities where the company itself had complied with the relevant due diligence obligations. Victims were entitled to full compensation in accordance with applicable national law. However, the subsequent Omnibus simplification reforms substantially reconsidered this framework. In particular, the reforms removed the initially envisaged harmonised EU-wide civil liability regime and significantly reduced the degree of harmonisation concerning private enforcement, leaving the determination of civil liability conditions and procedural rules largely to national legal systems. This reflects the broader objective of reducing litigation risks and regulatory burdens for companies subject to the Directive[166].

The CSDDD may be regarded as a further development of the EU harmonised sustainability framework, as it seeks to complement the CSRD and address some of its limitations. While the CSRD primarily influences corporate conduct indirectly through disclosure and transparency obligations, the CSDDD adopts a more substantive and preventive approach by introducing due diligence obligations directly affecting companies' operations, decision-making processes, risk management systems (and, in its original formulation, aspects of corporate

[165] Revised 2024 Directive on Corporate Sustainability Due Diligence, art. 14.
[166] See art. 29 of the Revised 2024 Directive on Corporate Sustainability Due Diligence.

liability). In this respect, the Directive reflects a shift from a predominantly disclosure-based model towards a more interventionist regulatory framework aimed at addressing unsustainable business practices from an *ex ante* perspective. However, it must be noted that the subsequent Omnibus simplification reforms have significantly reduced the scope and intensity of several of these obligations, particularly with regard to civil liability and climate transition plan requirements, thereby partially limiting the transformative ambition of the original framework.

The principal effect of modern supply chain due diligence regimes, such as the French *Loi de Vigilance* and, initially, the original framework of the Corporate Sustainability Due Diligence Directive, has been to encourage companies to internalise (at least partially) the negative externalities generated by the suppliers within their chains of activities by extending corporate due diligence obligations beyond the company's own legal sphere. Under these frameworks, companies may incur regulatory consequences and, in certain cases, civil liability where they fail to comply with their vigilance or due diligence obligations concerning adverse human rights and environmental impacts connected with their subsidiaries and business partners.

This development contributes to an expansion of the functional boundaries of the firm, particularly with regard to directors' duties, compliance responsibilities, and, in France and in the original formulation of the CSDDD, with regard to corporate liability. Such boundaries increasingly extend beyond the company's formal legal perimeter, traditionally linked to ownership rights[167] or corporate control[168], and beyond the limits classically identified by 20th century economic theories based on the comparative costs of market co-ordination and managerial hierarchy[169].

In this respect, the boundaries of the firm increasingly appear to be shaped not only by legal structures and economic efficiency considerations, but also by sustainability obligations arising from legislation, regulatory frameworks, contractual arrangements and corporate governance practices. These considerations remain valid notwithstanding the subsequent Omnibus simplification reforms, which have partially reduced the scope and intensity of the European due diligence framework by limiting harmonised civil liability mechanisms and narrowing the extent of companies' obligations concerning their chains of activities.

iii. Development of hybrid entities

Along with reforms directed at business companies, like the ones examined above and mainly directed at large or listed companies, specific reforms have been provided for the introduction of alternative and optional legal entities for purpose-driven organisations.

Indeed, due to the general cultural and legal dominance of shareholder primacy, the past few decades have seen the proliferation of new hybrid legal entities to support businesses in addressing social and environmental objectives. Such developments are the focus of this report and are analysed in the following chapters.

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[167] See Demsetz 1967.
[168] Among others, see Penrose 1959; Weick 1976; Porter 1980; Ashkenas, Ulrich, Jick, and Kerr 1995.
[169] See, in particular, Coase 1937; Alchian and Demsetz 1972; Jensen and Meckling 1976.

2. Purpose-driven organisations and the legal landscape

As mentioned above, the transition from shareholder value maximisation towards more responsible models of capitalism has been driven both by the broader reconsideration of contemporary capitalist systems and by the evolution of the international sustainable development agenda, which over the past decades has progressively translated into commitments undertaken by States at both the international and national levels. While recent geopolitical developments and competitiveness concerns have moderated the pace and ambition of some sustainability-related reforms, they have not displaced the central role that sustainable development has come to play within the international policy framework.The legal concept of sustainability was born within the context of the international community[170] and brought centre stage by the Brundtland Report (*Our Common Future*) of 1987, which described it as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs"[171].

It then evolved further through the extensive work of the United Nations[172], up to the adoption of the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs)[173]. While it initially embodied a set of obligations addressed to states and focused mainly on environmental protection, today, it is based on the interconnection between the economic, environmental and social dimensions and targets for not only states but also private stakeholders, with its transformation from a general principle of public international law to a principle shaping rules of private law.

In particular, the adoption of the 2030 Agenda represents a fundamental change of paradigm of sustainable development's international policies, making it clear that a sustainable future can be achieved only through strong co-operation between governments, the private sector and civil society.

In this context, the importance of the business sector as a force for change is indisputable, and the concept of purpose-driven organisations (PDOs)[174] (or impact-driven organisations) takes on significance considering the essential role of enterprises in shaping an equitable and sustainable economic growth.

The British Academy's Future of the Corporation initiative described PDOs as businesses that promote wider prosperity, producing "profitable solutions to the problems of people and planet" and that

[170] For a historical overview, see Bosselmann 2010, 337; Wood 2010, 137.
[171] The Report also specifies that sustainable development "is not a fixed state of harmony, but rather a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development, and institutional change are made consistent with future as well as present needs". See Brundtland Commission, Report to the World Commission on Environment and Development (WCED), Our Common Future, United Nations, 1987, Transmitted to the General Assembly as an Annex to document A/42/427, in particular §27 and §30.
[172] On the issue see Viñuales 2013, 3; Viñuales 2021, 285.
[173] See the UN 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs), A/RES/70/1, *Transforming our world: the 2030 Agenda for Sustainable Development*, Resolution adopted by the United Nations General Assembly of 25 September 2015.
[174] For an analysis of purpose-driven organisations from a managerial perspective see Hurth and Vrettos 2021.

do not profit from generating problems and harms to people or planet[175]. Similarly, PDOs are described by the British Standards Institution PAS Standard 808[176] as business organisations aligning their reason to exist with improving the long-term well-being of people and planet[177].

Purpose-driven organisations are thus grounded in the idea of long-term well-being of people and planet, which can only be achieved allowing the satisfaction of needs in an intergenerational perspective. They are therefore perfectly aligned with the concept of sustainability 'codified' by the 1987 Brundtland Report and later reaffirmed by the International Organization for Standardization (ISO) in its Governance of Organizations – Guidance (ISO 37000:2021), which defined 'sustainability' as a "state of the global system, including environmental, social and economic aspects, in which the needs of the present are met without compromising the ability of future generations to meet their own needs"[178].

Moving from the economic and managerial perspective to the legal one, purpose-driven organisations may adopt different organisational forms depending on the legal options available within a given jurisdiction. Although legal systems vary considerably in the range and characteristics of the entities they recognise, organisational forms are traditionally classified into three broad categories:

For-profit entities (or 'business entities'), characterised by a self-interest purpose (private-benefit or investor-oriented purpose), ie, organisational forms whose primary objective is the generation of profits for their shareholders or members. In these entities, profits and residual assets may generally be distributed to shareholders or members during the life of the organization or upon its liquidation, subject to applicable legal safeguards, such as creditor-protection, capital-maintenance, and solvency requirements, as well as any additional restrictions voluntarily adopted in the constitutional documents of the entity.

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[175] See The British Academy's Future of the Corporation initiative, in particular The British Academy, *Reforming Business for the 21st Century – A Framework for the Future of the Corporation* (2018), available at https://www.thebritishacademy.ac.uk/publications/reforming-business-21st-century-framework-future-corporation/. See also Mayer 2018.

[176] PAS 808 established the foundational principles and behaviours for purpose-driven organisations, providing guidance on how organisations can embed a core purpose into their governance, strategy, culture, and decision-making processes. Building on this framework, the forthcoming international standard ISO 37011 for purpose-driven organisations, currently under development, extends these principles into a globally recognised governance framework, supporting governing bodies and executive managers in aligning organisational purpose with the long-term well-being of society and the planet. For more information see https://www.iso.org/standard/86112.html.

[177] This is the definition elaborated in 2022 by the British Standards Institution (BSI), PAS Standard 808, *Purpose-driven Organisations: Worldviews, Principles and Behaviours* (PAS 808: 2022), available at https://www.bsigroup.com/en-GB/standards/pas-808/.

[178] ISO, ISO 37000:2021 Governance of organisations.

ii) Non-profit entities, characterised by ideal or altruistic purposes, ie, organisational forms established not to generate financial returns for their founders or members but rather to pursue one or more social, charitable, cultural, educational, scientific, religious or other public-interest objectives. Although such entities may engage in economic activities and generate surpluses, these cannot be distributed to founders, members or directors and must instead be reinvested in furtherance of the organisation's purposes. Non-profit entities are typically characterised by a 'profit lock' and an 'asset lock', namely restrictions on the distribution of profits and assets during the life of the organisation and, upon liquidation, requirements that any residual assets be transferred to another entity pursuing similar public-benefit objectives.

iii) In addition, several countries provide for co-operative companies, which are characterised by a 'mutual-benefit purpose', namely the pursuit of economic, social or other advantages for their members through mutual exchanges between the co-operative and its membership[179]. Co-operatives are based on a distinct organisational logic that differs from both the profit-oriented model and the traditional non-profit model. While they may engage in economic activities and generate profits, their primary objective is not the maximisation of returns to investors but rather the satisfaction of members' common needs through democratic governance and mutual participation. For this reason, co-operatives are generally regarded as a separate category of organisational forms, situated beyond the traditional profit/non-profit dichotomy. Although co-operative enterprises may also pursue broader social or environmental goals, they fall outside the scope of the present study.

Purpose-driven organisations may be established under any of these legal forms, depending on the regulatory options available within a given jurisdiction. The legal challenge is therefore not limited to the choice of organisational form, but rather concerns the extent to which a given legal structure enables the integration, protection and enforcement of a public-benefit purpose within the organisation's governance framework.

Legal systems typically provide distinct organisational forms for for-profit entities (eg, partnerships, limited liability companies, and public or private corporations/companies) and non-profit entities (eg, associations, foundations and charitable trusts). Some jurisdictions, such as the United States, Germany and Switzerland, generally allow business forms (eg, corporations/companies limited by shares or limited liability companies) to be used for non-profit purposes. Other jurisdictions, such as France and Italy[180], reserve for-profit legal forms primarily for the pursuit of profit-making activities (unless specific exceptions are provided by law) and allocate non-profit forms, such as associations and foundations, to the pursuit of

[179] The mutual purpose consists eg, of directly providing goods, services or job opportunities to members of the organisation at better economic conditions than those available in the market.
[180] According to the French and Italian civil codes, for-profit structures can be used only to pursue profit-making activities, unless the law provides for specific exceptions in this regard. For example, in Italy see Legislative Decree No. 112, 3 July 2017, regulating the so-called '*impresa sociale*'.. See art. 2247 of the Italian Civil Code ("*Con il contratto di società due o più persone conferiscono beni o servizi per l'esercizio in comune di una attività economica allo scopo di dividerne gli utili*") and art. 1832 of the French Civil Code ("*La société est instituée par deux ou plusieurs personnes qui conviennent par un contrat d'affecter à une entreprise commune des biens ou leur industrie en vue de partager le bénéfice ou de profiter de l'économie qui pourra en résulter*").

philanthropic or public-benefit purposes. However, even where the same legal structure may nominally be used to pursue either for-profit or non-profit objectives (eg, the business corporation and the non-profit corporation), non-profit entities remain subject to a distinct legal regime reflecting their particular purposes and constraints.

Non-profit organisations are indeed generally subject to the 'non-distribution constraint'[181], according to which assets and any revenues exceeding expenses must be devoted to the organisation's purposes rather than distributed, except where permitted by law to a very small extent, to individuals who control or govern the organisation, such as directors, officers, founders or members. Moreover, in some jurisdictions, non-profit entities may also be required to adopt governance arrangements that ensure a degree of democratic participation or accountability towards stakeholders. Because of their public-benefit orientation and the restrictions to which they are subject, non-profit organisations may qualify for various tax advantages and public support mechanisms. At the same time, they often face greater constraints than for-profit entities in accessing capital, particularly because they are generally unable to issue equity interests or provide financial returns to investors.

On the other hand, traditional for-profit entities may pursue social and environmental objectives through corporate social responsibility (CSR) initiatives[182], corporate philanthropy programmes or other stakeholder-oriented practices. However, under conventional corporate law frameworks, such objectives are generally ancillary to the primary objective that is the pursuit of profit and may not always be protected when they conflict with shareholders' economic interests. Unlike non-profit organisations, for-profit entities are not subject to profit or asset locks and typically enjoy greater access to capital and investment markets. From the perspective of impact investors and other mission-oriented stakeholders, however, they may be exposed to the risk of mission drift, particularly where the organisation's social or environmental purpose is not formally embedded and protected within its constitutional documents and governance arrangements through appropriate mission-lock mechanisms (ie, the inclusion of the social impact purpose in the articles of association).

In response to the limitations of the traditional for-profit/non-profit dichotomy, several jurisdictions have introduced new hybrid legal entities over the past few decades[183]. These organisational forms combine elements traditionally associated with both for-profit and non-profit entities by integrating commercial activities with the pursuit of social and environmental objectives. Hybrid entities formally recognise the coexistence of profit-making and public-benefit goals, either through specific provisions in company law, tax law or dedicated legal regimes, or through governance mechanisms that protect the organisation's mission, eg, acknowledging this blurred purpose within the articles of association. As such, they offer purpose-driven organisations a more tailored legal framework for pursuing social and environmental impact, while engaging in economic activity and attracting private investment.

Several organisational forms can be situated within this broad category of hybrid entities, occupying different positions along a continuum between traditional for-profit and non-profit models.

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[181] Hansmann 1980; Hansmann 1981.
[182] On the issue, Peter and Jacquemet 2015, 170-188.
[183] On hybrid organisations from a managerial perspective see Battilana, Lee, Walker, and Dorsey 2012, 50-55; Haigh and Hoffman 2012, 126-134.

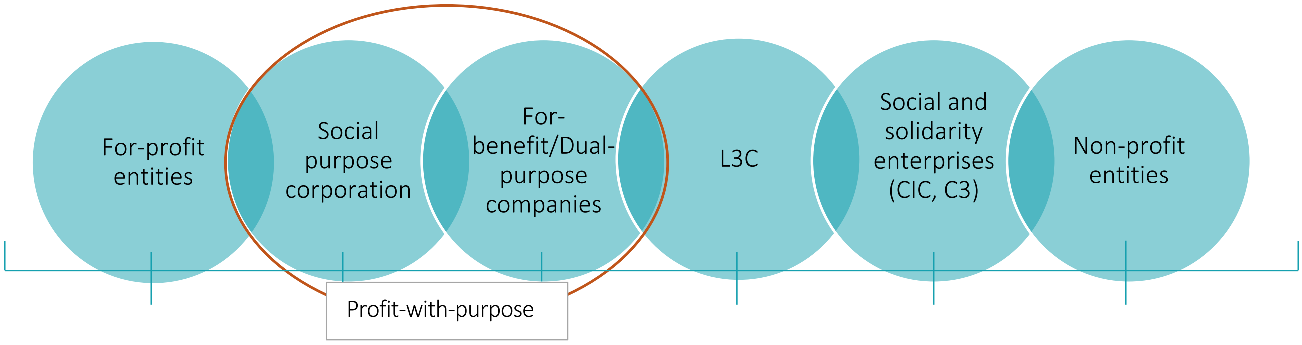

Figure 1: Hybrid entities continuum

At the non-profit end of the spectrum, characterised by strong asset-lock and profit-lock mechanisms, are various legal forms commonly regarded as alternatives to traditional charities and generally falling within the narrower conception of 'social enterprises' [184], or 'social and solidarity enterprises' [185]. These organisations conduct economic activities through business methods while pursuing a primary social or environmental purpose and operating under restrictions on the distribution of profits and assets. They are often considered part of, or closely connected to, the 'third sector'. Examples include Italy's *impresa sociale* ('social enterprise'), the UK's Community Interest Company (CIC), British Columbia's Community Contribution Company (C3) and Nova Scotia's Community Interest Company (CIC).

[184] Social enterprise (SE) can be described as a complex and variegated phenomenon marked by different extensions according to the legal system of reference. Indeed, the definitions of social enterprise are numerous and differently characterised in the various legal systems. For example, with regard to countries belonging to the Western legal tradition, Europe and the United States have different approaches towards SE (see, eg, Plerhoples 2012, 228 sqq.; Murray 2014, 347-348; Fishman 2007, 600; Katz and Page 2010, 59; Esposito 2013, 646). In Europe, the social enterprise is traditionally considered an alternative to charities, see Kerlin 2006; Esposito 2013, 647; Defourny and Nyssens 2008, 202 sqq. For example, according to the definition developed in the UK in 2002 by the former Department of Trade and Industry, social enterprises are "a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximize profit for shareholders and owners" (cfr. Dep't of Trade & Indus., *Social Enterprise: A strategy for Success*, 2002, p. 7). The United States embraced a broader view of SE, including profit-oriented business organisations involved in socially beneficial activities, hybrid dual-purpose businesses mediating profit goals with social objectives, and non-profit organisations engaged in mission-supporting commercial activity. On this issue Ventura 2022c, 9-10.
[185] On the issue, see extensively, Vargas Vasserot 2022, 27-45; Neri-Castracane 2022, 28-75; Fici 2022, 153-171.

The so-called '*impresa sociale*' (social enterprise) was introduced in **Italy** in 2006[186]. This legal status can be acquired by all eligible organisations, regardless of their structure (business organisations, co-operatives, non-profit entities). To be eligible, an organisation must be privately owned, have a social purpose, comply with the non-distribution constraint, and make publicly available its financial statements and social report on the fulfilment of the social mission. A 'social enterprise' must perform an 'entrepreneurial activity' (ie, the activity must be productive, professional, economic and organised[187]), but its business has to be of social utility (ie, working in the sectors of welfare, health, education, training, research, culture, environmental protection and social tourism, or helping the integration in the workplace of underprivileged or disabled people, regardless of the sector of activity). Social enterprises were originally characterised by strict limitations related to carried-out activities and prohibition of profit distribution. These were both partially amended by Italian legislature (together with other drawbacks of the 2006 statute, such as the absence of any tax benefits and the difficulty in raising finances) through the 'Third Sector Reform' of 2017[188]. It expanded the possible activities of a social enterprise, providing the possibility to generally pursue (mainly and permanently) civic, solidarity or social utility objectives (including microcredit, social housing, fair trade, social farming, or employing in its activity at least 30 per cent of disadvantaged or disabled workers), and allowed the distribution, though to a limited extent, of its net profits and surpluses to the members[189]. The introduction of the 'social enterprise' status allowed for the first time in Italy the use of for-profit organisational forms for social utility purposes. However, notwithstanding the non-distribution constraint amendment of 2017, social enterprise remains firmly rooted in the 'third sector'[190].

The **Community Interest Company** (CIC) was introduced in the **UK** in 2004[191]. CICs are blended legal structures (both companies limited by guarantee and companies limited by shares can acquire CIC status) for businesses that primarily have social and environmental objectives and whose surpluses are principally reinvested in the business or in the community, rather than being driven by the need to maximise profit for shareholders. CICs can raise equity capital as well as for-profit companies, but the company's assets shall be dedicated to public benefit. Thus, the

[186] Legislative Decree No. 115, 24 March 2006.
[187] See art. 2082 of the Italian Civil Code.
[188] Legislative Decree No. 112, 3 July 2017.
[189] According to art. 3, Legislative Decree No. 112, 3 July 2017, a social enterprise is now allowed to allocate an amount less than 50 per cent of its net profits (after deducting possible losses) to: (i) free capital increase or distribution to shareholders, within certain limits (the limit of the variation of an index that measures annually the prices for families of workers and employees as calculated by the Italian Statistic Agency), if the social enterprise is incorporated as one of the business organisational forms provided by Book V of the Civil Code; (ii) regardless of the legal form of the social enterprise, to free contribution in favour of organisations of the third sector (other than social enterprises) aimed at pursuing specific projects with social utility.
[190] See Ventura 2022b, 656-657.
[191] Companies (Audit, Investigations and Community Enterprise) Act, 2004, c. 27, §26. In legal literature see eg, Lloyd 2010; Esposito 2013, 674-678.

distribution of dividends is capped at 35 per cent of the aggregate total company profits[192], and in the event of dissolution CICs' assets must go to similar entities pursuing community benefits. CICs are overseen by the CIC Regulator, which ensures compliance with the 'community interest test' (verifying that a CIC's activity is carried out for the benefit of the community[193]) and receives the CIC's annual report. It is worth noting that CICs do not have tax advantages and are subject to the corporation tax regime. CICs represent a first step towards a new blended-value entity, but they have non-distribution constraint limits that characterise the non-profit sector.

The **Community Contribution Company** (C3 or CCC), similar to the UK CIC, was introduced in **British Columbia** in July 2013[194]. It has one or more legally enforced social purposes (social, cultural or environmental goals must be embedded in its articles of incorporation) but can generate profits even though there are restrictions on profit and asset distribution (asset and profit lock). There is a 40 per cent cap on annual dividend distribution, and the majority of assets (the 60 per cent) remaining after debts upon dissolution must be transferred to qualified entities, such as charities. C3s must have at least three directors and need to report annually on community contributions, but are not subject to a regulator oversight and any external verification of the report. C3s are considered as taxable corporations and are taxed at regular corporate rates.

Nova Scotia's Community Interest Company (CIC)[195] is modelled on the UK CIC and the British Columbian C3. CICs must have a community purpose benefiting society at large indicated in its memorandum of association. Moreover, it has a profit and asset lock: a 40 per cent cap on the annual distribution of profits, a cap of 15 per cent of interest payable for debentures issued, and restrictions on distribution of assets upon dissolution that can only be distributed to one or more qualified entities established for a similar community purpose. CICs are required to have at least three directors and annually produce, together with the financial statement, a Community Interest Report approved by its directors and filed with the Registrar of Community Interest Corporations. They are taxable as regular business corporations.

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[192] See Office of the Regulator of Community Interest Companies, Community interest companies: guidance chapters, Chapter 6: The Asset Lock, p. 6 ss.
[193] Companies (Audit, Investigations and Community Enterprise) Act, 2004, c. 27, §35(2), according to which "A company satisfies the community interest test if a reasonable person might consider that its activities are being carried on for the benefit of the community".
[194] Bill 23, 14 May 2012, Finance Statutes Amendment Act, 2012, S.B.C. 2012, c. 12, amending the British Columbia Business Corporations Act, S.B.C. 2002, Chapter 57, Part 2.2.
[195] Bill No. 153, 6 December 2012, Community Interest Companies Act 2012, S.N.S. 2012, c. 38; and N.S. Reg. 121/2016.

At the opposite end of the hybrid spectrum are organisational forms that preserve the for-profit nature of the enterprise while embedding a legally recognised public-benefit purpose into its governance structure.

Moving along the continuum towards the for-profit end of the spectrum, several innovative hybrid organisational forms have emerged, particularly in the United States. One of the earliest examples is the Low-profit Limited Liability Company (L3C), a legal form specifically designed to facilitate the pursuit of socially beneficial objectives while retaining the operational flexibility of a limited liability company. Unlike social enterprises located closer to the non-profit end of the continuum, the L3C is not subject to mandatory profit-lock or asset-lock mechanisms. Nevertheless, it is required to pursue a socially beneficial purpose as its primary objective, while the generation of profit remains permissible only as a secondary aim. The L3C was originally conceived to attract programme-related investments (PRIs) from philanthropic foundations and to bridge the gap between charitable and commercial activities.

The **Low-profit Limited Liability Company** (L3C) was introduced in Vermont (**US**) in 2008[196]. Then, other states such as Illinois, Louisiana, Maine, Michigan, Rhode Island, Utah and Wyoming introduced the L3C statute. L3Cs are companies aimed primarily at performing a socially beneficial (charitable or educational) purpose, and not at maximising income. In particular, the L3C legal form is designed to make it easier for socially oriented businesses to attract investments from foundations, simplifying compliance with the Internal Revenue Service's program-related investments' (PRI) regulations[197]. Indeed, through PRIs private foundations can satisfy their obligation under the Tax Reform Act of 1969 to distribute annually at least 5 per cent of their assets for charitable purposes. Investments in L3Cs that qualify as PRIs can fulfil this requirement while allowing the foundations to receive a return from the investment. L3Cs have been widely criticised for their unclear regulation under tax law and did not have huge success among practitioners[198].

Moving further along the continuum towards the for-profit end of the spectrum, characterised by the absence of profit-lock and asset-lock mechanisms and by the legitimacy of profit distribution, are the so-called 'profit-with-purpose companies'. The expression was coined by the Mission Alignment Working Group of the Social Impact Investment Taskforce established under the United Kingdom's G8 Presidency in 2014. It refers to organisational forms that combine a profit-making orientation with a legally recognised and protected social or environmental purpose.

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[196] See Vt. Stat. Ann. Tit. 11, §3001(27). On L3Cs see Lang and Carrott Minnigh 2010, 15.

[197] I.R.C. §§ 4942, 4944(c); 170(c)(2)(B); 26 CFR § 53.4944-3(b) ex. (3). The purpose of the L3C statute is to attract PRIs from foundations; these investments considered by the IRS as "qualifying distributions", meaning they count towards the federal requirement that private foundations distribute at least5 per cent of their net assets annually; see Kelley 2009, 356.

[198] See Esposito 2013, 682-688; Murray 2016, 545-546. See also NYU School of Law (Grunin Center), The State of Social Enterprise and the Law (2024-25 Report) (noting the continued erosion of interest and legislative stagnation surrounding the L3C form across US jurisdictions).

These entities are generally characterised by: (i) a mission lock, namely the formal embedding and protection of a social or environmental purpose within the organisation's constitutional documents; (ii) specific directors' duties requiring decision-makers to pursue the social or environmental purpose indicated in the organisation's constitutional documents when exercising their managerial functions; (iii) transparency and reporting obligations concerning the pursuit of the stated purpose and the social or environmental impact generated; (iv) the absence of restrictions on the distribution of profits and assets during the life of the company or upon liquidation; and (v) no requirement for democratic governance[199].

Examples of profit-with-purpose companies include the US Social Purpose Corporation (SPC) and the benefit corporation. Social Purpose Corporations generally authorise directors to consider one or more specific social or environmental purposes identified in the articles of incorporation alongside shareholders' financial interests, thereby providing greater legal protection for mission-oriented decision-making.

The **Social Purpose Corporation** (SPC) was introduced in California (**US**) in 2011 (formerly known as the flexible purpose corporation)[200], then in Washington in 2012[201] and in Florida in 2014[202]. The SPC is a for-profit corporate entity that enables the corporation to pursue, in addition to profit-maximising goals, a specific social or environmental purpose indicated in the articles of incorporation, (eg, a public purpose that non-profit corporations are allowed to pursue, or benefits for the SPC's employees, suppliers, customers, creditors, the community and society, or the environment). Directors are required to consider and give weight to the social and environmental purposes in addition to shareholder interests in business decision-making. Unlike the L3C, where the charitable purpose overrides profit maximisation, the SPC is a for-profit corporation in which directors have the discretion to allocate resources to pursue the social or/and environmental purposes included in the articles of incorporation, without the risk of facing shareholder derivative suits for not maximising profit. SPCs are required to produce an annual report for shareholders and the public that includes financial statements and a management discussion and analysis (the 'special purpose MD&A') of the SPC's special purpose, which articulates the special purpose objectives and identifies and discusses material actions taken to achieve the special purpose, the impact of such actions, and the extent to which those actions achieved the special purpose objectives. The main difference between the SPC and the benefit corporation is that directors have more flexibility in assigning different weights to each of the different factors (social, environmental, economic) as they deem appropriate. Moreover, there are less stringent rules on the methods to report and evaluate the corporation's impact, which is based on management's assessment.

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[199] Mission Alignment Working Group, *Profit-with-Purpose Businesses – Subject paper of the Mission Alignment Working Group*, Social Impact Investment Taskforce, G8, September 2014, available at https://www.gsgimpact.org/resources/publications-and-reports/profit-with-purpose-businesses/; Levillain, Segrestin, and Hatchuel 2019, 493.
[200] California Corporations Code, Title 1., Division 1.5. Social Purpose Corporations Act as amended by Stats. 2011, Ch. 740, sec. 12 and Stats. 2014, Ch. 694, sec. 12. In literature, see eg, Esposito 2013, 693.
[201] Revised Code of Washington (RCW), Title 23B, Chapter 23B.25.
[202] Florida Statutes, Title XXXVI - Business Organizations, Chapter 607, Part II - Social Purpose Corporations.

The benefit corporation represents the archetype of these 'dual-purpose' or 'for-benefit' companies and constitutes the principal focus of this study. Among the various profit-with-purpose organisational forms, the model of the dual-purpose company has achieved the widest diffusion internationally.

It is worth noting that dual-purpose companies constitute a specific category of profit-with-purpose companies and, in this study, represent the legal form most closely associated with the broader phenomenon of purpose-driven organisations.

Dual-purpose companies belong to the for-profit area of the spectrum but are characterised by a blended or explicit dual legal purpose: the pursuit of profit and the creation of public benefit. Public benefit generally refers to the generation of positive social and environmental impact through the reduction of negative externalities and the creation of value for society, the environment, workers, consumers, and the communities in which the company operates. Unlike traditional business corporations, dual-purpose companies are legally authorised, and in some cases required, to pursue both objectives simultaneously as legitimate corporate goals and on an equal ground. They seek to create both economic and social value through their core business activities rather than through ancillary corporate social responsibility initiatives. Directors are required to take into account the public-benefit objective or objectives incorporated into the company's constitutional documents, thereby expanding the traditional understanding of the 'company's interest' beyond shareholder value alone.

As will be discussed below, dual-purpose companies differ from traditional business corporations in terms of entity purpose, directors' accountability and transparency obligations, while generally remaining subject to the ordinary corporate tax regime. These entities operate according to the 'triple bottom line' approach (or the 3Ps: people, planet and profit)[203], which measures corporate performance not only in economic terms but also with regard to social responsibility and environmental impact.

The figure below illustrates how dual-purpose companies occupy an intermediate position between the traditional for-profit and non-profit sectors. They are often regarded as part of the emerging 'fourth sector' of the economy[204], a space in which the boundaries between the public, private and non-profit sectors become increasingly blurred and organisations combine entrepreneurial methods with the pursuit of social and environmental objectives.

[203] Elkington 1997. On this issue, see also Fisk 2010; Slaper and Hall 2011, 4-8.
[204] On the fourth sector, Kelley 2009, 347; Gaffney 2012, 329; Esposito 2013, 648; Yockey 2015, 772.

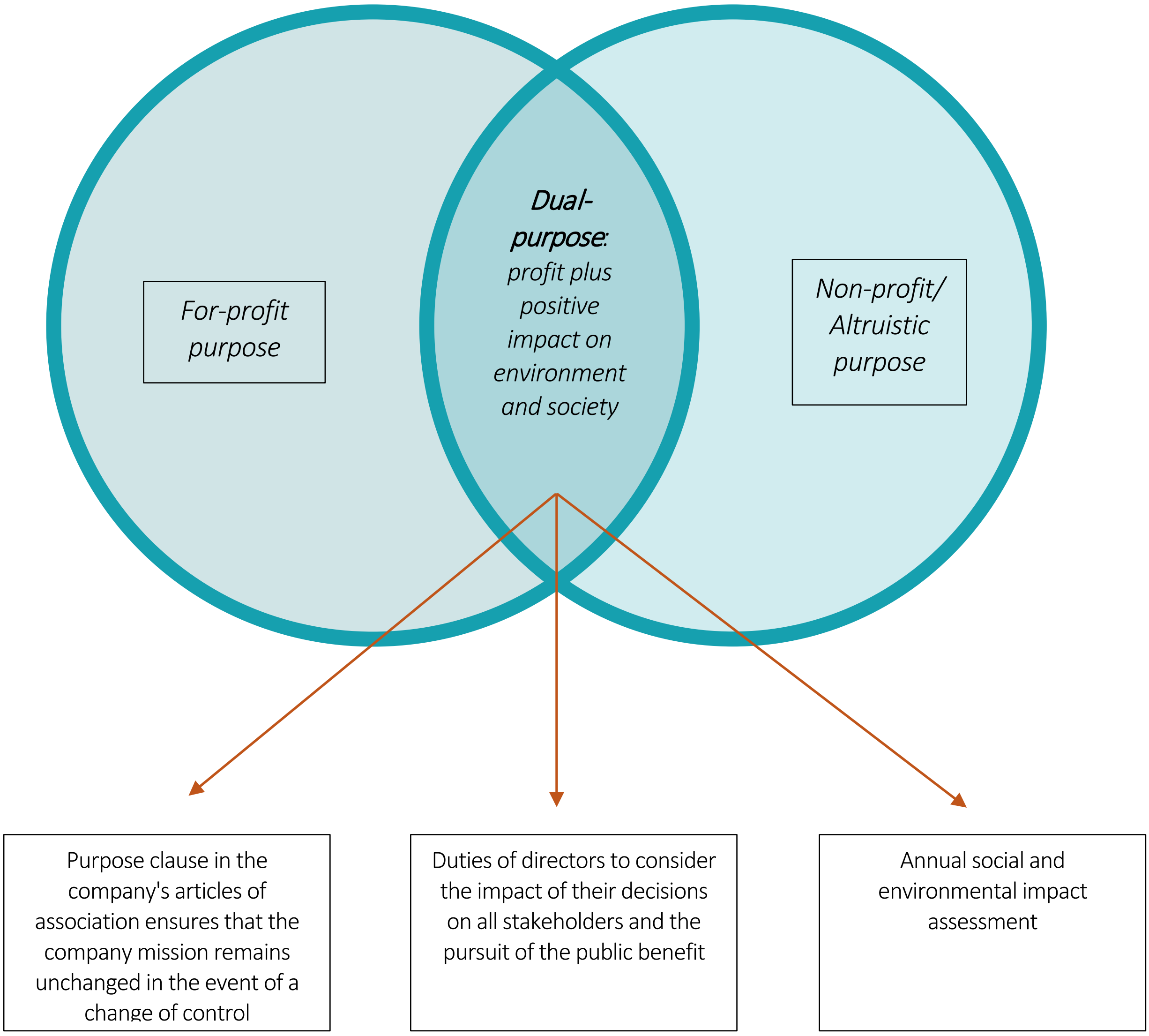

Figure 2: Dual-purpose company between profit and non-profit

3. The Birth of Dual-purpose companies

Dual-purpose companies originated in the United States, where Maryland enacted the first benefit corporation statute in 2010[205]. Since then, more than forty [206] U.S. jurisdictions have adopted benefit corporation legislation. Most of these statutes, including Maryland's, are based on the *Model Benefit Corporation Legislation* (Model Act)[207], developed by B Lab with the support of William Clark, then a partner at a Philadelphia-based law firm, and the American Sustainable Business Council.

Delaware regulated the public benefit corporation (PBC) in 2013 through its own legislative framework, the *Public Benefit Corporation Act*[208] that introduced Subchapter XV, on Public Benefit Corporations, in Title 8, Chapter 1, of the Delaware General Corporation Law. Since 2013, it has been amended twice, in 2015 and 2020[209]. This statute differs from the Model Act not only in form, given its more concise structure and smaller number of provisions, but also in substance. In particular, it places greater emphasis on private ordering[210], thereby affording shareholders broader autonomy in regulating key aspects of corporate governance, including transparency obligations[211]. It is worth noting that the enactment of the Delaware Public Benefit Corporation Act, given the relevance of Delaware corporate law in the evolution of North American—and, more broadly, global—corporate law, is of considerable importance for the spread of benefit corporations and represents a further source of inspiration, alongside the Model Act, for jurisdictions seeking to regulate this new corporate model[212].

Although benefit corporations are generally subject to the same legal regime as traditional business corporations[213], their distinctive regulatory framework is characterized by three core features: (i) the adoption of a dual-purpose corporate clause, combining profit-making objectives with the pursuit of public benefits; (ii) revised fiduciary duties and standards of conduct for directors; and (iii) heightened transparency requirements.

The purpose of a benefit corporation is to create a "general public benefit", defined as a material positive impact on society and the environment[214], taken as a whole and assessed against a third-party

[205] Md. Code Ann., Corps. & Ass'ns §5-6C.
[206] For further information see the Social Enterprise Law Tracker available at https://grunincenter.github.io/GruninCenterSELTMapSpring2026/index.html.
[207] The Model Act has been proposed by B Lab with the support of William H. Clark (Of Counsel at Drinker Biddle & Reath LLP) and the American Sustainable Business Council. See the 2017 text available at https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://growthorientedsustainableentrepreneurship.wordpress.com/wp-content/uploads/2016/07/gv-model-benefit-corporation-legislation-april-2017.pdf&ved=2ahUKEwiXsYbU2NyMAxXzgf0HHbWdG38QFnoECBkQAQ&usg=AOvVaw2T2KKf-CS7WNwopHtq6rIJ.
[208] See "Subchapter XV" of the "Delaware General Corporation Law" (Del. Code Ann. Tit. 8, §§ 361-368). On the issue, eg, Plerhoples 2014, 247.
[209] Littenberg, Oldshue, and Pifer 2020.
[210] On the general issue of *private ordering* see Smith, Wright and Hintze 2011, 125 ss. On the tensions between *private ordering* and the need of predefined and uniform rules in order to create a reliable brand for social enterprises see Murray 2014, 357-358.
[211] Murray 2014, 351-352.
[212] Colorado, for example, has decided to follow Delaware's model, but to be more consistent with the provisions of the Model Act, has made specific adjustments such as the requirement for annual publication of the benefit report and the use of third-party standards for measuring social and environmental impact (see Colo. Rev. Stat. §7-101-507).
[213] Model Act §101.
[214] Model Act §102 -*"General public benefit"*, and §201(a).

standard. In addition, a benefit corporation may or, depending on the applicable state law, must (*e.g.* in Delaware) identify in its articles of association one or more "specific public benefits" to pursue[215].

In discharging their duty to act in the best interests of the corporation, directors of benefit corporations are required to consider or, in some jurisdictions such as Delaware, to balance the effects of their decisions on shareholders and other corporate stakeholders, including employees, customers, society, and the environment. They must also take into account the achievement of the corporation's public benefit purposes, whether general or specific, as set forth in the corporate charter[216].

Transparency provisions generally require benefit corporations to publish a periodic benefit report on their social and environmental performance. In most states, this report must be prepared annually and assessed against a comprehensive, credible, independent, and transparent third-party standard. In some jurisdictions, however, such as Delaware, reporting is required every two years, and the use of a third-party standard is not expressly mandated[217].

In the United States, there is generally no public oversight of benefit corporations' reporting or activities. Where a benefit corporation fails to pursue or create the general or specific public benefits set forth in its articles of association, or violates any obligation, duty, or standard of conduct imposed by the applicable benefit corporation statute, the available remedies depend on state law. They may consist either of a "benefit enforcement proceeding" or of an ordinary action for breach of directors' duties.

The benefit enforcement proceeding, provided for by the Model Act[218] and by the states that follow it, allows the benefit corporation itself, or a shareholder or director acting derivatively, as well as any other persons identified in the corporation's by-laws, to bring an action against a director or officer for breach of their benefit-related duties. The remedy is typically injunctive relief, aimed at compelling the corporation to take, or refrain from taking, certain actions in order to align its conduct with its public benefit purpose. However, the benefit enforcement proceeding does not allow for the recovery of monetary damages.

By contrast, in some states, such as Delaware[219], the statute allows shareholders to rely on ordinary corporate law remedies, including derivative actions for breach of directors' duties, where directors fail to pursue the public benefit purposes identified in the corporation's charter.

Social enterprise legislation in the United States has evolved over time and continues to do so. Benefit corporation legislation is currently under consideration in Michigan, while other states, including

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[215] According to the definition provided in the Model Act §102, the specific public benefit includes: (i) providing low-income or underserved individuals or communities with beneficial products or services; (ii) promoting economic opportunity for individuals or communities beyond jobs in the normal course of business; (iii) protecting or restoring the environment; (iv) improving human health; (v) promoting the arts, sciences, or advancement of knowledge; (vi) increasing the flow of capital to entities with a purpose to benefit society or the environment; and (vii) conferring any other particular benefit on society or the environment.
[216] Model Act § 301.
[217] Model Act § 401 and 402.
[218] Model Act § 305.
[219] See eg, Delaware statute, Del. Code Ann. tit. 8, §367, according to which, any action, including any individual, derivative or any other type of action, may not be brought unless the plaintiffs own individually or collectively at least 2 per cent of the corporation's outstanding shares or, in the case of a listed corporation, the lesser of such percentage or shares of the corporation with a market value of at least USD 2,000,000.

Maryland[220], Oregon[221], Delaware[222], Pennsylvania[223], and Utah[224] extended the application of the 'for-benefit' model to another business entity form: the limited liability company (LLC).

Following the emergence of the benefit corporation, the vigorous debate over new forms of stakeholder-oriented or responsible capitalism led Senator Elizabeth Warren to introduce the *Accountable Capitalism Act* in August 2018 [225]. Although never enacted, the bill would have required all corporations with annual revenues exceeding $1 billion to obtain a federal charter as "United States corporations" and, in essence, adopt a governance model similar to that of benefit corporations[226].

At the same time, the emergence of benefit corporations has sparked a lively debate as to whether a new legal form is necessary and appropriate for pursuing economic, social, and environmental objectives simultaneously. While some U.S. scholars have opposed the introduction of new corporate forms, arguing that existing legal entities are sufficient for such purposes (the so-called 'unnecessary argument') [227], others, including both academics and business leaders, have highlighted the inadequacy of the traditional dichotomy between for-profit and non-profit entities[228]. They contend that existing for-profit structures, even in jurisdictions that permit the pursuit of hybrid purposes, do not adequately support the development of purpose-driven organisations.

With regard to non-profit entities, it should first be noted that the conduct of business activities is subject to strict limitations. Their use is generally restricted to the pursuit of activities specifically identified by law[229], and tax benefits may be lost where commercial activities become predominant over charitable ones[230].

Moreover, non-profit organizations are subject to the well-known nondistribution constraint, which limits the distribution of residual earnings[231] to individuals involved in or benefiting from the organisation, including board members, managers, and employees[232]. As a result, non-profit entities often face difficulties in attracting venture capital and recruiting highly qualified professionals.

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[220] Md. Code Ann., Corps. & Ass'ns §§ 11-4A-1201 to- 11-4A-1208, 11-1-502, 5-6C-03 (2013).
[221] Ore. Rev. Stat. §§ 60.750 to- .770 (2014).
[222] Del. Code Ann. tit. 6, § 18-1201 to § 18-1208 (2018).
[223] 15 Penn. Cons. Stat. §§ 8891-8898 (2016).
[224] H.B. 186, 62nd Leg., 1st Sess. (Ut. 2018).
[225] Accountable Capitalism Act, S.3348, 115th Congress (2017-2018).
[226] Indeed, these chartered corporations shall have the purpose of creating a 'general public benefit' and directors shall have the duty to balance the pecuniary interests of the shareholders with the best interests of persons that are materially affected by the conduct of the corporation (such as employees, customers, the communities and the environment). Moreover, the bill empowers workers to elect at least two-fifths of the board of directors' members and restricts the sales of company shares by directors and officers, in order to ensure they are focused on the long-term interests of all corporate stakeholders.
[227] See eg, Clemente 2013, 29-31. In support of the argument that social enterprises can make use of existing for-profit company structures, see, amongst others Elhauge 2005, 733, 763 sqq.; Kerr 2007, 634 ss. For an overview of whether or not directors are able to act in the interests of stakeholders in for-profit companies, see Bainbridge 1992, 975 sqq.
[228] See eg, Kelley 2009, 340-341; Esposito 2013, 645; Yockey 2015, 771-772.
[229] See I.R.C. (26 U.S.C.) §1.501(c)(3)-1, which provides specific tax exemptions for organisations conducting activities such as charitable, religious, educational, scientific, literary, public safety, promotion of national or international amateur sports competitions and prevention of cruelty to children or animals.
[230] I.R.C. §1.501(c)(3)-1(c)-(e). On the issue, Kelley 2005, 2438–2439; Clark and Vranka 2013, Appendix C; Clemente 2013, 8-10.
[231] I.R.C. §1.501(c)(3)-1(c)-(d)(1)(ii).
[232] See Brakman Reiser 2011, 607-608.

The use of traditional for-profit entities by PDOs also presents several challenges. These include limited access to public funding, which is generally directed towards non-profit organisations, and the absence of tax incentives, such as those designed to encourage private donations. More fundamentally, however, two issues stand out: (i) the preservation of the organisation's mission over time; and (ii) the predominance of the shareholder wealth maximization paradigm.

With respect to the first issue, concerns arise regarding the protection of the organisation's mission following a change of control. A new controlling shareholder may decide to abandon the original social mission and pursue exclusively profit-making objectives, since the latter typically constitute the sole corporate purpose recognized in the charter and bylaws of an ordinary business corporation[233]. As for the second issue, PDOs operating through conventional for-profit entities may be exposed to the pressure of shareholder wealth maximization as the principal benchmark against which directors' decisions are assessed for purposes of fiduciary duties. This approach is often regarded as incompatible with the logic and objectives of purpose-driven organisations[234].

It was precisely in response to these limitations, and to the growing dissatisfaction with the traditional for-profit/non-profit dichotomy, that several jurisdictions introduced new hybrid organisational forms. Among these, dual-purpose companies emerged as a means of accommodating the needs of social entrepreneurs and responding to the increasing demand for innovative business entities capable of pursuing both profit and public benefit objectives.

[233] Cummings 2012, 589-590.
[234] US case law affirmed the shareholder wealth maximisation principle in several landmark decisions, like *Dodge v. Ford Motor Co*., 204 Mich. 459, 170 N.W. 668. (Mich. 1919); *Unocal Corp. v. Mesa Petroleum Co.,* 493 A.2d 946 (Del. 1985); *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.,* 506 A. 2d 173, 182 (Del.1986); *Katz v. Oak Indus.*, 508 A.2d 873, 879 (Del. Ch. 1986); *eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1 (Del. Ch. 2010). See Brakman Reiser 2011, 608-609.

4. The Benefit corporation legal model and the B Corp Certification

As previously discussed, the rapid expansion of the modern social enterprise movement has given rise not only to new hybrid organisational forms, such as the benefit corporation, but also to a variety of certification systems designed to assess and signal companies' social and environmental performance. Among the most prominent is B Corp Certification, developed by the US-based non-profit organisation B Lab. The certification is based on the Benefit Impact Assessment (BIA)[235], a proprietary assessment framework that evaluates a company's impact on its stakeholders and recognises qualifying firms as 'Certified B Corporations' (or 'B Corps').

Given the terminology and historical proximity between benefit corporations and Certified B Corporations, both of which emerged from initiatives promoted by B Lab, it is important to distinguish between the legal status of a benefit corporation and B Lab's private and voluntary certification scheme.

Launched in 2007, the certification system was conceived as a mechanism for assessing and monitoring companies that claim to pursue a 'triple bottom line' approach, thereby helping investors, consumers and other stakeholders distinguish businesses genuinely committed to creating public benefit from those relying on such claims primarily as a marketing strategy[236]. The BIA evaluates corporate performance across several dimensions, including governance, workers, community, environment and customers. To obtain certification, a company must achieve a verified score of at least 80 points out of 200, successfully complete documentary verification procedures and a risk review, and comply with B Lab's transparency and accountability requirements.

Certified companies are also required to comply with B Lab's so-called *legal requirement*, which constitutes one of the most distinctive features of the B Corp Certification system. Since the inception of the B Corp movement, this requirement has been conceived as a mechanism for embedding the company's social and environmental commitments within its governance structure and protecting them against future changes in ownership, management, or corporate strategy. The underlying rationale is that a company genuinely committed to creating public benefit should not merely pursue such objectives as a matter of managerial discretion or reputational policy, but should incorporate them into its legal and organisational framework.

Accordingly, in jurisdictions where the benefit corporation legal form is available and suitable for the entity concerned, B Lab generally requires certified companies to adopt that status or, at a minimum,

[235] The Benefit Impact Assessment (BIA) is a proprietary assessment tool developed by B Lab to measure and evaluate a company's social and environmental performance across multiple stakeholder dimensions, including governance, workers, community, environment and customers. The BIA serves as the basis for obtaining B Corp Certification and constitutes one of the most widely used third-party standards for assessing corporate impact. The assessment is periodically revised and calibrated according to the size, sector and geographical location of the company, with the aim of providing a comprehensive, transparent and credible framework for evaluating a firm's contribution to public benefit objectives. At the same time, scholars have pointed to certain limitations of the BIA, including its private nature, the broad discretion retained by B Lab in defining and revising assessment criteria, and the absence of public oversight over the certification process. See B Lab, *Benefit Impact Assessment*, available at https://www.bcorporation.net.
[236] Magdaluyo 2012, 3 sqq.; Miles and Munilla 2004.

undertake to do so within a prescribed period. In jurisdictions where no equivalent legal form exists, certified companies must amend their constitutional documents or otherwise assume legally binding commitments designed to ensure that the pursuit of social and environmental objectives forms an integral part of the company's governance framework.

Although the specific legal requirements vary depending on the company's legal form and jurisdiction of incorporation, B Lab generally requires certified companies to introduce governance provisions aimed at institutionalising their public benefit mission. In addition, certified companies must publicly disclose information regarding their impact performance through their B Corp profile on B Lab's website[237].

The legal model of the benefit corporation operates on a different level from certification. Unlike B Corp Certification, which relies on assessment and verification by a private organisation, the benefit corporation is a statutory corporate form established under state law. Adoption of benefit corporation status does not require certification by B Lab or by any other public or private organisation, nor does it depend upon compliance with the standards established by private certifying bodies. Nor does it generally entail governmental supervision of the company's pursuit of public-benefit objectives, as compliance is primarily ensured through reporting obligations and private enforcement mechanisms. Rather, depending on the applicable statute, benefit corporations may be required to assess and report their social and environmental performance against a third-party standard, without necessarily obtaining certification from the organisation that developed that standard.

Another important distinction concerns their respective scope of application. B Corp Certification may be obtained by companies regardless of their legal form or place of incorporation, provided that they satisfy B Lab's certification requirements. By contrast, benefit corporation status is available only in jurisdictions that have enacted the relevant legislation and only to the organisational forms identified by the applicable statute (eg, in the United States, primarily corporations).

Accordingly, B Corp Certification and benefit corporation status are conceptually and legally distinct. A company may be a Certified B Corporation without adopting benefit corporation status, just as a benefit corporation may choose not to seek B Corp Certification. Furthermore, while benefit corporation status constitutes a legal status governed by corporate law, B Corp Certification is a private and contractual designation that may be suspended or revoked if the company no longer satisfies B Lab's standards. The two mechanisms are therefore complementary rather than interchangeable: the former operates through private certification and market signalling, whereas the latter relies on corporate law to institutionalise the pursuit of public benefit within the governance structure of the firm.

[237] For more information, see https://www.bcorporation.net/en-us/certification/.

5. Circulation of the legal model

The benefit corporation model developed in the United States has subsequently spread to a number of jurisdictions across Europe, North and South America, and Africa.

Italy was the first country outside the United States to enact specific legislation governing this type of enterprise through the introduction of the *società benefit* (SB) at the end of 2015[238]. Although developed within a civil law system, the Italian model draws inspiration from the US benefit corporation movement, including elements found in both the Model Benefit Corporation Legislation and the Delaware Public Benefit Corporation Act, while introducing several distinctive features.

Two innovations are particularly noteworthy. First, unlike most US statutes, the *società benefit* regime is not limited to corporations but is available to all for-profit corporate forms and co-operative societies recognised under the Italian Civil Code. Second, the Italian legislature sought to address one of the perceived weaknesses of the US model[239], namely, the limited oversight of the effective pursuit of public-benefit objectives, by introducing an additional public enforcement mechanism. Specifically, the law provides that *società benefit* are subject to the rules governing misleading advertising and unfair commercial practices, thereby bringing potentially misleading claims concerning the pursuit of common benefit within the enforcement powers of the Italian Competition Authority (*Autorità Garante della Concorrenza e del Mercato* – AGCM). Unlike the US model, therefore, the Italian framework combines internal corporate governance mechanisms with the possibility of public enforcement in cases of misleading or deceptive conduct.

The **Italian *società benefit*** legislation, enacted in 2015 and effective as of 1 January 2016, did not introduce a new corporate form alongside those already recognised by the Italian Civil Code (ie, in Book V, Title V and VI). Rather, it established a special legal regime under which the pursuit of a dual-purpose, ie profit combined with the pursuit of one or more public benefit/s (*beneficio comune*), must be reflected in the company's corporate purpose clause, governance structure and disclosure obligations.

Unlike most US benefit corporation statutes[240], the Italian model is not limited to corporations. Instead, *società benefit* status may be adopted by all for-profit corporate forms[241]

[238] Law No. 208, 28 December 2015, "*Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato* (*Legge di Stabilità* 2016)" (G.U. 30 December 2015), art. 1, paragraphs 376-384.
[239] See White 2015, 344-346.
[240] It must be said that a few states in the US extended the application of the 'for-benefit' model to the limited liability company (LLC), eg, Delaware introduced the 'statutory public benefit limited liability company' in 2018.
[241] In particular, in the Italian system, we can identify two groups of for-profit companies. In the first, there are organisational forms similar to the Anglo-Saxon partnerships (so-called '*società di persone*'), such as the '*società semplice*' ('informal partnerships', art. 2251 sqq. Civil Code), '*società in nome collettivo*' ('general partnerships', art. 2292 sqq. Civil Coce) and '*società in accomandita semplice*' ('limited partnership', art. 2312 sqq. Civil Code), which are all characterised by no distinction between the assets of the partnership and those of its partners, and the joint and several liability of the members for the partnership debts, aside from the exceptions defined by law (eg, for limited partners in a limited partnership). In the second group (so-called '*società di capitali*'), there are organisational forms characterised by juridical personality, the distinction

and co-operative organisational forms[242] recognised under the Italian Civil Code, including partnerships, limited partnerships, limited liability companies, joint-stock companies and co-operatives.

As in the United States, the Italian legislation regulates only the core features of the model, including corporate purpose, directors' duties, accountability mechanisms, disclosure requirements and enforcement provisions. In all matters not expressly regulated by the statute, the ordinary rules governing the relevant corporate form continue to apply[243].

Similar dual-purpose company structures have been introduced in several European jurisdictions. France, for example, enacted the *société à mission* (SaM) in 2019[244], a model that differs from the US benefit corporation in several respects, most notably through the introduction of additional internal governance and monitoring mechanisms, including a dedicated mission committee and external verification procedures.

Spain followed in 2022 with the recognition of the *Sociedades de Beneficio e Interés Común* (SBIC) through the Ley de Creación y Crecimiento de Empresas in 2022 [245]. However, the implementing regulation envisaged by the statute has not yet been adopted. As a result, the practical operation of the model currently relies on the statutory provisions, together with soft-law instruments and interpretative guidance developed by professional and institutional bodies.

Belgium may soon follow a similar path. A legislative proposal currently under consideration and heavily inspired by the French Loi PACTE would introduce an optional *société à mission* (*vennootschap met een missie*) into the Belgian Code of Companies and Associations, allowing companies voluntarily to embed a societal or environmental mission in their articles of association, and mandating the creation of a dedicated governance and monitoring mechanisms, the mission committee (*comité de mission*) to oversee sustainability goals[246].

between the assets of the corporation and those of its members, and the limited liability of the company's members, such as '*società per azioni*' ('corporation'/'joined stock company', art. 2325 sqq. Civil Code), '*società a responsabilità limitata*' ('limited liability company', art. 2462 sqq. Civil Code), '*società in accomandita per azioni*' ('limited partnerships by shares', art. 2452 sqq. Civil Code).

[242] The so-called '*società cooperativa*' (art. 2511 ff. Civil Code) is an organisational form which, differently to the for-profit companies, is primarily called upon to satisfy the common needs of the members. Co-operatives pursue a 'mutual purpose' ('*scopo mutualistico*') and have limits in the distribution of profits. There are several forms of co-operative and not all the co-operatives forms can acquire SB status, eg, from an interpretation of the Italian law, it seems that the so-called '*cooperative sociali*' ('social co-operatives') cannot acquire SB status.

[243] Law No. 208, 28 December 2015, art. 1, paragraph 377.

[244] Law No. 2019-486, 22 May 2019, *Plan d'action pour la croissance et la transformation des entreprises* (*Loi Pacte*), art. 169 and 176.

[245] Law No. 18/2022, 28 September 2022, *Ley de creación y crecimiento de empresas*, Disposición adicional décima.

[246] See Proposal for a Law amending the Belgian Code of Companies and Associations to introduce the optional status of société à mission (vennootschap met een missie), introduced in the Belgian Chamber of Representatives (Ch. repr. Belg., Proposition de loi introduisant la qualité de "société à mission d'intérêt commun" ou de "société à mission" dans le Code des sociétés et des associations, Doc. 56 1128/001 (2025/2026).

In Switzerland, discussions concerning the possible introduction of a dedicated legal framework for purpose-driven enterprises have likewise emerged. Nevertheless, Swiss law still does not provide for a specific legal form equivalent to the benefit corporation, and companies pursuing both profit and public-benefit objectives must continue to operate through existing corporate forms[247].

As already noted, **France** introduced the ***société à mission*** in 2019 through the adoption of the *Loi PACTE*[248], which implemented a broader reform of French corporate law aimed, *inter alia*, at redefining the role and purpose of the enterprise through amendments to both the Civil Code and the Commercial Code. Inspired by the Notat-Sénard Report[249] and earlier academic proposals[250], the reform rests on three main pillars: the requirement for corporate managers to take into consideration the social and environmental consequences of the company's activities; the possibility for companies to define a *raison d'être*[251]; and the introduction of the *société à mission* regime.

The *société à mission* was established by Article 176 of the Loi PACTE, which introduced Articles L. 210-10 to L. 210-12 into the French Commercial Code. The regulatory framework was subsequently supplemented by Decree No. 2020-1 of 2 January 2020[252]. Although influenced by the broader benefit corporation movement[253], the French model departs in several respects from the US benefit corporation and the Italian *società benefit*.

Like the Italian regime, it does not create a new corporate form but rather introduces an optional legal status available to a broad range of entities, including commercial companies, co-operatives, mutual insurance companies and mutual companies, pursuant to the provisions introduced by the Loi PACTE into the Commercial Code, the Insurance Code and the Mutuality Code[254]. Therefore, the scope of the legislation, like in Italy, is extended to a larger number of organisational forms and different levels of the economy.

The distinctive feature of the French model lies in its governance architecture. A company seeking *société à mission* status must incorporate into its articles of association not only a *raison*

[247] See the parliament initiative 23454, *Introduire un statut juridique facultatif 'Entreprise durable' pour les PME suisses*, presented to the Conseil National on 28 September 2023; more information available at https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20230454; and the Swiss Alliance for Sustainable Enterprises policy paper on "*Fast-forwarding business sustainability in Switzerland: The case for a new regulatory framework*", January 2024, available at https://www.alliance-sustainable-enterprises.ch/keydocuments.
[248] Law No. 2019-486, 22 May 2019, *Plan d'action pour la croissance et la transformation des entreprises* (*Loi Pacte*), art. 169 and 176.
[249] Senard and Notat 2018.
[250] Segrestin and Hatchuel 2012; Segrestin, Roger, and Vernac 2014; Segrestin, Levillain, Vernac, and Hatchuel 2015; Levillain 2017.
[251] See French Civil Code, art. 1833 and 1835.
[252] Decree No. 2020-1, 2 January 2020 on mission companies (*Décret relatif aux sociétés à mission*).
[253] The French *société à mission* is part of the broad dual-purpose companies' international movement that had further development, particularly with the birth of the US benefit corporations; see Segrestin, Hatchuel, and Levillain 2021, 1.
[254] See Commercial Code, arts. L. 210-10 to L. 210-12; Art. 7, Law n. 47-1775, 10 September 1947; Code de la mutualité (Code of Mutual Societies), Decree No. 55-1052, 5 August 1955, as reframed by Ordinance No. 2001-350, 19 April 2001, arts. L. 110-1-1 to L. 110-1-3; Code des Assurances (Insurance Code), Decree No. 76-666, 16 July 1976. art. L 322-26-4-1.

d'être, namely, the principles and values guiding its activities, but also one or more social or environmental objectives that it undertakes to pursue in the conduct of its business[255]. These objectives become part of the company's organisational framework and must be taken into account in corporate decision-making.

Unlike the US benefit corporation and the Italian *società benefit*, the French model introduces a dedicated internal monitoring mechanism and thus, stands as a further alternative model in the profit-with-purpose landscape. The implementation of the mission is overseen by a dedicated mission body (*comité de mission*) or, in smaller companies (employing fewer than 50 permanent employees), by a mission officer (*référent de mission*), which is responsible for monitoring the company's progress towards its mission objectives and preparing a periodic report. In addition, the fulfilment of the mission is subject to verification by an independent third-party body (*organisme tiers indépendant*). This combination of internal and external oversight mechanisms makes the *société à mission* one of the most institutionally structured purpose-driven corporate models currently available.

Furthermore, French law provides for a form of public enforcement that is absent from most US benefit corporation statutes. Where the statutory requirements for *société à mission* status are not met, the public prosecutor or any interested person may apply to the court for an order requiring the company to remove the reference to *société à mission* from its articles of association and corporate communications. In this respect, the French regime combines private governance mechanisms with a degree of judicial oversight over the use of mission-related claims.

Spain introduced the *Sociedades de Beneficio e Interés Común* (SBIC) in September 2022[256], within the framework of a broader programme aimed at promoting entrepreneurship, reducing regulatory barriers and fostering sustainable economic growth. The statute formally recognises the SBIC model but contains only a limited number of general provisions, leaving the detailed regulation of the regime to a subsequent implementing regulation, which has not yet been adopted.

As a consequence, the Spanish model remains in a transitional phase. Pending the adoption of the implementing regulation, various soft-law initiatives have emerged in an attempt to facilitate the practical development of the model. In 2023, B Lab Spain and the law firm Gabeiras & Asociados published the *Código de Buenas Prácticas para las Sociedades de Beneficio e Interés Común*[257], a voluntary framework designed to guide companies wishing to adopt the

[255] Commercial Code, art. L. 210-10
[256] Law No. 18/2022, 28 September 2022, Ley de creación y crecimiento de empresas, Disposición adicional décima.
[257] The Código de Buenas Prácticas para las Sociedades de Beneficio e Interés Común available at https://lacultivadaediciones.es/codigo-de-buenas-practicas-para-las-sociedad-de-beneficio-e-interes-comun/.

SBIC model. Subsequently, in 2024, the *Colegio de Registradores de España*[258] issued the *Guía orientativa de los Estatutos Sociales de las Sociedades de Beneficio e Interés Común*[259], which provides practical guidance on the drafting of corporate bylaws for companies seeking to operate as SBICs.

SBICs are for-profit companies that voluntarily undertake to pursue, alongside their economic objectives, a positive social and environmental impact. Similar to the Italian *società benefit*, the Spanish model does not create a new corporate form but rather establishes an optional legal status that may be adopted by existing companies. In particular, the regime is available to the corporate forms governed by Article 1 of the *Ley de Sociedades de Capital*, namely the *sociedad de responsabilidad limitada*, the *sociedad anónima*, and the *sociedad comanditaria por acciones*[260]. Accordingly, the Spanish legislature has opted for a model based on the adaptation of existing corporate forms rather than the creation of a new organisational structure.

Although the future implementing regulation is expected to further clarify the accountability, transparency and verification mechanisms applicable to SBICs, the legislative framework already suggests an intention to combine the flexibility of the US benefit corporation model with certain features that recall the Italian *società benefit*, particularly with regard to the public visibility and verifiability of the company's commitment to generating social and environmental benefits.

Latin American countries have likewise played a significant role in the global diffusion of purpose-driven business models. Across the region, growing attention has been devoted to forms of enterprise that seek to combine profit-making activities with the pursuit of social and environmental objectives[261].

A key driver of this development was the establishment of *Sistema B* in 2012 as the Latin American partner of B Lab and the regional promoter of the B Corp movement. Since then, the number of certified *Empresas B* has increased significantly throughout the region[262], contributing to the dissemination of stakeholder-oriented business practices and to the broader debate on the role of business in society.

Alongside the spread of B Corp Certification, several Latin American jurisdictions have introduced legal frameworks specifically designed for purpose-driven companies. In particular, Colombia, Peru, Ecuador and Uruguay have adopted legislation regulating the *Sociedades de Beneficio e Interés Colectivo* (BICs), thereby creating legal mechanisms through which companies may formally combine profit-making objectives with the pursuit of social and environmental benefits. Other countries in the region have also

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[258] Registradores de España (or the Colegio de Registradores de la Propiedad y Mercantiles de España) is a public body responsible for ensuring the proper functioning of the property, commercial and movable property registrars.
[259] The Guía orientativa de los Estatutos Sociales de las Sociedades de Beneficio e Interés Común is available at https://gabeiras.com/archivo/guia-orietativa-de-las-especialidades-de-los-estatutos-de-las-sbic/.
[260]. Royal Legislative Decree 1/2010, 2 July 2010, approving the consolidated text of the Companies Act (Ley de Sociedades de Capital).
[261] On the issue see Alcalde Silva 2018, 381-425.
[262] On *Empresa B* see, among others, Correa, Abramovay, Gatica, and Van Hoof 2013.

considered similar reforms, reflecting the growing influence of the benefit corporation movement and of the broader debate on sustainable and inclusive capitalism[263].

Colombia was the first Latin American country to introduce a dedicated legal framework for purpose-driven companies through Law 1901 of 2018, which established the ***Sociedades de Beneficio e Interés Colectivo*** (BIC)[264]. The legislative framework was subsequently complemented by Resolution No. 200-004394 of October 2018, adopted by the *Superintendencia de Sociedades* (a public administrative body), which identified the independent standards that BICs may use in preparing their annual impact reports[265]. It was further supplemented by Decree No. 2046 of 2019, which introduced a set of promotional measures aimed at encouraging the adoption of the BIC model[266].

Like the Italian *società benefit*, the Colombian BIC does not constitute a new corporate form[267]. Rather, it is a voluntary legal status that may be adopted by any existing or newly incorporated business company recognised under Colombian law, irrespective of whether it is organised as a civil or commercial company and regardless of whether it is a public or private company [268]. Co-operative entities, however, fall outside the scope of the regime. Accordingly, companies may elect BIC status without altering their underlying legal form, while committing to pursue social and environmental objectives alongside their economic activities.

The Colombian legislation regulates the defining features of the model, including the public benefit commitment, reporting obligations and accountability mechanisms. Matters not expressly governed by the BIC legislation remain subject to the company's bylaws and to the

[263] In Argentina, an initial proposal for the regulation of *Empresas Beneficiosas* was introduced on 7 September 2014. A more comprehensive bill, No. 2498-D-2018, was subsequently presented and approved by the Cámara de Diputados on 6 December 2018; however, it was never enacted by the Senado. As a result, Argentina has not yet adopted a specific legal framework for purpose-driven companies at the federal level. In Chile, following an initial proposal introduced in 2015 (Boletín No. 10321-03), Bill No. 11273-03 (*Proyecto de Ley que regula la creación y funcionamiento de las empresas de beneficio e interés colectivo*) was submitted on 13 June 2017. Although the bill has undergone parliamentary consideration, Chile has not yet enacted a dedicated legal regime for benefit and collective interest companies. Further information is available through the legislative records of the Cámara de Diputadas y Diputados de Chile
https://www.camara.cl/pley/pley_detalle.aspx?prmID=11789&prmBoletin=11273-03.
[264] Law No. 1901, 8 June 2018. See among others, Bonilla Sanabria 2017.
[265] Superintendencia de Sociedades, Resolución por la cual se reconocen unos estándares independentes para la preparación de informes de gestión en las sociedades de beneficio e interés colectivo, Resolution No. 200-004394, 18 October 2018, available at https://bibliotecadigital.ccb.org.co/items/67ebab62-b58c-494e-b366-483f69686755. The Resolution recognises as accepted independent standards to be used in the annual impact report B Corporation Certification, GRI, the ISO 26000 standard and the UN SDG Compass standards.
[266] Decree 2046-2019, 12 November 2019, available at
https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=102352.
[267] Law No. 1901, 8 June 2018, art. 2.
[268] See Law No. 1901, 8 June 2018, art. 1. In particular, the reference is to partnership (*sociedad colectiva*), limited partnership (*sociedades en comandita simple y por acciones*), limited liability company (*sociedad de responsabilidad limitada*), the corporation (*sociedad anónima*) and the simplified corporation (*sociedad por acciones simplificada*), regulated by the Colombian Commercial Code (Decree No. 410, 27 March 1971) and Law No. 1258, 5 December 2008, *Por medio de la cual se crea la sociedad por acciones simplificada*.

general rules applicable to the relevant corporate form[269]. In this respect, the Colombian framework follows an approach similar to that adopted by the Italian *società benefit*, superimposing a special purpose-oriented regime upon existing corporate structures rather than creating a distinct organisational form.

A distinctive feature of the Colombian model is its pioneering role within Latin America. Indeed, Colombia was the first jurisdiction in the region to enact comprehensive benefit corporation-style legislation, thereby providing a model that subsequently influenced similar reforms adopted in Peru, Ecuador and Uruguay.

Ecuador represents a particularly significant example in the development of purpose-driven business entities. The country is widely known for having been one of the first jurisdictions in the world to constitutionally recognise the rights of nature (*derechos de la naturaleza*) through Articles 71–74 of the 2008 Constitution[270]. This constitutional commitment to environmental protection and sustainable development has provided a particularly favourable context and the normative foundation for the emergence of business models that combine economic objectives with broader social and environmental goals.

The ***Sociedades de Beneficio e Interés Colectivo*** (BICs) were initially introduced through secondary legislation. In 2019, the *Superintendencia de Compañías, Valores y Seguros* (ie, the Superintendency of Companies, Securities and Insurance – SCVS) issued the *Instructions on Benefit and Collective Interest Companies*[271], thereby establishing the first regulatory framework governing the adoption and operation of BIC status. Subsequently, the model received legislative recognition through the *Organic Law on Entrepreneurship and Innovation* (*Ley Orgánica de Emprendimiento e Innovación*), enacted in 2020, which amended the Companies Act[272] by expressly recognising and regulating BIC companies within the Ecuadorian corporate law framework[273]. The legal framework applicable to BIC companies was then further amended in 2020[274] and 2023[275].

The administrative and legislative measures were developed in a complementary manner and pursue substantially the same objectives. Like the Italian *società benefit* and the Colombian

[269] Law No. 1901, 8 June 2018, art. 9.
[270] See the Constitution of the Republic of Ecuador (2008) articles 71–74, which recognise nature (*Pachamama*) as a subject of rights and entitle any person, community, people or nationality to demand their protection and enforcement.
[271] See "Instructivo sobre Sociedades Mercantiles de Beneficio e Interés Colectivo", Superintendencia de Compañías, Valores y Seguros, Resolution No. SCVS-INC-DNCDN-2019-0021, 6 December 2019, published in the Registro Oficial No. 107, 24 December 2019.
[272] Ley de Compañías, Law No. 312, 5 November 1999.
[273] Ley Orgánica de Emprendimiento e Innovación, Law No. SAN-2020-1526, 21 February 2020, published in the Registro Oficial – *Suplemento* No. 151, 28 February 2020. See in particular Disposiciones Reformatorias, Novena, which amended the Ley de Companias, adding to section IX a new non-numbered section on "Empresas de beneficio e interés colectivo".
[274] Law No. 347, 10 December 2020, Ley de Modernización a la Ley de Compañías.
[275] Law No. 269, 15 March 2023, Ley Reformatoria a la Ley de Compañías para la Optimización e Impulso Empresarial y para el Fomento del Gobierno Corporativo.

BIC, the Ecuadorian regime does not create a new corporate form. Rather, it establishes a voluntary legal status that may be adopted by any company subject to the supervision of the SCVS (e.g., partnership, limited partnership, joint-stock companies, limited liability companies), while preserving its existing legal structure and organisational form[276].

Companies electing BIC status undertake to pursue social and environmental objectives alongside their economic activities and are required to report periodically on the achievement of those objectives. In this respect, the Ecuadorian model follows the broader Latin American trend towards the institutionalisation of purpose-driven business entities through the integration of public-benefit commitments into the corporate framework.

At the same time, the Ecuadorian regime reflects a broader legal and policy environment characterised by a strong commitment to sustainability, social inclusion and long-term value creation, as demonstrated by its distinctive constitutional background. The constitutional recognition of the rights of nature (*Pachamama*), together with the principle of *Buen Vivir* (*Sumak Kawsay*)[277], establish a legal framework that places environmental protection, ecological sustainability and the interests of future generations among the fundamental values of the legal system.

Although the BIC legislation operates within the sphere of corporate law and does not directly implement constitutional rights of nature, it may be viewed as part of a broader regulatory evolution aimed at encouraging business organisations to internalise social and environmental considerations within their corporate purpose and decision-making processes. The Ecuadorian experience therefore offers an interesting example of the interaction between corporate law, constitutional values, and wider public policies aimed at promoting sustainable development.

Peru introduced the ***Sociedades de Beneficio e Interés Colectivo*** (BICs) through Law No. 31072 of November 2020[278], becoming one of the first Latin American countries to adopt a dedicated legal framework for purpose-driven companies. The enactment of the law was followed by an extensive implementation process aimed at providing a comprehensive regulatory

[276] See "Instructivo sobre Sociedades Mercantiles de Beneficio e Interés Colectivo", Superintendencia de Compañías, Valores y Seguros, Resolution No. SCVS-INC-DNCDN-2019-0021, 6 December 2019, art. 1. In particular, Ecuador company law (Ley de Compañias, Registro Oficial No. 312, 5 November 1999) provides for the following company types that can thus become BIC companies: *compañía en nombre colectivo, compañía en comandita simple y dividida por acciones, compañía de responsabilidad limitada, compañía anónima, compañía de economía mixta.*

[277] '*Buen Vivir*' (or Sumak Kawsay) is a constitutional principle rooted in Indigenous Andean traditions that conceives development as the achievement of collective well-being and harmonious coexistence between human beings and nature. It constitutes one of the normative foundations of the Ecuadorian constitutional model adopted in 2008. It is reflected both in the constitutional catalogue of the 'Rights of Buen Vivir' (arts. 12–34) and in the provisions defining the national development regime (arts. 275–278), which conceive development as the realisation of a sustainable and socially inclusive way of life in harmony with nature. For a discussion of the constitutionalisation of *Buen Vivir* in Ecuador, see eg, Gudynas 2011, 441-447; Acosta 2013.

[278] Law No. 31072, 24 November 2020, "Ley de la Sociedad de Beneficio e Interés Colectivo (Sociedad BIC)".

framework for the operation of BIC companies and the integration of sustainability-oriented business models into the Peruvian corporate landscape[279].

A key step in this process was the adoption of Supreme Decree No. 004-2021-PRODUCE in 2021[280], which clarified several aspects of the BIC regime, including the incorporation and registration of BIC status, the specification of the benefit purpose, reporting obligations, procedures for the loss of BIC status, and the corresponding accountability mechanisms. Additional implementing measures were subsequently adopted by various public authorities. These include regulations issued by the *Superintendencia Nacional de los Registros Públicos* (SUNARP) concerning the registration of BIC-related corporate acts[281]; provisions adopted by the National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI) regarding the consequences of misleading or improper use of BIC status, including the loss of the status for breach of consumer law regulations[282]; and guidelines issued by the Ministry of Production (*Ministerio de la Producción*) concerning the minimum content of the strategic plan and annual management report required of BIC companies[283].

Also the Peruvian model does not create a new corporate form. Rather, it establishes a voluntary legal status that may be adopted by any company regulated under the General Companies Act (e.g., corporation, partnership, limited partnership, limited liability companies)[284]. The legislation focuses on the core elements of the model, namely the pursuit of a specific social and environmental purpose, the adaptation of directors' and managers' duties to take such purposes into account, and enhanced transparency obligations through periodic reporting. Accordingly, the Peruvian regime follows the now-established Latin American approach of superimposing a purpose-oriented governance framework upon existing corporate structures rather than creating a separate organisational form.

Compared with other Latin American jurisdictions, the Peruvian model is noteworthy for the breadth of its implementing regulation, which has contributed to providing a relatively detailed and operational framework for the practical functioning of BIC companies.

[279] Mujica Filippi and Ochoa Pérez 2022, 733.
[280] Supreme Decree No.004-2021 PRODUCE, 23 February 2021, "Reglamento de la Ley No. 31072, Ley de la Sociedad de Beneficio e Interés Colectivo (Sociedad BIC)".
[281] Superintendent Resolution No. 043-2021-SUNARP/SA, 25 March 2021, which approved Directive No. DI-003-2021-SNR-DTR, 26 March 2021, "Directiva que regula la calificación de los actos inscribibles de la Sociedad de Beneficio e Interés Colectivo (Sociedad BIC)".
[282] Resolution No. 000056-2021-PRE/INDECOPI, 21 May 2021, which approved Directive No. 002-2021/DIR-COD-INDECOPI, 23 May 2021, "Directiva que regula la aplicación de la medida correctiva de pérdida de la categoría societaria a la que se refiere la Ley No. 31072 y su Reglamento, en el caso de infracciones a los derechos del consumidor".
[283] Ministerial Resolution No. 00127-2021-PRODUCE, 29 April 2021, which approved "Lineamientos para la elaboración del Plan Estratégico y del Informe de Gestión de las Sociedades de Beneficio e Interés Colectivo (Sociedad BIC)".
[284] Law No. 26887, 9 December 1997, "Ley General de Sociedades". Among them, corporations (*Sociedad Anónima*), partnership (*Sociedad Colectiva*), limited partnership and partnerships limited by shares (*sociedad en comandita simple*, *sociedad en comandita por acciones*), limited liability company (*sociedad comercial de responsabilidad limitada*), but not co-operatives (see art. 4 Supreme Decree No. 004-2021-PRODUCE).

Uruguay introduced the ***Sociedades de Beneficio e Interés Colectivo*** (BICs) through Law No. 19.969 of 23 July 2021[285], subsequently complemented by Decree No. 136/022 of 26 April 2022[286]. The adoption of this legislation followed the growth of the *Sistema B* movement and the increasing diffusion of Certified B Corporations within the country, providing a legal framework for organisations seeking to combine profit-making activities with the pursuit of social and environmental objectives.

The Uruguayan legislation is concise and principle-based. Rather than creating a new organisational form, it establishes a special legal status that may be voluntarily adopted by existing entities while preserving their underlying legal structure. The law harmonises the BIC regime with the existing framework of company and trust law, thereby facilitating its integration into the domestic legal system.

A distinctive feature of the Uruguayan model is its broad scope of application[287]. BIC status may be adopted not only by commercial companies incorporated under any of the corporate forms recognised by Uruguayan company law (ie, partnership, limited partnership, limited liability companies, joint-stock company, not co-operatives)[288], but also by *fideicomisos* (trusts), an institution introduced into Uruguayan law in 2003[289]. In particular, a trust may qualify as a *fideicomiso de beneficio e interés colectivo* where its constitutive instrument expressly provides for the pursuit of a positive social and environmental impact alongside its economic objectives[290]. This extension of the regime beyond the traditional corporate sphere represents one of the most innovative aspects of the Uruguayan framework.

Another noteworthy feature of the Uruguayan framework is the protection afforded to dissenting investors. The law expressly grants withdrawal rights to members or shareholders who were absent from the meeting, abstained or voted against the resolution adopting BIC status[291]. This provision is particularly significant from a comparative perspective, as benefit corporation legislation in most jurisdictions does not expressly recognise a statutory withdrawal right in connection with the acquisition or loss of benefit status. Neither the US benefit corporation statutes nor the Italian *società benefit* legislation, for example, provide for a specific withdrawal right on these grounds, leaving the matter to the general rules governing amendments to the corporate purpose or other fundamental corporate changes. The Uruguayan solution therefore offers a higher level of protection to dissenting investors by expressly acknowledging that the

[285] Law No. 19969, 23 July 2021, so-called “Ley de sociedades de beneficio e interés colectivo”.
[286] Decree 136/022, 26 April 2022, “Reglamentacion de la Ley 19.969, que establece el regimen aplicable a las sociedades y fideicomisos de beneficio e interes colectivo (BIC)”.
[287] Law No. 19969, 23 July 2021, art. 1.
[288] Law No. 16060, 4 September 1989, ie, “Ley de Sociedades Comerciales”, and Law No. 19820, 18 September 2019, regulating *sociedades por acciones simplificadas*. Thus, the company types that can acquire BIC status are partnerships (*sociedades colectivas*), limited partnerships (*sociedades en comandita simple*), capital-and-industry partnership (*sociedades de capital e industria*), limited liability companies (*sociedades de responsabilidad limitada*), joint-stock company (*sociedades anónimas*), partnerships limited by shares (*sociedades en comandita por acciones*), simplified joint-stock companies (*sociedades por acciones simplificadas*).
[289] Law No. 17.703, 27 October 2003.
[290] de Cores Helguera, Di Bello, and Hughes 2022, 932.
[291] See Law No. 19969, 23 July 2021, art. 6.

adoption of a public-benefit purpose may substantially affect the nature, objectives and risk profile of the enterprise.

Like the benefit corporations, Latin American BICs are for-profit entities characterised by the pursuit of both economic objectives and a social and environmental mission. Despite the differences arising from the specificities of each legal system, a significant degree of convergence can be observed among the legislative frameworks and, in some cases, the legislative proposals adopted across the region. These models generally address, to varying degrees, the three defining features of the dual-purpose company: the incorporation of a public-benefit purpose, the adaptation of directors' duties and responsibilities, and enhanced transparency and reporting obligations.

As civil law jurisdictions, Latin American countries appear to have drawn inspiration not only from the US Model Benefit Corporation Legislation, but also from the experience of the Italian *società benefit*, which represented the first comprehensive implementation of the dual-purpose company model within a civil law system. This influence can be observed, for example, in the decision not to create a new corporate form, but rather to establish an optional legal status that may generally be adopted by existing company forms provided by domestic company law. In this respect, the Latin American approach differs from the original US model, which was initially developed primarily for corporations, although some jurisdictions like Colombia, Ecuador, Peru and Uruguay continue to exclude certain organisational forms, such as co-operatives, from the scope of the regime[292].

Another common feature is the tendency to complement private enforcement mechanisms with various forms of public oversight or administrative supervision. While the intensity and design of such mechanisms vary considerably from one jurisdiction to another, several Latin American legislatures have entrusted public authorities with functions relating to the registration, monitoring, reporting or enforcement of the obligations associated with BIC status. This approach contrasts with the predominantly private-enforcement model adopted in most US benefit corporation statutes and reveals a broader inclination, characteristic of civil law systems, to rely on public institutions in order to enhance the credibility and accountability of purpose-driven business entities.

Turning to North America, Canada offers a particularly interesting perspective on the evolution of purpose-driven business organisations. Unlike the traditional shareholder primacy paradigm often associated with US corporate law, Canadian corporate law has long adopted a broader understanding of the corporation's interests. In particular, the Supreme Court of Canada has clarified that directors owe their fiduciary duties to the corporation itself rather than exclusively to its shareholders, thereby allowing consideration of a wider range of stakeholder interests when determining what is in the corporation's best interests[293].

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[292] Contrary to what happens in Italy, probably in a manner more consistent with the corporate law system (considering that co-operatives are not, technically, for-profit companies) but more restrictive, these countries exclude co-operatives from the application of the BIC.
[293] On the issue see Giagnocavo 2022, 458-460.

This approach was articulated most notably in *Peoples Department Stores Inc. (Trustee of) v. Wise* (2004)[294] and subsequently reaffirmed in *BCE Inc. v. 1976 Debentureholders* (2008)[295], where the court recognised that directors may legitimately take into account the interests of shareholders, employees, creditors, consumers, governments, Indigenous communities and the environment. The stakeholder-oriented approach of Canadian corporate law was further reinforced through amendments to the *Canada Business Corporations Act* adopted in 2019, which expressly acknowledge that directors may consider these interests when acting in the best interests of the corporation[296].

Against this background, Canada has witnessed increasing interest in corporate purpose, sustainable business practices, and hybrid organisational forms capable of combining economic value creation with broader social and environmental objectives[297]. Several policy initiatives and academic reports have advocated the development of a 'purpose economy' centred on long-term societal well-being and the alignment of corporate behaviour with public interests[298]. Among the most influential contributions is the report *Promoting Purpose in Canadian Public Policy*[299], which recommends a series of reforms aimed at encouraging corporations to articulate and implement a social purpose alongside their commercial objectives.

Among the various policy recommendations addressed to federal, provincial and local governments, several concern corporate law. At the federal level, the report advocates the adoption of a corporate social purpose framework through amendments to the *Canada Business Corporations Act* (CBCA). In particular, it recommends requiring large corporations, defined as companies with 500 or more employees, to adopt and disclose a formal statement of corporate purpose, understood as the company's commitment to create social value through the ordinary conduct of its business activities. According to the proposal, corporations would be required, on a 'comply or explain' basis, to disclose such purpose publicly and to issue an annual report describing the measures adopted to implement it and the results achieved.

The report further recommends reforming directors' duties by expressly requiring directors and officers to pursue the corporation's stated purpose honestly and in good faith, while continuing to act in the best interests of the corporation[300]. In this respect, the proposal seeks to move beyond the merely permissive stakeholder-oriented approach currently reflected in Canadian corporate law by introducing a more affirmative obligation to take the corporation's declared social purpose into account in corporate decision-making. Similar recommendations are advanced at the provincial level, where amendments to provincial corporate statutes replicating those provided at federal level are proposed in order to ensure a

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[294] Supreme Court of Canada, *Peoples Department Stores Inc (Trustee of) v Wise* [2004] 3 S.C.R. 461, 2004 SCC 68.
[295] *BCE Inc. v. 1976 Debentureholders* [2008] 3 S.C.R. 560, 2008 SCC 69.
[296] The 2019 amendments to the *Canada Business Corporations Act* introduced § 122(1.1), expressly providing that, in acting with a view to the best interests of the corporation, directors and officers may consider, among other factors, the interests of shareholders, employees, retirees and pensioners, creditors, consumers, governments, the environment, and the long-term interests of the corporation. See *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, § 122(1.1), as amended by *Budget Implementation Act, 2019, No. 1* (Bill C-97), S.C. 2019, c. 29.
[297] McMurtry, Brouard, Elson, Hall, Lionais, and Vieta 2015.
[298] See the Canadian Purpose Economy Project and the Social Purpose in Canada Status Report of November 2022, available at https://purposeeconomy.ca/about-us/.
[299] United Way Social Purpose Institute, *Promoting Purpose in Canadian Public Policy – Options for Governments in Canada to Accelerate Social Purpose in Business*, March 2022.
[300] United Way Social Purpose Institute, *Promoting Purpose in Canadian Public Policy – Options for Governments in Canada to Accelerate Social Purpose in Business*, March 2022, p. 12. On the issue see Akintunde and Janda 2023.

coherent approach across Canadian jurisdictions[301]. Although these proposals have not been enacted, they are noteworthy because they seek to embed corporate purpose within the governance framework of ordinary business corporations rather than through the creation of a distinct organisational form.

More concrete legislative developments have nevertheless occurred at the provincial level[302]. In response to the growing debate on corporate purpose and increasing concern regarding the social and environmental impacts of business activities[303], the Province of British Columbia amended its *Business Corporations Act* in May 2019 to introduce the *benefit company*, thereby becoming the first Canadian jurisdiction to adopt a statutory dual-purpose corporate model broadly inspired by the US benefit corporation.

British Columbia introduced ***benefit companies*** through the *Business Corporations Amendment Act (No. 2), 2019*[304], which inserted a new Part 2.3 (ss. 51.991–51.995) into the *Business Corporations Act*, Chapter 57[305]. By doing so, British Columbia became the first Canadian jurisdiction to enact a statutory dual-purpose corporate model inspired by the benefit corporation movement.

The legislation is relatively concise and closely follows the structure of the US benefit corporation framework, drawing inspiration from both the Delaware Public Benefit Corporation Act[306] and the Model Benefit Corporation Legislation[307]. Like its US counterparts, the British Columbian regime establishes an optional legal status that may be adopted only by businesses incorporated as companies under the *Business Corporations Act*.

The legislation focuses on the core features traditionally associated with dual-purpose companies, while matters not specifically regulated by the benefit company provisions remain subject to the general rules of British Columbian corporate law.

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[301] In particular, the report provides for the amendment of provincial Company Acts to require large companies with 500 or more employees to disclose their purpose, and to issue a report annually on their corporate purpose and the progress implementing it on a comply or explain basis. See United Way Social Purpose Institute, *Promoting Purpose in Canadian Public Policy – Options for Governments in Canada to Accelerate Social Purpose in Business*, March 2022, at 18.

[302] Within the context of dual-purpose companies, as well as in British Columbia, other innovative initiatives can also be found in Nova Scotia, which in 2012 adopted community interest companies with the *Community Interest Companies Act* (2012), in force since June 2016, and in Québec, where there was a proposal to introduce the *entreprise mission* or benefit corporation in the Québec *Companies Act*; see Projet de loi n° 797, *Loi modifiant la Loi sur les sociétés par actions afin d'y intégrer l'entreprise à mission* (http://www.assnat.qc.ca/fr/travaux-parlementaires/projets-loi/projet-loi-797-42-1.html?appelant=MC).

[303] See Giagnocavo 2022, 455.

[304] Business Corporations Amendment Act (no.2), 2019 (Bill M209), which received Royal assent on 16 May 2019 and came into force on 30 June 2020.

[305] See British Columbia Business Corporations Act (S.B.C. 2002, c. 57), Part 2.3, §§ 51.991–51.995.

[306] Eg, in addition to a general commitment to responsible and sustainable management of the company, the pursuit of specific public benefit purposes is required; furthermore, directors are required to 'balance' the interests of the company with sustainable management and the pursuit of the specific public benefit purpose.

[307] Eg, the benefit report must be prepared annually, and the impact generated by the company must be measured through a third-party evaluation standard.

In particular, benefit companies are required to include in their articles of association a *benefit provision*, namely a statement that they will conduct their business in a responsible and sustainable manner and promote one or more public benefits.

Directors are required to act honestly and in good faith with a view to conducting the business in a responsible and sustainable manner, and promoting the public benefits specified in the company's benefit provision. They have to balance these obligations with their general fiduciary duty under section 142(1)(a) of the *Business Corporations Act*. Accordingly, it looks like the balancing exercise in British Columbia does not occur among different stakeholder constituencies (ie, stockholders' pecuniary interests, the best interests of those materially affected by the corporation's conduct, and the public benefit/s identified in the certificate of incorporation) like in the Delaware Act, but rather between the traditional duty to act in the best interests of the company and the additional statutory obligations arising from the company's status as a benefit company.

Furthermore, benefit companies are required to produce an annual benefit report assessing through a third-party standard their performance in relation to those commitments.

Although inspired by the US benefit corporation model, the British Columbian framework operates within a broader Canadian corporate law environment that already recognises a stakeholder-oriented understanding of directors' fiduciary duties. Consequently, the introduction of the benefit company may be viewed less as a departure from traditional corporate law than as a legislative mechanism for making a company's public-benefit commitments more explicit, transparent and accountable.

Finally, the spread of new hybrid legal structures has also reached Africa, where the role of social entrepreneurs and purpose-driven organisations is increasingly recognised by both public institutions and private actors[308]. In February 2021, Rwanda became the first African country to enact legislation introducing the so-called *Community Benefit Company* (CBC) [309], a hybrid corporate model broadly inspired by the benefit corporation movement and designed to accommodate enterprises pursuing both commercial and public-benefit objectives.

However, the Rwandan CBC exhibits several distinctive features that set it apart from the US benefit corporation model. While the operative provisions governing CBCs largely follow the structure of benefit corporation legislation, certain aspects of the statutory definition adopted by the Rwandan legislature employ language traditionally associated with social enterprise and third-sector organisations. As a result, the legal nature of the CBC remains subject to debate, raising questions as to whether it should

[308] On the issue see eg, Marcet, Hartmann and Mirigay 2022; African Union (AU), *The Social and Solidarity Economy (SSE) in the African Union. Ten-year SSE Strategy and Implementation Plan (2023-2033)*, February 2025, available at https://sewfonline.com/wp-content/uploads/2023/10/SSE-in-the-African-Union.pdf.

[309] It is worth mentioning that Rwanda, once closer to the civil law tradition, has recently undergone a change of direction from a purely civil law system to a mixed system that combines principles from both civil and common law traditions, as well as traditional elements. On the peculiarities of Rwandan legal system history see Kamatali 2020.

be regarded primarily as a dual-purpose company belonging to the emerging 'fourth sector' or as a hybrid entity closer to more traditional social enterprise models.

Following the 1994 genocide against the Tutsi, Rwanda undertook extensive institutional, legal and economic reforms aimed at rebuilding the country and fostering sustainable economic development[310]. Over the past two decades, these reforms have contributed to significant economic growth and to the progressive modernisation of Rwanda's legal and regulatory framework.

As part of a broader strategy to attract domestic and foreign investment and position Rwanda as a leading business and financial hub in the region, the government has implemented an ambitious programme of reforms affecting company law, investment regulation and the overall business environment[311]. The introduction of the Community Benefit Company forms part of this wider effort to promote innovation, entrepreneurship and socially responsible investment.

Among the numerous reforms undertaken to modernise Rwanda's business environment, Law No. 007/2021 of 5 February 2021 governing companies[312] introduced several new corporate forms, including the *Community Benefit Company* (CBC), regulated in Chapter XIII (arts. 269–273) [313]. The Companies Act was subsequently amended by Law No. 019/2023 of 30 March 2023[314], which retained the CBC framework and the statutory definition of the model. The legislation further provides for the adoption of a Ministerial Order determining the incentives available to CBCs and the conditions for eligibility[315]. However, no such implementing instrument appears to have been adopted to date.

Under Article 269, a CBC is a company that has the purpose of creating a positive impact on society and the environment, taken as a whole, which is proportionate to the size and nature of the company's business, and generated through the manner in which the business and operations of the company are carried out (ie, a community-benefit purpose). The CBC regime is available to both private and public companies and does not create a separate corporate form[316]. Rather, it establishes a special status that may be adopted within the framework of ordinary company law.

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[310] For a deeper analysis of Rwandan growth see Bernatzki, Busse, and Hoekstra 2022.

[311] Among the fields affected by the reforms there are laws on: companies, partnerships, insolvency, negotiable instruments, foundations, trusts, collective investment schemes, insurance business, deposit-taking microfinance institutions, capital markets.

[312] Law No. 007/2021, 5 February 2021, Law governing companies, Official Gazette n° 04 *ter* of 08/02/2021.

[313] For information about the Rwandan legislative process, special thanks go to Dr Carter Crockett, co-founder of Karisimbi Partners, who participated in the working group for the drafting of Rwanda's CBC legislation and who was available to be interviewed.

[314] Law No. 019/2023, 30/03/2023, amending Law No. 007/2021 of 05/02/2021 governing companies, Official Gazette No. Special Bis of 30/03/2023.

[315] Law No. 007/2021, 5 February 2021, art. 269, last paragraph.

[316] According to the New Company Law, Law No. 007/2021, 5 February 2021, there are several company types in Rwanda which can thus acquire the status of CBC: companies limited by shares, companies limited by guarantee, unlimited companies.

The legislation addresses the three core features commonly associated with dual-purpose companies. First, it requires the company to pursue a community-benefit purpose. Second, directors are required, when performing their duties, to consider the effects of their decisions not only on shareholders but also on a wide range of stakeholders, such as employees, customers, suppliers, the community, and the local and global environment, as well as the long-term interests of the company and its ability to accomplish its purposes[317]. Third, the company must prepare an annual community benefit report describing its pursuit of the community-benefit purpose and its overall social and environmental performance[318].

From a structural perspective, Chapter XIII displays significant similarities with benefit corporation legislation adopted in the United States and subsequently transplanted to other jurisdictions[319]. The Rwandan model combines a public-benefit purpose, expanded directors' duties and periodic reporting obligations, while leaving all matters not specifically regulated by the CBC provisions subject to the general rules governing companies.

Nevertheless, the Rwandan legislation presents an important interpretative peculiarity. While the operative provisions contained in Chapter XIII closely resemble the architecture of benefit corporation statutes[320], the general definition of a Community Benefit Company contained in Article 2(31) adopts a different terminology. The provision defines a CBC as a "company with primary social objectives whose surpluses are re-invested, for that purpose, in the business or in the community rather than being driven by the need to maximise profit for its shareholders or owners" [321]. This wording appears to place particular emphasis on the primacy of social objectives over profit-making ones, and on the reinvestment of surpluses. These features seem to bring Rwanda's CBC into close alignment with the UK Community Interest Company (CIC) and other social enterprise models found in several jurisdictions[322], which are characterised by the non-distribution constraint and may be placed within the third sector.

However, neither Chapter XIII nor any other provision of the Companies Act expressly establishes, or can be interpreted as establishing, restrictions on profit distributions, asset-lock mechanisms, mandatory reinvestment percentages, or special rules governing the allocation of residual assets upon liquidation. Nor does the legislation create a system of public supervision comparable to those commonly associated with traditional third-sector entities. Articles 269–273, instead, seem to closely follow the US benefit corporation model, without any hierarchy of purposes and with no limits on profit distributions or asset allocation in the event of liquidation.

As a result, a degree of tension exists between the definition contained in Article 2(31) and the operational provisions governing CBCs. Whereas the former employs language frequently associated with social enterprises, the latter largely follows the logic of dual-purpose company legislation. In the absence of further implementing measures clarifying the relationship between

[317] Law No. 007/2021, 5 February 2021, art. 272.
[318] Law No. 007/2021, 5 February 2021, art. 273.
[319] Eg, Latin American models were also considered in the writing process, especially those of Ecuador and Colombia.
[320] The similarity of Rwanda's legislation to the benefit corporation model, led B Lab to announce Rwanda as the fifth country in the world to recognise and regulate the dual-purpose company model; see https://b-labafrica.net/rwanda-becomes-5th-country-in-the-world-to-pass-law-on-conscious-business-practices/.
[321] Law No. 007/2021, 5 February 2021, art. 2, n. 31°.
[322] For a deep and interesting analysis of the international landscape on social enterprise see Neri-Castracane 2023.

these provisions, the precise positioning of the CBC within the broader landscape of purpose-driven organisations remains open to interpretation.

Interpretative doubts have been reinforced during discussions concerning the implementation of the legislation. Indeed, various draft versions of the Ministerial Order envisaged by the law reportedly contemplated restrictions commonly associated with social enterprise and third-sector entities, including limitations on profit distributions, mandatory reinvestment obligations, asset-lock mechanisms and enhanced administrative supervision[323].

However, no official implementing instrument containing such provisions appears to have been adopted to date. Consequently, any assessment of the legal nature of the CBC must primarily rely on the statutory provisions currently in force.

Although comprehensive data on the practical use of the CBC form are not publicly available, several organisations have reportedly adopted this status in Rwanda. These include entities operating in fields such as community development, agriculture, healthcare, environmental protection and sustainable tourism. While this evidence is necessarily anecdotal, it suggests that the CBC has thus far been used primarily by social enterprises, rather than by conventional profit-oriented businesses. Although this does not resolve the interpretative questions arising from the Companies Act, it may provide some indication of how the new legal form is being understood and employed in practice.

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[323] According to what emerged from some draft versions, and in line with the definition provided in Article 2(31) of the Companies Act, CBCs would have been subject to limitations such as the possibility of distributing only 30 per cent of profits to shareholders, the obligation to reinvest 70 per cent of profits in the company, and the mandatory devolution to other CBCs, social enterprises or public-interest funds of two-thirds of any remaining assets and outstanding dividends in the event of dissolution, liquidation, cancellation, or conversion into an ordinary company. Other limitations envisaged by the drafts included the requirement to obtain the approval of the Registrar General for any alteration of the company's memorandum or articles of association, as well as a prohibition on campaigning in favour of or against changes in law or public policy, or in support of a political party, organisation, particular group or employees on discriminatory grounds. In exchange for these limitations, certain benefits for CBCs were envisaged, although no direct tax incentives appeared to be included. The proposed benefits seemed to be inspired by measures adopted in other jurisdictions for dual-purpose companies, such as the award of additional points in public procurement procedures, exemptions from intellectual property registration and other company fees, and preferential access to government credit lines or credit guarantees. Had such provisions been adopted, or should they be adopted in the future, they would arguably place CBCs closer to the realm of social enterprises and the third sector rather than that of dual-purpose companies belonging to the fourth sector.

6. The main features of dual-purpose company legislation: convergences and divergences

The comparative analysis conducted so far reveals a remarkable degree of convergence among the legal regimes governing dual-purpose companies, notwithstanding the diversity of legal traditions, institutional frameworks and regulatory approaches in which they have emerged. Although the US benefit corporation has undoubtedly served as the original legislative model, subsequent reforms across Europe, Latin America, Canada and Africa have not simply replicated the American experience. Rather, they have adapted its fundamental principles to their own corporate law traditions, constitutional frameworks and public policy objectives.

Consequently, contemporary dual-purpose company legislation exhibits a common conceptual core, centred on the combination of profit-making and public-benefit objectives, while simultaneously displaying important jurisdictional variations in the legal techniques adopted to achieve those objectives. These divergences concern, in particular, the boundaries of the benefit purpose, the governance structure, transparency obligations and the control mechanisms, especially the relationship between private autonomy and public oversight. They ultimately reflect different regulatory choices as to how the pursuit of public benefit should be embedded within company law, and the balance between private autonomy and public-interest objectives.

Against this background, the following comparative overview examines the principal structural features of the dual-purpose company regime. For ease of comparison, the analysis is organised around a common set of themes, namely: definitions and purpose; formation, termination and exit; directors' duties and accountability; governance structure; transparency and reporting obligations; control systems and accountability; and tax treatment and economic incentives. The purpose of this thematic approach is to identify both the common denominator shared by the different legal regimes and the principal points of divergence that characterise each jurisdiction.

The jurisdictions examined represent both the common law and the civil law traditions. The United States (including the Model Benefit Corporation Legislation and Delaware) and British Columbia[324] belong to the common law family. By contrast, Italy, France, Spain, Colombia, Ecuador, Peru and Uruguay are generally classified as civil law jurisdictions, reflecting the broader civil law tradition that characterises Latin American legal systems[325]. Rwanda, on the other hand, is generally regarded as a mixed or hybrid legal system. While historically rooted in the civil law tradition, it has progressively incorporated important common law features, particularly in judicial organisation, and the growing role of judicial precedent following its accession to the Commonwealth. This hybrid character is also reflected in its BIC legislation,

[324] British Columbia belongs to the Canadian common law tradition, although Canada as a federal legal system is generally described as bijural, combining common law outside Québec and civil law in Québec.
[325] Colombia, Ecuador, Peru and Uruguay may all be classified as civil law jurisdictions. More generally, Latin American legal systems are usually described as belonging to the civil law tradition, although each national system has its own institutional, constitutional and regulatory specificities.

whose overall structure and regulatory technique appear to have been largely inspired by the US benefit corporation model.

6.1 Definitions and purpose

The defining feature of all dual-purpose company legislation is the departure from the traditional conception of the business company or other business organisational forms as entities exclusively oriented towards the generation of profits for their shareholders or members. Although the various statutes employ different legislative techniques and terminology, they all recognise that the pursuit of economic profit may coexist with the creation of a positive social and/or environmental impact, thereby incorporating a public-benefit dimension into the company's corporate purpose. In this respect, the comparative analysis reveals a remarkable degree of convergence across jurisdictions, notwithstanding the diversity of legal traditions and regulatory approaches.

A first common feature concerns the **legal nature of the model**. With the exception of the US and British Columbia – in which, also due to the different legislative approach, provision is made for the introduction of a specific type of company, the benefit corporation (and in some cases the benefit LLC) – the majority of the jurisdictions examined do not create a new corporate form. Rather, they establish a voluntary legal status that may be adopted by one or more existing company types (with some differences regarding the possibility for co-operatives to acquire this status; for example, in Italy they can, but in Uruguay they cannot), while preserving the legal regime otherwise applicable to the underlying corporate form. The dual-purpose model therefore operates as a modification of the company's constitutional framework rather than as a separate organisational vehicle.

A second point of convergence concerns the existence of a **dual-purpose clause**. In all jurisdictions, the pursuit of profit remains an essential objective of the company, but it is complemented by one or more public-benefit purposes that become part of the company's corporate purpose and are intended to guide its business activities. The legislation generally requires such benefit purposes to be expressly incorporated into the company's purpose clause contained in its constitutional documents (articles of association or by-laws), although the degree of specificity required varies considerably from one jurisdiction to another.

The comparative analysis nevertheless reveals different regulatory techniques for defining the public-benefit purpose. At the most general level, all the statutes require the company to pursue, alongside profit, a broader public-interest objective. However, this **general benefit purpose** is formulated differently across jurisdictions. In some legal systems (see eg, the US Model Act) it is expressed as the obligation to generate a general public benefit, usually understood as a material positive impact on society and the environment as a whole. In others (see eg, Italy or Delaware), the same overarching objective is framed through the obligation to conduct the company's business in a responsible, sustainable and, in some cases, transparent manner, thereby emphasising the standards according to which the company's activities must be carried out rather than defining the public benefit as a separate legal concept. Despite these different formulations, both approaches perform the same function of extending the company's corporate purpose beyond the sole pursuit of profit.

A second point of divergence concerns the role of **specific public-benefit purposes**. While some jurisdictions require companies, in addition to the general public-benefit obligation, to identify one or more specific social or environmental objectives in their constitutional documents (see eg, Italy or Delaware), others merely permit companies to do so on a voluntary basis (see eg, the US Model Act). Under the latter approach, the general public benefit constitutes the only mandatory component of the extended corporate purpose, whereas the identification of additional specific objectives is left to the company's discretion. By contrast, where the law requires the inclusion of one or more specific public-benefit purposes, the company's commitment becomes more precisely defined from the outset, thereby providing a clearer benchmark against which directors' conduct, reporting obligations and compliance with the benefit purpose may subsequently be assessed.

Moreover, the **degree of legislative prescription** concerning the benefit purpose differs significantly across jurisdictions. Some regimes (such as those of the Model Act, Peru and Ecuador) adopt a more prescriptive approach to defining the benefit purpose by requiring, for example, the simultaneous pursuit of at least one social and one environmental objective, the implementation of the benefit purpose within the framework of a strategic plan or an environmentally sustainable management system, or by identifying illustrative measures that may be adopted in specific areas such as corporate governance, employees, the community and the environment. Other jurisdictions, by contrast, leave companies considerably greater discretion in defining the content and scope of their public-benefit commitments. These variations reflect different conceptions of the role of company law and private ordering in promoting sustainability objectives, ranging from relatively flexible enabling models to more prescriptive regulatory frameworks.

Finally, despite the different legislative techniques adopted to define the benefit purpose, all the jurisdictions examined share a fundamental conceptual premise: none establishes a **legal hierarchy** between the company's profit-making purpose and its public-benefit purpose. Rather, the dual-purpose model is based on the coexistence of two complementary and equal-ranking corporate purposes, both of which become part of the company's constitutional purpose once the for-benefit status has been adopted. Accordingly, directors are not required to subordinate the pursuit of profit to the benefit purpose, nor vice versa. Instead, they are expected to pursue and reconcile both objectives within the ordinary conduct of the company's business.

Likewise, the legislation generally does not establish any hierarchy among multiple benefit purposes where these coexist, leaving companies free to eventually determine their relative importance in their constitutional documents or, where appropriate, in their internal governance arrangements.

The dual-purpose company therefore represents a departure from the traditional dichotomy between for-profit and non-profit organisations: rather than replacing the profit motive with altruistic objectives, it recognises that the creation of economic value and the generation of positive social and environmental impact constitute complementary and legally equivalent dimensions of the corporate purpose.

Against this comparative background, the following country reports provide an overview of the specific legal regimes governing the definition and content of the corporate purpose and in particular of the benefit purpose in each of the jurisdictions considered.

U.S. Model Act

A benefit corporation is a business corporation, whose articles of incorporation contain an explicit statement that it is a benefit corporation[326].

As to the corporate purpose, in addition to pursuing a profit-making purpose, benefit corporations shall have the further purpose of creating through their business and operations a 'general public benefit'[327], which is defined as a material positive impact on society and the environment, taken as a whole, assessed taking into account the impacts of the benefit corporation as reported against a third-party standard[328].

The Model Act also allows benefit corporations to voluntarily pursue one or more additional 'specific public benefit/s', which must be also stated in the articles of incorporation[329]. The law indicates, merely by way of example, some areas of action such as providing low-income or underserved individuals or communities with beneficial products or services; promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business; protecting or restoring the environment; improving human health; promoting the arts, sciences or advancement of knowledge; increasing the flow of capital to entities with a purpose to benefit society or the environment. However, the pursuit of any other particular benefit on society or the environment, different from those listed above, is possible.

Delaware

Public benefit corporations (PBCs) are for-profit corporations that intend to produce a public benefit or public benefits, and to operate in a responsible and sustainable manner. Accordingly, with regard to the corporate purpose, Delaware law requires the PBC, on one side, to operate in a responsible and sustainable manner looking out for the interests of those on whom the company's activities may have a significant impact. This seems an obligation similar to the general public benefit prescribed by the Model Act. On the other side, the law mandatorily requires to indicate in the corporation's articles of incorporation one or more specific public benefits that the company intends to pursue[330].

The law offers a broad definition of public benefit, which means the production of a positive effect, or reduction of negative effects, on one or more categories of persons, entities, communities or interest groups other than shareholders, including, but not limited to, effects of

[326] Model Act §102.
[327] Model Act §201(a).
[328] Model Act §102 –*"General public benefit"*.
[329] Model Act §102 – *"Specific public benefit"*; and §201(b).
[330] Del. Code Ann. tit. 8, §362(a).

an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature[331].

British Columbia

A benefit company is defined as a for-profit company that, in addition to pursuing a profit-making purpose commits itself to conducting business in a 'responsible and sustainable manner' and promoting one or more 'public benefits' included in the articles of association[332].

The law specifies that a benefit company is considered to operate in a 'responsible and sustainable manner' if it takes into account the well-being of persons affected by its activities, and endeavours to use a fair and proportionate share of available environmental, social and economic resources and capabilities[333].

A 'public benefit', according to the law, means a positive effect, including of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature, for the benefit of either a class of persons, other than shareholders of the company, or a class of communities or organisations, or the environment (including air, land, water, flora and fauna, and animal, fish and plant habitats)[334].

Rwanda

The Community Benefit Company (CBC) is defined in article 2(33) of the Companies Act, as amended by Law No. 019/2023 of 30 March 2023[335], as "a company with primary social objectives whose surpluses are re-invested, for that purpose, in the business or in the community rather than being driven by the need to maximize profit for its shareholders or owners." This definition appears to emphasise the primacy of social objectives and the reinvestment of surpluses, thereby suggesting a possible proximity between the Rwandan CBC and social enterprise models characterised by limits on profit distribution.

However, this interpretation is not clearly reflected in the operative provisions governing CBCs. Article 269 provides that one of the purposes of every CBC is to have a positive impact on society and the environment, taken as a whole, proportionate to the size and nature of the company's business and created by the manner in which the company is operated[336]. This formulation resembles the general public-benefit purpose found in several dual-purpose

[331] Del. Code Ann. tit. 8, §362(b).
[332] S.B.C. 2002, c. 57, Part 2.3, §51.992.
[333] S.B.C. 2002, c. 57, Part 2.3, §51.991.
[334] S.B.C. 2002, c. 57, Part 2.3, §51.991.
[335] See Law No. 007/2021, 5 February 2021, art. 2, n. 33.
[336] Law No. 007/2021, 5 February 2021, art. 269, paragraph 1.

company statutes and does not expressly establish any hierarchy between the public-benefit purpose and the company's other purposes[337].

Similarly to the US Model Act, Rwanda law provides that the incorporation documents of a CBC may also identify one or more specific social objectives as additional company purposes. A non-exhaustive list of such objectives includes: providing beneficial products or services to low-income or underserved individuals or communities; promoting economic opportunities beyond job creation in the ordinary course of business; conserving and promoting the environment; improving human health; promoting the arts, sciences and the advancement of knowledge; and conferring any other particular benefit on society or the environment[338]. The identification of a specific social objective does not limit the general purpose of having a positive impact on society and the environment taken as a whole.

Accordingly, a tension exists between the general definition of a CBC, which uses language commonly associated with social enterprises, and the operative provisions of article 269, which more closely resemble dual-purpose company legislation. Since no implementing instruments have been adopted and the current statutory provisions do not expressly impose a non-distribution constraint, mandatory reinvestment percentages, or special rules on asset allocation upon liquidation, the precise classification of the Rwandan CBC remains open to interpretation.

Italy

Società benefit are defined as those companies that, in the conduct of an economic activity, pursue, in addition to the purpose of distributing profits, one or more purposes of common benefit and operate in a responsible, sustainable and transparent manner towards persons, communities, territories and the environment, cultural and social assets and activities, entities and associations, and other stakeholders[339].

Therefore, with regard to the entity purpose, Italian law seems to resume the provisions of Delaware because *società benefit* are characterised by a dual-purpose clause, combining the production of profits and the pursuit of both a 'general' and (one or more) 'specific' public benefits[340]. Indeed, according to the law, a *società benefit* shall pursue one or more public-benefit purposes (ie, the specific public benefit) and operate in a responsible, sustainable and transparent manner vis-à-vis several categories indicated in a not exhaustive definition, such as

[337] It is worth mentioning that, according to the Rwanda New Companies Act, art. 4, every company is considered to be established for commercial purposes.
[338] Law No. 007/2021, 5 February 2021, art. 269, paragraphs 2 and 3.
[339] Law No. 208, 28 December 2015, art. 1, paragraph 376.
[340] Consequently, a company characterised only by a responsible, sustainable and transparent conduct towards all stakeholders (ie, pursuing only the general public benefit) could not be correctly qualified as a *società benefit* and, vice versa, a company in which the 'common benefit' purpose is explicit, but the business activity is not conducted in a responsible, sustainable and transparent manner, could not be properly qualified as a *società benefit*.

individuals, communities, territories and the environment, cultural and social heritage, entities and associations as well as other stakeholders (ie*,* the general public benefit)[341]. The law provides broad definitions and does not clearly indicate how these different interests should be prioritised, giving directors a large degree of flexibility in this respect.

With regard to the obligation to operate in a responsible, sustainable and transparent manner, the law also describes the scope of the general reference to 'stakeholders', defining them as "the individuals or groups of individuals directly or indirectly involved in, or affected by, the activities of the benefit company, being, *inter alios*: workers, clients, suppliers, lenders, creditors, public administration and civil society"[342]. The definition is very general and is not a 'closed definition'; it permits to identify stakeholders different from those listed by the law.

As for the specific public benefit, a *società benefit* shall identify, within its company purpose clause, the particular aim/s of public benefit ('*beneficio comune*') that it intends to pursue[343]. The *beneficio commune* is also defined by law in a broad manner[344], as the pursuit of one or more positive effects, or the reduction of negative effects, with respect to one or more categories of stakeholder, such as the ones listed above[345].

France

To obtain the *société à mission* status the law provides substantive and procedural requirements. Substantive requirements are basically related to the extension of the ordinary purpose of a company. Indeed, to become a *société à mission*, a company must specify in its articles of association[346]:

i) a *raison d'être* pursuant to art. 1835 of the Civil Code (the guiding principles determining the long-term strategic direction of the company), and

ii) a '*mission*', ie, one or more social and environmental objectives that the company is committed to pursuing in the course of its business (intended as the materialisation of the *raison d'être*)[347].

[341] Law No. 208, 28 December 2015, art. 1, paragraph 376.
[342] Law No. 208, 28 December 2015, art. 1, paragraph 378, letter b).
[343] Law No. 208, 28 December 2015, art. 1, paragraph 379.
[344] Law No. 208, 28 December 2015, art. 1, paragraph 378, letter a).
[345] Law No. 208, 28 December 2015, art. 1, paragraphs 376 and 378, letter b).
[346] Art. L210-10 Commercial Code: "*Une société peut faire publiquement état de la qualité de société à mission lorsque les conditions suivantes sont respectées: 1° Ses statuts précisent une raison d'être, au sens de l'article 1835 du code civil; 2° Ses statuts précisent un ou plusieurs objectifs sociaux et environnementaux que la société se donne pour mission de poursuivre dans le cadre de son activité;...*".
[347] The objectives indicated in the company mission cannot be separated from the ordinary business activity but need to be integrated in that, while the pursuit of such objectives can be considered as an obligation of means, not an obligation of result; see Desbarats 2021, 743.

Procedural requirements are related to the oversight on the achievement of the company's extended purpose. The law touches on the governance and the system of internal and external controls. It provides for the need to indicate in the articles of association the methods for monitoring the execution of the *mission* through the establishment of a new corporate body, separate from the board of directors, the '*comité de mission*' (mission committee), and the necessity to seek a verification by an independent third-party body ('*organisme tiers indépendant*')[348], both of which will be discussed in more detail below.

Spain

According to the provisions contained in Law 18/2022, *Sociedades de Beneficio e Interés Común* (SBICs) are defined[349] as incorporated companies that voluntarily decide to include in their articles of association: (i) a commitment to generating a positive social and environmental impact through their business activities; (ii) a commitment to higher standards of transparency and accountability regarding the achievement of such objectives; and (iii) a commitment to take into account the interests of stakeholders in their decision-making. These commitments are intended to be pursued alongside the company's profit-making activities and do not give rise to a distinct corporate form.

Colombia

Sociedades de Beneficio e Interés Colectivo (BIC) are companies that pursue a dual purpose[350]. According to article 2 of Law 1901 of 2018, they are companies incorporated in accordance with the applicable legislation which, in addition to the benefit and interests of their shareholders, act in pursuit of the interests of the community and the environment ('*interés de la colectividad y del medio ambiente*'), and specify in their corporate purpose clause the collective-benefit activities (ie*,* the public benefit) that they want to promote.

The adoption of BIC status does not create a new corporate form but introduces a special legal status that may be voluntarily assumed by existing or newly incorporated companies.

To acquire BIC status, a company must amend its corporate purpose clause and specify the collective-benefit activities that it intends to promote[351]. The combined provisions of Law 1901 of 2018 and Decreto 2046 of 2019, identify five broad dimensions in which such activities may be carried out, namely: business model, corporate governance, labour practices,

[348] Commercial Code, art. L210-10, 3° and 4°.
[349] Law 18/2022, 28 September 2022, *Ley de creación y crecimiento de empresas*, Disposición adicional décima.
[350] Law 1901/2018, 18 June 2018, art. 2.
[351] Law 1901/2018, 18 June 2018, art. 2 and art. 3.

environmental practices, and community practices[352]. Within each dimension, the law provides a number of illustrative examples, including the adoption of reasonable remuneration policies, the promotion of charitable and voluntary activities, support for local communities and the efficient use of natural resources. The activities listed in the legislation are generally understood as illustrative rather than exhaustive[353], allowing companies to pursue additional initiatives consistent with the objectives of the BIC regime. Companies are not required to implement all the measures listed in the Law and the Decree, but should undertake at least one activity within each of the five dimensions identified[354].

The Colombian model therefore combines the traditional profit-making purpose with the pursuit of collective and environmental interests through a structured framework of public-benefit commitments integrated into the company's corporate purpose.

Peru

The Peruvian legal framework defines the *Sociedad de Beneficio e Interés Colectivo* ('Sociedad BIC') as a voluntary legal status that may be adopted by any corporate legal person incorporated, or to be incorporated, under one of the company types provided by the Peruvian General Companies Law[355]. The adoption of BIC status does not create a new corporate form, but allows a company to pursue a benefit and collective interest, integrating into its economic activity social and environmental-benefit purposes[356].

For the purposes of the Law, 'benefit and collective interest' is defined as either a material positive impact or the reduction of a negative impact on society and the environment[357]. In particular, the implementing regulation defined the meaning of 'positive material impact' and the 'reduction of a negative material impact'[358]. The first is described as an outcome aimed at improving the well-being of the population and/or the environment. The second as an outcome aimed at eliminating or mitigating the effects of a negative impact generated either by natural causes or by third parties unrelated to the BIC company, affecting one or more components of the environment and/or a specific group of individuals or the community at large. In both cases, the outcome should be measurable over time and generated directly by one or more actions undertaken by the BIC company.

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[352] See Law 1901/2018, 18 June 2018, art. 2, and Decree 2046-2019, 12 November 2019, arts. 2.2.1.15.4–2.2.1.15.5, implementing Law 1901/2018 and organising BIC commitments into five dimensions.
[353] Law 1901/2018, 18 June 2018, art. 2 ("...*entre otras, las siguientes características...*").
[354] See Decree 2046-2019, 12 November 2019.
[355] Law No. 31072, 24 November 2020, art. 2, and 3.1., providing that companies incorporated or to be incorporated under the corporate types provided by Law No. 26887, Ley General de Sociedades, may adopt BIC status.
[356] Law No. 31072, 24 November 2020, art. 3; Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 5.1
[357] Law No. 31072, 24 November 2020, art. 3.2.; Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art.3 (a).
[358] Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 3(d) and 3(e).

A *Sociedad de Beneficio e Interés Colectivo* must include in its articles of association and by-laws the express statement that the company is a BIC company[359]. Moreover, it shall include in its bylaws, immediately after the clause regulating the corporate purpose, a clear and detailed description of the benefit purpose pursued by the company[360]. The benefit purpose may prioritise[361] social[362] and environmental[363] objectives, however it must include at least one social objective and one environmental objective to be pursued within the framework of an "environmentally sustainable management"[364] The acts connected to the same social and environmental objective that contribute to its realisation, even if they are not expressly indicated in the articles, are deemed to be included[365]. Moreover, the law specifies that the activities undertaken to achieve those objectives must be implemented in accordance with a strategic plan focused on the benefit purpose[366].

As for the name, a company that acquires BIC status shall include the expression 'Benefit and Collective Interest' or the abbreviation 'BIC' [367]. Where BIC status is lost, the company must register the relevant amendment with the *Superintendencia Nacional de los Registros Públicos* (SUNARP), after which it must cease using the designation 'Sociedad BIC' or the abbreviation 'BIC' in its corporate name and communications.

Ecuador

Under Ecuadorian law, *Sociedades de Beneficio e Interés Colectivo* (BICs) are defined as companies which, while carrying out their operational activities for the benefit of the interests of

[359] Law No. 31072, 24 November 2020, art. 5.1.
[360] Law No. 31072, 24 November 2020, art. 5.2; Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 7.
[361] According to Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 9, BIC companies may give priority to benefit and collective-interest activities that contribute to the achievement of the Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development adopted by the United Nations; to activities aimed at promoting the rights of groups in situations of particular vulnerability, as recognised by national legislation and policy instruments, as well as by the international treaties to which the Republic of Peru is a party.
[362] According to Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 3(f), social objectives are quantifiable goals aimed at improving, wholly or partially, the well-being of the population by addressing or reducing the effects of a problem caused either by natural events or by third parties unrelated to the BIC company.
[363] According to Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 3(g), environmental objectives are goals aimed at ensuring the existence of healthy, viable and functional ecosystems through the prevention of environmental harm, the protection and restoration of the environment and its components, and the conservation and sustainable use of natural resources in a responsible manner consistent with respect for fundamental human rights.
[364] See Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 8. According to Supreme Decree No.004-2021 PRODUCE of 23 February 2021, art. 3(c), environmentally sustainable management means a permanent and continuous process consisting of a structured set of principles, rules, processes and activities aimed at implementing the objectives of the company's environmental sustainability policy and preserving the natural heritage. Environmental management shall be governed by the principles established in the General Environmental Law and by the other legislation applicable to environmental matters.
[365] Law No. 31072, 24 November 2020, art. 6.
[366] See Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 8.2.
[367] Law No. 31072, 24 November 2020, art. 4; Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 6.

their partners or shareholders, undertake to generate a positive social impact in pursuit of the interests of society and the environment[368].

BIC status does not create a new corporate type or alter the company's existing legal form[369]. Rather, it is a voluntary legal status that may be adopted by any domestic company subject to the control and supervision of the *Superintendencia de Compañías, Valores y Seguros*[370]. The company must add the expression '*Sociedad de Beneficio e Interés Colectivo*' or the abbreviation 'BIC' to its corporate name[371].

New or existing companies wishing to acquire BIC status must incorporate into their articles of association the general obligation to generate a positive social or environmental impact and submit the corresponding amendment for registration with the Mercantile Registry or the Companies Registry of the Superintendency of Companies, Securities and Insurance of Ecuador[372]. In addition to clearly and specifically defining its business activities, and undertaking the obligation to create a positive material impact on society and the environment, the corporate purpose of a BIC company may, where the company so chooses, also include one or more specific social or environmental objectives.

To fulfil the general obligation to create a positive, material and verifiable impact on society and the environment, the directors of a BIC company may adopt measures relating to one or more of the following impact areas: governance[373], workforce[374], community[375], customers[376] and the environment[377]. Where appropriate, they may rely on one, several or all of these impact areas in pursuing the specific objectives incorporated into the company's corporate purpose. They are not required to address all of the impact areas described but once one or more areas have been selected, compliance with the corresponding commitments becomes mandatory for the BIC. The measures adopted must be described in the impact management reports[378].

368 Resolution No. SCVS-INC-DNCDN-2019-0021, 6 December 2019, art. 2; Law No. SAN-2020-1526, 21 February 2020, art. 3(10); Ley de Compañías, Law No. 312, 5 November 1999, second unnumbered article following art. 329.
369 Resolution No. SCVS-INC-DNCDN-2019-0021, 6 December 2019, art. 2; Law No. SAN-2020-1526, 21 February 2020, art. 3(10); Ley de Compañías, Law No. 312, 5 November 1999, second unnumbered article following art. 329.
370 Ley de Compañías, Law No. 312, 5 November 1999, third unnumbered article following art. 329.
371 Ley de Compañías, Law No. 312, 5 November 1999, first unnumbered article following art. 329.
372 Ley de Compañías, Law No. 312, 5 November 1999, fourth unnumbered article, paragraph 2, following art. 329.
373 Ley de Compañías, Law No. 312, 5 November 1999, ninth unnumbered article following art. 329.
374 Ley de Compañías, Law No. 312, 5 November 1999, tenth unnumbered article following art. 329.
375 Ley de Compañías, Law No. 312, 5 November 1999, eleventh unnumbered article following art. 329.
376 Ley de Compañías, Law No. 312, 5 November 1999, thirteenth unnumbered article following art. 329.
377 Ley de Compañías, Law No. 312, 5 November 1999, twelfth unnumbered article following art. 329.
378 Ley de Compañías, Law No. 312, 5 November 1999, eighth unnumbered article following art. 329.

The company's positive social or environmental impacts[379] must be assessed in accordance with independent and internationally recognised standards[380] and certified either by the state or by private certification bodies accredited by the Superintendency of Companies, Securities and Insurance[381].

Uruguay

In Uruguay, BIC status is open to all corporate forms recognised under Uruguayan company law[382], as well as to the *fideicomisos* (Uruguayan trust)[383], which may voluntarily adopt BIC status while remaining subject to their ordinary legal regime[384]. The acquisition of BIC status does not create a new corporate form but introduces an additional legal status characterised by the assumption of specific statutory obligations relating to the pursuit of a public-benefit purpose.

The defining feature of a Uruguayan BIC is the incorporation into its corporate purpose of the obligation to generate a positive social and environmental impact[385] on the community, alongside its profit-making activity, capable of being verified. The Decree further clarifies that the company's constitutional documents must identify, in a clear and precise manner, both the economic activity to be carried out and the benefit purposes that the company intends to pursue[386]. The implementing Decree[387] further specifies the content of the benefit purpose requiring every BIC to pursue at least one social objective[388] and one environmental objective[389], in addition to its profit-making purpose, and always within the framework of an environmentally

[379] According to the law, positive social and environmental impact shall mean those actions undertaken by the BIC that create value for society and/or the environment in accordance with the impact areas provided for in this Law, and that derive directly from its economic activity. Such actions must go beyond the standards established by: (i) national and local environmental legislation; (ii) labour and occupational health and safety legislation; (iii) legislation promoting the social and labour inclusion of persons in vulnerable situations or of persons affected by historical, social, economic, biological, political and/or cultural inequalities; and (iv) legislation aimed at improving the quality of life and well-being of individuals, including their health, housing and education. See Ley de Compañías, Law No. 312, 5 November 1999, sixth unnumbered article, paragraph 2, following art. 329.
[380] Ley de Compañías, Law No. 312, 5 November 1999, fourth unnumbered article, paragraph 2, following art. 329.
[381] Ley de Compañías, Law No. 312, 5 November 1999, sixth unnumbered article, paragraph 2, following art. 329.
[382] Ley de Sociedades Comerciales, Law No. 16.060, 4 September 1989, and Ley de Sociedades por Acciones Simplificadas, Law No. 19.820, 18 September 2019.
[383] Law No. 7.703, 27 October 2003.
[384] Law No. 19969, 23 July 2021, art. 1; Decree 136/022, 26 April 2022, art. 1.
[385] Decree 136/022, 26 April 2022 provides statutory definitions of the core concepts underpinning the regime. According to art. 3, letter b), a positive impact is defined as a measurable and verifiable improvement over time in the welfare of the population and/or the environment, generated directly by one or more actions of the BIC company.
[386] Law No. 19969, 23 July 2021, art. 1 and 3; Decree 136/022, 26 April 2022, art. 1.
[387] Decree 136/022, 26 April 2022, art. 2.
[388] Decree 136/022, 26 April 2022, art. 3, letter c), according to which social objectives consist of quantifiable goals aimed at improving, wholly or partially, the well-being of the population by preventing, reducing or resolving problems affecting society,
[389] Decree 136/022, 26 April 2022, art. 3, letter d), according to which environmental objectives are directed towards preserving healthy, viable and functional ecosystems through the prevention, protection and restoration of the environment, as well as the sustainable use of natural resources in a manner consistent with respect for fundamental human rights.

sustainable management system[390]. The activities directed towards achieving those objectives must be carried out pursuant to a strategic plan specifically focused on the benefit purpose, which must be prepared and approved by the competent corporate body[391].

6.2 Formation, termination and exit

The acquisition and loss of dual-purpose company status constitute another area in which the various legal regimes display a high degree of convergence, while differing as regards the corporate law mechanisms adopted to protect shareholders and preserve the integrity of the benefit purpose.

In virtually all jurisdictions, the dual-purpose regime is conceived as a voluntary legal status that may be adopted either at the **time of incorporation** or subsequently by **existing companies**, without affecting the underlying corporate form. Accordingly, the acquisition of such status generally requires the amendment of the company's constitutional documents in order to incorporate the benefit purpose and any additional statutory requirements prescribed by the applicable legislation, typically within the corporate purpose clause or other provisions governing the company's objects. Where the status is adopted after incorporation, the relevant amendments must be approved in accordance with the corporate law rules governing amendments to the articles of association applicable to the relevant company form.

Although the procedural framework is broadly similar across jurisdictions, the degree of protection afforded to minority shareholders varies. Some legal systems **explicitly** require **qualified or supermajority voting thresholds** (by imposing specific thresholds or invoking the application of existing reinforced majorities applicable to the company type) for the adoption or removal of the benefit clause, thereby recognising the significance of the decision to alter the company's constitutional purpose. Other jurisdictions, by contrast, simply apply the ordinary corporate law rules governing amendments to the articles of association (some of which require a qualified majority for certain amendments to the articles of association, while others require a simple majority), without imposing any additional procedural safeguards specifically linked to the adoption of dual-purpose status, and eventually leaving room for interpretation. The adoption of qualified majorities (explicitly indicated) reflects the recognition that the benefit clause is not merely an amendment of the corporate purpose but a constitutional modification of the company, intended to embed the public-benefit commitment within the entity and strengthen its mission lock over time.

A further point of divergence concerns the availability of **withdrawal (or appraisal) rights** for shareholders who oppose the adoption or removal of the benefit purpose. While several jurisdictions expressly recognise a statutory right of withdrawal in favour of dissenting or absent shareholders when the company acquires or relinquishes dual-purpose status (eg, Uruguay), others do not provide a specific exit remedy, leaving the matter to the ordinary rules of company law (see eg, Italy, France, Colombia and Delaware after the 2020 reform), thus leaving room for interpretation, or excluding any special protection

[390] Decree 136/022, 26 April 2022, art. 3, letter a).
[391] Decree 136/022, 26 April 2022, art. 2.

altogether. The recognition of a withdrawal right reflects the understanding that the introduction or removal of the benefit purpose may substantially alter the contractual framework originally accepted by the shareholders and therefore justifies an opportunity to exit the company.

The legislation also adopts different approaches to the **termination of dual-purpose status**. In all jurisdictions, companies may voluntarily relinquish such status by amending their constitutional documents and removing the benefit clause in accordance with the applicable corporate procedures. In addition, several legal systems provide for **involuntary loss of status** where the company fails to comply with the obligations attached to the dual-purpose regime, such as the pursuit of the benefit purpose, compliance with reporting obligations or other statutory requirements. Depending on the jurisdiction, the declaration of loss of status may be entrusted to an administrative authority, to the courts, or result from a combination of administrative supervision and judicial intervention. These mechanisms seek to preserve the credibility of the dual-purpose regime and prevent companies from retaining benefit status without effectively complying with the obligations that justify its recognition.

An additional point of variation concerns the company's name. Several jurisdictions require companies that acquire dual-purpose status to amend their corporate name by adding the designation identifying their benefit status (such as *Benefit Corporation*, *Public Benefit Corporation*, *SB*, *BIC* or equivalent expressions), thereby ensuring that the company's dual-purpose nature is immediately apparent to third parties. In other jurisdictions, by contrast, the inclusion of such designation is merely optional, leaving companies free to decide whether to publicly signal their benefit status through their corporate name. This distinction reflects different regulatory approaches to the visibility of the dual-purpose commitment, ranging from mandatory legal disclosure to a greater reliance on voluntary market signalling.

Against this comparative background, the following country reports examine the specific legal regimes governing the formation, termination and exit mechanisms applicable to dual-purpose companies in each of the jurisdictions considered.

U.S. Model Act

Newly formed corporations or existing corporations may elect to be a benefit corporation. Newly formed corporations must include in the articles of incorporation a statement that the company is a benefit corporation[392]. Existing corporations may become benefit corporations directly, electing to be a benefit corporation through the amendment of their articles of incorporation so that they contain a statement that the corporation is a benefit corporation; or indirectly, in the context of a fundamental transaction (eg, merger, consolidation, conversion or share exchange). In both cases the Model Act requires a supermajority to acquire the status, the so-called, 'minimum status vote'[393].

[392] Model Act §103.
[393] Model Act §104.

The minimum status vote is also required to terminate benefit corporation status, either directly (by an amendment of the articles of incorporation) or indirectly (through a fundamental transaction)[394].

According to the minimum status vote, an amendment of the articles of incorporation or a fundamental change that has the effect of changing the status of a corporation so that it either becomes a benefit corporation or ceases to be a benefit corporation, must be approved by at least a two-thirds majority vote[395]. The rationale for that supermajority requirement is to protect minority shareholders and assure broad shareholder support to approve fundamental changes, such as the election or termination of benefit corporation status.

Apart from the protection provided by the supermajority, the Model Act does not explicitly address dissenters' rights and exit for shareholders who oppose the transition to or from the benefit status, leaving the issue of withdrawal/appraisal rights to be regulated by the applicable state law.

Delaware

To acquire public benefit corporation (PBC) status, is necessary to identify in the certificate of incorporation (within the statement of business or purpose) one or more specific public benefits that the corporation wants to promote and state within its company name that it is a public benefit corporation[396]. Existing companies need to amend their certificate of incorporation accordingly.

Initially, Delaware law required the approval of 90 per cent of the outstanding stock for the amendment of the certificate of incorporation (or in the merger or consolidation with or into a PBC) to acquire or terminate benefit status. The stockholder approval threshold was then reduced to a qualified two-thirds majority of the outstanding shares in 2015, and to majority vote in 2020[397]. As a result, conversion to public benefit corporation status is now approved under the ordinary voting rules applicable to charter amendments, namely by the affirmative vote of a majority of the outstanding shares entitled to vote thereon, unless a higher threshold is provided in the certificate of incorporation.

Moreover, Delaware law originally provided appraisal rights[398] in connection with the adoption of public benefit corporation status. In case of amendment of the certificate of incorporation (or merger or consolidation), to opt in to or opt out of the benefit status, the law originally provided for appraisal rights for stockholders who did not vote for such an amendment

[394] Model Act §105.
[395] Model Act §102 – "*Minimum status vote*".
[396] Del. Code Ann. tit. 8, §362(a).
[397] Del. Code Ann. tit. 8, § 242(b) and 251.
[398] The appraisal rights is a remedy that allows a dissenting shareholder to petition a court to determine the fair value of the shares with respect to which withdrawal rights are exercised, requiring the corporation to purchase those shares.

(merger or consolidation). However, the 2020 reform of the Public Benefit Corporation Act removed the specific statutory appraisal right related to PBC status[399].

Both safeguards, the qualified majority and the appraisal rights, were eliminated by the 2020 amendments to the Delaware General Corporation Law to facilitate and encourage the adoption of the public benefit corporation form.

As for the company name, it is not mandatory to amend it to include the words 'public benefit corporation' or the abbreviation 'P.B.C.' or 'PBC'. Indeed, the name of a public benefit corporation may contain such language, and in cases where it does not, the corporation shall provide notice that it is a public benefit corporation to anyone involved prior to issuing unissued shares of stock or disposing of treasury shares[400].

Notice of the 'for benefit' status must be indicated in any stock certificate issued by a public benefit corporation[401] and in every notice of a meeting of stockholders[402].

British Columbia

Any company may become a benefit company by including a 'benefit statement' and a 'benefit provision' in its articles of incorporation. Through the benefit statement the company affirms that it is a benefit company, and pledges itself to operate responsibly and sustainably, promoting one or more public interests[403]. The benefit provision, on the other hand, specifies the public benefits to be promoted by the company and sets out the commitments (i) to conduct the company's business in a responsible and sustainable manner, and (ii) to promote the public benefits indicated in the articles[404].

A company can be incorporated as a benefit company, while an existing company can become or cease to be a benefit company by amending its articles of association to include or remove the benefit statement and provision through a special resolution of the shareholders[405]. According to British Columbian corporate law, special resolutions are usually required to approve matters with relevant consequences to a company. In particular, a 'special resolution' is passed by a 'special majority' of shareholders' votes. Such a majority is indicated in the company's articles of association and must be between two-thirds and three-quarters of the votes. If the company's articles do not provide a specific number, the default rule is two-thirds of the votes. A notice of alteration must be filed with the company's registry.

[399] Currently, only Del. Code Ann. tit. 8, § 262, regulating generally appraisal rights in mergers and consolidations is applicable.
[400] Del. Code Ann. tit. 8, §362(c).
[401] Del. Code Ann. tit. 8, §364.
[402] Del. Code Ann. tit. 8, §366(a).
[403] S.B.C. 2002, c. 57, Part 2.3, §51.992(1).
[404] S.B.C. 2002, c. 57, Part 2.3, §51.992(2).
[405] S.B.C. 2002, c. 57, Part 2.3, §51.995.

Shareholders (including non-voting shareholders) who object to the acquisition or deletion of the benefit status are also protected by the possibility of exercising their right to dissent, sending a notice of dissent to the company to have their shares redeemed at fair value[406].

As for company name, benefit companies are not subject to any specific naming requirements (beyond those generally applicable to corporations).

Rwanda

Community Benefit Company (CBC) status may be acquired both by newly incorporated companies and by existing private or public companies[407]. At the time of incorporation, the founders may elect CBC status by including in the company's incorporation documents a statement that the company is a Community Benefit Company (the Community Benefit Company statement). Existing companies may subsequently acquire the status by amending their incorporation documents through the adoption of a special resolution of the shareholders.

Likewise, a company may cease to be a Community Benefit Company by adopting a special resolution removing the community benefit company statement from its incorporation documents[408].

Accordingly, both the acquisition and the loss of CBC status are subject to the same enhanced shareholder approval requirements, reflecting the significance of the change in the company's corporate purpose. Under the Companies Act, a 'special resolution' is a resolution passed by a majority of at least 75 per cent of the votes cast by shareholders entitled to vote, unless the company's incorporation documents require a higher majority or unanimity[409].

The legislation does not contain specific provisions governing the withdrawal of dissenting shareholders in connection with the acquisition or termination of CBC status. Nevertheless, since the relevant amendments require an alteration of the company's incorporation documents by special resolution, the general appraisal remedy provided by articles 106 et seq. of the Companies Act may arguably apply where the statutory conditions are satisfied. In particular, article 106 grants shareholders the right to require the company to purchase their shares at a fair and reasonable price where a special resolution alters the incorporation documents so as to impose or remove a restriction on the company's business or activities[410]. Whether this provision extends to amendments introducing or removing CBC status remains an open interpretative question.

As regards the company name, the law expressly requires a private Community Benefit Company to end its registered name with the words 'Community Benefit Company' or the

[406] S.B.C. 2002, c. 57, Part 2.3, §51.995 (5), and Part 8, Division 2.
[407] Law No. 007/2021, 5 February 2021, art. 270.
[408] Law No. 007/2021, 5 February 2021, art. 271.
[409] Law No. 007/2021, 5 February 2021, art. 2, n. 51°.
[410] Law No. 007/2021, 5 February 2021, arts. 106-110.

abbreviation 'CBC' [411]. No equivalent provision is expressly laid down for public companies, leaving open the question whether this omission was intentional or is to be clarified through future implementing measures.

Italy

Newly established companies and already existing companies can both acquire the status of *società benefit* (SB). A new SB shall be incorporated in accordance with the applicable company law and the *società benefit* statute. An existing company may become a *società benefit* by amending its articles of incorporation and by-laws so that they contain the double purpose clause (for profit and for benefit), in compliance with the relevant provisions applicable to each organisational form provided by the Italian Civil Code[412].

The law does not explicitly address dissenters' rights for shareholders who oppose the transition to, or from SB status. However, minority shareholders are protected through the special majorities required by Italian law for amendments to the partnership agreement or articles of association. Since the acquisition or abandonment of *società benefit* status entails an amendment of the company's constitutional documents, the ordinary rules governing statutory amendments apply.

Such amendments require: (i) the unanimous consent of all partners in partnerships, pursuant to Article 2252 of the Italian Civil Code, unless otherwise provided in the partnership agreement; (ii) approval by the extraordinary shareholders' meeting in joint-stock companies, which, on first call, requires the favourable vote of at least two-thirds of the share capital represented at the meeting, pursuant to Articles 2365 and 2368 of the Italian Civil Code, subject to any higher quorum provided by law or the articles of association; and (iii) a resolution of the quotaholders in limited liability companies, requiring the favourable vote of a majority representing at least one-half of the share capital, pursuant to Articles 2480 and 2479-bis, paragraph 3, of the Italian Civil Code, unless the articles of association provide for higher majorities. Such amendment shall also be disclosed by the filing with the competent Company's Register Office in compliance with the applicable Civil Code provisions.

With regard to the amendment of the articles of incorporation and by-laws to acquire SB status, a fundamental question under Italian law is the eventual application of the exit right granted to minority shareholders, especially in joint stock companies (*società per azioni*) and limited liability companies (*società a responsabilità limitata*)[413].

According to Italian company law, minority shareholders have the right to withdraw from the company in a wide range of circumstances, all based on the disagreement of the minority with respect to resolutions passed by the majority shareholders. In case they decide to exercise

[411] Law No. 007/2021, 5 February 2021, art. 33.
[412] See articles 2252, 2300, 2436 and 2480 of the Italian Civil Code.
[413] Respectively regulated by art. 1437, paragraph 1(a) and 2473, paragraph 1, Civil Code.

their cash exit rights[414], the company has the duty to re-purchase the shares of the withdrawing shareholder.

In particular, shareholders of joint stock companies and limited liability companies are entitled to exercise their exit rights whenever a resolution that changes the business purpose clause of the company is adopted. In order to exercise their withdrawal right, the amendment must result in a significant or substantial change in the company's activity, which is reflected – according to scholars – in the risk's conditions of the investment[415].

Thus, in case of the introduction or deletion of SB status, the amendment to the entity purpose clause may, in practice, take a very different stance and may result (or not) in a change that can be considered relevant for the exercise of the withdrawal right. The relevance (or not) of the amendment depends on the activity already pursued by the company and the changes produced adding the public-benefit purpose. The evaluations must be carried out on a case-by-case basis. However, it is worth remembering that minority shareholders are always protected by the above-mentioned special majority vote required for the approval of amendments to articles of incorporation and by-laws.

Finally, to mirror the change of the purpose clause, the law provides that *società benefit* can choose to add, alongside the company name and the company type, the words '*Società Benefit*' or the abbreviation 'SB' and use such denomination in its official documents and communications to third parties[416].

France

The *société à mission* is not a new type of company but a status that companies can voluntarily acquire amending their articles of association to include the company's *raison d'être*, the *mission* and the methods for monitoring the execution of the mission.

The law does not provide special procedures for such amendment, and the ordinary rules provided for each company type are applicable to the acquisition or deletion of *société à mission* status. Generally, the modification of the articles of association must be voted by an extraordinary general meeting with the unanimous agreement of the members[417], or with a qualified majority

[414] The exit rights can be exercised sending notice to the company by registered mail within 15 days after the publication in the Companies' Register of the resolution approved at the special meeting of shareholders.
[415] Piscitello 2016, 2502; Di Cataldo 2007, 227. See also Assonime, Circolare No. 19, July 20, 2016, available at http://www.societabenefit.net/wp-content/uploads/2017/02/Assonime-Benefit-Corporation.pdf, at 15.
[416] Law No. 208, 28 December 2015, art. 1, paragraph 379, third sentence.
[417] See eg, *société par actions simplifiée* (SAS), art. L 227-9 Commercial Code, according to which the amendment of the articles of association must be voted on and approved in accordance with the conditions laid down in the articles of association, but in the absence of details the unanimous agreement of the partners is required; *société en nom collectif* (SNC), art. L221-6 Commercial Code, according to which the amendment of the articles of association requires the unanimous agreement of the partners at an extraordinary general meeting, but articles of association may provide for certain decisions to be taken with the agreement of the majority (50 per cent); *société en commandite simple* (SCS), art. L222-9 Commercial Code, according to which the amendment of the articles of association must be decided with the agreement of all general partners and the majority of

of two-thirds of the votes of the shareholders present or represented[418], depending on the company type.

In France, there is no general statutory right of withdrawal for partners of commercial companies (with the exception of commercial companies with variable capital[419]) and no special right of withdrawal is provided for absent or dissenting shareholders in relation to the amendment of the corporate purpose clause aimed at introducing or eliminating the status of a *société à mission*. The protection of minority shareholders is therefore partly ensured by the provision of supermajority envisaged for the amendment of the articles of association.

A *société à mission* is subject to specific disclosure requirements. The company must declare its status as a *société à mission* to the registrar of the competent commercial court (*greffier du tribunal de commerce*) [420], who records that status in the *Registre du commerce et des sociétés* (Commerce and Companies Register). Since the establishment of the *Registre national des entreprises* (RNE), this information is also reflected in the national business register. Registration is subject to verification that the company's articles of association comply with the statutory requirements applicable to *sociétés à mission*[421].

The status of *société à mission* constitutes a legally recognised corporate status recorded in the commercial register. However, unlike certain special corporate forms, French law does not require the expression '*société à mission*' to be incorporated into the company's corporate name, nor does it impose a general obligation to display that designation on all corporate documents.

Spain

The legal framework does not currently regulate a specific procedure for the acquisition, maintenance or loss of *Sociedad de Beneficio e Interés Común* (SBIC) status. Pursuant to the Tenth Additional Provision of Law 18/2022, companies may voluntarily adopt SBIC status by incorporating into their articles of association commitments relating to the generation of a positive social and environmental impact, enhanced transparency and accountability, and stakeholder consideration. However, the law does not specify the corporate resolutions, registration requirements or procedural conditions necessary for the acquisition of the status,

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limited partners; or the *société en commandite par actions* (SCA), art. L226-11 Commercial Code, according to which the amendment of the articles of association requires, unless otherwise provided, the agreement of all general partners.

[418] See eg, *société à responsabilité limitée* (SARL), art. L223-30 Commercial Code, and *société anonyme* (SA), art. L225-96 Commercial Code.

[419] Commercial Code, art. L231-6.

[420] The rules for such declaration are provided by Decree No. 2020-1, 2 January 2020.

[421] Art. L210-10 Commercial Code, paragraph 5: "… *La société déclare sa qualité de société à mission au greffier du tribunal de commerce, qui la publie, sous réserve de la conformité de ses statuts aux conditions mentionnées aux 1° à 3°, au registre du commerce et des sociétés, dans des conditions précisées par décret en Conseil d'État*". See also art. R 123-53 and R 123-222 Commercial Code, introduced by Decree No. 2020-1, 2 January 2020.

which were expected to be defined through subsequent regulatory development. No specific provisions currently regulate the termination or loss of SBIC status.

Spanish law does not currently provide any specific withdrawal or appraisal rights for shareholders in connection with the adoption, modification or abandonment of SBIC status.

The legal framework does not currently clarify whether the use of the designation '*Sociedad de Beneficio e Interés Común*' or the acronym 'SBIC' is mandatory, optional, or subject to specific conditions in the company name or corporate documents.

Colombia

Any existing or future commercial company, regardless of its corporate form, may voluntarily adopt *Beneficio e Interés Colectivo* (BIC) status[422]. The acquisition of the status requires a corporate charter amendment incorporating the company's collective-benefit activities in the corporate purpose clause[423]. The adoption or termination of BIC status, thus, requires an amendment of the articles of incorporation and by-laws approved by the majority prescribed for amendments to the corporate charter by the law applicable to the specific company type, or by the company's articles of association[424].

Moreover, the adoption of BIC status requires the use of the designation 'BIC' or the words '*Sociedad de Beneficio e Interés Colectivo*' in the company name[425].

The legislation does not provide any specific withdrawal, appraisal, or dissenters' rights for shareholders who oppose the adoption or abandonment of BIC status. Consequently, any exit rights remain governed by the ordinary rules applicable to the relevant corporate form.

In addition to voluntary termination through a charter amendment to be approved by the majority prescribed by the law, BIC status may be revoked by the *Superintendencia de Sociedades* where the company is found to have committed serious and repeated breaches with regard to the independent standards applicable to BIC companies ('*incumplimiento de los estándares independientes*')[426].

In particular, a company shall be deemed to have failed to comply with the applicable independent standard where:

i) the information reported in its management report on benefit and collective-interest activities (ie, the impact report) does not correspond to the actual business practices carried out in furtherance of its corporate purpose

[422] Law 1901/2018, 18 June 2018, art. 1.
[423] Law 1901/2018, 18 June 2018, art. 2.
[424] Law 1901/2018, 18 June 2018, art. 3.
[425] Law 1901/2018, 18 June 2018, art. 2, and Decree 2046-2019, 12 November 2019, art. 2.2.1.15.3.
[426] Law 1901/2018, 18 June 2018, art. 7, and Decree 2046-2019, 12 November 2019, arts. 2.2.1.15.8 – 2.2.1.15.11.

ii) the company fails to comply with the methodology prescribed by the independent standard it has selected

iii) the impact report is not submitted to the shareholders' meeting or is not made available to the public in accordance with the second paragraph of article 5 of Law 1901 of 2018.

In all cases, non-compliance shall be determined by the *Superintendencia de Sociedades*, either *ex officio* or upon request by an interested party (ie, shareholders or partners, directors, the statutory auditor, creditors, employees, consumers, and any person who demonstrates that he or she has suffered harm in connection with the benefit and collective-interest activities carried out by the company), in accordance with the procedure established by Decreto 2046 of 2019[427].

In such cases, the *Superintendencia* or other competent authority may order the loss of BIC status and the removal of the acronym 'BIC' or the expression '*Sociedad de Beneficio e Interés Colectivo*' from the company's name. The loss of BIC status constitutes an act subject to registration in the Commercial Registry[428].

Peru

BIC status may be acquired by any existing or to-be-incorporated company established under the General Companies Act (Law No. 26887)[429], regardless of its corporate form, by voluntarily amending its articles of association and by-laws to incorporate the express statement that the company is a BIC company[430], and by including in its bylaws, immediately after the clause regulating the corporate purpose, a clear and detailed description of the benefit purpose pursued by the company[431]. The benefit purpose must include at least one social and one environmental objective to be pursued within the framework of an 'environmentally sustainable management'[432].

For existing companies wishing to adopt BIC status, the law prescribes supermajorities. The amendment of the articles of association and by-laws requires, at first call, the concurrence of at least two-thirds of the subscribed voting shares and, on second call, at least three-fifths, or the qualified majority required by the relevant company type or the statute. The same formalities

[427] Decree 2046-2019, 12 November 2019, arts. 2.2.1.15.8 – 2.2.1.15.11.
[428] Law 1901/2018, 18 June 2018, art. 7.
[429] Law No. 31072, 24 November 2020, art. 2, and 3.1.
[430] Law No. 31072, 24 November 2020, art. 5.1.
[431] Law No. 31072, 24 November 2020, art. 5.2; Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 7.
[432] See Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 8. According to Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 3(c), environmentally sustainable management means a permanent and continuous process consisting of a structured set of principles, rules, processes and activities aimed at implementing the objectives of the company's environmental sustainability policy and preserving the natural heritage. Environmental management shall be governed by the principles established in the General Environmental Law and by the other legislation applicable to environmental matters.

apply where a BIC company wishes to modify its benefit purpose or terminate its BIC status[433]. The resolution containing such amendments that include or delete BIC status must be registered with the Legal Entities Registry maintained by the National Superintendency of Public Registries (SUNARP).

Moreover, the law specifies that the activities undertaken to achieve those objectives must be implemented in accordance with a strategic plan focused on the benefit purpose, which must be prepared and proved by the competent corporate body within 60 calendar days after the registration of BIC status with the SUNARP[434].

Shareholders or partners who expressly disagree with the amendment may exercise the withdrawal right (*derecho de separación*) in accordance with the General Companies Act[435].

A company loses its BIC status in three situations: (i) where the shareholders voluntarily amend the articles of association removing the provisions required for BIC status; (ii) where the company fails to comply with the obligations arising from the BIC regime; and (iii) where the National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI), by a final administrative decision, determines that the company has committed infringements of competition or consumer protection legislation that entail the loss of BIC status. The implementing Regulation develops each of these situations and establishes the corresponding procedures[436].

Any company that transitions into the BIC regime must formally amend its articles of associations to modify its legal name adding the reference to "sociedad de beneficio e interés colectivo" or the acronym "BIC"[437].

Ecuador

Any existing or newly incorporated company subject to the supervision of the Superintendency of Companies, Securities and Insurance may voluntarily acquire BIC status. The decision must be adopted by the general meeting of partners or shareholders and requires the approval of two-thirds of the company's share capital[438]. To acquire BIC status, the company must amend its articles of association by incorporating the statutory commitments required under the BIC regime, including the general obligation to create a positive material impact on society and the environment, and, where the company so decides, specific benefit purposes.

In the case of existing companies, the adoption of BIC status confers upon dissenting or absent partners or shareholders the right to withdraw from the company and to require

[433] Law No. 31072, 24 November 2020, art. 5.3 (1) and (2).
[434] See Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 8.2.
[435] Law No. 31072, 24 November 2020, art. 5.3(3).
[436] Law No. 31072, 24 November 2020, art. 10. Supreme Decree No.004-2021 PRODUCE, 23 February 2021, arts. 17 – 27.
[437] Law No. 31072, 24 November 2020, art. 4.
[438] Ley de Compañías, Law No. 312, 5 November 1999, third unnumbered article following art. 329.

reimbursement of the value of their shares or equity interests in accordance with article 333 of the Companies Act[439].

BIC status may subsequently be terminated in two different ways. First, the company may voluntarily relinquish the status by amending its articles of association to remove the required BIC statement. Such resolution must be approved by two-thirds of the share capital represented at the meeting, and again gives rise to the right of withdrawal in favour of dissenting and absent partners or shareholders under article 333 of the Companies Act[440].

Second, the Superintendency of Companies, Securities and Insurance may revoke the company's BIC status where, in the exercise of its corporate supervisory powers, it determines that the directors have failed either to comply with their obligation to pursue the positive material impact incorporated into the company's corporate purpose or to prepare the required impact management report. In such circumstances, the company must amend its articles of association within six months so as to remove the provisions conferring BIC status. Failure to comply with this obligation may ultimately result in the company's dissolution in accordance with the general provisions of the Companies Act[441].

In alignment with the regional emphasis on public transparency, Ecuador also mandates a corporate name change upon adopting the BIC status by appending the phrase "Sociedad de Beneficio e Interés Colectivo" or its acronym "B.I.C."[442].

Uruguay

The Uruguayan BIC regime is voluntary and may be adopted by any new or existing company or *fideicomisos* (Uruguayan trust) by amending their articles of association or bylaws, or trust instrument, for the purpose of generating a positive, measurable and verifiable social and environmental impact[443]. The constitutional documents must identify, in a clear and precise manner, the company's economic activity as well as its social and environmental objectives.

For existing companies, the adoption of BIC status constitutes an amendment to the constitutional documents so as to incorporate the benefit purpose, and must therefore be adopted in accordance with the corporate rules governing amendments to the articles of association applicable to the relevant legal form. In addition, the law requires BIC companies to include in their articles of association a provision requiring the affirmative vote of at least 75 per cent of the company's share capital for any subsequent amendment of the corporate purpose[444].

[439] Ley de Compañías, Law No. 312, 5 November 1999, seventh unnumbered article following art. 329.
[440] Ley de Compañías, Law No. 312, 5 November 1999, twenty-second unnumbered article following art. 329.
[441] Ley de Compañías, Law No. 312, 5 November 1999, twenty-third unnumbered article following art. 329.
[442] Ley de Compañías, Law No. 312, 5 November 1999, first unnumbered article following art. 329.
[443] Law No. 19969, 23 July 2021, art. 3; Decree 136/022, 26 April 2022, art. 1.
[444] Law No. 19969, 23 July 2021, art. 3.

This statutory supermajority is intended to ensure enhanced stability of the company's dual-purpose commitment once BIC status has been acquired.

A distinctive feature of the Uruguayan model is the right of withdrawal (*derecho de receso*)[445]. The adoption of the regime by an existing company grants a withdrawal right to the members who voted against the decision, as well as to those who voted blank, abstained or were absent, in accordance with the Commercial Companies Act[446].

As to the loss of BIC status (*descalificación*), this is lost either voluntarily, by reforming the contract or statute with the supermajorities required by the law[447], or for breach of the obligations arising under the BIC regime (*incumplimiento*)[448] declared by the competent judge in ordinary proceedings, which may be promoted *ex officio* by the *Auditoría Interna de la Nación* or by any member or third party with a direct, personal and legitimate interest[449].

The Decree specifies the circumstances in which a company is deemed to have failed to comply with the obligations arising under the BIC regime. In particular, non-compliance exists where the information contained in the annual report does not correspond to the company's actual business practices in pursuing its corporate purpose, or where the company repeatedly fails to submit the annual report to the competent authority[450].

Voluntary loss permits the company to re-adopt the status, whereas loss for breach declared by judicial decision precludes its re-adoption.

Upon acquiring BIC status, the entity must incorporate the expression '*Beneficio e Interés Colectivo*' or the abbreviation 'BIC' into its corporate or trust name, thereby making its legal status apparent to third parties. Conversely, where the entity subsequently loses or voluntarily relinquishes such status, the corresponding designation must be removed from its name[451].

6.3 Directors' duties and accountability

One of the defining features of the dual-purpose company model is the expansion of directors' duties beyond the traditional framework governing commercial companies. While directors remain subject to the ordinary fiduciary duties imposed by the applicable company law, the adoption of dual-purpose status enlarges the range of interests that must be taken into account in the exercise of managerial powers. The pursuit of the public-benefit purpose incorporated into the company's constitutional documents becomes an integral component of the corporate interest and, consequently, of

[445] Law No. 19969, 23 July 2021, art. 6.
[446] Law No. 16,060, 4 September 1989.
[447] Law No. 19969, 23 July 2021, art. 3.
[448] Decree 136/022, 26 April 2022, art. 11.
[449] Decree 136/022, 26 April 2022, art. 5 and 10; Law No. 19969, 23 July 2021, art. 7. According to the law, third parties with a direct, personal and legitimate interest are partners or shareholders, directors and officers, statutory auditors and members of the supervisory committee, creditors, employees, settlors, trustees and beneficiaries, as well as any person who demonstrates that he or she has suffered harm in connection with the benefit or collective interest activities carried out by the company.
[450] Decree 136/022, 26 April 2022, art. 11. The Decree authorises the *Auditoría Interna de la Nación* to determine, by means of a reasoned resolution, the conditions under which such repeated failure to submit the annual report is deemed to exist.
[451] Law No. 19969, 23 July 2021, art. 2; Decree 136/022, 26 April 2022, art. 10.

directors' decision-making responsibilities. Rather than acting exclusively in the interests of shareholders, directors are generally required to take into account the interests of a broader range of stakeholders, including employees, customers, creditors, local communities and the environment, as well as the pursuit of the company's benefit purpose alongside its profit-making objective.

The expansion of directors' duties does not generally replace the ordinary fiduciary duties of care and loyalty. Rather, it modifies their content by enlarging the notion of the corporate interest and the factors that directors are legally entitled or required to take into account. Although this expansion is common to virtually all jurisdictions, the legislative techniques adopted differ significantly. Some statutes identify **in detail the categories** of stakeholders and the factors that directors are required to take into account, sometimes even providing illustrative measures through which the benefit purpose may be pursued. Other legal systems adopt a more principle-based approach, limiting themselves to requiring directors to pursue the public-benefit purpose incorporated into the company's constitutional documents.

Likewise, different statutes employ different standards of conduct. While most jurisdictions require directors to **consider** the interests of the relevant stakeholders, others adopt the arguably more demanding concept of **balancing**, requiring directors to reconcile shareholders' interests, stakeholder interests and the public-benefit purpose in the exercise of their managerial discretion. The latter formulation appears to impose a more active decision-making process than the mere obligation to take competing interests into consideration.

The extended configuration of directors' duties inevitably enlarges **managerial discretion**. Unlike the traditional shareholder-value model, in which directors are guided by the relatively clear objective of maximising shareholder welfare, the dual-purpose company requires directors to reconcile multiple legitimate interests and objectives that may, at least in particular circumstances, point in different directions. Such broader discretion should not, however, be regarded as a weakness of the model. On the contrary, it constitutes one of its defining characteristics: the purpose of dual-purpose company legislation is precisely to confer upon directors the legal authority to balance profit-making considerations with the pursuit of public-benefit objectives without exposing themselves, solely for that reason, to allegations of breach of fiduciary duty. Accordingly, most jurisdictions preserve the application of the business judgment rule or its functional equivalent, thereby recognising that the balancing of competing interests primarily belongs to the directors' business judgment. In this sense, the traditional business judgment rule may therefore be reconceptualised, in the context of dual-purpose companies, into a form of 'benefit-oriented business judgment rule' (or benefit judgment rule), under which courts defer to directors' good-faith balancing of profit-making and public-benefit objectives rather than reviewing the substantive merits of that balance.

The broad discretion conferred upon directors is counterbalanced by specific mechanisms of **accountability and enforcement**. Here too, the comparative analysis reveals a significant degree of convergence. As a general rule, the expanded fiduciary duties are owed to the company and are enforceable primarily through **private enforcement**. Most jurisdictions reserve standing to the company itself or to its shareholders (often through derivative actions or the ordinary remedies available under company law), while expressly excluding any direct right of action by stakeholders, beneficiaries of the public benefit or other third parties. In several jurisdictions, standing is further restricted through minimum shareholding thresholds, particularly where derivative actions are brought to enforce compliance with the benefit purpose. Only a limited number of legal systems establish a dedicated enforcement mechanism, such as the **benefit enforcement proceeding** under the US Model Benefit Corporation Legislation. In the vast majority of jurisdictions, however, compliance with the expanded duties is ensured through the ordinary rules governing directors' liability under company law. In several civil-law jurisdictions, these private-law remedies are complemented by administrative oversight mechanisms capable of leading, in cases of serious or repeated non-compliance with the benefit regime, to the loss of dual-purpose status.

Finally, the various statutes adopt different approaches to directors' liability. Several common-law jurisdictions expressly protect directors from personal liability for **monetary damages** arising solely from the pursuit, balancing or failure to achieve the public-benefit purpose, thereby confining enforcement to equitable or injunctive remedies. Other jurisdictions, by contrast, do not establish comparable liability shields and instead leave directors fully subject to the ordinary liability regime applicable under company law. These different solutions reflect different policy choices concerning the appropriate balance between encouraging directors to pursue public-benefit objectives and ensuring their effective accountability for compliance with the company's dual-purpose commitments.

Against this comparative background, the following country reports analyse the specific statutory provisions governing directors' duties and accountability in each of the jurisdictions considered. For ease of comparison, the analysis is divided into two distinct subsections: the first examines the substantive content of directors' duties, while the second focuses on the mechanisms available for their enforcement.

6.3.1 Director's duties

U.S. Model Act

In properly discharging the duties of their respective positions and in considering the best interests of the corporation, directors must consider the effects of their decisions (including action or inaction) not only on shareholders, but also on a wide range of stakeholders, including the employees of the corporation, its subsidiaries and suppliers, customers, the community and society. Likewise, directors must take into account the local and global environment, the short-term and long-term interests of the corporation, and the corporation's ability to accomplish its (general and specific) public-benefit purposes identified in the articles of incorporation[452]. In addition to the interests expressly mentioned above, directors may consider other pertinent factors or the interests of other groups specifically identified in the articles of incorporation (as in the case of constituency statutes)[453].

More specifically, the Model Act does not modify the traditional fiduciary duties of benefit corporation directors, which remain the duty of care and the duty of loyalty. Rather, it expands the range of interests that directors are required to consider in the exercise of their decision-making powers. Thus, while the duty of loyalty – understood as the obligation to act in good faith and in the best interests of the corporation – remains formally unchanged, the duty of care is

[452] Model Act §301(a)(1). The Model Act here rejects the holdings in *Dodge v. Ford,* 170 N.W. 668 (Mich. 1919), and *eBay Domestic 570 Holdings, Inc. v. Newmark,* 16 A.3d 1 (Del. Ch. 2010), that directors must maximise the financial value of a corporation.
[453] Model Act §301(a)(2).

broadened by requiring directors to take into account the effects of their decisions on a wider range of stakeholders.

The Model Act does not provide for a prioritisation of the benefit interests to be pursued, but shareholders, in the exercise of private ordering, may state in the articles of incorporation that certain interests or factors related to the accomplishment of the company's public-benefit purposes shall be given priority[454].

In defining the legal position of directors, the Model Act clarifies that the consideration of interests other than those of shareholders does not constitute a breach of fiduciary duties[455] and reaffirms the application of the business judgment rule[456]. Accordingly, a director who makes a business judgment in good faith fulfils his or her duties if the director is not interested in the subject of the judgment, is informed with respect to it, and rationally believes that the judgment is in the best interests of the benefit corporation.

Moreover, the Model Act expressly excludes the existence of fiduciary duties vis-à-vis the beneficiaries of the public benefit (general or special)[457], who have no right of action against the directors and the company merely on that basis. The rationale of this rule is to shield the company and its directors from potentially broad and undefined liability, which could otherwise discourage the use of the benefit corporation model[458].

Furthermore, unless otherwise provided for in the articles of incorporation, the Model Act excludes the company's and directors' personal liability for monetary damages caused by the pursuit of the public benefit and by the failure to realise it, insofar as the directors' conduct satisfies the duty of care and the duty of loyalty[459]. According to some commentators, the exclusion of the remedy of damages was introduced to prevent directors from being exposed to multiple personal liability proceedings in an area lacking settled case law and to channel enforcement towards equitable remedies, such as injunctive relief, aimed at ensuring compliance with the company's public benefit commitments[460].

Delaware

The configuration of directors' standards of conduct differs somewhat from that of the Model Act. On one side it stresses – as does the Model Act – that directors do not owe fiduciary duties to third-party beneficiaries of the public benefit or to persons materially affected by the corporation's conduct[461]. On the other, Delaware's framework employs different language

454 Model Act §301(a)(3).
455 Model Act §301(b).
456 Model Act §301(e).
457 Model Act §301(d).
458 Clark and Vranka 2013, 21.
459 Model Act §301 (c), and §305 (b).
460 Clark and Vranka 2013, 20.
461 Del. Code Ann. tit. 8, §365(b).

requiring directors not to 'consider', but to 'balance' the interests of different stakeholders[462]. Indeed, public benefit corporations shall be managed by the board of directors in a manner that balances the shareholders' pecuniary interests, the best interests of those materially affected by the corporation's conduct, and the public benefit/s identified in its certificate of incorporation[463].

Directors satisfy their balancing duties to stockholders and the corporation if their decisions are both informed and disinterested and unless such act or omission constitutes an act or omission that no person of ordinary, sound judgment would approve[464]. Directors' protection was significantly strengthened by the 2020 amendments, which expressly provided that a director's failure to satisfy the balancing requirement does not constitute an act or omissionin bad faith, nor does it breach the duty of loyalty[465]. By operation of the law, this provision shields directors from personal liability unless the corporation's certificate of incorporation explicitly provides an opt-out from such protection[466].

British Columbia

Directors and officers must continue to act honestly and in good faith with a view to the best interests of the company, while conducting the company's business in a responsible and sustainable manner and promoting the public benefits specified in the company's articles (the 'benefit provisions'). The Act expressly provides that compliance with these benefit provisions does not, in itself, constitute a breach of the directors' or officers' ordinary fiduciary duties.

Similarly to the US Model Act, specific duties are provided for directors and officers of a benefit company, defining a new standard of corporate management, capable of balancing stakeholders' interests[467]. They are required by law to balance the ordinary duty to act honestly and in good faith in the best interests of the company[468] with the duty to conduct the business in a responsible and sustainable manner, and to promote the public benefits enshrined in the company's articles of association (hereinafter, also 'benefit obligations' or 'benefit duties')[469].

The law expressly provides that compliance with these benefit provisions does not, in itself, constitute a breach of the directors' or officers' ordinary fiduciary duties[470].

As in the US Model Act, special protections are established. First, the law clarifies that the directors and officers of a benefit company have no duty to a person whose well-being may be

[462] Del. Code Ann. tit. 8, §365(a). In relation to the protection of stakeholders' interests, on the greater strength offered by the activity of 'balancing' (ie, giving equal weight to each factor) as opposed to 'considering' their interests (ie, simply taking different factors into account) see Murray 2014, 355, in particular note 64.
[463] Del. Code Ann. tit. 8, §362(a) and § 365(a).
[464] Del. Code Ann. tit. 8, §365(b).
[465] For purposes of Del. Code Ann. tit. 8, §102(b)(7) or §145.
[466] Del. Code Ann. tit. 8, §365(c).
[467] See Segrestin and Vernac 2018, 67 sqq.
[468] S.B.C. 2002, c. 57, Part 5, Division 2, § 142 (1).
[469] S.B.C. 2002, c. 57, Part 2.3, § 51.993 (1).
[470] S.B.C. 2002, c. 57, Part 2.3, § 51.993 (3).

affected by the company's conduct, or who has an interest in a public benefit specified in the company's articles[471]. Second, limitations on standing are provided because legal proceedings related to fulfilment of their benefit duties may not be brought by third parties (affected by the company's conduct, or with an interest in the company's public benefits)[472]. Only shareholders are granted standing to do so. Finally, the law provides that despite any rule to the contrary, a court may not order monetary damages in relation to any breach of such duties[473]. Thus, only non-monetary remedies (such as an order to comply) are available, imposing a sort of liability shield.

Rwanda

In discharging their statutory duties[474] to act in good faith and in the best interests of the company, the directors of a Community Benefit Company are required to consider the effects of any action or omission on a broad range of stakeholders. These include, among others, the shareholders, employees, customers and beneficiaries, the community, and the local and global environment. Directors must also take into account the short- and long-term interests of the company, as well as its ability to accomplish its community-benefit purpose and any specific social objectives set out in its incorporation documents[475]. Like some other benefit company statutes, the Act does not establish any hierarchy among these interests, leaving their balancing to the directors' business judgment.

The Act also addresses potential conflicts of interest by expressly providing that the mere fact that a director is also a shareholder does not, by itself, make that director an interested person[476] in relation to a decision of the board[477].

Italy

The direct consequence of the inclusion of the public-benefit purpose in the corporate purpose clause is the modification of directors' powers, duties and responsibilities, as well as certain aspects of the company's organisational structure.

With regard to directors' duties and liability, Italian law appears to have been influenced by the Delaware public benefit corporation model. In fact, it requires the directors to manage the company in a responsible, sustainable and transparent manner, *balancing* (i) the interests of the

[471] S.B.C. 2002, c. 57, Part 2.3, § 51.993 (2) (a).
[472] S.B.C. 2002, c. 57, Part 2.3, § 51.993 (2) (b).
[473] S.B.C. 2002, c. 57, Part 2.3, § 51.993 (5).
[474] Law No. 007/2021, 5 February 2021, art.147.
[475] Law No. 007/2021, 5 February 2021, art. 272, paragraph 1.
[476] Law No. 007/2021, 5 February 2021, art. 166.
[477] Law No. 007/2021, 5 February 2021, art. 272, paragraph 2.

shareholders, (ii) the interests of other stakeholders (of those materially affected by the company's conduct), and (iii) the pursuit of the specific public benefit, or public benefits, identified in its articles of association and by-laws[478].

The law does not explicitly provide (nor does it deny) for any kind of duty or additional liability of directors vis-à-vis the beneficiaries of the public benefit.

The Italian statute, like the Delaware legislation and unlike the Model Act, does not provide any limitation of, or exemption from, directors' personal liability. Nor does it exclude the possibility of seeking monetary damages for breaches of the duties applicable to directors of a *società benefit*.

France

The extension of the *société à mission*'s corporate purpose has implications for directors' obligations and liabilities. According to the Loi PACTE, the board of directors shall set the direction of the company's activity in accordance with its company interest, taking into consideration the social and environmental issues of its business, as well as the *raison d'être* indicated in the articles of association[479]. Moreover, the acquisition of the status of *société à mission* determines the need for directors to pursue the specific mission stated in the articles of association.

Since the company's articles of association have been modified to include a *raison d'être* and a *mission*, the failure to implement them may allow for remedies typical of company law.

Spain

Although Spanish law does not currently establish a detailed regime governing directors' duties in SBICs, companies adopting this status are expected to pursue social and environmental objectives and to take into account the interests of their stakeholders in the conduct of their activities and decision-making processes, in accordance with the commitments voluntarily incorporated into their articles of association[480].

[478] Law No. 208, 28 December 2015, art. 1, paragraph 377, first sentence and 380, first sentence.
[479] Commercial Code art. 225-35 and 225-64.
[480] Law 18/2022, 28 September 2022, *Ley de creación y crecimiento de empresas*, Disposición adicional décima.

Colombia

Directors of BIC companies remain subject to the general duties and liability regime established by Article 23 of Law 222 of 1995. However, Article 4 of Law 1901 of 2018 expands the interests that directors must take into account in the exercise of their functions. In addition to the interests of the company and those of its shareholders or partners, directors of BIC companies must consider the benefit and collective-interest purpose defined in the company's articles of association[481].

Accordingly, the adoption of BIC status modifies the decision-making framework applicable to directors. Under the ordinary corporate regime, directors are generally expected to act in the interest of the company, a concept traditionally interpreted within the framework of a profit-oriented enterprise. By expressly requiring directors of BIC companies to take into account the collective-benefit purpose stated in the bylaws, article 4 enlarges the range of legitimate interests that may guide managerial decision-making and thus, recognises the legitimacy of managerial decisions aimed at generating social and environmental benefits, provided that they are consistent with the collective-benefit activities adopted by the company[482].

Peru

In addition to the duties imposed on directors and managers under the General Companies Act (Law No. 26887), article 7 of Law No. 31072 establishes specific obligations applicable to BIC companies. Directors and managers are required to ensure the effective pursuit of the company's social and environmental-benefit purpose as defined in its articles of association[483].

In discharging their functions, directors and managers must also weigh the impact of their actions or omissions on the shareholders, employees, the community, the local and global environment, and the long-term expectations of the shareholders regarding both the company's corporate purpose and its benefit purpose[484]. The statute therefore extends the factors that directors are required to take into account in the decision-making process without replacing the general duties applicable under company law.

The enforcement of these expanded duties is expressly limited to the shareholders or partners of the company. Third parties are not entitled to seek judicial enforcement of the directors' compliance with the benefit obligations[485].

[481] Law 1901/2018, 18 June 2018, art. 4; Law 222/1995, 20 December 1995, art. 23.
[482] See eg, Reyes Villamizar 2024.
[483] Law No. 31072, 24 November 2020, art. 7.1.
[484] Law No. 31072, 24 November 2020, art. 7.2.
[485] Law No. 31072, 24 November 2020, art. 7.3.

Furthermore, directors are expressly made responsible for identifying any failure by the company to comply with the obligations arising from its BIC status[486].

Ecuador

The Ecuadorian BIC regime expands the fiduciary duties of directors, managers and officers when performing activities related to the company's statutory obligation to generate a positive material impact on society and the environment.

In addition to pursuing the company's corporate purpose, they are required to consider the effects of their actions and omissions on a broad range of interests, including: (i) the partners or shareholders; (ii) the company's employees, workforce and suppliers; (iii) customers and consumers; (iv) the community; (v) the local and global environment; (vi) the company's short- and long-term performance; and (vii) the company's ability to achieve its corporate purpose[487].

The fulfilment of these duties may be pursued through one or more of the statutory impact areas, namely governance, workforce, community, customers and the environment. While directors are not required to address all impact areas, once the company has elected to pursue one or more of them, the corresponding commitments become mandatory and the measures adopted must be reflected in the company's impact management report[488]. The legislation further provides non-exhaustive examples of measures that may be adopted within each impact area[489].

Conversely, directors incur no personal liability, nor may any claim for damages be brought against them, where compliance with the statutory BIC duties results in a reduction of the company's operating profits[490].

The expansion of fiduciary duties does not create obligations enforceable by third parties who do not hold an equity interest in the BIC. Rather, such duties are owed exclusively to the company's partners or shareholders, who are the only persons entitled to enforce them through judicial proceedings[491]. According to the law, it seems that the *Superintendencia de Compañías, Valores y Seguros* may not assess the activities undertaken by a BIC company to fulfil its obligation to create a positive impact on society and the environment, and the judicial enforcement of duties relating to the benefit purpose is vested exclusively in the partners or shareholders[492].

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[486] Law No. 31072, 24 November 2020, art. 7.4.
[487] Ley de Compañías, Law No. 312, 5 November 1999, twentieth unnumbered article following art. 329.
[488] Ley de Compañías, Law No. 312, 5 November 1999, eighth unnumbered article following art. 329.
[489] See Ley de Compañías, Law No. 312, 5 November 1999, ninth, tenth, eleventh, twelfth, thirteenth and fourteenth unnumbered article following art. 329.
[490] Ley de Compañías, Law No. 312, 5 November 1999, twenty-first unnumbered article following art. 329.
[491] Ley de Compañías, Law No. 312, 5 November 1999, twenty-first unnumbered article following art. 329.
[492] Ley de Compañías, Law No. 312, 5 November 1999, twenty-fourth unnumbered article following art. 329.

The legislation further provides that any action seeking to hold directors liable for failure to comply with the obligation to create a positive material impact may be brought only by the company, following a resolution of the general meeting, in accordance with the Companies Act[493].

Uruguay

The Uruguayan BIC framework supplements the ordinary duties applicable under Uruguayan corporate law and *fideicomiso* law by requiring directors and trustees to manage the company or trust consistently with their statutory commitment to generate a positive social and environmental impact.

The law expands the duties of directors and trustees that, in the performance of their functions, the execution of the acts within their competence and taking of decisions, must take into account the effects of their actions or omissions on (i) the members or beneficiaries; (ii) the current employees and, in general, the contracted workforce; (iii) the communities with which they are connected and the local and global environment; and (iv) the long-term expectations of the members and of the company, or of the beneficiaries and the trust, so that the purposes of the company or trust are realised. Compliance with this duty may be required only by the members and, in the case of trustees, only by the beneficiaries of the trust[494].

The implementing Decree complements this rule by requiring the benefit purpose to be translated into a strategic plan focused on the benefit purpose and approved by the competent corporate body[495]. Directors are accordingly responsible for implementing and monitoring that strategic plan in the ordinary management of the company.

The Uruguayan model therefore expressly requires directors and fiduciaries to integrate stakeholder, environmental and long-term considerations into their decision-making process. At the same time, the law limits enforcement of this duty: compliance may be required only by the partners in the case of companies, and only by the beneficiaries in the case of BIC trusts.

[493] Ley de Compañías, Law No. 312, 5 November 1999, twentieth unnumbered article following art. 329.
[494] Law No. 19969, 23 July 2021, art. 4.
[495] Decree 136/022, 26 April 2022, art. 2.

6.3.2. Enforcement

U.S. Model Law

In terms of remedies, it should be noted that, under the Model Act, the principal statutory remedy specifically designed to enforce benefit corporation obligations, and in particular for failing to pursue public-benefit purposes (general or special), is the so-called 'benefit enforcement proceeding'[496]. This special proceeding may be brought directly by the corporation or derivatively by shareholders owning at least 2 per cent of the outstanding shares, and by persons owning at least 5 per cent of the equity interests of a parent company of the benefit corporation[497].

The Model Act excludes liability for monetary damages for failure to pursue or create general public benefit or a specific public benefit. Accordingly, shareholders may bring derivative actions in the name and on behalf of the corporation seeking equitable relief, such as injunctions or court orders requiring compliance with the statutory obligations applicable to benefit corporations, rather than compensatory damages.

Delaware

As for remedies, Delaware law does not provide for a specific action comparable to the benefit enforcement proceeding under the Model Act. Instead, compliance with the balancing requirement is enforced through the ordinary remedies available under Delaware corporate law for breaches of directors' fiduciary duties.

However, the Delaware Public Benefit Corporation Act establishes a specific standing requirement for actions seeking to enforce the public-benefit obligations of a PBC. In particular, a derivative action may be brought only by shareholders who, individually or collectively, own at least 2 per cent of the corporation's outstanding shares or, in the case of a corporation listed on a national securities exchange, the lesser of 2 per cent of the outstanding shares or shares having a market value of at least USD 2 million[498].

[496] Model Act §305 (a).
[497] Model Act §305 (c).
[498] Del. Code Ann. tit. 8, §367.

British Columbia

The enforcement of the benefit obligations in British Columbia relies exclusively on private mechanisms, namely the ordinary actions available for breaches of directors' and officers' statutory duties.

Proceedings relating to the breach of the benefit company responsibilities may be commenced only by shareholders holding, in the aggregate, at least 2 per cent of the company's issued shares or, in the case of a public company, the lesser of 2 per cent of the company's issued shares and issued shares having a fair market value of at least CAD 2,000,000[499].

Moreover, notwithstanding any rule of law to the contrary, a court may not award monetary damages for any breach of the benefit company responsibilities[500]. Accordingly, the principal remedy available is injunctive relief, including orders requiring compliance with the benefit company responsibilities.

As for third parties affected by the company's conduct, or with an interest in the company's public benefits specified in the company's articles, they are expressly denied standing to bring proceedings against the directors or officers in relation to the performance of their benefit company responsibilities[501].

Rwanda

The Companies Act does not establish a specific enforcement mechanism for Community Benefit Companies. Unlike several other benefit company statutes, it does not provide for a dedicated benefit enforcement proceeding, confer standing on stakeholders or beneficiaries, or establish any form of public supervision or administrative sanctions in relation to the pursuit of the community-benefit purpose.

Accordingly, compliance with the benefit obligations appears to be enforced exclusively through the ordinary mechanisms of company law. Since the directors' duty to consider the company's community-benefit purpose and the interests identified in article 272 forms part of their statutory duties, a failure to comply with those obligations may, in principle, give rise to the ordinary remedies available for breaches of directors' duties under the Companies Act, subject to the general conditions governing directors' liability.

However, the Act contains no specific provisions clarifying how such remedies should operate in relation to the community-benefit purpose. In particular, it does not specify whether shareholders may bring actions based solely on the failure to pursue the company's public-benefit purpose, nor does it confer any right of action on third parties or beneficiaries. Consequently, the

[499] S.B.C. 2002, c. 57, Part 2.3, § 51.993 (4).
[500] S.B.C. 2002, c. 57, Part 2.3, § 51.993 (5).
[501] S.B.C. 2002, c. 57, Part 2.3, § 51.993 (2)(b).

practical enforcement of the CBC regime will ultimately depend on the interpretation and application of the general rules on directors' duties and liability by the Rwandan courts.

Italy

Failure by directors to comply with the balancing obligation arising from the *società benefit* legislation – including the pursuit of the common-benefit purpose and the duty to balance the interests of shareholders, the common-benefit objectives, and the interests of the stakeholders identified by the law – may constitute a breach of the duties imposed upon them by law, and the articles of association and by-laws, with the consequent application of the relevant liability provisions provided by the Italian Civil Code for each organisational form[502].

As a general rule, only the company itself and its shareholders (through the actions available under company law, including derivative actions where applicable) have standing to bring claims alleging a breach of directors' duties and seeking compensation for any damage suffered by the company as a result of the failure to comply with the balancing obligation or to pursue the common-benefit purpose, including, for example, reputational harm.

As mentioned above, the *società benefit* legislation neither expressly provides for nor expressly excludes any duty owed by directors to the beneficiaries of the common benefit. Accordingly, directors are generally considered to be protected from direct claims brought by such beneficiaries, who do not appear to have standing to sue either the company or its directors merely for failure to pursue the company's common-benefit objectives. A possible, albeit controversial, exception may arise under Articles 2395 (for corporations) and 2476, paragraph 6 (for limited liability companies), of the Italian Civil Code[503]. These provisions grant third parties a right of action against directors where they have suffered direct damage as a consequence of the directors' wrongful conduct. Whether a failure to comply with the balancing obligation could satisfy the requirements of such provisions remains highly debatable.

France

As already mentioned, failure to pursue the *raison d'être* and the *mission* objectives incorporated into the articles of association may give rise to remedies grounded in ordinary company law, both in the company's internal relationships and, more controversially, in its relationships with third parties.

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[502] Law No. 208, 28 December 2015, art. 1, paragraph 381.
[503] Third parties have the right, under art. 2395 of the Civil Code, to bring a liability action against directors of a joint stock company (*società per azioni*), but the damage they alleged must have directly affected their assets. The same remedy is recognised under art. 2476, paragraph 6, of the Civil Code, for third parties that suffered damages as a direct result of the misconduct of directors of a limited liability company (*società a responsabilità limitata*).

As regards internal corporate relationships, a first possible consequence is the removal of directors who disregard the *raison d'être* and the *mission* incorporated into the articles of association, which reflect the will of the shareholders[504]. Furthermore, under French company law, directors may incur liability towards the company and towards third parties for breaches of laws and regulations, violations of the articles of association, or faults committed in the management of the company[505]. Accordingly, failure to comply with the *raison d'être* or the *mission* objectives incorporated into the articles of association may, in principle, constitute a violation of the articles of association and give rise to directors' liability where the other requirements of the action, including damage and causation (ie, a causal link between the directors' violation and the damage suffered), are satisfied[506].

As regards the company's external relationships, the availability of remedies for third parties remains uncertain. The prevailing view is that third parties cannot ordinarily rely on breaches of the articles of association, given that they are not parties to the corporate contract. Nevertheless, certain judicial decisions have recognised claims by third parties in situations involving breaches of limitations on directors' powers provided for in the articles of association[507]. On this basis, considering the *raison d'être* and the *mission* as limitations on the directors' powers once incorporated into the articles of association, the possibility for third parties to bring an action challenging decisions adopted in violation of those provisions could be envisaged.

Additional grounds for claims by third parties may arise under the general principles governing directors' personal liability in case of loss suffered as a result of the breach of the mission, where the breach is associated with intentional misconduct of particular gravity, incompatible with the normal exercise by directors of their corporate functions (so-called *faute séparable des fonctions*)[508]. However, the practical scope of such remedies remains uncertain, and it will be necessary to await further judicial developments to determine whether French courts will recognise claims based directly on the failure to pursue the corporate mission.

[504] République de France, Assemblée Nationale, *Projet de loi relatif à la croissance et la transformation des entreprises* – Étude d'impact, 20 June 2018, p. 548.

[505] See Civil Code art. 1850 ("*Chaque gérant est responsable individuellement envers la société et envers les tiers, soit des infractions aux lois et règlements, soit de la violation des statuts, soit des fautes commises dans sa gestion*"); Commercial Code art. 223-22 ("*Les gérants sont responsables, individuellement ou solidairement, selon le cas, envers la société ou envers les tiers, soit des infractions aux dispositions législatives ou réglementaires applicables aux sociétés à responsabilité limitée, soit des violations des statuts, soit des fautes commises dans leur gestion*"), and 225-251 ("*Les administrateurs et le directeur général sont responsables individuellement ou solidairement selon le cas, envers la société ou envers les tiers, soit des infractions aux dispositions législatives ou réglementaires applicables aux sociétés anonymes, soit des violations des statuts, soit des fautes commises dans leur gestion*").

[506] Civil Code art. 1843-5. The plaintiff is entitled to sue for compensation for the loss suffered by the company, and in the event of a conviction, the damages are awarded to the company.

[507] See Desbarats 2021, 750-751, citing Civ. 3e, 14 June 2018, *Bull. civ*. III, n. 64; and Com. 14 February 2018, n. 16-21.077.

[508] Desbarats 2021, 751.

Spain

The current Spanish legal framework does not establish specific remedies for the breach of directors' duties, or for the failure to pursue the social and environmental commitments associated with SBIC status. Any liability or enforcement mechanisms are therefore expected to derive from the general rules of company law and from the commitments voluntarily incorporated into the company's articles of association, pending further regulatory development.

Colombia

Law 1901 of 2018 does not establish a specific enforcement action comparable to the benefit enforcement proceeding provided under the US Model Act. Nor does it create a special judicial remedy allowing shareholders, stakeholders or beneficiaries to challenge directors solely for failing to pursue the collective-benefit purpose.

Directors remain subject to the ordinary liability regime provided by Colombian company law, including the rules governing directors' duties and liability under Law 222 of 1995. Accordingly, any action against directors, also for the breach of their enlarged benefit duties, must be based on the general remedies available under company law rather than on a specific BIC enforcement mechanism.

On the other hand, it must be stressed that the law provides a specific administrative procedure to sanction the non-compliance with the BIC regime[509] entrusted to the *Superintendencia de Sociedades*[510] that may order the loss of BIC status.

Peru

Law No. 31072 and the implementing Regulation[511] provide indication for the judicial determination and the enforcement of the obligations arising from a company's BIC status. Where a BIC company fails to pursue its social or environmental-benefit purpose, especially with regard to directors' extended benefit duties, or fails to comply with any obligation imposed by law, any shareholder or partner may bring legal proceedings seeking an order requiring the

[509] Law 1901/2018, 18 June 2018, art. 7, and Decree 2046-2019, 12 November 2019, arts. 2.2.1.15.8 – 2.2.1.15.11.
[510] According to Decree 2046-2019, 12 November 2019, arts. 2.2.1.15.8, shareholders or partners, directors, statutory auditor, creditors, employees, consumers, and any person who demonstrates that he or she has suffered harm in connection with the benefit and collective-interest activities carried out by the company can be considered an interested party.
[511] Law No. 31072, 24 November 2020, art. 7; Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 23 – 27.

company to fulfil those obligations[512]. The legislation excludes any direct right of action by third parties or by the beneficiaries of the company's social or environmental activities[513].

If the court finds that the company has failed to comply with its obligations, it may grant a period within which compliance must be achieved[514]. Should the company continue to default after the expiry of that period, it loses its BIC status, the provisions relating to such status must be removed from its constitutional documents, and the corresponding amendments must be registered in the Legal Entities Registry[515].

Ecuador

The expanded fiduciary duties imposed on directors are owed exclusively to the company and its partners or shareholders. Accordingly, the legislation expressly excludes the creation of any enforceable rights in favour of third parties who do not hold an equity interest in the BIC, while providing that compliance with the directors' BIC duties may be judicially enforced only by the company's partners or shareholders[516].

The company may also bring an action against directors for breach of their statutory BIC obligations, subject to prior authorisation by the general meeting under the ordinary rules governing directors' liability provided for in the Companies Act[517].

Uruguay

The directors' duties laid down in article 4 of the BIC law may be enforced only by the members or shareholders or, in the case of trusts, by the beneficiaries of the trust, according to the applicable corporate or *fideicomiso* law. Accordingly, the Uruguayan regime does not appear to grant standing to third parties to bring claims directly against directors or fiduciaries for breach of these duties.

Beyond this private action, the system relies on the *descalificación* mechanism, which can be initiated not only by the competent authority acting *ex officio*, but also by any partner or interested third party before the competent court[518].

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[512] Law No. 31072, 24 November 2020, art. 7.3; Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 23, 24
[513] Law No. 31072, 24 November 2020, art. 7.3.
[514] Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 25.
[515] Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 26.
[516] Ley de Compañías, Law No. 312, 5 November 1999, twenty-first unnumbered article following art. 329.
[517] Ley de Compañías, Law No. 312, 5 November 1999, twentieth unnumbered article following art. 329.
[518] Decree 136/022, 26 April 2022, art. 10; Law No. 19969, 23 July 2021, art. 7.

6.4 Governance structure

The comparative analysis shows that, in most jurisdictions, the acquisition of dual-purpose company status does not entail the mandatory adoption of a specific governance structure. In these systems, the pursuit of the benefit purpose is integrated into the functions of the company's ordinary corporate organs, rather than entrusted to a separate body or office. The main legal consequence of the adoption of the status therefore lies in the modification of directors' duties, reporting obligations and accountability mechanisms, while the formal governance architecture of the company remains largely unchanged.

Only some jurisdictions introduce specific governance adjustments aimed at supporting the implementation and monitoring of the benefit purpose. These mechanisms may be either optional or mandatory. Optional governance tools include, for example, the benefit director and benefit officer provided under the US Model Act, whose appointment is left to the company's discretion. By contrast, other systems impose mandatory organisational requirements. Italian law, for instance, requires *società benefit* to identify one or more persons responsible for carrying out functions and tasks aimed at pursuing the common-benefit purpose, although it does not define this role as a specific corporate office nor regulate its powers and liabilities in detail.

The French *société à mission* represents the most developed example of a mandatory governance adjustment. French law requires the establishment of a dedicated internal monitoring body, separate from the board of directors: the *comité de mission*, or, for smaller companies, the *référent de mission*. This body is specifically entrusted with monitoring the execution of the company's mission, carrying out the verifications it considers appropriate and preparing an annual report on the implementation of the mission. The French model therefore introduces an additional layer of internal accountability, designed to ensure that the mission incorporated into the articles of association is not merely declaratory but subject to continuing internal supervision.

Other jurisdictions adopt intermediate solutions. They do not create a separate governance body, but require the existing corporate organs to adopt organisational tools, such as a strategic plan, transparency practices or impact-reporting arrangements, aimed at integrating the benefit purpose into the company's management and internal processes. These requirements do not alter the company's governance structure in a strict sense, but they reinforce the organisational dimension of the benefit commitment.

Overall, governance requirements in dual-purpose company legislation reflect different balances between flexibility and assurance. A lighter approach preserves organisational autonomy and allows companies to adapt the pursuit of the benefit purpose to their own size, structure and business model. A more prescriptive approach, by contrast, strengthens the credibility and internal monitoring of the benefit commitment. The choice between these models reflects different legislative sensitivities as to how far company law should go in transforming the internal governance of enterprises that voluntarily assume a public-benefit purpose.

Against this comparative background, the following country reports provide an overview of the specific governance arrangements applicable to dual-purpose companies in each of the jurisdictions considered.

U.S. Model Act

In terms of governance, the Model Act provides for the optional designation of a benefit director (who must be an independent individual)[519] and a benefit officer[520]. Moreover, it establishes specific standards of conduct and duties for both the benefit director and the benefit officers, who are required to consider the interests of the corporation's constituencies in the same manner as directors are required to do[521].

In particular, if a benefit director is designated, he or she has the additional duty of preparing the benefit director's statement, indicating whether, in the opinion of the benefit director, the corporation acted in accordance with its public-benefit purposes, and whether the directors and officers complied with their duties under the Model Act. The statement must also describe any failure by the corporation or by its directors or officers to pursue or create public benefit or to comply with their respective duties. Such statement must be included in the annual benefit report.

Where a benefit officer is designated, he or she shall have the powers and duties relating to the purpose of the corporation to create general public benefit or any specific public benefit as provided in the bylaws or by resolution of the board of directors, and the duty to prepare the corporation's mandatory annual benefit report.

Delaware

Unlike the Model Benefit Corporation Legislation, the Delaware Public Benefit Corporation Act does not require any specific governance adjustments for public benefit corporations. In particular, it neither mandates nor regulates the figures of the benefit director and the benefit officer, leaving the internal governance structure of PBCs largely subject to the ordinary rules of Delaware corporate law.

British Columbia

Unlike the US Model Act, Italian *società benefit* or French *société à mission*, the British Columbian legislation does not require benefit companies to adopt any specific governance structure or to establish dedicated corporate bodies responsible for overseeing the pursuit of the

[519] Model Act §302.
[520] Model Act §304.
[521] Model Act §303.

public benefits. No equivalent of the benefit director, benefit officer, impact manager or mission committee is provided.

The governance of a benefit company therefore remains subject to the ordinary corporate governance framework established by the *Business Corporations Act*. The principal innovation lies in the statutory responsibilities of directors and officers, who are required to conduct the company's business in a responsible and sustainable manner and to promote the public benefits specified in the company's articles while continuing to comply with their ordinary fiduciary duties. Accordingly, the pursuit of the public benefits is integrated into the functions of the existing corporate organs rather than entrusted to a separate governance body.

Rwanda

The Rwandan Community Benefit Company regime does not require the adoption of any specific governance structure or the establishment of dedicated corporate bodies responsible for overseeing the pursuit of the community-benefit purpose. Unlike other dual-purpose company models, the Companies Act does not provide for the appointment of a benefit director, a benefit officer, an impact manager, a mission committee, or any comparable supervisory body.

The governance of a Community Benefit Company therefore remains subject to the ordinary corporate governance framework applicable to companies incorporated under the Companies Act. Accordingly, the pursuit of the community-benefit purpose is entrusted to the company's existing corporate organs and integrated into the directors' decision-making process, without introducing additional governance mechanisms or internal monitoring bodies.

Italy

From an organisational perspective, a *società benefit* is required to identify one or more individuals responsible for carrying out functions and tasks aimed at pursuing the common-benefit purpose[522]. Unlike the Model Act, which expressly regulates the positions of benefit director and benefit officer, the Italian legislation does not establish a specific corporate office, nor does it provide a detailed regulation of the role. Rather, it simply requires the company to designate one or more persons responsible for the pursuit of the common-benefit objectives.

The selection of such individuals is left to the discretion of the company and may fall upon a director, an officer, an employee, or an external professional. In practice, these individuals are often referred to as 'impact managers', although this terminology does not appear in the statute.

[522] Law No. 208, 28 December 2015, art. 1, paragraph 380, second sentence.

The law does not specify the powers, duties or liability regime applicable to the responsible person[523]. Depending on the organisational structure adopted by the company, such person may assist the directors in integrating the common-benefit purpose into the company's activities, co-ordinate impact-related initiatives, or support the preparation of the annual benefit report. However, the appointment of the responsible person does not relieve directors, statutory auditors or other control bodies of their respective duties and liabilities under company law[524].

France

With regard to the governance structure, the French model differs compared to the other models developed both in common and civil law, providing for a specific governance mechanism that introduces an internal layer of monitoring

Indeed, a *société à mission* must establish a dedicated monitoring body, separate from the board of directors and from other company bodies: the '*comité de mission*' (mission committee)[525], or '*référent de mission*' (mission representative) for companies with fewer than 50 employees[526].

As to its composition and functioning, the law does not give clear indications, except that the *comité de mission* must be composed of at least one employee, while the *référent de mission*, according to the law, may be an employee[527].

The law does not prescribe the participation of other stakeholder groups. However, commentators generally consider that the committee may include representatives of stakeholders, experts, associations, non-profit organisations or other independent persons whose expertise is relevant to the mission pursued by the company[528].

The *comité de mission* (or the *référent de mission* in smaller companies) is exclusively responsible for monitoring the execution of the company's mission. To that end, it may carry out any verification it considers appropriate and shall be provided with any document necessary to the monitoring function.

[523] On the issue see *La figura del Responsabile di Impatto e implicazioni nella governance delle Società Benefit*, Quaderno O.I.B.R. No.13, eds. by Osservatorio AssoBenefit-O.I.B.R. sulla Rendicontazione delle Società Benefit, April 2025, available at https://www.google.com/url?sa=i&source=web&rct=j&url=https://www.fondazioneoibr.it/wp-content/uploads/2025/04/Quaderno-OIBR_N_13_ITA-finale.pdf&ved=2ahUKEwiN-KDuqa2VAxWBzQIHHUBZAMYQ0YISegoIAggACAAICxAB&opi=89978449&cd&psig=AOvVaw1Ix2hS2zWHQFREjaOf7R9z&ust=1782852662305000.
[524] Assonime, Circolare No. 19, 20 July 2016, available at http://www.societabenefit.net/wp-content/uploads/2017/02/Assonime-Benefit-Corporation.pdf, at 23-24.
[525] Commercial Code, art. L210-10, 3°.
[526] Commercial Code, art. L210-12.
[527] On the participation of employees see Mazuyer 2019, 47.
[528] Mazuyer 2019, 47; Cohen 2019, 62.

Moreover, the committee prepares and presents an annual report on the execution of the mission, which is attached to the management report and submitted to the shareholders' meeting together with the annual financial statements[529]. The annual report of the *comité de mission* may be regarded as the principal internal accountability mechanism of the *société à mission*, providing shareholders and other stakeholders with information on the implementation of the company's mission and the progress achieved. It performs a function comparable to that of the benefit or impact reports required under other dual-purpose company regimes, by assessing the implementation of the company's mission and reporting on its progress.

Spain

The current legal framework does not establish any specific governance structure for SBICs. In particular, Spanish law does not require the appointment of a benefit director, benefit officer, impact manager, mission committee, or any equivalent body responsible for overseeing the pursuit of the company's social and environmental objectives.

The governance of SBICs therefore remains subject to the ordinary corporate rules applicable to the relevant company form. However, future regulatory developments may introduce specific governance mechanisms aimed at ensuring compliance with the social and environmental commitments voluntarily incorporated into the company's articles of association.

Colombia

The Colombian BIC regime does not require any modification of the company's governance structure nor the establishment of dedicated governance bodies responsible for overseeing the pursuit of the collective-benefit purpose. The company's existing organisational structure remains governed by the ordinary rules applicable to the relevant company type.

In particular, neither Law 1901 of 2018 nor Decree 2046 of 2019 require the appointment of a benefit director, benefit officer, impact manager, mission committee or any equivalent body entrusted with monitoring the implementation of the company's social and environmental commitments.

[529] Commercial Code, art. L210-10, 3°: "*Ses statuts précisent les modalités du suivi de l'exécution de la mission mentionnée au 2°. Ces modalités prévoient qu'un comité de mission, distinct des organes sociaux prévus par le présent livre et devant comporter au moins un salarié, est chargé exclusivement de ce suivi et présente annuellement un rapport joint au rapport de gestion, mentionné à l'article L. 232-1 du présent code, à l'assemblée chargée de l'approbation des comptes de la société. Ce comité procède à toute vérification qu'il juge opportune et se fait communiquer tout document nécessaire au suivi de l'exécution de la mission; …*".

The responsibility for pursuing the collective-benefit activities incorporated into the company's corporate purpose and for complying with the reporting obligations established under the BIC regime remains vested in the company's ordinary management and governance bodies.

Peru

The Peruvian BIC legislation does not establish a specific governance structure or require the creation of dedicated corporate bodies responsible for overseeing the company's benefit purpose. In particular, neither Law No. 31072 nor its implementing Regulation provides for the appointment of a benefit director, a benefit officer, a mission committee or any equivalent governance mechanism.

Accordingly, the pursuit of the benefit purpose is integrated into the functions of the company's ordinary organs. The principal organisational innovation introduced by the BIC regime consists in the requirement that the competent corporate body prepare and approve, within 60 calendar days following the company's registration as a BIC company, a strategic plan aimed at implementing the company's benefit purpose and the corresponding social and environmental objectives[530].

Moreover, it provides that the board of directors or the legal representative must introduce organisational transparency practices[531] and entrust an independent third party with the preparation of the management report on the company's impact in relation to the benefit purpose[532].

Ecuador

The Ecuadorian BIC regime does not establish any specific corporate governance structure for *Sociedades de Beneficio e Interés Colectivo*. In particular, the legislation neither requires the appointment of dedicated corporate bodies, or directors or officers responsible for the pursuit of the benefit purpose, nor provides for internal committees or supervisory bodies specifically entrusted with monitoring compliance with the company's social and environmental commitments. Accordingly, BIC companies remain subject to the ordinary governance rules applicable to their respective corporate form under the Companies Act.

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[530] Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 8.2.
[531] According to Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 10, in order to fulfil this organisational transparency requirement provided for in art. 8(a) of Law No. 31072, 24 November 2020, BIC companies may adopt the practices set out in the chapter entitled "Transparency of Information" of the 2013 Code of Good Corporate Governance for Peruvian Companies issued by the Superintendency of the Securities Market (SMV), or any instrument replacing it.
[532] Law No. 31072, 24 November 2020, art. 8.

The legislation nevertheless requires directors, managers and officers to integrate the company's benefit purpose into the exercise of their managerial functions by considering the interests identified in article 20 of the law (ie, partners or shareholders; employees; customers and consumers; the community; the local and global environment; the company's short- and long-term performance; and the company's ability to fulfil its corporate purpose) and by implementing one or more of the statutory impact areas selected by the company. These provisions affect the content of directors' fiduciary duties rather than the company's governance structure[533].

Uruguay

The Uruguayan framework does not mandate any dedicated governance structure. In particular, neither the Law nor the Decree requires the appointment of a benefit director, benefit officer, mission committee, independent supervisory body, or any other special corporate organ entrusted with monitoring the benefit purpose. BIC companies and BIC trusts therefore remain governed by the ordinary organisational rules applicable to their respective legal form.

The Decree nevertheless introduces one relevant governance-related requirement: the activities linked to the social and environmental objectives must be developed within a strategic plan focused on the benefit objective, which must be prepared and approved by the competent corporate body[534]. Thus, the Uruguayan model does not alter the formal governance architecture of the entity, but it requires the existing corporate organs to integrate the benefit purpose into internal planning and decision-making processes.

6.5 Transparency and reporting obligations

Transparency constitutes one of the fundamental pillars of all dual-purpose company regimes. Although the various legal systems adopt different reporting techniques and verification mechanisms, they all rely on periodic disclosure as the principal instrument through which the company's pursuit of its public-benefit purpose becomes externally verifiable. The annual benefit or impact report therefore performs a dual function. On the one hand, it promotes accountability towards shareholders, investors, customers and other stakeholders by providing information on the implementation of the company's social and environmental commitments. On the other hand, it constitutes the primary legal basis upon which private and, where applicable, public oversight of the company's compliance with the benefit regime may be exercised.

[533] See Ley de Compañías, Law No. 312, 5 November 1999, eighth, ninth, tenth, eleventh, twelfth, thirteenth and fourteenth unnumbered article following art. 329.
[534] Decree 136/022, 26 April 2022, art. 2.

The comparative analysis reveals a remarkable degree of convergence as regards the existence of a **periodic reporting obligation**. Almost all jurisdictions require the preparation of a benefit or impact report on an **annual basis**, while only a limited number of legal systems adopt a different reporting frequency (eg, Delaware, every two years).

Responsibility for preparing the report generally rests with the company's ordinary governance bodies, typically the board of directors, the directors themselves, the legal representative or other competent corporate organs. Only a few jurisdictions require the direct involvement of an independent external organisation in the preparation of the report (eg, Peru), while others reserve the role of independent third parties to the verification or assessment of the information contained therein.

Despite differences in terminology and drafting techniques, the **content of the report** is largely consistent across jurisdictions. In general, the report is required to describe the actions undertaken during the relevant financial year to pursue the company's benefit purpose, to assess the social and environmental impact generated by those activities, and to explain any circumstances that have prevented, hindered or delayed the achievement of the company's public-benefit objectives. Several legal systems also require the report to describe the methodology used to measure impact, the objectives pursued during the reporting period, and, in some cases, the future objectives or strategic initiatives that the company intends to implement.

The most significant point of divergence concerns the **assessment methodology** adopted to evaluate the company's benefit performance. Some jurisdictions require the assessment to be carried out by reference to an **independent third-party standard** (eg, the Model Act, Italy, British Columbia and Colombia, but not Delaware, which allows self-defined standards), while others leave companies free to develop and apply standards internally. Among those adopting third-party standards, the legislative approaches differ considerably. Some systems merely require the selected standard to satisfy objective characteristics such as independence, credibility, transparency and comprehensiveness, leaving companies free to choose any standard meeting those requirements. Other jurisdictions require companies to select a standard from a list of approved or recognised standards maintained by a competent public authority. A further distinction concerns the role of external parties in the reporting process. While in several jurisdictions third-party standards constitute solely a measurement benchmark and the assessment remains an internal responsibility of the company's directors, other legal systems require independent organisations to prepare, or certify, audit or otherwise verify the report before it is disclosed (see the French *organisme tiers indépendant*, and the Ecuadorian certification requirement). In contrast, a few jurisdictions rely entirely on internal reporting mechanisms without requiring either external standards or independent verification.

The **disclosure regime** also follows broadly similar patterns. As a general rule, the report must first be presented to the shareholders, frequently together with the annual financial statements and, where required, submitted for consideration by the general meeting. It is then generally made publicly available through the company's website or, where no website exists, through equivalent means ensuring public accessibility. Several jurisdictions also require the report to be filed with a public authority, company register or other competent administrative body, while others rely exclusively on corporate disclosure without imposing any filing obligation. Where filing requirements exist, they frequently perform not merely an informational function but also facilitate public supervision and, in some cases, the registration and monitoring of benefit reports by the competent authority.

Finally, the comparative analysis shows that transparency is closely connected with the broader system of **accountability** governing dual-purpose companies. In several jurisdictions, the failure to prepare, publish, file or adequately substantiate the benefit report, or the non-compliance with the assessment standards required may trigger administrative sanctions, corrective measures or even the loss of benefit status. The benefit report therefore operates not only as a disclosure instrument but also as one of the principal legal mechanisms through which compliance with the dual-purpose regime is monitored and enforced.

In trying to summarise the disclosure framework, it is worth saying that from a comparative perspective, the various transparency regimes may be viewed as reflecting different levels of external assurance. At one end of the spectrum are systems that rely almost exclusively on internal reporting by the company's own governance bodies (Delaware). At the opposite end are regimes that require the direct involvement of independent external organisations in the preparation, certification or verification of the benefit report (Peru). Between these two models lie intermediate solutions, under which the report is prepared internally but assessed against an independent third-party standard (eg, Model Act, Italy, British Columbia) or, prepared internally but subjected to some form of external review or certification (France, Ecuador). The different approaches ultimately reflect varying legislative choices as to the degree of credibility and external oversight that should accompany the company's public-benefit commitments, balancing the need for organisational flexibility against the objective of ensuring reliable and verifiable impact reporting.

Against this comparative background, the following country reports provide an overview of the specific legal regimes governing transparency and disclosure requirements applicable to dual-purpose companies in each of the jurisdictions considered.

U.S. Model Act

Transparency requirements provided by the Model Act include the publication of an annual report (the 'benefit report') and the use of external evaluation standards ('third-party standards') to assess the public benefit produced by the company. The law indicates their essential features, and both the benefit report and the performance assessment do not need to be audited or certified by a third party[535].

In particular, the benefit report shall include a description of how the benefit corporation pursued the general and (eventually) the specific public benefit/s, and the extent to which such public benefits were created, as well as any circumstances that have hindered their creation. Moreover, it shall include an assessment of the overall social and environmental performance of the benefit corporation reported against the chosen third-party standard, the process and rationale for selecting or changing the third-party standard used to prepare the benefit report[536], and the eventual connection between the organisation that established the standard and the

[535] Model Act § 401 (c).
[536] Model Act § 401 (a)(1).

benefit corporation[537] shall be disclosed. The standard needs to be applied consistently with the prior benefit report or needs to contain an explanation of the reasons for any inconsistency or for changing the standard[538]. Such a standard must be elaborated by third parties and can be freely chosen from those available on the market. In the US there is no public regulation of such standards, but the Model Act requires them to be credible[539], transparent[540] and developed by organisations independent of the benefit corporation using them, ie, with no direct or indirect relationship to the company[541].

Information regarding benefit directors and benefit officers (if any), and their address[542], as well as, in that case, the benefit director statement on the benefit corporation, or its directors or officers with respect to the public-benefit purposes[543] must also be included.

As for the disclosure of the benefit report, it needs to be delivered to shareholders annually, posted on the company's website, or supplied to any person that requests a copy of it if the benefit corporation does not have a website. Additionally, the company shall deliver a copy of the benefit report to the Secretary of State for filing. Some information contained in the report, such as the compensation paid to directors and financial or proprietary information may be omitted in external communications of the report[544].

Delaware

Transparency obligations are regulated differently in Delaware compared to the Model Act. A public benefit corporation is required to produce a benefit report no less than biennially, although the certificate of incorporation or bylaws may require the report to be provided more frequently[545]. Moreover, the benefit report must be provided to shareholders, but it is not required to be made publicly available unless otherwise provided in the certificate of incorporation or bylaws[546].

The report must contain a statement regarding the corporation's promotion of the public benefit/s identified in the certificate of incorporation and of the best interests of those materially affected by the corporation's conduct. In particular, it must include: (i) the objectives the board of directors has established to promote such public benefit/s and interests; (ii) the standards the

[537] Model Act § 401 (a)(6).
[538] Model Act § 401 (a)(2).
[539] Standards are required to be drawn up by subjects with specific competences.
[540] To ensure transparency, the parameters used in the assessment, the identity of the parties involved and the processes by which the standards are developed, updated and modified must be publicly accessible.
[541] Ie, an organisation independent of the benefit corporation that uses their standards, and having no direct or indirect relationship with the company. Model Act §102 – *"Third-party standard"*. See also Clark and Vranka 2013, 24-26.
[542] Model Act § 401(a)(3) and (b).
[543] Model Act § 302(c).
[544] Model Act §402.
[545] Del. Code Ann. tit. 8, §366(b) and 366(c)(1).
[546] Del. Code Ann. tit. 8, §366(c)(2).

board has adopted to measure the corporation's progress in promoting them; (iii) objective factual information based on those standards regarding the corporation's success in meeting the objectives established to promote such public benefit/s and interests; and (iv) an assessment of the corporation's success in meeting those objectives and promoting such public benefit(s) and interests.

A major difference from the Model Act is that Delaware law does not require the use of third-party standards to measure the public benefit created, thereby allowing directors to assess the corporation's performance on the basis of standards adopted by the corporation itself[547]. However, a public benefit corporation may voluntarily use a third-party standard or obtain a third-party certification by expressly providing for it in the certificate of incorporation or by-laws[548].

British Columbia

Regarding transparency requirements, British Columbian law mandates the publication of an annual benefit report that includes an assessment of the 'benefit impact' generated by the company (ie, the overall performance related to the obligations to conduct business in a responsible and sustainable manner and to pursue the public benefits specified in the company's articles) against a third-party standard[549].

The third-party standard can be chosen among the generally accepted third-party standards but needs to be developed by a qualified and independent third-party standard-setting body, which is a person or entity that is not related to the benefit company[550] and that makes public certain information indicated by the law, including information concerning its governing body, its control structure, its funding sources and the process used to develop the standard[551].

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[547] Del. Code Ann. tit. 8, §366(b)(2).
[548] Del. Code Ann. tit. 8, §366(c)(3).
[549] S.B.C. 2002, c. 57, Part 2.3, § 51.991 (1), "third-party standard".
[550] See S.B.C. 2002, c. 57, Part 2.3, § 51.991 (2), according to which, a third-party standard-setting body is related to a benefit company in case (a) it is a company affiliate of the benefit company, (b) a director, officer or shareholder (or an associate of a director, officer or shareholder) of the benefit company, or of an affiliate of the benefit company, is a member of the governing body of, or controls the operation of, or otherwise controls, the third-party standard-setting body, or (c) a person who beneficially owns shares of the benefit company (or an associate of such a person) is a member of the governing body of, or controls the operation of, or otherwise controls, the third-party standard-setting body. For the definition of associate see S.B.C. 2002, c. 57, Part 5, Division 8, § 192.
[551] See S.B.C. 2002, c. 57, Part 2.3, § 51.991 (1), "third-party standard-setting body", according to which, the third-party standard-setting body has to make public the following information: "(a) the name of each member of the third-party standard-setting body's governing body; (b) the selection process for membership in that governing body; (c) the name of each person who, (i) if the third-party standard-setting body is a corporation, controls the standard-setting body within the meaning of section 2 (3) of this Act, or (ii) if the third-party standard-setting body is not a corporation, controls the operations of the standard-setting body; (d) a description of the sources of the third-party standard-setting body's funding in sufficient detail to disclose any relationship that could reasonably be considered to compromise the standard-setting body's independence from

In particular, the benefit report must contain specific information provided by the law. It must disclose: (i) a fair and accurate description of the ways the benefit company demonstrated commitment to both conducting its business in a responsible and sustainable manner, and promoting the public benefits specified in the company's articles of association; (ii) the assessment of the company's benefit impact; (iii) any circumstances that hindered the company's endeavours to carry out the commitments set out in the benefit provision; and (iv) the process and rationale for selecting or changing the third-party standard used to prepare the benefit report[552].

The board of directors is responsible for selecting the third-party standard to be used, assessing the company's benefit performance against it[553], producing and approving the benefit report for each company's financial year[554]. Then the benefit report must be presented to the shareholders at the annual general meeting and deposited in the company's records office, so that it is accessible to the public[555]. It shall also be posted on the company's website if the company has one[556], but is not filed with the company's registry. Failure to publish or post the benefit report, or publishing or posting a benefit report that does not comply with the applicable law is an offence for which the company could be subjected to a fine up to USD 5,000[557].

Finally, the assessment is conducted internally by the directors against the selected third-party standard. The Act does not require certification or verification by the standard-setting body, nor does it provide for public authority review of the benefit report.

Rwanda

The Companies Act requires the board of directors of a Community Benefit Company to prepare an annual benefit report. The report must accompany the documents annually presented to the shareholders, namely the company's financial statements, the auditor's report (where required), and the board of directors' report[558].

The annual benefit report must describe the ways in which the company pursued its community-benefit purpose and any specific social objectives during the relevant financial year, the extent to which those purposes were achieved, and any circumstances that hindered their

the benefit company; (e) a description of the process used to develop a third-party standard, including the criteria against which the benefit company's performance is to be measured and the relative weight of those criteria".

552 S.B.C. 2002, c. 57, Part 2.3, § 51.994 (3).

553 S.B.C. 2002, c. 57, Part 2.3, § 51.994 (2).

554 S.B.C. 2002, c. 57, Part 2.3, § 51.994 (4).

555 S.B.C. 2002, c. 57, Part 1, Division 1, § 1 (1). Companies are required to keep certain records at the company's records office, which shall be open to the public at least two consecutive business hours each day (except weekends) to allow for possible inspection.

556 S.B.C. 2002, c. 57, Part 2.3, § 51.994 (5).

557 S.B.C. 2002, c. 57, Part 12, Division 4, § 426 (d.2) NS §428.

558 Law No. 007/2021, 5 February 2021, art. 88 and 89.

accomplishment[559]. Unlike other benefit company regimes, the Act does not prescribe any specific reporting methodology, performance indicators, third-party standards or external verification mechanisms. Accordingly, the preparation and assessment of the report remain entirely the responsibility of the company's board of directors.

To ensure public accessibility, the annual benefit report, together with all previous annual benefit reports, must be published on the company's website, if the company maintains one. Where the company does not have a website, it is required to provide a copy of its most recent annual benefit report to any person requesting it[560].

The Act does not expressly state whether the annual benefit report must also be filed with the Registrar General together with the company's annual filings[561]. Since the report is listed alongside the annual corporate documents submitted to shareholders, it may be argued that it forms part of the company's annual disclosure package. However, in the absence of an express statutory provision or implementing regulations, such a filing is subject to interpretation.

Italy

To create greater accountability and transparency, *società benefit* are required to publicly report on their social and environmental performance, so that customers, workers, investors and policymakers can assess the company's impact.

In accordance with the Model Act, Italian law requires *società benefit* to produce and publish on their website (if existing)[562] an annual benefit report[563] concerning the pursuit of the public benefit[564]. Moreover, the impact of the company and the pursuit of the public benefit/s indicated in the articles of incorporation and by-laws must be assessed through the use of a third-party standard[565].

In particular, the annual benefit report shall include[566]:

i) the description of the specific objectives and actions implemented by the directors to pursue the public-benefit purposes, and the possible mitigating circumstances, which have prevented or slowed up their achievement

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559 Law No. 007/2021, 5 February 2021, art. 273, paragraph 1.
560 Law No. 007/2021, 5 February 2021, art. 273, paragraph 2.
561 Law No. 007/2021, 5 February 2021, art. 142.
562 Law No. 208, 28 December 2015, art. 1, paragraph 383.
563 The law does not provide specific indication, but it can be assumed that the annual benefit report must be prepared by the company's directors (who are also in charge of drawing up the annual financial statements according to art. 2423 Civil Code), also with the collaboration of the impact manager. The benefit report should not be considered as an integral part of the annual financial statements but as an autonomous document, which is not subject to approval by the general shareholders' meeting.
564 Law No. 208, 28 December 2015, art. 1, paragraph 382.
565 Law No. 208, 28 December 2015, art. 1, paragraph 382, letter b).
566 Law No. 208, 28 December 2015, art. 1, paragraph 382.

ii) the evaluation, through the chosen third-party standard, of the impact generated by the company in the areas of corporate governance, workers, other stakeholders and environment[567]

iii) a specific section containing the description of the new objectives that the *società benefit* intends to pursue in the following fiscal year.

The third-party standard used must comply with the requirements listed by the law. It must be comprehensive (in that it assesses the impact of the business and its operations aimed at pursuing the public benefit upon all the possible stakeholders), independent (developed by an entity which is not controlled by, or affiliated to, the *società benefit*), credible (developed by a person that both has access to the necessary expertise and uses a balanced scientific and multi-stakeholder approach), and transparent (in that information about the criteria used, the process and persons developing or supervising those criteria, and the sources of financial support for the organisation developing them are made publicly available)[568].

The annual benefit report must be attached to the company's annual financial statements and filed with the Company's Register office[569], with all the legal consequences and sanctions this entails in the event of a failure to deposit[570].

France

The transparency of the company's results in terms of the achievement of the social and environmental goals indicated in the *mission* is entrusted to the annual report prepared by the mission committee or mission representative. The report is public and accessible to third parties[571] as it is attached to the annual management report and is presented to the shareholders' general meeting responsible for approving the annual financial statements.

The law does not indicate the standards or methods to be used to assess the achievement of the mission but provides for an external control of the company's implementation of its mission. This control is attributed to an independent third-party body ('*organisme tiers indépendant*' – OTI) [572] among those accredited by the *Comité français*

[567] Law No. 208, 28 December 2015, Annex 5.
[568] Law No. 208, 28 December 2015, Annex 4.
[569] Law No. 208, 28 December 2015, art. 1, paragraph 382.
[570] Failure in preparing and filing the annual report together with the financial statements could result in the application of existing sanctions provided by art. 2630 of the Civil Code (ie, financial penalties).
[571] Desbarats 2021, 744.
[572] Commercial Code, art. L210-10, 4°: "…*L'exécution des objectifs sociaux et environnementaux mentionnés au 2° fait l'objet d'une vérification par un organisme tiers indépendant, selon des modalités et une publicité définies par décret en Conseil d'État. Cette vérification donne lieu à un avis joint au rapport mentionné au 3*°; …". The regulation was later completed by Decree No. 2020-1, 2 January 2020.

d'accréditation – COFRAC (French Accreditation Committee)[573], which is subject to the same incompatibilities provided for auditors[574].

The independent third-party body is appointed by the board of directors (or another management body) for an initial period not exceeding six financial years, renewable up to a maximum total duration of 12 financial years. It shall verify, at least every two years, the implementation of the company's social and environmental objectives through on-site inspections and access to all company documents relevant to the formation of its opinion[575]. In practice, the assessment is generally understood to concern not only the achievement of the mission itself, which is inherently a long-term process, but also the adequacy of the measures and procedures implemented by the company to pursue its mission[576].

It issues a reasoned opinion (*avis motivé*) setting out the due diligence it has carried out and indicating whether the company is complying with its mission, where appropriate, highlighting the reasons why, in its opinion, the objectives have not been met, or why it has been impossible to reach a conclusion. The opinion is attached to the report drawn up by the *comité de mission* or *référent de mission* and is published on the company's website, where it must remain publicly available for at least five years[577].

Spain

The current legal framework provides that SBICs should operate according to enhanced standards of transparency and accountability regarding the achievement of their social and environmental objectives. However, the specific reporting obligations, monitoring mechanisms and verification procedures remain subject to future regulatory development.

According to Law 18/2022, the future regulatory framework is expected to establish, in compliance with the highest standards of rigour, detailed criteria and methodologies for validating the new corporate status, and assessing the company's social and environmental performance[578].

[573] See Decree No. 2008-140, 19 December 2008 *relatif à l'accréditation et à l'évaluation de conformité pris en application de l'article 137 de la loi n° 2008-776 du 4 août 2008 de modernisation de l'économie*. The independent third-party body can also be accredited by any other accreditation body that is a signatory to the Multilateral Recognition Agreement established by the European Coordination of Accreditation Bodies.
[574] Code de Commerce art. L 822-11-3.
[575] The first verification must take place within 18 months of the publication of the mission statement, while for companies with fewer than 50 employees within 24 months of such publication.
[576] Desbarats 2021, 747.
[577] Commercial Code art. R 210-21.
[578] Law 18/2022, 28 September 2022, *Ley de creación y crecimiento de empresas*, Disposición adicional décima.

Colombia

The Colombian BIC regime relies heavily on transparency and reporting obligations as the primary mechanism for ensuring compliance with the company's collective-benefit commitments.

BIC companies are required to prepare, present to the general assembly and publicly disclose an annual management report describing the activities undertaken to pursue the benefit and collective-interest purposes included in the corporate purpose clause[579]. Decree 2046 of 2019 further specifies the content of the report and organises the assessment of the company's impact around five dimensions: business model, corporate governance, labour practices, environmental practices and community practices[580].

The annual BIC report must be prepared in accordance with an independent third-party standard ('*estándar independiente*') among the ones recognised by the *Superintendencia de Sociedades*, and it must expressly indicate, in its heading, the standard adopted[581]. Moreover, the standard adopted may be subject to audit by the competent authorities or by an independent third party[582]. The *Superintendencia de Sociedades* may examine complaints concerning the company's compliance with the selected standard[583].

The law also specifies that the independent standard adopted for the preparation of the annual BIC report must satisfy a number of statutory requirements. First, it must be a recognised standard used for defining, reporting and evaluating companies' activities in relation to the community and the environment. Second, it must be comprehensive, in the sense that its assessment and reporting methodology must examine the effects of the company's activities in relation to the benefit and collective-interest activities it has undertaken. Moreover, the standard must be independent, meaning that it must be developed by a national or foreign public, private or mixed entity that is not controlled by the BIC company or by its parent or subsidiary companies. The standard must also be reliable, having been developed by an entity with proven experience in assessing the impact of companies' activities on society and the environment, and employing methodologies that evaluate corporate performance from different perspectives and by reference to a range of stakeholders, standards and indicators. Finally, the standard must ensure transparency, requiring that information concerning both the independent standard itself and the entity responsible for its development be made publicly available[584].

The *Superintendencia de Sociedades*, thus, is required to evaluate the available standards and maintain and publish a list of independent standards that comply with those legal requirements[585]. Accordingly, unlike the Delaware model, BIC companies are not free to rely

[579] Law 1901/2018, 18 June 2018, art. 5.
[580] Decree 2046-2019, 12 November 2019, art. 2.2.1.15.6.
[581] Decree 2046-2019, 12 November 2019, art. 2.2.1.15.6.
[582] Law 1901/2018, 18 June 2018, art. 6.
[583] Law 1901/2018, 18 June 2018, art. 7, and Decree 2046-2019, 12 November 2019, arts. 2.2.1.15.7 – 2.2.1.15.11.
[584] Law 1901/2018, 18 June 2018, art. 6.
[585] Law 1901/2018, 18 June 2018, art. 6; see Resolution No. 200-004394, 18 October 2018.

exclusively on self-defined assessment criteria, and unlike other countries, must choose a standard among the ones included in the list.

The report must be made publicly available through the company's website or, where the company does not maintain a website, the report shall be made available at its registered office and shall be provided to any person who so requests in writing by means of a communication addressed to the legal representative of the BIC company[586].

Unlike the US Model Act, Colombian law does not require the appointment of a dedicated benefit officer or any other specific corporate body responsible for preparing the report. Compliance with the reporting obligations is therefore ensured through the company's ordinary governance and management structures.

Peru

Peruvian BIC companies are required to prepare an annual management report (*informe de gestión*), ie, the benefit report, demonstrating that, during the relevant financial year, they have generated positive material impacts and/or reduced negative material impacts on society and the environment in accordance with their benefit purpose[587].

The benefit report must be prepared by an organisation independent of the BIC company, in accordance with the requirements laid down in the implementing Regulation.

The board of directors or the legal representative of a Sociedad BIC must introduce organisational transparency practices and entrust an independent third party with the preparation of a management report on the company's impact in relation to the social- and environmental-benefit purpose[588]. The independent third party carries out the assessment using internationally recognised standards for measuring social or environmental impact[589] and must belong to an organisation whose purpose is to audit or certify companies with good corporate, social and environmental practices[590].

The benefit report must include, at a minimum: (i) a description of the methodology used to assess the company's social and environmental impact; (ii) a description of the specific actions undertaken by the BIC company during the year in furtherance of its benefit purpose; (iii) a description of any circumstances that facilitated or hindered the achievement of its benefit purpose during the year; and (iv) a measurement of the BIC company's material social and environmental impact[591].

[586] Law 1901/2018, 18 June 2018, art. 5.
[587] Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 11.1.
[588] Law No. 31072, 24 November 2020, art. 8; Supreme Decree No.004-2021 PRODUCE, 23 February 2021, arts. 14 and 16.
[589] See Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 15.
[590] Law No. 31072, 24 November 2020, art. 9.1; Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 14.
[591] Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 11.2.

The impact report must be presented to the members and shareholders together with the prior year's economic results, published on the company's website or another similar electronic medium, and kept available at the registered office for consultation by any interested citizen[592].

The Peruvian Ministry of Production (*Ministerio de la Producción* [593]– PRODUCE) consolidates the management reports for dissemination purposes and may publish them on its institutional website, although their submission to PRODUCE is voluntary.

The Regulation further provides that the failure to prepare, publish or make available the annual management report, the use of a report that is unrelated to the company's benefit purpose, or the appointment of an organisation that does not satisfy the independence requirements established by the Regulation constitutes a breach of the obligations arising from the BIC regime and may give rise to the loss of BIC status in the cases provided by law.

Ecuador

The Ecuadorian BIC regime establishes a comprehensive transparency framework centred on the preparation and public disclosure of an annual impact management report. The company's legal representative is required to prepare the report annually, describing the activities undertaken to fulfil the company's general obligation to create a positive, material and verifiable impact on society and the environment. Where the company has voluntarily incorporated one or more specific social or environmental objectives into its corporate purpose, the report must also describe the measures adopted to achieve those specific objectives. The report may be prepared by reference to one, several or all of the statutory impact areas selected by the company[594].

The impact management report must be prepared in accordance with internationally recognised reporting standards and must account for the benefit and collective interest activities carried out by the company. The legislation requires the reporting methodology to satisfy four fundamental criteria: (i) comprehensibility, by assessing the effects of the company's activities in relation to its benefit commitments; (ii) independence, requiring both the reporting standard and the assessment to be developed and carried out by entities independent of the company and its corporate group; (iii) reliability, through the use of recognised methodologies and experienced evaluators adopting multiple perspectives, actors, standards and indicators; and (iv) transparency, requiring public disclosure of both the reporting standards applied and the entities responsible for developing them[595].

[592] Law No. 31072, 24 November 2020, art. 9.2.
[593] Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 13.
[594] See Ley de Compañías, Law No. 312, 5 November 1999, fifteenth unnumbered article following art. 329.
[595] See Ley de Compañías Law No. 312, 5 November 1999, fifteenth unnumbered article following art. 329.

The company's management is free to select the independent national or international reporting standard that it considers most appropriate for measuring and reporting the company's benefit activities[596].

Before the annual general meeting, the impact report must be made available to the partners or shareholders together with the company's annual financial report at least eight days before the meeting responsible for examining and approving it. In addition, the report must be accompanied by a certification issued by an independent entity specialised in the fields in which the company seeks to generate a positive social and environmental impact[597].

Following its approval by the general meeting, the impact management report must be published, together with the company's annual financial report, on the company's website within 15 days, excluding information relating to employees' salaries. Where the company does not maintain a website, it must instead make the report publicly available at its business premises and provide a copy, free of charge and without unnecessary formalities, to any person requesting it[598].

Uruguay

The Uruguayan BIC regime places transparency at the centre of its accountability framework by requiring every BIC company and trust to prepare an annual report describing the fulfilment of its benefit purpose. The report must provide a comprehensive account of the activities undertaken during the relevant financial year to achieve the social and environmental objectives incorporated into the entity's constitutional documents and implemented through its strategic plan[599].

The directors and trustees must prepare the annual report. It must be submitted within six months from the end of each annual financial year, simultaneously published on the company's website (if existent), and filed with the *Auditoría Interna de la Nación* (AIN). It must be accompanied by a sworn statement made by the legal representative of the company or trust, certifying the accuracy of the information contained in the annual report and the entity's compliance with the statutory obligation to pursue the triple-impact purpose incorporated into its corporate purpose[600].

The Decree specifies the minimum content of the annual report. At a minimum, it must include: (i) the methodology used to measure the impact in relation to the company or trust environmental and social objectives; (ii) a detailed description of the specific actions undertaken during the relevant financial year in furtherance of its benefit purpose; and (iii) an assessment of

[596] Ley de Compañías, Law No. 312, 5 November 1999, seventeenth unnumbered article following art. 329.
[597] Ley de Compañías, Law No. 312, 5 November 1999, eighteenth unnumbered article following art. 329.
[598] Ley de Compañías, Law No. 312, 5 November 1999, nineteenth unnumbered article following art. 329.
[599] Law No. 19969, 23 July 2021, art. 5; Decree 136/022, 26 April 2022, art. 6.
[600] Decree 136/022, 26 April 2022, art. 7, 8, 9.

the social and environmental impact generated[601]. The report must demonstrate, through both qualitative and quantitative information, the impact that the social and environmental practices carried out during the preceding financial year have generated. The law does not prescribe the use of a third-party standard to assess the BIC impact.

Finally, the annual report also performs an enforcement function. The Decree provides that, for the purposes of disqualification, non-compliance exists where the information contained in the report does not correspond to the company's actual business practices or where the report is repeatedly not submitted to the competent authority[602]. The accuracy and timely filing of the report therefore constitute essential legal obligations for maintaining BIC status.

6.6 Control systems and accountability

The comparative analysis reveals that the mechanisms designed to ensure compliance with the dual-purpose company regime differ considerably across jurisdictions. More than in any other area examined, the systems of control reflect the underlying legal traditions and regulatory philosophies of the jurisdictions concerned. A clear distinction emerges between common law and civil law approaches. Common law jurisdictions generally rely on private enforcement and market-based accountability, considering the company's public-benefit commitments primarily as matters of corporate governance and private ordering. By contrast, several civil law jurisdictions complement private-law remedies with forms of public enforcement, thereby recognising that the pursuit of the public-benefit purpose also serves broader public interests capable of justifying administrative supervision. This model of public oversight first emerged in the Italian *società benefit* legislation and was subsequently adopted, albeit with significant variations, by other civil law jurisdictions. Notably, no jurisdiction relies exclusively on public enforcement. Even where administrative supervision is provided, it complements rather than replaces private enforcement mechanisms, with transparency obligations operating as the connecting element between the two forms of accountability.

From a comparative perspective, the accountability mechanisms may be grouped into three principal models. The first relies exclusively on **private enforcement**, consisting primarily of judicial actions for breaches of directors' duties (with the variation of the benefit enforcement proceeding provided by the Model Act), or other remedies available under ordinary company law. In these systems, transparency and disclosure obligations constitute an essential complementary mechanism, enabling shareholders, investors, creditors, consumers and other stakeholders to make informed decisions and, where appropriate, to activate the available private-law remedies.

A second model combines **private and public enforcement**. Alongside the ordinary corporate law remedies, the legislation entrusts one or more public authorities with supervisory powers over compliance with the dual-purpose regime. The scope of such supervision varies significantly across jurisdictions. In some legal systems, public authorities primarily monitor compliance with reporting obligations and the

[601] Decree 136/022, 26 April 2022, art. 7.
[602] Decree 136/022, 26 April 2022, art. 11.

correct application of the standards used to assess social and environmental impact. In others, supervision is linked to the improper use of the dual-purpose status under competition or consumer protection law, or extends more broadly to the fulfilment of the statutory obligations attached to the benefit regime. Depending on the jurisdiction, these supervisory functions are entrusted to different public bodies, including competition authorities, company supervisory authorities or specialised administrative agencies, which may exercise investigative powers, require corrective measures, impose administrative sanctions or, in the most serious cases, order or initiate proceedings leading to the loss of dual-purpose status. The supervisory activity of an independent authority can strengthen the protection of stakeholders, who lack a direct action against the company, and build a trustworthy 'brand' offering greater reliability to investors, consumers and policymakers, while countering the risk of greenwashing.

Finally, some jurisdictions complement private and public oversight with **internal governance-based control mechanisms** specifically designed to monitor the implementation of the benefit purpose. The French *société à mission* provides the clearest example of this approach. By requiring the establishment of a *comité de mission* (or, for smaller companies, a *référent de mission*), French law introduces an additional layer of internal supervision entrusted with monitoring the implementation of the company's mission, preparing an annual report and interacting with the independent third-party verifier. Rather than relying exclusively on *ex post* judicial or administrative enforcement, this model seeks to embed continuous monitoring within the company's own governance structure.

Overall, the comparative analysis demonstrates that the different control systems reflect different conceptions of how compliance with the dual-purpose commitment should be ensured. While some jurisdictions rely primarily on market discipline, shareholder litigation and corporate transparency, others regard the pursuit of the public-benefit purpose as an objective warranting public supervision and, in certain cases, dedicated internal monitoring bodies. These different solutions ultimately reflect the broader balance struck by each legal system between private autonomy, public oversight and institutional assurance of the company's benefit commitments.

Against this comparative background, the following country reports provide an overview of the specific legal regimes governing the control mechanisms and accountability systems applicable to dual-purpose companies in each of the jurisdictions considered, illustrating the different legislative approaches to private enforcement, public oversight and, where applicable, internal governance-based control.

U.S. Model Act

Under the framework established by the Model Act, neither the activities of benefit corporations nor their reporting obligations are subject to any form of public enforcement, as the legislation does not provide for oversight by any state authority at either the federal or state level. Accordingly, the accountability system relies primarily on private enforcement mechanisms, most notably the benefit enforcement proceeding, as well as on disclosure requirements designed to promote transparency and enable informed decisions by investors, consumers and other stakeholders[603].

Delaware

Also under Delaware law, the activities and reporting of public benefit corporations are not subject to any form of public oversight. Rather, the accountability system relies primarily on private enforcement mechanisms and corporate law remedies. In particular, directors may be challenged through the ordinary actions available under Delaware corporate law for breaches of their fiduciary duties, which includes the failure to comply with the balancing requirement set forth in § 365 of the Delaware General Corporation Law and with the reporting obligations established by § 366 of the same code.

British Columbia

The British Columbian model relies exclusively on private enforcement mechanisms and corporate transparency, without establishing either specialised internal governance bodies or public supervisory authorities.

Internal control is entrusted to the company's ordinary governance structure. The directors select the third-party standard, assess the company's performance against it, approve the annual benefit report and ensure its publication. The report must be made available to shareholders and the public, but it is not reviewed or certified by any public authority or independent verifier.

Judicial enforcement is based exclusively on private actions. Proceedings for breach of the benefit company responsibilities may be commenced only by shareholders meeting the statutory ownership thresholds, while affected third parties and persons interested in the public benefits specified in the articles of association are expressly denied standing.

Moreover, monetary damages are excluded, consequently, non-monetary remedies, such as orders requiring compliance, remain the principal available remedies.

Rwanda

The Rwandan Community Benefit Company regime relies primarily on private enforcement mechanisms and corporate transparency. Unlike other dual-purpose company

[603] Clark and Babson 2012, 845-846; White 2015, 344, 347-348.

models, the Companies Act does not establish a dedicated enforcement proceeding, confer standing on stakeholders or beneficiaries, or provide for any form of public supervision specifically aimed at monitoring the pursuit of the community-benefit purpose.

As regards private enforcement, the directors' obligation to consider the interests of a vast range of stakeholders identified in Article 272, together with the company's community-benefit purpose and any specific social objectives set out in its incorporation documents, forms part of their statutory duties[604]. Accordingly, a failure to comply with those obligations may, in principle, give rise to the ordinary remedies available under the Companies Act for breaches of directors' duties, including representative or derivative actions, where the statutory conditions for such actions are satisfied[605].

The legislation also relies on transparency as an accountability mechanism by requiring Community Benefit Companies to prepare and disclose an annual benefit report describing the extent to which the company's purposes have been pursued and achieved.

By contrast, the Companies Act does not establish any specific public enforcement mechanism. No administrative authority is entrusted with supervising Community Benefit Companies, no independent verification of the annual benefit report is required, and no administrative sanctions or loss of CBC status are specifically provided for in relation to the failure to pursue the community-benefit purpose. Consequently, the effectiveness of the regime currently only depends on the ordinary rules governing directors' duties and liability, together with the transparency obligations imposed on Community Benefit Companies.

Italy

The control system in Italy is based on both private and public enforcement. As in the United States, private enforcement is based on the disclosure requirements designed to promote transparency and informed decisions by stakeholders, as well as on the personal action against the directors offered to shareholders in cases where directors fail to comply with their duties of conduct and the duty to pursue the public benefit.

However, unlike in the United States, where there is no public enforcement of benefit corporations' activities, Italian law has established a system of public enforcement. It gives the Italian Competition Authority (*Autorità Garante della Concorrenza e del Mercato* – AGCM) the power to apply the regulation on misleading advertising and misleading business practices[606] to sanction companies that, using the SB's legal form or the name '*società benefit*' or the

[604] Law No. 007/2021, 5 February 2021, art. 147, 228 and 272.
[605] Law No. 007/2021, 5 February 2021, art. 229 and 231.
[606] See Legislative Decree No. 145, 2 August 2007; and Legislative Decree No. 206, 6 September 2005, (*Codice del consumo*), Part II, Title III, in particular art. 20 and 21-23.

abbreviation 'SB', repeatedly and without good cause, do not pursue the public benefits provided for in the bylaws[607].

In performing its supervisory activities, the AGCM, endowed with inspection, inhibitor and sanction powers, may initiate *ex officio*, as well as at the request of individuals or organisations that have an interest, administrative proceedings aimed at investigating any violations by a *società benefit*[608].

France

In France, the system designed to ensure the pursuit of the mission has a distinctive structure, articulated through multiple layers of private and public oversight. In addition to the private enforcement mechanisms based on possible liability actions against directors or other available corporate law remedies, the internal monitoring entrusted to the *comité de mission* (or *référent de mission*), and the external verification carried out by an independent third-party body accredited by the Comité français d'accréditation (COFRAC), a form of judicial public enforcement is also provided for.

In the event of any infringement of the statutory requirements applicable to *sociétés à mission*, or where the opinion issued by the independent third-party body reveals non-compliance with those requirements, the public prosecutor (*ministère public*) or any interested person (*toute personne intéressée*) may refer the matter to the President of the Commercial Court (*Président du Tribunal de commerce*). Acting in summary proceedings, the court may order the company's legal representative, where appropriate under penalty payments (*astreinte*), to remove the designation '*société à mission*' from all acts, documents and electronic media issued by the company[609].

This sanction does not entail monetary liability or the dissolution of the company. However, the loss of the right to use the designation '*société à mission*' may have significant reputational consequences and undermine the credibility of the company's commitment to its social and environmental mission.

[607] See Law No. 208, 28 December 2015, art. 1, paragraph 384; and the introduction to the Parliamentary initiative bill A.S. No. 1882/2015 on "Disposizioni per la diffusione di società che perseguono il duplice scopo di lucro e di beneficio comune", p. 4.
[608] The AGCM procedure is regulated by the Resolution of the Authority No. n. 25411, 1 April 2015, on "Approvazione del regolamento sulle procedure istruttorie in materia di pubblicità ingannevole e comparativa, pratiche commerciali scorrette, violazione dei diritti dei consumatori nei contratti, violazione del divieto di discriminazioni e clausole vessatorie".
[609] Commercial Code, art. L. 210-11.

Spain

The current legal framework does not establish a detailed system of internal, external or public controls applicable to SBICs. Law 18/2022 merely provides that SBICs should be subject to enhanced standards of transparency and accountability, and envisages the future adoption of mechanisms capable of measuring and verifying the social and environmental impact generated by the company[610]. Until such regulation is adopted, no specific control system beyond the ordinary applicable mechanisms of company law is in force.

Colombia

The Colombian BIC regime relies primarily on a system of transparency, reporting and administrative oversight, as well as on private enforcement.

The principal accountability mechanism is the annual BIC management report, which must be prepared by the company's legal representative, submitted to the shareholders' meeting, publicly disclosed, and prepared in accordance with an independent standard among the ones recognised by the *Superintendencia de Sociedades*[611]. The independent standard adopted by the company must satisfy statutory requirements, including recognition, comprehensiveness, independence, reliability and transparency. The *Superintendencia de Sociedades* maintains a public list of independent standards that comply with those requirements and may include or exclude standards from that list.

On the other hand, the law provides a specific administrative procedure to sanction the non-compliance with the BIC regime, eg, allegations concerning a company's failure to comply with the independent standard it has chosen for the preparation of its impact report [612]. In that case the *Superintendencia de Sociedades* can initiate either *ex officio*, or upon request by an interested party, such administrative procedure[613]. Or, where it lacks jurisdiction over the alleged breach, the complaint must be referred to the competent authority[614]. Upon verification of such non-compliance, the *Superintendencia* or other administrative authority deemed competent, may order the loss of BIC status where the company has committed serious and repeated breaches of the applicable independent standards. In such a case, the company must remove the acronym 'BIC' and the expression '*Sociedad de Beneficio e Interés Colectivo*' from its corporate name and corporate communications[615]. Where the non-compliance is not deemed to be serious, the *Superintendencia* may order the company to adopt the corrective measures necessary to remedy

[610] Law 18/2022, 28 September 2022, *Ley de creación y crecimiento de empresas*, Disposición adicional décima.
[611] Law 1901/2018, 18 June 2018, arts. 5–6; Decree 2046-2019, 12 November 2019 , art. 2.2.1.15.6.
[612] Law 1901/2018, 18 June 2018, art. 7, and Decree 2046-2019, 12 November 2019, arts. 2.2.1.15.8 – 2.2.1.15.11.
[613] According to Decree 2046-2019, 12 November 2019, arts. 2.2.1.15.8, shareholders or partners, directors, statutory auditor, creditors, employees, consumers, and any person who demonstrates that he or she has suffered harm in connection with the benefit and collective-interest activities carried out by the company can be considered an interested party.
[614] Law 1901/2018, 18 June 2018, art. 6; Decree 2046-2019, 12 November 2019, arts. 2.2.1.15.6. – 2.2.1.15.11.
[615] Law 1901/2018, 18 June 2018, art. 7; Decree 2046-2019, 12 November 2019, arts. 2.2.1.15.7. – 2.2.1.15.11.

the breach, and failure to comply with such orders may result in the imposition of administrative fines[616]. It is worth noting that, in addition to this oversight mechanism, the annual report may be subject to audit by the competent authorities or by an independent third party[617].

In addition to the administrative oversight mechanisms provided by the BIC legislation, directors remain subject to the ordinary corporate law remedies governing directors' liability. Such remedies must, however, be applied in light of article 4 of Law 1901 of 2018, which expands the interests relevant to directors' decision-making by requiring them to take into account the interests of the company, those of its shareholders, and the collective-benefit purpose defined in the bylaws[618].

The Colombian model therefore combines private accountability through directors' liability, public disclosure and reporting obligations with a form of administrative enforcement exercised by the *Superintendencia de Sociedades*[619].

Peru

The Peruvian control system combines private and public enforcement. Private enforcement primarily relies on the judicial protection of the company's benefit purpose and of the obligations arising from the BIC regime, as well as on transparency requirements.

Where a BIC company fails to pursue its social or environmental-benefit purpose, especially with regard to directors' extended benefit duties, or fails to comply with any obligation imposed by law, any shareholder or partner (the law excludes any right of action by third parties or by the beneficiaries) may bring legal proceedings seeking an order requiring the company to fulfil those obligations[620]. If the court finds that the company has failed to comply with its obligations, it may grant a period within which compliance must be achieved[621]. Should the company continue to default after the expiry of that period, it loses its BIC status, the provisions relating to such status must be removed from its constitutional documents, and the corresponding amendments must be registered in the Legal Entities Registry[622].

Alongside judicial enforcement, the legislation promotes accountability through transparency. BIC companies are required to prepare and publish an annual benefit report describing the pursuit and achievement of their benefit purpose, thereby enabling shareholders

[616] Decree 2046-2019, 12 November 2019, art. 2.2.1.15.7.
[617] Law 1901/2018, 18 June 2018, art. 6.
[618] Law 1901/2018, 18 June 2018, art. 4 ("*Además de los deberes previstos en la Ley 222 de 1995, los administradores de las sociedades BIC deberán tener en cuenta el interés de la sociedad, el de sus asociados o accionistas y el beneficio e interés colectivo definido en sus estatutos*"); Law 222/1995, 20 December 1995, arts. 23–25.
[619] Law 1901/2018, 18 June 2018, arts. 4 – 7.
[620] Law No. 31072, 24 November 2020, art. 7.3; Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 23, 24
[621] Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 25.
[622] Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 26.

and the public to assess the company's compliance with its statutory commitments. The report must be prepared by an organisation independent of the BIC company[623] that carries out the assessment using internationally recognised standards for measuring social or environmental impact[624], and must belong to an organisation whose purpose is to audit or certify companies with good corporate, social and environmental practices[625].

The system is complemented by public enforcement. The *Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual* (INDECOPI) supervises the proper use of the BIC status with regard to infringements of competition or consumer protection legislation[626]. INDECOPI can order the loss of BIC status as a corrective measure where a company, by making improper use of its benefit purpose, engages in conduct contrary to consumer protection or competition law, provided that such conduct has been duly established in the corresponding administrative sanctioning proceedings[627]. Depending on the seriousness of the infringement, the loss of BIC status may remain effective for a period ranging from one to four years. The BIC company must amend its articles of association and its corporate name, and register such amendment in the Legal Entities Registry[628]. During that period, the company is prohibited from using the designation 'Sociedad BIC' or 'BIC' in its constitutional documents, corporate communications, advertising or any other representation made internally or to third parties. Once the applicable period has expired, the company may voluntarily reacquire BIC status in accordance with Law No. 31072[629].

Ecuador

The Ecuadorian BIC regime establishes a mixed control system combining private enforcement, corporate transparency, independent impact verification and public supervision.

First, as regards private enforcement, the expanded fiduciary duties imposed on directors are owed exclusively to the company and its partners or shareholders. Accordingly, the legislation expressly excludes the creation of any enforceable rights in favour of third parties, while providing that compliance with the directors' BIC duties may be judicially enforced only by the company's partners or shareholders[630]. The company may also bring an action against directors for breach of their statutory BIC obligations, subject to prior authorisation by the general meeting under the ordinary rules governing directors' liability.

[623] Law No. 31072, 24 November 2020, art. 8; Supreme Decree No.004-2021 PRODUCE, 23 February 2021, arts. 14 and 16.
[624] See Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 15.
[625] Law No. 31072, 24 November 2020, art. 9.1; Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 14.
[626] Law No. 31072, 24 November 2020, art. 19.3, 10. Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 17 – 22.
[627] Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 19.1.
[628] Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 19.3.
[629] Supreme Decree No.004-2021 PRODUCE, 23 February 2021, art. 19.5.
[630] See Ley de Compañías, Law No. 312, 5 November 1999, twentieth and twenty-first unnumbered article following art. 329.

Second, the regime promotes accountability through transparency and independent verification. Every BIC company must prepare an annual impact report in accordance with internationally recognised standards and submit it to the general meeting together with the annual financial report. The report must also be accompanied by a certification issued by an independent specialised entity and, following its approval, must be made publicly available, thereby enabling shareholders, investors and the public to assess the company's fulfilment of its statutory benefit commitments[631].

Finally, the legislation provides for a form of public supervision entrusted to the *Superintendencia de Compañías, Valores y Seguros*. Although the *Superintendencia* seems to be expressly prohibited from evaluating the substantive adequacy of the activities adopted by the company to achieve its positive social and environmental impact[632], it retains supervisory powers to verify compliance with the statutory obligations governing the BIC regime. In particular, where it determines that the company has failed either to pursue the positive material impact incorporated into the company's corporate purpose or to prepare the mandatory impact report, it may revoke the company's BIC status. In such circumstances, the company must amend its articles of association within six months so as to remove the provisions conferring BIC status; failing this, it may ultimately be dissolved in accordance with the general provisions of the Companies Act[633].

Uruguay

The Uruguayan BIC regime combines private enforcement, administrative supervision and judicial control in order to ensure compliance with the obligations arising from BIC status.

First, the Law provides for a form of private enforcement. Compliance with the directors' extended duty to consider the interests of a vast range of stakeholders identified in article 4 of the BIC Law may be required only by the partners of a company or, in the case of a trust, by its beneficiaries.

Furthermore, as for judicial control in relation to the loss of BIC status, it is worth highlighting that where a company fails to comply with the obligations arising under the BIC regime, proceedings for its disqualification may be brought before the competent court not only

[631] See Ley de Compañías, Law No. 312, 5 November 1999, from fifteenth to nineteenth unnumbered article following art. 329.
[632] See Ley de Compañías, Law No. 312, 5 November 1999, twenty-fourth unnumbered article following art. 329. It must be stressed that a potential interpretative issue arises from the relationship between the twenty-third and twenty-fourth unnumbered articles following art. 329 of Ley de Compañías, Law No. 312, 5 November 1999. While the twenty-third unnumbered article empowers the *Superintendencia* to revoke a company's BIC status where it determines that the directors have failed to comply with their obligation to generate the positive material impact incorporated into the company's corporate purpose, the twenty-fourth unnumbered article expressly provides that the *Superintendencia* may not assess the activities adopted by the company to fulfil that same obligation. The precise boundary between verifying compliance with the statutory obligations governing BIC status and evaluating the substantive adequacy of the company's impact activities therefore seems to remain open to interpretation.
[633] Ley de Compañías, Law No. 312, 5 November 1999, twenty-third unnumbered article following art. 329.

by the competent authority acting *ex officio*, but also by any partner or interested third party. The Decree broadly defines the notion of 'interested third party' as including, among others, shareholders, directors, managers, statutory auditors, members of the supervisory committee, creditors, employees, settlors, trustees, beneficiaries and any person able to demonstrate that he or she has suffered harm in connection with the company's benefit activities.

Second, as for public enforcement, the regime establishes a system of administrative supervision entrusted to the *Auditoría Interna de la Nación* (AIN), a supervisory public body reporting to the Ministry of Economy and Finance. The AIN is responsible for receiving and registering the annual reports, and issuing a certificate of registration. However, this is without pronouncing on their content or on the fulfilment of the triple impact[634], establishing by means of reasoned resolutions the form and conditions governing their submission and registration, the technical criteria applicable to their supervision, and the mechanisms for their public disclosure. It may also request technical opinions from public or private bodies that it considers competent, and communicate any instances of non-compliance to the authority having jurisdiction under the applicable legal framework[635]. Finally, the *Auditoría Interna de la Nación*, upon detecting non-compliance with the obligations arising under the BIC regime, may initiate *ex officio* proceedings for the disqualification (loss of BIC status) before the competent court[636].

6.7 Tax treatment and economic incentives

The comparative analysis reveals a striking degree of convergence with respect to the tax treatment of dual-purpose companies. None of the jurisdictions examined has established a general preferential tax regime for companies that adopt for-benefit status (this is a major difference compared with third sector organisations and social enterprises). Rather, dual-purpose companies remain subject to the ordinary tax rules applicable to their respective corporate form under the relevant national tax legislation. The adoption of benefit status therefore does not, as a general rule, result in tax exemptions, reduced tax rates or other structural fiscal advantages. This common legislative approach reflects the understanding that the pursuit of social and environmental objectives is not an external activity to be encouraged through tax privileges, but an intrinsic component of the company's corporate purpose and of the very reason for its existence. It should therefore not alter the fiscal treatment traditionally applicable to for-profit business companies.

Although tax incentives are generally absent, several jurisdictions have nevertheless introduced non-fiscal incentives aimed at encouraging the adoption of the dual-purpose company model or rewarding companies that effectively pursue their public-benefit commitments. These incentives take different forms. Some legal systems have relied on public procurement mechanisms, granting preferential treatment or award criteria linked to the generation of positive social and environmental impact. Others provide regulatory or administrative advantages, such as reduced administrative fees or contributions

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[634] Decree 136/022, of 26 April 2022, art. 4.
[635] Decree 136/022, 26 April 2022, art. 4 and 5.
[636] Decree 136/022, 26 April 2022, art 10.

payable to supervisory authorities, preferential access to public services or industrial property procedures, facilitated access to public financing programmes, or other targeted economic incentives. In a few jurisdictions, access to these benefits is further conditioned upon independent certification or the demonstration of sustained positive social and environmental impact over a specified period.

These measures demonstrate that, although legislators have generally refrained from creating preferential tax regimes, they have occasionally sought to encourage the diffusion of dual-purpose companies through targeted regulatory and economic incentives. Indeed, policymakers may more effectively promote the development of these companies through these alternative instruments. Regulatory and market-based incentives may prove particularly valuable during the early stages of development of the dual-purpose company model, when reducing market barriers and encouraging voluntary adoption are especially important.

U.S. Model Act

The Model Act does not provide any specific tax advantages or other incentives for benefit corporations, which remain subject to the same federal and state tax rules generally applicable to ordinary business corporations.

At the federal level, the Internal Revenue Service (IRS), in Information Letter 2016-0063[637], clarified that payments made by a benefit corporation to charitable organisations may, under certain circumstances, be deductible as ordinary and necessary business expenses under Section 162 of the Internal Revenue Code, rather than as charitable contributions under Section 170. In particular, this treatment may apply where the payment bears a direct relationship to the corporation's business activities and is made with a reasonable expectation of a commensurate financial or reputational return, such as through institutional or goodwill advertising.

However, the IRS letter does not establish a special tax regime for benefit corporations. Rather, it confirms that benefit corporations are generally subject to the same federal tax rules applicable to other for-profit corporations, while recognising that, in appropriate circumstances, payments to charitable organisations may qualify as business expenses under the ordinary principles of Section 162.

Delaware

Delaware law does not provide any specific tax advantages for public benefit corporations, which remain subject to the same federal and state tax rules generally applicable to ordinary business corporations.

[637] IRS General Information Letter 2016-0063, 2 June 2016.

British Columbia

Benefit companies in British Columbia are not entitled to any special tax treatment or fiscal incentives. They remain subject to the ordinary tax regime applicable to their corporate form under federal and provincial tax legislation. The acquisition of benefit company status does not affect the company's tax liability, nor does it give access to specific public financial incentives or preferential funding schemes.

Rwanda

At present, Rwandan law does not provide any specific tax incentives or preferential tax treatment for Community Benefit Companies. CBCs remain subject to the ordinary tax regime applicable to the relevant corporate form and do not benefit from tax exemptions, reduced tax rates or dedicated fiscal advantages merely as a consequence of adopting CBC status.

The Companies Act provides for the adoption of a Ministerial Order determining the incentives available to CBCs and the conditions for eligibility. However, no implementing instrument establishing such incentives appears to have been adopted to date. Accordingly, the CBC regime currently relies on corporate purpose, directors' duties and reporting obligations rather than on fiscal or economic incentives.

Italy

With regard to tax treatment, no specific tax advantages are associated with *società benefit* status in Italy[638]. *Società benefit* remain subject to the ordinary income tax rules applicable to each business organisational form under the Italian Income Tax Code (*Testo Unico delle Imposte sui Redditi* – TUIR) [639].

However, following the introduction of the new model, the Italian legislator sought to support the development of *società benefit* through public procurement policies and temporary economic incentives. In particular, by Budget Law 2020[640], the Parliament amended Article

[638] There is a debate among scholarship over the possible reduction (according with the already existing statutory and case law) of the company's taxable income with regard to all costs related to the pursuit of the public benefits provided for in the bylaws, in accordance with the so-called 'inherence principle' of corporate income tax. See Setti 2016, 2303-2305; Cordeiro Guerra and Lenzi 2021, 307-321.
[639] *Testo Unico delle Imposte sui Redditi* (TUIR), Presidential Decree No. 917, 22 December 1986.
[640] Law No. 160, 27 December 2019.

95(13) of the Public Contracts Code[641], introducing a new award criterion based on the positive social and environmental impact generated by economic operators[642].

Under this provision, contracting authorities were required to take into account, alongside the legality rating[643] and the company rating[644], the positive impact generated by the tendering company in the areas of corporate governance, workers, other stakeholders and the environment. The amendment expressly referred to the reporting requirements applicable to *società benefit*, particularly the annual benefit report[645], although the award criterion was not limited to *società benefit* and could potentially be satisfied by any company producing equivalent impact reporting.

The National Anti-Corruption Authority (ANAC) was entrusted with the task of defining the criteria and methodologies for assessing such impact within public procurement procedures[646]. However, this incentive mechanism never became fully operational. Subsequently, Legislative Decree No. 36 of 31 March 2023, adopting the new Public Contracts Code, repealed Legislative Decree No. 50/2016 with effect from 1 July 2023 and did not reproduce the provisions concerning the rating of impact. As a result, the specific procurement-related advantage originally associated with impact reporting of *società benefit* was effectively abandoned.

France

As in most jurisdictions that have introduced dual-purpose company models, French law does not provide any specific tax advantages for *sociétés à mission*. Such companies remain subject to the ordinary tax regime applicable to their respective corporate form and do not benefit from any preferential tax treatment as a consequence of adopting mission status.

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641 Legislative Decree No. 50, 18 April 2016, so-called "Public Contract Code" ("Codice dei contratti pubblici").
642 See the amendment to art. 49, contained in Law No. 157, 19 December 2019, titled "Conversione in legge, con modificazioni, del decreto-legge 26 ottobre 2019, n. 124, recante disposizioni urgenti in materia fiscale e per esigenze indifferibili", which amended articles 83, paragraph 10, and 95, paragraph 13 of Legislative Decree No. 50, 18 April 2016.
643 The Italian Competition Authority (AGCM) is in charge of the "legality rating" system, which indicates the ethical value of the company and enhances its reputation. The legality rating contributes to the determination of the "company rating" and not *vice versa* (see art. 213 of Legislative Decree No. 50, 18 April 2016).
644 ANAC (the National Anti-Corruption Authority) is in charge of the "company rating" system, which is an indicator of the conduct that the company has had in the context of public contracts (taking into account the previous behaviour of the company with regard to failure to use the preliminary aid; mandatory reporting of extortion and bribery requests; compliance with deadlines and costs during the execution of contracts, as well as with the incidence and outcomes of disputes, both when participating in tender procedures and during the execution of the contract); see art. 83, paragraph 10, of Legislative Decree No. 50, 18 April 2016.
645 See Law No. 208, 28 December 2015, art. 1, paragraph 382, letter b) and Annex 5.
646 Art. 83, paragraph 10, of Legislative Decree No. 50, 18 April 2016.

Spain

Spanish law does not currently provide any specific tax benefits for *Sociedades de Beneficio e Interés Común*. Companies adopting SBIC status remain subject to the ordinary tax regime applicable to their respective corporate form and do not benefit from any preferential tax treatment as a consequence of pursuing social and environmental objectives.

Although future regulatory developments may introduce incentives aimed at promoting the adoption of the SBIC model, no such measures have been enacted to date.

Colombia

BIC companies do not benefit from a general preferential tax regime. The law expressly provides that companies adopting BIC status remain subject to the ordinary corporate income tax regime, the ordinary VAT regime, and all other national, departmental and municipal tax obligations applicable to the relevant corporate form[647].

However, the Colombian legislator has introduced a number of incentives aimed at promoting the adoption of BIC status[648]. In particular, BIC companies may benefit from: (i) preferential access to certain industrial property services offered by the *Superintendencia de Industria y Comercio*; (ii) preferential access to credit facilities and financing programmes that may be created by the national government; and (iii) a specific tax treatment applicable to profits distributed to employees through shares[649].

The only tax-related incentive expressly regulated concerns employee share ownership schemes. BIC companies organised as corporations and subject to income tax may benefit from the favourable tax treatment provided under the Colombian tax regulations for profits distributed to employees through shares[650].

Accordingly, the Colombian model does not provide general tax exemptions or reduced tax rates for BIC companies. Instead, it combines ordinary taxation with a limited set of regulatory, financial and tax-related incentives designed to encourage the adoption of the BIC regime and the implementation of socially and environmentally responsible business practices.

Colombia is one of the few jurisdictions regulating benefit-driven companies that expressly provides statutory incentives to encourage the adoption of the BIC regime.

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[647] Law 1901/2018, 18 June 2018, art. 2.
[648] Law 1901/2018, 18 June 2018, art. 8; Decree 2046-2019, 12 November 2019, art. 2.2.1.15.2, 1.2.1.7.9., and 1.2.1.12.10.
[649] Decree 2046-2019, 12 November 2019, art. 2.2.1.15.2.
[650] Decree 2046-2019, 12 November 2019, art. 2.2.1.15.2(3), 1.2.1.7.9., and 1.2.1.12.10, referring to articles 1.2.1.12.10 and 1.2.1.7.9 of Decree No. 1625-2016, 11 October 2016.

Peru

The Peruvian legislation does not create any tax benefit. The Fourth Final Complementary Provision of Law No. 31072 expressly provides that companies which opt for, and are constituted as, Sociedades BIC are governed by the tax regime that corresponds to them under the relevant legislation, and that the law generates no additional tax benefit.

Ecuador

The Ecuadorian BIC regime does not provide for any general preferential tax treatment. Instead, it grants a limited set of economic and regulatory incentives, which become available only after the company has demonstrated, through competent certification, that it has generated a positive social and/or environmental impact directly deriving from its business activities for five consecutive financial years[651].

Once these conditions have been satisfied, BIC companies are entitled to priority in public procurement procedures where their bid is equal in price to that of competing bidders. In addition, qualifying companies benefit from a 50 per cent reduction in the corporate contributions payable to the *Superintendencia de Compañías, Valores y Seguros*.

Eligibility for these incentives depends upon the verification of the company's impact by either the state or accredited private certification bodies.

Uruguay

BIC companies or trusts do not have any preferential tax treatment or specific economic incentives. Neither the Law nor the implementing Decree provides for tax exemptions, tax credits, preferential access to public funding, procurement preferences or other financial advantages associated with the adoption of the BIC regime. They remain subject to the ordinary tax regime applicable to their respective legal form.

6.8 Final remarks

Drawing together the threads of the comparative analysis, it may be concluded that dual-purpose companies can no longer be regarded as isolated national experiments. Rather, they now constitute an

[651] Ley de Compañías, Law No. 312, 5 November 1999, fifth and sixth unnumbered article following art. 329.

emerging transnational corporate law model characterised by a remarkable degree of legislative convergence, notwithstanding significant, although technically circumscribed, divergences.

The convergent core includes, first, the recognition of a dual-purpose clause, combining the traditional profit-making objective with the pursuit of one or more public-benefit purposes conceived as complementary and equal-ranking corporate objectives. Second, almost all jurisdictions conceive the model as a voluntary legal status, rather than as a new corporate form, capable of being adopted by the existing company types provided under domestic company law (with the exception of the US models, mainly applicable to corporations). Third, the legislation generally expands directors' fiduciary duties by requiring directors to pursue the benefit purpose while taking into account the interests of shareholders, stakeholders, the environment and the company's long-term interests. Fourth, transparency constitutes a central element of the model, implemented through the preparation and publication of a periodic impact, benefit or mission report. Fifth, accountability is primarily ensured through private enforcement mechanisms based on shareholder standing, complemented in several civil-law jurisdictions by forms of administrative or public oversight. Finally, all the legal systems examined adopt the principle of fiscal neutrality, under which dual-purpose companies remain subject to the ordinary tax regime applicable to their respective corporate form.

The principal divergences concern the legislative techniques through which these common principles are implemented. They relate, in particular, to the definition of the benefit purpose (general benefit alone or combined with mandatory or optional specific benefit purposes); the procedural requirements governing the acquisition and loss of benefit status; the availability of withdrawal rights for dissenting shareholders; the intensity of transparency obligations and the role assigned to independent third-party standards, external verification or certification of the report; the presence or absence of dedicated governance mechanisms, ranging from the appointment of specific officers to the establishment of a mission committee; and the design of accountability systems, including the different combinations of private enforcement, administrative supervision and internal monitoring. These differences reflect diverse legal traditions and policy choices, but they operate primarily at the level of the technical implementation of a shared model rather than at the level of its underlying logic.

This combination of a strong convergent core and limited implementation divergences makes the dual-purpose company a particularly promising candidate for future possible harmonisation. The common principles emerging from the comparative analysis appear sufficiently mature to be distilled into the general framework of a Dual-purpose Company Model Law at the global level or into a harmonised European legal framework, capable of preserving the flexibility of national company law while ensuring a common minimum standard with regard to the dual purpose, directors' duties, transparency obligations and accountability mechanisms.

The comparative evidence therefore suggests that the contemporary evolution of company law is not characterised by the emergence of isolated national experiments, but by the gradual consolidation of a common transnational paradigm of the for-profit corporation pursuing both economic and public-benefit objectives.

The comparative analysis carried out in this chapter has deliberately adopted a legislative and doctrinal perspective, focusing on the legal architecture of dual-purpose companies and on the degree of convergence achieved across different jurisdictions. The following chapter, on the other hand, moves beyond the comparative analysis of positive law to examine dual-purpose companies through the lenses of the economic analysis of law and the contemporary corporate governance debate, assessing whether the dual-purpose company model provides an effective and theoretically sound framework for reconciling profit-making with the pursuit of public-benefit objectives.

The theoretical analysis undertaken in the following chapter will draw primarily upon two legislative paradigms that best exemplify the two major legal traditions examined in this study: the US model, represented by the Model Benefit Corporation Legislation and the Delaware Public Benefit Corporation, and the Italian *società benefit*, as the first-developed civil-law model. Although the discussion will focus principally on these two regimes, the conclusions reached are intended to be read against the broader dual-purpose company framework.

7. Dual-purpose companies from the economic analysis of law perspective and in the corporate governance debate

7.1 Introduction

Considering the traditional dichotomy between the pursuit of self-interest purposes by for-profit entities on one side, and the pursuit of altruistic purposes by non-profit entities on the other, hybrid models, such as the dual-purpose company, appear to struggle in finding an adequate space within the context of corporate governance theories.

An interpretative key for understanding the for-benefit model is abandoning the classical *homo economicus* paradigm to embrace a reading based on behavioural law and economics and the Yale approach to economic analysis of law, according to which altruism and beneficence should be considered as ends in themselves, as goods desired by people and for which they are willing to pay a price.

In this line of reasoning, for-benefit companies – due to their ability to bring altruistic values into the corporate purpose, departing from shareholder value maximisation as the *raison d'être* of the corporate form – can be considered as a further manifestation of 'firm altruism', given that they are characterised by a deep and lasting impact on the environment and civil society.

In the context of existing corporate governance frameworks, dual-purpose companies and the 'for-benefit' model are characterised by permitting the voluntary inclusion of the public-benefit purpose in the corporate purpose clause. Therefore, it is still possible to place them in the conceptual framework of contractarian theory and the shareholder primacy model. This is despite the concept of shareholder interest being broadened to encompass both personal profit and the altruistic purpose of generating positive externalities or reducing negative impacts deriving from the company's activity.

7.2 The for-profit *v.* non-profit dichotomy: self-interest *v.* altruistic purpose from the economic analysis of law perspective

From the economic theory perspective, business corporations flourish in capitalist systems and the concept of altruism seems – *prima facie* – to belong to a sharply contrasting sphere, especially if one looks at the birth of the business corporation and its traditional function. Indeed, corporations are organisations whose primary goal is to jointly carry out an economic activity with the aim of making a profit (so-called 'objective profit') and to distribute the earnings among the owners of the enterprise (so-called 'subjective profit')[652].

[652] This perspective is encompassed by the definitions of for-profit companies offered by several civil or commercial codes of the Western legal tradition countries, such as the one contained in article 2447 of the Italian Civil Code, according to which "*Con il contratto di società due o più persone conferiscono beni o servizi per l'esercizio in comune di un'attività economica allo*

As mentioned above, for a long time the predominant model accepted by corporate law in the major legal systems was the 'shareholder primacy' model, and the financialisation of corporate law strengthened the paradigm of the maximisation of shareholder value as the fundamental objective of business activity. Business corporations are traditionally characterised by a self-interest purpose, materialised in the maximisation of profits and their distribution to the shareholders. From a general perspective, this looks antithetical to altruism, intended as any behaviour designed to increase another person's welfare and that does not seem to provide a direct reward to the person carrying out the behaviour[653].

Looking at empirical reality through the lens of the economic analysis of law (EAL), the self-interest model of the business corporation aligns perfectly with the *homo economicus* paradigm of neoclassical economics, according to which human beings are rational and selfish actors, focused entirely on maximising their own material well-being[654]. Once we accept the *homo economicus* paradigm and the rational choice theory (according to which individuals build their choices through a cost–benefit analysis with a view to maximising the utility expected by the person)[655], as well as the concept of the individual as a 'maximising individual' typical of neoliberalism[656], it appears difficult to justify human conduct that is led by altruistic and disinterested behaviours. Consequently, unselfish actions of individuals are considered as a sort of deviation from the rational behaviour paradigm[657].

That being so, how to explain "the daily dynamics of gratuitousness and selflessness"[658], the existence of altruism, charity and not-for-profit organisations (although for-profit companies are supposed to be more efficient, from the economic analysis of law perspective, in the production of goods and services)[659]? How to explain the existence of altruistic behaviour looking at the phenomenon through the inflexible lenses of the economic analysis of law and the neoclassical economics that identify in the *homo economicus* the paradigm of the individual to be taken as a normative model[660]?

Nonetheless, the empirical evidence demonstrates the existence, in fact, of altruism and beneficence, as well as the existence of other organisational forms – the non-profit entities – which are characterised by an altruistic purpose (ie*,* the reinvestment of profits into the specific public benefit pursued) and a peculiar structure based on the non-distribution constraint. The observation of the reality, thus, shows that unselfish prosocial behaviour, which seems to depart from the *homo economicus* model

scopo di dividerne gli utili" ("With the company's contract, two or more persons contribute assets or services in order to jointly conduct an economic activity and pursue the purpose of sharing the profits thus gained"); or article 1832 of the French Civil Code, according to which "*La société est instituée par deux ou plusieurs personnes qui conviennent par un contrat d'affecter à une entreprise commune des biens ou leur industrie en vue de partager le bénéfice ou de profiter de l'économie qui pourra en résulter*" ("A firm is established by two or several persons which agree by a contract to appropriate property or their industry for a common venture with a view to sharing the benefit or profiting from the saving which may result therefrom").

653 See Batson, Ahmad and Stocks 2011, 103–126; Dovidio, Piliavin, Schroeder and Penner 2006; Penner, Dovidio, Piliavin and Schroeder 2005.

654 On the *homo economicus* model Stout 2014, 195-212.

655 See Friedman 1953, 15 sqq.; Hargreaves-Heap and Varoufakis 1995; Posner 1998, 3; Ulen 2000, 790-791; Shavell 2004, 1.

656 For further reading on this point Denozza 2014, 13–47.

657 Resta 2014, 121-122, 135.

658 In this sense Resta 2014, 122-123, specifically note 7, where the author mentions the debate on the "overall deadweight loss on Christmas presents".

659 In this regard see Calabresi 2016, 90-91 (specifically notes n. 1, 2 and 3), 204.

660 On this point Gentili 2014, 88 et seqq.; Resta 2014, 132-133; Zoppini 2014, 14-15.

and the rational choice theory, is indeed very common in human social life, as demonstrated by several social dilemma experiments[661].

This suggests the need for re-thinking the behavioural paradigm of the *homo economicus,* intended as the expression of the industrial revolution and utilitarianism "that cannot be universalised neither in space nor in time"[662]. It also suggests that it is not apt to explain an inclination towards altruism and co-operation that is, to the contrary, a fundamental and universal aspect of human behaviour, as much as selfish conduct and the pursuit of material well-being[663].

7.3 The behavioural law and economics perspective and altruism as an end in itself

New behavioural models suitable for explaining the physical and juridical world can be found both in the studies of behavioural law and economics – aimed at highlighting the cognitive variables within the decision-making processes of individuals[664] and the reasons underlying human behaviours[665] – and in the 'multi-faceted approach' to juridical phenomena that is typical of the Yale School of economic analysis of law (the so-called '*Law & Economics*')[666].

With regard to the latter, a starting point for the reconstruction of the phenomena of altruism and beneficence, useful for our purposes, is offered by a recent contribution from Guido Calabresi[667]. According to the author, altruism, beneficence and similar values exist in empirical reality not simply as 'means' for the production of other goods and services, but also, because they constitute 'ends in themselves', they are desired as 'goods in and of themselves' to satisfy a desire for which individuals are willing to pay a price[668]. Hence, if we look at altruism and similar values as goods in and of themselves, desired by individuals, their existence cannot be deemed irrational merely because it does not correspond to the behavioural model of the *homo economicus* typical of neoclassical economics.

Likewise, the existence of altruistic behaviours must not be deemed irrational only because they do not respond, according to the so-called McKean paradox[669], to the canonical structures of market and

[661] Stout 2014, 198-200.
[662] Citing Resta 2014, 134-135, who mentions, particularly in notes n. 60, 61 and 62, the criticisms made by Amartya Sen, Ronald Coase and Karl Polanyi to the paradigm of the *homo economicus.*
[663] In this sense Resta 2014, 151; and for further reading on this matter see Solomon 1998, 520 sqq.
[664] See the studies by Simon 1955; Simon 1957, 270 sqq.; Kahneman and Tversky 1974; Kahneman and Tversky 1984; Kahneman 2011. In general, on Behavioural Law and Economics see Thaler 1996, 227–237; Sunstein 1997; Korobkin and Ulen 2000; Sustain 2000; Parisi and Smith 2005; Thaler and Sunstein 2008; Zamir and Teichman 2014.
[665] Fehr and Gächter 2000b; Fehr and Gächter 2000a; Fehr and Fischbacher 2003; Gintis, Bowles, Boyd and Fehr 2003; Fehr and Schmidt 2006, 615–691.
[666] See Calabresi 2016, 1 sqq. for a description of the approaches to the economic analysis of law of the two schools of Yale (of *Law & Economics*) – using economics to understand the law as it is in reality – and of Chicago (*Economic Analysis of Law*) – using the economic paradigms to adjust the law, identifying the best choices in terms of efficiency, according to Pareto optimality.
[667] Calabresi 2016, 90-116.
[668] Calabresi 2016, 90-91.
[669] See McKean 1975, 29–37; and Calabresi 2016, 92-93. On this matter an interesting insight is provided by the reflections on "gratuitousness" and market by Bruni 2009, 164-165.

command employed in economic theory for the optimisation of production[670]. As a matter of fact, if on the one hand the use of pure market or pure command incentives can destroy altruism or charity[671], on the other hand in empirical reality there exist different forms of modified market and modified command that do not destroy charity and altruism. It is quite the opposite as they are the most effective in optimising – indirectly – their production through the creation of the culture of altruism and education on altruism[672].

In his analysis of altruism, beneficence and non-profit institutions, Calabresi also underlines how the individual's need for altruism as a good in and of itself[673] shows in several forms: the desire of individual altruistic behaviours (private altruism), of altruistic behaviours by the state (public altruism) and of altruistic behaviours by private firms (firm altruism). In this last case, it can traditionally show both as not-for-profit companies and as philanthropic activity[674] undertaken by for-profit companies[675].

In recent years, the answer of the law to this stronger demand for firm altruism coming from civil society has been the introduction of new hybrid organisational forms. These are characterised by a governance structure suitable for incorporating within the decision-making process altruism as a good in and of itself, as a new corporate purpose equivalent and complementary to the profit-making purpose.

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[670] See Calabresi 2016, 92-95, and 105 sqq. The author, dealing with *market* and *command incentives,* resumes the concepts exemplarily illustrated by Coase 1937, in which emphasis is put on the tension between price mechanism and vertical integration: on the one hand the dynamic of free trade and on the other that of vertical command.

[671] Buying altruism and charity on the market or imposing charity and altruism through a rigid system of prescriptions, instead of increasing their production, leads to their destruction; see McKean 1975, 29-30 and Calabresi 2016, 92-93.

[672] Calabresi 2016, 94-97, 105 et seq.

[673] It must be specified that according to Calabresi, altruism does not constitute a single good, rather it constitutes a group of interrelated goods that can be placed on different levels: altruism as a means – replaceable – for the production of other desired goods; and altruism as an end and good in and of itself, only partially replaceable depending on the type of desired altruism (private, public or firm altruism); see Calabresi 2016, 94, 98 sqq.

[674] For-profit companies traditionally answered the request for firm altruism through 'corporate philanthropy' activities and programmes. According to accounting literature, philanthropy can be described as "an unconditional transfer of cash or other assets to an entity or a settlement or cancellation of its liabilities in a voluntary nonreciprocal transfer by another entity acting other than as an owner", or as "unconditional promises to give" those assets in the future (see Statement of Financial Account Standards 116 (FASB116) issued by the Financial Accounting Standards Board in 1993, which is the primary guidance relating to the recording of contribution revenue by not-for-profit organisations). Broadly speaking, corporate philanthropy consists in supporting beneficial causes and in the achievement of a positive social impact through contributions in cash or in kind (eg, employee time, facilities, or products and services produced by the firm). In most cases, philanthropy results in financial contributions by companies to causes that are intended to promote the welfare of others and bring about social change. These donations can be handled directly by the company or through a foundation established and controlled by the company itself. With the development of corporate social responsibility (CSR), philanthropy often became part of modern CSR programmes. Dozens of definitions of CSR have arisen since the 1950s. According to the famous Carroll four-part definition, CSR encompasses the economic, legal, ethical and discretionary (philanthropic) expectations that society has of organisations at a given point in time (see Carroll 1979, 500), while philanthropy "encompasses those corporate actions that are in response to society's expectation that businesses be good corporate citizens" (see Carroll 1991, 42). Notwithstanding the many attempted definitions, CSR remains an overarching concept. It can be described as a voluntary self-regulatory corporation's initiative to assess and take responsibility for the company's effects on environmental and social well-being, going beyond law requirements. CSR seems to differ from traditional philanthropy because it goes a step further by directly involving the corporation's business model and business practices, in an effort to mitigate the potentially negative externalities created as a result of the corporate activity. What they share is the possible positive impact on the organisation's brand image and the bottom line (see Godfrey 2005, 777-798), as well as their non-mandatory, but voluntary nature.

[675] Calabresi 2016, 93-94.

Therefore, the dual-purpose company and the for-benefit model can be considered as the new form of firm altruism.

7.4 The dual-purpose company as the new form of firm altruism

What characterises the dual-purpose company or the 'for-benefit' model is that they allow the introduction of the so-called 'triple bottom line' approach (of 'people, planet and profit') into the corporate purpose clause[676]. This means that, to have a positive impact on the environment and society and to create shared value, shareholders need to 'sacrifice' the 'maximisation of shareholder value' as the main purpose of the company, in particular in the short term.

In fact, conducting an economic activity in a sustainable way, on one side can generate profits attracting conscious consumers and increasing the company's reputational capital, but on the other can be more expensive. For example, the implementation of sustainable production strategies can be more expensive compared to the application of strategies only focused on cost reduction; sharing value with employees reduces the amount of profits distributed to shareholders; involving disadvantaged people as employees can be more expensive, especially at the beginning due to their training, etc.

Thus, from the EAL perspective it is possible to affirm that the creation of a benefit corporation (or other similar hybrid models) seems to be contrary to the *homo economicus* paradigm because it represents a deviation from rational choice and the maximisation of shareholder value paradigm. Would it therefore be irrational for an entrepreneur or shareholder to choose to cut their own personal profit with a view to adding value to the community, creating benefits for the environment and civil society?

Thus, investigating the for-benefit phenomenon from the corporate law perspective, there are two questions that need to be answered:

> i) Why should an entrepreneur or shareholder decide to relinquish part of their personal profit, reducing the profitability of the corporation in favour of production processes and entrepreneurial strategies oriented towards social and environmental sustainability? "*If not for profit, for what?*"[677] If not for profit (or rather, for the maximisation of personal profit), for what other reason should one invest in a for-profit corporation?
>
> ii) How does this entrepreneur's anthropological change – who appears to be guided by a deeper *ethos* compared to the maximisation of profit in the short term[678] and willing to integrate altruistic values in the business strategy and organisation – affect corporate law, and in particular the corporate governance debate?

[676] See Elkington 1997.
[677] One of the main issues in the analysis of the regulations regarding the benefit corporation is summarised in the title of the well-known contribution of Young 1983, titled "*If Not for Profit, for What?*", suggesting an interesting behavioural theory of the entrepreneurial non-profit sector.
[678] On this point Bazela 2010, 193.

7.5 If not for profit, for what?

To answer the first question, the starting point cannot but be, then, an analysis aiming at understanding the underlying reasons that push an entrepreneur to use an organisational form characterised by a blended purpose, a selfish one (personal profit) and an altruistic one (public benefit) – given the lack of specific tax advantages and considering the additional obligations and cost to achieve public-benefit results and to disclose them that are generally imposed on benefit companies[679].

Using the arguments employed by Calabresi, the for-benefit model, although apparently in contrast with the concept of maximising the individual, is therefore made logical when considered as the product of a new way of interpreting economics, in which the purposes – selfish (for profit-making) and altruistic (for the public benefit) – are both desired by the shareholders as goods in and of themselves. These purposes both enter into the company's charter and by-laws, legitimising the pursuit of business strategies that can turn out to be less profitable in terms of immediate profit and maximisation of wealth for the shareholder[680], but capable of generating wealth in the long term to be shared with the community and the environment.

The benefit corporation model must not be deemed irrational only because it does not respond to the McKean paradox and the pure market and command structures. In particular, as relates to market incentives, the lack of a transactional gift must be noted, given the general absence of tax benefits or any other kind of relevant benefits for the new company model. Despite there being no limits to remuneration, typical of not-for-profit organisations, there could be an opportunity to increase modified market incentives in the form of rewards to managers for results achieved in terms of profit and public benefit[681].

Moreover, the introduction of benefit corporation statutes represents a modified command structure towards firm altruism, in that it offers to businesses the chance to freely opt for the legal model of the benefit corporation without imposing altruism from above through a rigid system of prescriptions, thereby destroying it. Rather, it indirectly induces altruism, thus contributing to the creation of an entrepreneurial culture that is attentive to the protection of the environment as well as of civil society[682].

Hence, if we look at public benefit as a good in and of itself, desired by shareholders, the for-benefit model cannot be deemed irrational merely because it does not correspond to the behavioural model of the *homo economicus*.

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[679] In conformity with the trend in the US, the Italian legislator's choice not to attribute, tax advantages to the benefit corporation seems to be utterly consistent with the rationale underlying the legal doctrine, intended to promote a new paradigm of business that is actually focused on prospects for a long-term environmental and social sustainability, and it serves as a shield against the improper use of the new model by corporations only aiming at gaining tax advantages.
[680] For a summary of the several advantages, also economic, that a corporation can derive from having a good reputation in terms of social and environmental sustainability see Monoriti and Ventura 2017, 1125-1128.
[681] On the issue see Calabresi 2016, 105-107 and 110-111.
[682] See Calabresi 2016, 108-109.

7.6 The benefit corporation in the corporate governance debate

Moving on to the second question, it is necessary to stress that the for-benefit company represents a new governance model that exceeds philanthropy and corporate social responsibility. While corporate social responsibility, philanthropy or the use of codes of ethics and self-regulation represent an obligation voluntarily undertaken by the company and an external self-restraint limit as opposed to the dynamic of pure profit, the adoption of the benefit corporation model imposes an internal limit to the for-profit aim, rephrasing in environmental and social terms the guiding principles of directors' discretionary activity.

As regards corporate law, the introduction of benefit corporations allows, through a voluntary choice made by the founding shareholders or by the shareholders' general meeting, the internalisation – legally binding for both the corporation and the directors – of the typical values of corporate social responsibility within the corporate purpose clause.

The formation of a company is the expression of shareholders' private autonomy (even though within the limits of the mandatory rules prescribed by the law), opting for the new model characterised by a double purpose, and deciding to include in the articles of association the purpose of public benefit (general and/or specific depending on the applicable state law). By so doing, the perimeter of the company's purpose is widened to include both purposes desired by the shareholders – 'for profit' and 'for benefit'. This imposes an internal limit[683] to the dynamic of the maximisation of shareholders' wealth and, consequently, to the directors' management activity, which must be aimed at striking a balance between shareholders' for-profit interest, the public benefit, and the interests of a vast audience of stakeholders.

It is precisely the *voluntary* inclusion of the public-benefit purpose in the corporate purpose clause that characterises benefit corporation models, allowing to place them in the conceptual framework of contractarian theory and the shareholder primacy model. Shareholders' decision to pursue the public-benefit purpose (general and/or special), which is desired as good in and of itself, on an equal footing with profit, determines a different "characterisation of the interests sought by the very same shareholders"[684]: shareholders do not pursue third-party interests (stakeholders, community or environment interests), rather it is their very interest as shareholders that is broadened to encompass both personal profit and the altruistic purpose of generating positive externalities or reducing negative ones deriving from the company's activity.

Such expansion of the shareholders' interest does not stem from mandatory rules or the acceptance of a revived concession theory or communitarian perspective that compel the pursuit of some form of public benefit, rather from the unbound expression of shareholders' autonomy. This implies the non-contradiction of the 'for benefit' model vis-à-vis the principles of liberal economy, since the internal

[683] On the regulation of the negative externalities produced by corporate activity see Bainbridge 2003, 586 sqq., who, for a complete synthesis of the scholarship on the regulation theory makes reference to den Hertog 2000, 223 sqq. By the same author see also den Hertog 2010.
[684] The expression here employed, although with reference to a different field, is taken from Angelici 2010, 47.

limits to the shareholders' interest derive from shareholders' will, as opposed to being a restriction on their personal free will[685].

From the corporate governance debate perspective, the new corporate model with a blended purpose cannot be considered either as part of the stakeholder theory[686] or as part of director primacy[687], or the team production theory[688].

According to Bainbridge "[a]ny model of corporate governance must answer two basic sets of questions:

(1) Who decides? In other words, which corporate constituency possesses ultimate decision-making power?

(2) When the ultimate decisionmaker, whoever it may be, is presented with a zero sum game in which it must prefer the interests of one corporate constituency over those of all others, whose interests prevail?"[689].

Following Bainbridge's theoretical framework, the two basic questions to be answered for the analysis of the for-benefit governance model are:

i) who has ultimate control of the corporation (the means question), and

ii) to what ends this control must be exercised (the ends question).

As for stakeholder theory, stakeholders should have ultimate control, and the primary goal of the corporation should be the balancing of the interest of all the constituencies impacted by the corporation's activity. Benefit corporations cannot fall within the stakeholder theory in that:

i) stakeholders do not take part in the control of the corporation; as a matter of fact, stakeholders have no rights in the management, nor are they entitled to take action in case of directors' failure to pursue benefit purposes

ii) the pursued interest is that of the shareholders (although widened to include the safeguard of different stakeholders' interests and the achievement of the public benefit) and the directors bear fiduciary duties exclusively towards the shareholders.

As for director primacy theory, the board of directors has the control, and the primary goal of the corporation is the shareholders' wealth maximisation. The benefit corporation model cannot fall within the director primacy model since:

[685] This raises the issue of the relationship between the importance of the stakeholders' interests and the liberal economy; see Angelici 2010, 55.
[686] Freeman and Reed 1983, 89 sqq.; Freeman 1984; Mitroff 1983. On the development of pro-stakeholder governance theory see Jonsen 2016, 292 sqq.; Blair 1995; Kay 1997, 125-141; Kelly, Gavin and Parkinson 2000, 113-140; Keay 2008; Attenborough 2012; Mayer 2013.
[687] Bainbridge 1993; Bainbridge 2003, 547-606.
[688] Blair and Stout 1999; Blair 1998; Blair 2003; Stout 2007; Stout 2015, 685-723.
[689] Bainbridge 2003, 605.

i) the control remains with the shareholders, who decide on the expansion of the corporate purpose (indicating its limits within the corporate purpose clause) and delegate to the directors the activity of balancing the pursued interests

ii) the aim is not that of shareholders' wealth maximisation, given that the shareholders' economic interest is mitigated by the public-benefit purpose.

As for the team production theory, the board of directors, intended as 'mediating hierarchs', has ultimate control of the corporation, and the directors' job is to balance team members' competing interests. Benefit corporations cannot fall within the team production theory considering that:

i) the control is still attributed to the shareholders, since directors' obligations to mediate among the different interests is not enshrined in their role; rather, it is conferred on them by the shareholders that include the public-benefit purposes in the company agreement

ii) the aim pursued is not the abstract realisation (left to the directors' pure discretion) of efficient forms of collaboration; rather, it is the legal obligation to go after shareholders' actual interest, as widened by the inclusion of the public-benefit purposes in the company agreement.

Indeed, in the for-benefit model, corporate control lies with the shareholders (the 'means question') who then delegate it to the board of directors. The directors, as agents of the shareholders, must pursue their interests as established and widened in the company agreement (the 'ends question').

Compared to the shareholder primacy model, then, what is not accepted here is exclusively the primary purpose of the maximisation of shareholder wealth, in that the shareholders themselves, within the range of their private ordering, have decided to impose a restriction thereon by also accepting purposes of public benefit.

The above interpretation becomes evident from the shareholder-centric configuration of the for-benefit legislations previously analysed. To the stakeholders other than shareholders, or more generally to the beneficiaries of the public benefit, the laws of different countries regulating dual-purpose companies do not attribute any right to participate in the management of the corporation: there are no provisions establishing a special assembly for them; they have no rights to vote in the general assembly, still wholly reserved to the shareholders; generally there are no provisions on some kind of representation in the managing or control bodies appointed by shareholders.

Furthermore, the inclusion of public-benefit purposes (general and specific) within the corporate purpose clause does not imply the creation of personal rights on third parties benefiting therefrom, nor does it imply the existence of any enforceable duty of directors to a person that is a beneficiary of the public-benefit purpose or other non-shareholder constituents. Indeed, the only fiduciary duties directors have, according to the different statutes, are the ones owed to the corporation and its shareholders[690]. Consequently, the only ones who are entitled to act in cases of breach of the implementation of public-

[690] See eg, for the United States, the Model Act §301 (d); §305 (a); Del. Code Ann. tit. 8, §365 (b). In Italy, through the reference (in LawNo. . 208, 28 December 2015, art.1, paragraph 381) to the directors' liability actions set forth in the Civil Code for each type of corporation, the legislator seems to deny the existence of additional duties and responsibilities on the directors with regard to the third parties that benefit from the public benefit, who remain devoid of direct protection, except for the action stemming from arts. 2395 and 2476, paragraph 6°, of the Civil Code, so long as the preconditions established by law are met.

benefit purposes are the corporation and its shareholders[691]. No action is expressly prescribed in favour of stakeholders[692].

Even the procedures provided for an existing company to acquire the legal status of 'benefit company' or to terminate such status emphasise the fundamental role of shareholders in that they generally prescribe the application of a supermajority to amend the articles of association to include or delete the for-benefit clause – for example, to approve other fundamental transactions such as merger, consolidation or conversion[693].

Lastly, the lack of governmental powers of control on the activity performed by benefit companies should be highlighted. In the common law system regulating the for-benefit model, like in the US, the only form of control is left to private enforcement tools such as the benefit enforcement proceeding or shareholder derivative actions for breach of fiduciary duties and disclosure mechanisms (annual report and free employment of the third-party standard). This private enforcement regime is established in favour of shareholders and third parties (customers and investors who have access to information) and not with a view to allowing any form of public control[694]. In civil law systems that followed the Italian example of public enforcement, the supervisory role attributed to the different public bodies (eg, the public competition authority in Italy) does not impact on the above analysis, in that such public authorities operate on a level other than corporate law, considering the violation of external limits imposed on the corporations by the regulation aimed at safeguarding competition and consumers, or other laws[695].

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[691] See eg, Model Act §305 (b); Del. Code Ann. tit. 8, §367; Italian Law No. 208, 28 December 2015, , art.1, paragraph 381.

[692] With regard to the US, there was an exception in a provision initially included in the US Model Act, which allowed the right of action for those specifically listed in the deed of incorporation; however, such provision was removed in 2016 and was rarely implemented by state legislatures; see Model Act 2014 §305 (c)(2)(iv); provision not included in the last version of the Model Act 2017.

[693] Eg, see the Model Act (§104, §105, e §102 – "*Minimum status vote*"), which prescribes the two-thirds majority of the shareholders with voting rights in each category or class of shares to modify the bylaws converting an ordinary corporation into a benefit corporation or, conversely, a benefit corporation into an ordinary business corporation. In contrast, Delaware amended the Public Benefit Corporation Statute (Del. Code Ann. tit. 8, Ch 1, Subchapter XV) in July 2020, reducing the stockholder approval threshold necessary for becoming a PBC, and for exiting the PBC regime. Section 363(a) and (c) has been eliminated and the voting thresholds for conversions, mergers and consolidations involving PBCs are now governed by ordinary rules of the Delaware General Corporation Law (§§ 242(b) and 251) that prescribes majority voting unless the certificate of incorporation provides otherwise. Moreover, the 2020 amendment also eliminated statutory appraisal rights in connection with the conversion of a corporation to a PBC; § 363(b) has also been eliminated. As relates to Italian law, it is necessary to have all shareholders' consent in case of *società di persone* (ie, partnerships, art. 2252 Civil Code). In the *società per azioni* (ie, corporations), given the competence of the extraordinary shareholders' meeting to decide on the amendment to the corporate purpose (arts. 2365, 2368 Civil Code), supermajorities are required, with a quorum beyond one-third of the share capital (art. 2369, paragraph 5, Civil Code) and the quorum of two-thirds of the capital represented in the assembly for listed corporations (2369, paragraph 3, Civil Code). In the *società a responsabilità limitata* (ie, limited liability companies) the amendment of the deed of incorporation is left to the shareholders' assembly (art. 2479, paragraph 2°, n. 4 e 5, and art. 2480 of the Civil Code) deciding with the favourable vote of shareholders representing at least half of the share capital (art. 2479-bis, paragraph 3° Civil Code).

[694] Eg, the choice of the evaluation standards is left to the corporation and there is no prescription concerning a check by third parties, either private or public; Model Act §401 (c); Del. Code Ann. tit. 8, §366 (c)(3); Italian Law No. 208, 28 December 2015, art.1, paragraph 382.

[695] See Italian Law No. 208, 28 December 2015, art.1, paragraph 384.

Taking into account the graphic representation proposed by Bainbridge[696], it is possible to summarise what has been described to this point by placing the 'for-benefit' company in Figure 3 below.

On the Means Axis (who has ultimate control of the corporation) are the theories that emphasise, on the one hand the role of the board of directors, and on the other the role of the shareholders. On the Ends Axis (to what ends this control must be exercised) are, instead, theories that emphasise, on the one hand shareholder wealth maximisation, meant as an exclusively economic value represented by the maximisation of the market value of the shares, and on the other the stakeholder model, according to which the management is aimed at equally safeguarding the several interests of all the existing corporate constituencies.

The benefit corporations are to be placed – with regard to the control within the area of shareholder primacy, considered the shareholder-centric regulation and, with regard to the interests pursued – in an intermediate area that can be defined as 'shareholder welfare maximisation' (wealth + altruism), which suggests that the pursuit of the shareholders' interest includes: on one hand the pursuit of the shareholders' economic interest (ie, wealth, but without the aim of its maximisation in monetary terms), and on the other hand the pursuit of other 'altruistic' values such as the purpose of public benefit, both general and special (ie, altruism)[697].

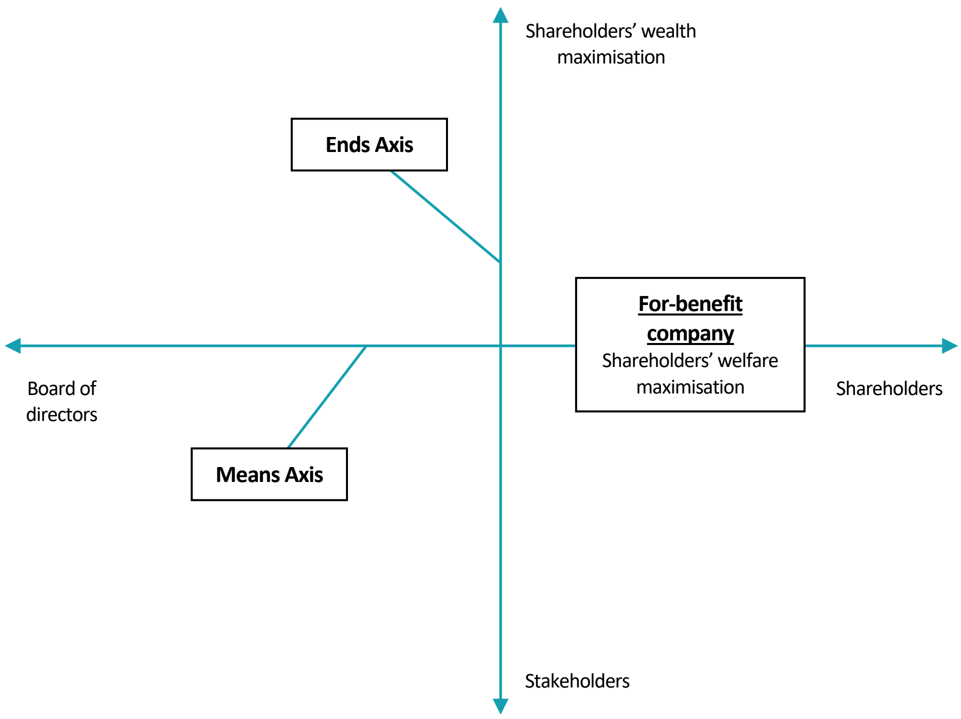

Figure 3: For-benefit company in the corporate governance debate

[696] Bainbridge 2003, 548.
[697] See Ventura 2018.

7.7 Final remarks

Using the categories employed by Calabresi, it can be affirmed that the for-benefit model constitutes a further manifestation of firm altruism*,* more efficient (from a legal perspective) than not-for-profit organisations. This is because it is devoid of the limits of the non-distribution constraint (which prohibits the distribution of residual earnings to individuals who exercise control over the firm) and characterised, compared to philanthropy, by a deeper and lasting impact on the environment and civil society, given the integration of altruistic values within the framework of the business purpose clause contained in the articles of association.

If we look at the law as a tool capable of shaping social awareness, and at the same time as an expression of the internal dynamics of civil society, of its social and economic values[698], it is possible to assess how, on one hand, the introduction of benefit corporation statutes contributes to create a new culture of altruism, educating entrepreneurs, consumers and investors on a new form of capitalism. On the other, it corresponds to the cultural transformation currently happening in civil society, supporting the growing collective desire of firm altruism.

Finally, the analysis undertaken in this report suggests that the dual-purpose company model has secured a legitimate place within the contemporary corporate governance debate. It embodies the paradigm of responsible capitalism by reconciling the pursuit of profit with the creation of long-term social and environmental value within the ordinary framework of for-profit company law.

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[698] See Calabresi 2016, 157 sqq., who affirms the centrality of the legislator and the law, or of the jurisprudence in the common law countries, in shaping values typical of a given community, and therefore the existence of a relationship between law and values. To reach this conclusion, the author draws inspiration by the influence of some decisions rendered by the Supreme Court of the United States and other state supreme courts, pointing out that the amendments on the legislative or jurisprudential level can pave the way to a change in the values of the community (*Plessy v. Ferguson*, 63 U.S. 537 (1896); *Brown v. Bd of Ed. of Topeka*, 347 U.S. 483 (1954); *Dred Scott v. Sandford*, 60 U.S. 393 (1857)), just as much as to the rise of counter-movements that are stronger than the legislative amendment (*Goodridge v. Dept. of Public Health*, 440 Mass. 309 (2003); *Roe v. Wade*, 410 U.S. 113 (1973)). On the integration between law and other social and cultural phenomena, see the essay on the movement of the *Critical Legal Studies* by Minda 2001, 180, 189, 199. See also Bruni and Zamagni 2015, 42-43, for a reference to the relationship between rules and values and ethos of a population.

8. Dual-purpose companies and harmonisation of law

The findings of the previous chapters naturally lead to the final question addressed in this study. The comparative analysis has demonstrated the emergence of a sufficiently coherent transnational legislative model of dual-purpose companies, while the economic analysis of law and the corporate governance analysis have shown that such a model is capable of reconciling profit-making with the pursuit of long-term social and environmental value within the paradigm of responsible capitalism. The question that inevitably follows is therefore whether this growing legislative and theoretical convergence is sufficiently mature to support harmonisation initiatives at both the global and the European levels.

Such a question is particularly relevant in the field of sustainability. Environmental and social challenges are inherently systemic and transnational, while the principal policy objectives aimed at addressing them are increasingly defined at the international and regional levels, as demonstrated by instruments such as the United Nations 2030 Agenda, the Paris Agreement, and the broader framework established through the Conference of the Parties (COP) process. Against this background, the coexistence of fragmented national rules governing sustainable enterprises risks undermining the achievement of common policy objectives, whereas a greater degree of legislative co-ordination could substantially enhance their effectiveness.

Within this context, comparative law and the harmonisation of legal rules[699] perform a fundamental function. Comparative analysis makes it possible to identify the common principles and the principal divergences among national legal systems, thereby creating the foundations for a genuine cross-border legal dialogue and for the development of legislative solutions capable of transcending domestic legal traditions. In turn, harmonisation, whether pursued through international conventions, regional legislation or soft-law instruments such as model laws, may contribute to the creation of a more coherent regulatory framework for sustainable enterprises, ensuring a more level playing field while preserving an appropriate degree of national flexibility[700].

From this perspective, sustainability represents one of the most significant manifestations of contemporary 'Global Law' [701]. The regulation of sustainable business enterprises transcends the traditional boundaries of domestic company law and increasingly belongs to a broader system of transnational economic governance, in which common legal principles, international standards and shared

[699] The relevance of harmonisation on the law is well exemplified by the co-ordination between European countries and Switzerland. See eg, how the Swiss Federal Council affirmed, in June 2024, that it wanted to ensure that Swiss rules on sustainable corporate governance remain in line with European and international law. More information is available at https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-101585.html.

[700] On the role of harmonisation and unification of law, in particular governing world trade see Lando 2004, 161 sqq.; van Houtte and Wautelet 2001, 89 sqq.

[701] Generally, on the issue of 'global law' see among others, Teubner 1997; Snyder 1999; Michaels 2006; Domingo 2010; Michaels 2009; Walker 2015.

regulatory objectives progressively shape national legislations and court decisions[702]. Social entrepreneurship and dual-purpose companies therefore constitute a particularly suitable field for the development of harmonised legal solutions capable of balancing economic integration with the protection of fundamental social and environmental values shared by the international community. In this respect, dual-purpose companies offer an illustrative example of how company law is progressively evolving from a purely domestic discipline into an area of Global Law, characterised by the emergence of common regulatory principles capable of operating across different legal traditions.

Against this background, the comparative analysis undertaken in the previous chapter demonstrates that dual-purpose companies already share a sufficiently developed common legislative core to justify further harmonisation initiatives. Rather than encouraging the creation at the domestic level of a new mandatory corporate model characterised by a blended purpose, this study advocates the development of a Model Law capable of guiding national legislators in the introduction of an optional dual-purpose company regime. Such an instrument might be more readily accepted by legal systems, without encountering strong political opposition linked to a general overhaul of their economic and company law systems. From the technical perspective, it would preserve the flexibility necessary to accommodate different legal traditions while promoting a common minimum framework governing the essential characteristics of the dual-purpose company model, thereby facilitating its diffusion and contributing to the broader objective of sustainable economic development.

The need for legislative intervention arises from several considerations. Existing company law often fails to provide purpose-driven enterprises with an adequate legal framework capable of ensuring legal certainty, protecting the continuity of the benefit mission over time and enabling directors to pursue social and environmental objectives without exposing themselves to claims based on the traditional shareholder-value paradigm. In particular, current corporate forms frequently prove inadequate to preserve the fidelity to the mission following changes of control, and to legitimise directors in balancing profit-making with public-benefit objectives within the ordinary exercise of their fiduciary duties.

More fundamentally, legal reform is justified by the essential role that an enabling legislation plays in promoting the emergence and successful development of sustainable enterprises. Company law should not merely regulate existing business organisations, but should provide entrepreneurs with legal structures capable of supporting different conceptions of corporate purpose and allowing them to flourish according to market demand[703]. Rather than prescribing a single model of the corporation, policymakers should encourage the coexistence of different organisational forms and allow them to compete in responding to the evolving expectations of investors, consumers and society, increasingly focused on sustainability in recent years.

Assuming that legislative intervention is desirable, the crucial question concerns its form. In principle, as mentioned above, two alternative regulatory strategies may be envisaged. The first would consist of a general reform of company law requiring all business corporations to adopt a blended corporate purpose and redefining directors' duties accordingly. The second would involve the introduction

[702] See eg, the decisions rendered in the Netherlands in the Shell case: *Milieudefensie et al. v. Royal Dutch Shell plc*, District Court of The Hague, 26 May 2021, Case No. C/09/571932 / HA ZA 19-3; *Milieudefensie et al. v. Royal Dutch Shell plc,* The Hague Court of Appeal, 12 November, Case No. 2024, 200.302.332/01.
[703] On this issue, see Mayer 2018, 200-202.

of an additional optional legal status specifically designed for enterprises wishing voluntarily to combine profit-making with the pursuit of public-benefit objectives.

Although a general reform may appear attractive from a normative perspective, it encounters considerable legal, political and practical obstacles[704]. It would require a profound reconsideration of one of the most controversial issues in company law, the purpose of the corporation, and would therefore demand a level of political consensus that has repeatedly proved difficult to achieve. The experience of European company law provides a telling illustration of these difficulties, as demonstrated by the failure of the proposed Fifth Company Law Directive (on the harmonisation of the corporate governance framework) and, more recently, by the removal of the provisions concerning directors' duties from the final text of the Corporate Sustainability Due Diligence Directive[705]. Moreover, imposing a mandatory sustainability-oriented corporate purpose upon all companies could generate resistance from entrepreneurs and investors, who might perceive such intervention as an externally imposed constraint upon their freedom of enterprise. In these circumstances, compliance risks becoming a purely formal or tick-box exercise, rather than producing genuine organisational change.

By contrast, the introduction of an optional and harmonised dual-purpose company framework appears both more realistic and more consistent with the logic underlying the model itself. Rather than replacing existing corporate forms, it expands the range of organisational choices available to entrepreneurs and investors, allowing those genuinely committed to integrating economic and public-benefit objectives to adopt a legal structure specifically designed for that purpose. Such an approach promotes a bottom-up process of institutional innovation, relying upon voluntary adoption, market competition and private ordering rather than mandatory legislative intervention. In this respect, harmonisation should not be understood as limiting entrepreneurial freedom, but rather as enhancing it through the provision of an additional legal instrument capable of responding to the growing demand for sustainable business models.

Finally, it must be stressed how harmonisation alone is unlikely to ensure the widespread diffusion of dual-purpose companies. As the comparative analysis has shown, most jurisdictions deliberately reject preferential tax regimes, reflecting the view that the pursuit of the public benefit forms part of the company's very purpose rather than constituting an activity deserving fiscal privileges. Nevertheless, the successful development of purpose-driven enterprises may require complementary regulatory and market-based incentives, including sustainable public procurement policies, facilitated access to equity and debt finance, impact-investment mechanisms, and other regulatory measures capable of reducing market barriers and encouraging voluntary adoption. Such instruments appear particularly valuable during the early stages of development of the dual-purpose company model, when enabling legislation alone may not be sufficient to unlock its full potential.

[704] Eg, see Fleischer's criticism (Fleischer 2021, 19–21) of Colin Mayer's policy proposal for a mandatory corporate blended purpose. Fleischer argues that: (i) a stronger signalling effect is achieved when companies are free to opt-in voluntarily; (ii) a mandatory regime raises significant doubts regarding the effective monitoring and control of management; and (iii) such a system suffers from inherent enforcement weaknesses.
[705] See articles 25 and 26 of the 2022 European Commission CSDDD proposal.

The following sections examine the prospects for harmonising dual-purpose company law at both the global and the European levels, taking into account the different institutional frameworks, legal instruments and regulatory techniques available in each context.

8.1 Global Harmonisation through Soft Law: Towards an International Model Law?

At the global level, the most realistic path towards harmonisation is the development of an international Model Law providing national legislators with a common legislative template, while preserving domestic regulatory autonomy.

This solution reflects the very philosophy of the dual-purpose company, which does not impose the pursuit of public-benefit objectives on any company but offers entrepreneurs an optional legal status through which they may voluntarily incorporate them into the company's constitutional documents. Accordingly, harmonisation should likewise adopt an enabling approach, providing states with a common legislative framework that they may voluntarily implement and adapt to their own legal traditions.

This technique has already proved particularly successful in this field. Indeed, the US Model Benefit Corporation Legislation itself demonstrates the effectiveness of model legislation as a vehicle for legislative diffusion, having inspired not only the adoption of benefit corporation statutes throughout the United States, but also, directly or indirectly, numerous legislative reforms in Europe, Latin America and Africa.

Such an instrument could be developed under the auspices of international organisations experienced in the preparation of harmonising legislative texts in the field of commercial and business law, such as UNCITRAL or UNIDROIT, whose longstanding practice demonstrates the effectiveness of soft-law instruments in promoting convergence while fully respecting national legislative sovereignty. The objective would not be to replace domestic company law, but to provide legislators with a coherent and internationally recognised legislative framework capable of facilitating the gradual convergence of national regimes.

As mentioned, the comparative analysis undertaken in the previous chapters demonstrates that the legislative regimes adopted in different jurisdictions already share a sufficiently developed common core to support a process of international harmonisation. Indeed, the proposed Model Law should incorporate the essential features that emerged consistently: the recognition of the dual-purpose clause as an equal-ranking corporate objective; the qualification of the model as an optional legal status superimposed upon existing corporate forms; the expansion of directors' fiduciary duties; mandatory impact reporting supported by credible impact-assessment methodologies; and appropriate mechanisms of accountability combining private enforcement with public oversight where considered desirable by domestic legal systems. At the same time, the Model Law should deliberately leave sufficient regulatory flexibility with respect to issues on which the comparative analysis revealed legitimate policy alternatives, such as governance arrangements, disclosure methodologies, enforcement techniques and administrative supervision.

To illustrate how these principles may be translated into legislative provisions, Appendix I of this report sets out a proposed *Draft Model Law on Dual-Purpose Companies*, developed on the basis of the comparative analysis and normative considerations advanced throughout this report.

In this way, harmonisation would not require the uniformity of domestic company law, but rather the progressive consolidation of a common transnational legislative framework for dual-purpose companies. The Model Law would serve as a common legislative benchmark, reducing unnecessary fragmentation while preserving the diversity of national legal traditions and allowing each jurisdiction to adapt the model to its own institutional, economic and cultural context. Greater convergence among national regimes would also facilitate the mutual recognition and international credibility of dual-purpose companies, thereby enhancing legal certainty and supporting their cross-border establishment, investment and commercial activities.

8.2 European harmonisation through hard law: towards a European dual-purpose company framework?

Unlike the global level, where harmonisation can realistically be pursued only through soft-law instruments, the European Union possesses the institutional competence to adopt binding legislative measures in the field of company law. Moreover, the evolution of European sustainability regulation over the last decade demonstrates a clear and progressive shift from voluntary initiatives towards increasingly mandatory forms of regulation. Beginning with the promotion of corporate social responsibility through soft-law instruments[706], European policy has gradually moved towards binding obligations concerning sustainability disclosure, sustainable finance, corporate due diligence and corporate governance. The adoption of the Non-Financial Reporting Directive[707], subsequently replaced by the Corporate Sustainability Reporting Directive (CSRD)[708], the Shareholder Rights Directive II (SRD II) on long-term shareholder engagement[709], the Sustainable Finance Disclosure Regulation (SFDR)[710], the Taxonomy

[706] See eg, the Green Paper "Promoting a European framework for Corporate Social Responsibility", 18.7.2001, COM(2001) 366; the Commission Communication of 15 May 2001 on "A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development", COM(2001) 264; the Commission Communication of 13 December 2005 "On the review of the Sustainable Development Strategy – A platform for action", COM(2005) 658; the Commission Communication of 25 October 2011 on "A renewed EU strategy 2011-14 for Corporate Social Responsibility", COM(2011) 681.
[707] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups ("the Non-Financial Reporting Directive").
[708] Directive 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (Text with EEA relevance).
[709] Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement.
[710] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector.

Regulation[711] and, more recently, the Corporate Sustainability Due Diligence Directive (CSDDD)[712] clearly illustrates this legislative evolution. Against this background, the harmonisation of dual-purpose company law through an instrument of EU hard law appears to represent the natural next step in the development of European sustainable company law.

However, despite these important developments, a significant gap remains within the European regulatory framework. Existing legislation increasingly regulates how companies should operate sustainably, primarily through reporting and disclosure obligations. These measures, however, do not generally impose a direct and substantive obligation to integrate sustainability into corporate decision-making. Rather, they seek to influence corporate behaviour indirectly, from an *ex post* perspective, by requiring companies to disclose sustainability-related information and allowing market participants to react accordingly. By contrast, initiatives in the field of company law aimed at addressing sustainability from an *ex ante* perspective remain relatively limited. It is within this broader evolution that the original proposal for the Corporate Sustainability Due Diligence Directive should be understood, as it marked a significant step towards the adoption of rules directly affecting companies' conduct, directors' decision-making and corporate responsibilities. In this sense, the evolution of European sustainability regulation appears to be entering a second phase: moving beyond disclosure-based obligations towards legal rules capable of shaping corporate behaviour itself. Then, it is within this broader context that the introduction of a harmonised legal framework governing how companies may voluntarily organise themselves around sustainability by embedding the pursuit of public benefit within their constitutional structure, should be considered.

Indeed, although some Member States like Italy, France and Spain have introduced dual-purpose company legislation, these national regimes remain fragmented. A harmonised dual-purpose company structure intended as an optional hybrid organisational form that companies can voluntarily choose, regardless of their size (thus available also to micro, small and medium enterprises, usually excluded from direct application of European rules, mainly directed to large companies) would represent a further step in the progressive integration of sustainability into European company law, complementing the existing regulatory architecture with rules addressing the internal legal organisation of purpose-driven companies.

As regards legislative instruments, two principal regulatory modalities are conceivable: a directive requiring Member States to regulate a dual-purpose company at the domestic level, or a regulation establishing a 'European benefit company'. A directive would establish common minimum requirements, while leaving Member States a margin of discretion in transposing them into their company-law systems, thereby respecting national legal traditions. A regulation, by contrast, would introduce a directly applicable and uniform European status ensuring full uniformity at the cost of a greater degree of centralisation. In either case, the European dual-purpose framework should be co-ordinated with the recent Union instruments on corporate sustainability, in particular the reporting obligations under the CSRD and the due-diligence obligations under the CSDDD.

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[711] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (the "EU Taxonomy Regulation"). See also the Commission Communication of 21 April 2021 on "EU Taxonomy, Corporate Sustainability Reporting, Sustainability Preferences and Fiduciary Duties: Directing finance towards the European Green Deal", COM(2021) 188.
[712] Directive 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (Text with EEA relevance).

The adoption of a harmonisation directive appears preferable to the creation of a supranational European benefit company through a regulation. This conclusion is supported by several considerations. First, the harmonisation of European company law has traditionally been achieved primarily through directives, which have proved capable of reconciling legislative approximation with respect for the diversity of national company law systems. Second, the comparative analysis undertaken in this study reveals a remarkable degree of convergence concerning the fundamental characteristics of dual-purpose companies, but also legitimate differences regarding their technical implementation. A directive would preserve the flexibility necessary for Member States to adapt the model to their own legal traditions and institutional frameworks, while ensuring the harmonisation of its essential structural features. Finally, the relatively limited practical success of the *Societas Europaea*[713] suggests caution in relying upon a supranational corporate form as the principal instrument for promoting the widespread adoption of a new governance model. A directive therefore appears better suited to reconcile legal integration with respect for the diversity that continues to characterise European company law.

A future directive should therefore require Member States to introduce an optional dual-purpose company status, available to the existing corporate forms provided by domestic company law. This uniform organisational form can be built upon the convergent core identified through the comparative analysis of Member States' legislation, especially the Italian *società benefit* and the French *société à mission*, considering that the Spanish *Sociedades de Beneficio e Interés Común* is still only partially regulated. In particular, the main convergences at the European level are related to:

i) Dual-purpose clause: the requirement to have a dual-purpose clause in the articles of association combining profit-making and the pursuit of a public benefit (general sustainable behaviour, and/or special objectives)[714]. Usually, the law does not clearly specify how these different interests should be prioritised, giving directors a large degree of flexibility in this respect, which may be reduced through specific indications in the by-laws. Furthermore, dissenters' rights for shareholders who oppose the transition to, or from, the hybrid status are not specifically regulated, but usually the law requires a special majority vote in case of fundamental changes to the entity purpose clause, such as for the introduction or deletion of the for-benefit mission.

ii) Fiduciary duties: directors are required to consider or balance the impact of their decisions not only on the company and the shareholders, but also on other stakeholders (workers, customers, communities, suppliers and the environment) and the pursuit of the public benefit/s indicated in the company agreement[715]. However, directors generally do not owe fiduciary duties to beneficiaries of the public benefit/s, and it is doubtful whether third parties can start a claim for damages arising from the failure to pursue the for-benefit mission. Thus, directors are typically protected from claims of external beneficiaries; only shareholders have standing to bring derivative suits alleging the breach of fiduciary duties or the violations of the duty to pursue the public benefit/s.

[713] Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE).
[714] Italy, art. 1, paragraph 376, Law No. 208, 28 December 2015; France, art. L210-10, Commercial Code; Spain, Disposición adicional décima, Law 18/2022, 28 September 2022.
[715] Italy, art. 1, paragraphs 377 and 380, Law No. 208, December 28, 2015; France, art. 225-35 and 225-64, Commercial Code; Spain, Disposición adicional décima, Law 18/2022, 28 September 2022.

iii) Transparency requirements: the need to publish an annual report (the so-called 'impact report') on the company's social and environmental performance (produced by the board of directors, or by a special dedicated committee), combined with a form of external control (eg, requiring the use of a third-party standard to assess the company's impact[716], or a certification of the report by an independent third-party organisation[717]). Furthermore, statutes can require the filing of the annual impact report with a state administrative office and provide penalties for failing to deliver the report.

iv) Enforcement mechanisms: mainly based on private (ordinary action for breach of directors' fiduciary duties[718]) and public enforcement (different forms of public control over dual-purpose companies, which can be entrusted to various public bodies[719], or the possible action of public prosecutor and interested third parties[720]). A system of internal control can be voluntarily added to these mechanisms, providing for a specific company's body to oversee the pursuit of the public-benefit purposes, such as the *comité de mission* in France[721].

v) Absence of tax incentives: dual-purpose companies are taxed as ordinary for-profit companies.

vi) Scope of application: the dual-purpose company is not a new company type but a governance model/status that can be acquired by all the organisational forms provided by the law.

vii) Inclusion of the new model into the existing company law framework: being just a model/status that can be acquired by organisational forms already provided by the law, for all the matters not expressly regulated by dual-purpose statutes, the existing domestic company law is applicable.

Thus, the directive should harmonise the essential structural pillars of the model: the incorporation of a dual-purpose clause into the constitutional documents of the company; the corresponding expansion of directors' duties; transparency and impact-reporting requirements; reporting and assessment methodologies for comparability of results; as well as appropriate mechanisms of accountability and enforcement, which include a form of public control. These elements transform the pursuit of public benefit from a voluntary managerial commitment into a legally binding component of the company's constitutional framework that can be monitored, assessed and enforced. By contrast, issues on which the comparative analysis reveals legitimate regulatory diversity – such as the procedure and majorities required for formation and termination of the for-benefit company, the right of withdrawal,

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[716] Italy, art. 1, paragraphs 382 and 383, Law No. 208, 28 December 2015.
[717] Eg, in France, the control is attributed to an independent third-party body ('*organisme tiers independent*') among those accredited by the Comité français d'accréditation; see art. L210-10, Commercial Code, paragraph 4 and Decree No. 2020-1, 2 January 2020.
[718] France, art. 1850, and 1843-5 of the Civil Code, and art. 223-22, 225-251 of the Commercial Code; Italy art. 1, paragraph 381, Law No. 208, 28 December 2015.
[719] See eg, the power granted in Italy to the Competition Authority (Autorità Garante della Concorrenza e del Mercato) to apply the regulation on misleading advertising and misleading business practices to sanction SB companies that do not pursue the public benefits, Law No. 208, 28 December 2015, art. 1, paragraph 384.
[720] See French Commercial Code, art. L. 210-11, according to which the public prosecutor or any interested person may refer the matter to the Président du Tribunal de Commerce, who can order the cancellation of the status of *société à mission.*
[721] See Commercial Code art. L210-10, paragraphs 3 and 4.

governance arrangements or internal controls – should remain within the discretion of Member States, consistently with the principles of subsidiarity and proportionality.

From a general perspective, the absence of harmonisation concerning some essential elements – like corporate purpose and directors' duties, as well as the fact that although European law guarantees the freedom of establishment and the recognition of companies validly incorporated in another Member State, it does not generally require the exclusive application of the law of the state of incorporation – inevitably creates legal uncertainty for companies operating across borders. Indeed, the legal significance and practical effectiveness of the benefit purpose, the directors' obligations connected to it, and the related accountability mechanisms may become uncertain whenever a dual-purpose company carries out activities beyond the legal system in which it was incorporated.

Consequently, in Europe the case for harmonisation is reinforced by the internal-market dimension. The fragmentation of statutes applicable to dual-purpose companies and the lack of regulation in the majority of Member States constitutes not only an obstacle for companies seeking to scale their impact throughout Europe, but also a limitation to the proper functioning of the internal market itself. Indeed, the problem of fragmentation was identified by both the Letta[722] and Draghi[723] Reports as one among the factors hampering the competitiveness and the integration of the single market.

Such a harmonised legislative framework would produce significant benefits both for individual companies and for the European internal market. It would provide entrepreneurs wishing to pursue both profit and public benefit with a clear and legally certain organisational model; strengthen accountability and investor confidence; facilitate access to sustainable finance; reduce the legal uncertainty associated with cross-border operations; and contribute to the emergence of an integrated European market for impact-driven businesses. At the same time, it would offer Member States a common legislative benchmark for regulating dual-purpose companies, creating a clear legal path for purpose-driven companies in terms of accountability, transparency, enforcement, and directors' 'duty to act' to produce benefits, while preserving the flexibility necessary to accommodate their respective legal traditions.

Finally, it is worth noting that, in the longer term, the possibility of incorporating a dual-purpose company could also be recognised within the future EU 28th Regime (EU Inc.), thereby allowing entrepreneurs operating throughout the Union to choose an optional legal structure specifically designed for purpose-driven enterprises. Such an evolution would further strengthen the development of a genuine European fourth sector, capable of competing internationally while contributing to the Union's broader objectives of sustainable and inclusive economic growth.

8.3 Final remarks

The analysis developed in this chapter suggests a dual model of harmonisation, reflecting the different constitutional and institutional frameworks within which harmonisation is pursued.

At the global level, where no supranational legislator exists, harmonisation can be realistically achieved only through soft-law instruments, primarily in the form of an international Model Law capable

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[722] Letta 2024.
[723] Draghi 2024.

of fostering voluntary legislative convergence while respecting the diversity of national legal systems. At the European level, by contrast, the Union's competence in company law and the progressive shift from soft law to hard law in the field of corporate sustainability can justify the adoption of a harmonisation directive establishing the essential characteristics of an optional dual-purpose company framework. The choice between these two instruments therefore reflects not different policy objectives, nor merely different legislative techniques, but the distinct constitutional and institutional architecture of the global and European legal orders.

In both cases, however, the underlying regulatory philosophy remains the same. Rather than imposing a mandatory redefinition of the corporate purpose applicable to all companies, harmonisation should preserve the enabling nature of the dual-purpose model by expanding the range of legal options available to entrepreneurs and shareholders. The objective is not to replace existing company law, but to provide a coherent, credible and transparent legal framework within which businesses may voluntarily commit themselves to pursuing public benefit alongside profit, while benefiting from greater legal certainty and facilitating their cross-border activities. Such an enabling approach also acknowledges the practical difficulties of achieving a comprehensive reform of company law, given the strong path dependence that characterises national corporate law systems and the political consensus that such reform would require. At the same time, the gradual diffusion of dual-purpose companies may create a clear legal pathway for purpose-driven enterprises and contribute to the progressive development of legislative experience, judicial practice and market acceptance, thereby laying the foundations for a broader evolution of company law in the future.

Ultimately, the harmonisation of dual-purpose company law should not be understood merely as a technical exercise in legislative approximation. Rather, it represents an opportunity to consolidate a common legal infrastructure capable of supporting the development of responsible capitalism, strengthening legal certainty for impact-driven enterprises and facilitating the emergence of increasingly integrated global and European markets for sustainable business. In this respect, dual-purpose companies demonstrate how company law can evolve from a purely domestic discipline into an instrument of global and European governance, capable of promoting sustainable economic development through voluntary yet legally enforceable organisational models.

9. Conclusion

The debate on corporate purpose has traditionally been framed as a choice between shareholder primacy and stakeholder governance, or as a question of whether companies should pursue profit or broader societal objectives. The analysis developed throughout this report suggests that this dichotomy is ultimately misleading. The real question is not whether companies should pursue profit or public benefit, but how legal systems can create institutional conditions under which these objectives become mutually reinforcing rather than mutually exclusive.

The evolution of contemporary company law reflects precisely this transition. Across jurisdictions belonging to different legal traditions, sustainability is progressively moving from the margins of corporate governance into the core of legal regulation. Although this process follows different institutional paths and remains characterised by significant diversity, a common trajectory can nevertheless be identified. Company law is no longer concerned solely with organising private economic activity and relations among shareholders and corporate organs; it is increasingly becoming an instrument through which legal systems shape the relationship between business, society and the environment.

Within this broader transformation, the role of law assumes particular significance. The transition towards a more sustainable economy cannot rely exclusively on voluntary corporate initiatives, nor can it be achieved solely through market mechanisms, which are unable to internalise the environmental and social externalities generated by business activity. Law provides the institutional framework within which private initiative develops, defining the incentives, constraints and organisational structures that shape corporate behaviour. In this respect, contemporary legal systems appear to be pursuing two complementary regulatory strategies.

The first consists in discouraging the production of negative externalities. Traditionally, this objective has been pursued through tort law, environmental regulation, labour law, and other mandatory legal rules imposing liability or sanctions after harmful conduct has occurred. More recently, this function has been strengthened by the emergence of mandatory human rights and environmental due diligence regimes. These latter instruments progressively extend corporate responsibility beyond the formal legal boundaries of the firm linked to ownership rights or the chain of control, requiring companies to take responsibility for risks generated throughout increasingly complex global value chains. Nevertheless, the existence of a grey area for activities that do not rise to the level of tort or violation of other mandatory rules cannot be denied. There can be lawful activities creating profit for the company and negative externalities for the community and environment not falling under any legal liability scenario. That grey area is where the role of purpose and the legal reconceptualisation of directors' fiduciary duties, as happens in dual-purpose companies, can probably mediate.

The second strategy is more ambitious. Rather than merely preventing harm, it seeks to encourage the creation of positive externalities through the ordinary exercise of business activity. Here legislative intervention necessarily proceeds with greater caution, given the constitutional protection generally afforded to private autonomy and freedom of economic initiative. It is therefore unsurprising that legal systems initially relied upon self-regulation and soft-law instruments, such as codes of ethics, international principles and guidelines, and corporate governance and stewardship codes based on the 'comply or explain' approach before progressively moving towards more binding forms of regulation. Mandatory sustainability disclosure, transparency and due diligence obligations have strengthened this evolution by influencing corporate behaviour indirectly through accountability and market discipline. The emergence of dual-purpose companies represents a further step in this process, moving from the regulation of corporate disclosure towards the regulation of corporate organisation itself.

Viewed from this perspective, dual-purpose companies are not simply another corporate model. They represent an institutional innovation through which company law attempts to internalise public benefit within the constitutional structure of the corporation itself. Their significance lies less in the creation of a new legal status than in demonstrating that sustainability can become a legally relevant element of corporate organisation, capable of influencing directors' duties, governance structures, transparency obligations and accountability mechanisms while preserving entrepreneurial freedom and private ordering.

The comparative analysis equally reveals that the evolution currently taking place is not one of uniformity but of functional convergence. Different legal traditions continue to adopt distinct legislative techniques, reflecting their constitutional structures, institutional preferences and regulatory cultures. Nevertheless, beneath this diversity emerges an increasingly coherent body of common principles concerning corporate purpose, directors' responsibilities, transparency and accountability. The resulting convergence is therefore neither ideological nor formal. Rather, it reflects a growing consensus that sustainable value creation requires legal institutions capable of integrating economic performance with broader environmental and social objectives.

This comparative convergence provides the foundation for the harmonisation proposals advanced in this report. Yet harmonisation should not be conceived as uniformity. At the global level, the diversity of legal systems and the absence of supranational legislative authority naturally point towards soft-law instruments, particularly an international Model Law capable of encouraging voluntary legislative convergence. Within the European Union, by contrast, the existence of common institutions and legislative competence in company law justifies a more ambitious strategy based upon a harmonisation directive. In both cases, however, the underlying philosophy remains identical: not to replace existing company law or impose a mandatory conception of corporate purpose, but to expand the range of legal options available to entrepreneurs through an enabling and optional organisational model.

Such an incremental approach is not merely politically more realistic. It also reflects the path dependence that characterises company law and the considerable consensus required for structural reforms affecting the foundations of corporate governance. Precisely because dual-purpose company legislation operates as an optional framework rather than as a mandatory transformation of existing corporate law, it may progressively generate the legislative experience, judicial practice and market acceptance necessary to support broader future developments. Both the historical evolution of company law and the comparative experience examined in this report suggest that fundamental reforms rarely occur through abrupt legislative discontinuity; rather, they tend to emerge gradually, as innovative legal institutions demonstrate their practical effectiveness and progressively reshape prevailing conceptions of the corporation[724].

[724] On path dependence in corporate law and corporate governance, see Bebchuk and Roe 1999, 127; Roe 2003. More generally, on the incremental evolution of legal institutions, see North 1990. On the gradual evolution of company law through processes of legal convergence, see also Hansmann and Kraakman 2001, 439.

Ultimately, the significance of dual-purpose companies extends well beyond their immediate legal regimes. They illustrate a broader transformation in the function of company law itself. For much of its history, company law has primarily served as a framework for facilitating economic organisation, allocating decision-making authority and protecting investors and creditors. Increasingly, however, it is also becoming an instrument of economic governance through which legal systems seek to reconcile economic growth, competitiveness, innovation and long-term prosperity with environmental sustainability and social welfare.

Whether this transformation will eventually produce a new paradigm of company law cannot yet be known. What already appears clear, however, is that the future of capitalism will depend not only upon markets, technological progress or entrepreneurial initiative, but equally upon the capacity of legal systems to provide credible institutional frameworks capable of aligning private enterprise with the broader public interest. In this respect, dual-purpose companies should not be regarded as the final destination of corporate law, but rather as one step in a much broader evolution. The challenge for the future will not be to choose between profit and public benefit, but to design legal institutions capable of making the pursuit of one reinforce the achievement of the other.

APPENDIX I

Draft Model Law on Dual-Purpose Companies

Explanatory Note

1. Objectives of the Draft Model Law

This Draft Model Law is intended to provide national legislators with a harmonised legislative framework for the introduction of an optional legal regime governing Dual-Purpose Companies. It has been developed on the basis of the comparative analysis carried out in this report, which examined the legislation currently in force in the United States, Canada, Europe, Africa and Latin America.

Rather than reproducing any existing national legislation, the Draft Model Law seeks to identify the convergent principles emerging from the comparative analysis and translate them into a coherent legislative framework capable of serving as a common point of reference for future domestic reforms. It therefore does not reflect any individual national statute, but represents a synthesis of the most significant legislative solutions adopted across the jurisdictions examined.

The Draft Model Law is conceived as a soft-law instrument, intended to facilitate the voluntary convergence of domestic legal systems while fully respecting the diversity of national company law traditions.

2. Enabling Nature of the Model

The Draft Model Law follows an enabling rather than mandatory regulatory approach.

It does not seek to redefine the corporate purpose of all business corporations, nor is it intended to replace existing company law regimes. Instead, it establishes an optional legal status that may be adopted by any company organised under the domestic company law of the enacting State.

Accordingly, entrepreneurs and shareholders remain free to choose whether to adopt the dual-purpose status, while the existing corporate forms and the general principles of domestic company law remain unaffected except where expressly modified by this Model Law.

3. Relationship with Domestic Company Law

The Draft Model Law is designed to operate together with the domestic company law applicable to each corporate form.

Unless otherwise provided, the ordinary rules governing, among other matters, incorporation, corporate governance, directors' liability, shareholders' rights, amendments to the articles of association, financial statements, mergers, divisions, dissolution and judicial remedies continue to apply.

The Model Law therefore introduces only those provisions that are strictly necessary to regulate the specific features of Dual-Purpose Companies, leaving all remaining matters to domestic legislation.

4. Mandatory and Optional Harmonisation

The comparative analysis undertaken in this report reveals the existence of a substantial common core shared by the vast majority of existing legislative regimes, together with a number of solutions reflecting different legislative traditions and policy choices.

For this reason, the Draft Model Law distinguishes conceptually between mandatory and optional elements of harmonisation.

The mandatory provisions included in this Draft Model Law reflect both the common core emerging from the comparative analysis and a normative assessment of those additional elements considered essential to ensure the effective functioning and internal coherence of the dual-purpose company model, even where they have not yet been uniformly adopted across existing jurisdictions. They include, in particular:

- the voluntary nature of the status;
- the possibility for all existing domestic organisational forms to acquire such status;
- the incorporation of a dual-purpose clause within the articles of association;
- the coexistence of a profit-making purpose and both a general and one or more specific public benefit purposes enjoying equal legal status;
- the expansion of directors' fiduciary duties;
- the preparation of an annual impact report assessed against an independent third-party standard;
- private enforcement through the ordinary liability mechanisms provided by domestic company law.

The Draft Model Law does not regulate the tax treatment applicable to Dual-Purpose Companies, as this matter remains within the competence of domestic tax law. Nevertheless, the comparative analysis reveals a widespread tendency towards fiscal neutrality, reflecting the view that the pursuit of public benefit forms part of the company's constitutional identity rather than constituting a basis for preferential tax treatment.

Other aspects of the regulation display greater diversity among jurisdictions, or are deemed non-essential for the functioning of the model and are therefore left to the discretion of domestic legislators. These include, *inter alia*:

- specific withdrawal rights for dissenting shareholders;
- the establishment of specialised governance mechanisms, such as benefit directors, benefit officers, impact officers or mission committees;
- external verification or certification of the annual impact report;
- systems of public supervision and administrative enforcement.

This distinction seeks to reconcile legal convergence with respect for national legal traditions, allowing domestic legislators to adapt the Model Law to their institutional and constitutional frameworks.

5. Legislative Technique

The Draft Model Law deliberately adopts concise legislative drafting.

It establishes general legal principles rather than detailed procedural rules, thereby preserving the flexibility necessary for implementation within different domestic legal systems.

The Articles are accompanied by Official Comments intended solely to facilitate interpretation and implementation. They do not possess normative value.

6. Functional Approach

The Draft Model Law adopts a functional rather than formal approach. It does not seek to harmonise the legal forms available under domestic company law, but rather the core legal characteristics that distinguish a dual-purpose company. Consequently, the legal status established by this Model Law may be superimposed upon any existing corporate form recognised by domestic legislation, irrespective of its legal denomination or internal organisational structure.

7. General Principles

The Draft Model Law is based upon five fundamental principles.

First, the pursuit of public benefit does not replace the profit-making purpose but complements it. Profit and public benefit constitute complementary and equal-ranking corporate purposes.

Second, the public benefit commitment forms part of the constitutional identity of the company and must therefore be incorporated into the articles of association as part of the corporate purpose.

Third, directors, in the exercise of their managerial discretion, must balance shareholders' interests and the public benefit purposes voluntarily undertaken by the company.

Fourth, transparency constitutes the primary mechanism through which accountability is ensured. Accordingly, each Dual-Purpose Company shall prepare an annual impact report based upon a credible, independent and transparent third-party standard.

Fifth, compliance with the benefit obligations remains primarily entrusted to private enforcement through the ordinary remedies available under domestic company law, while States remain free to introduce complementary systems of public supervision.

8. Purpose of the Draft Model Law

The ultimate objective of this Draft Model Law is not to impose a uniform model of corporate organisation, but to facilitate the emergence of a common international legal framework capable of supporting purpose-driven businesses while preserving the diversity of domestic company law systems.

By identifying the common principles emerging from existing legislation and translating them into a coherent legislative proposal, the Draft Model Law seeks to contribute to the progressive harmonisation of dual-purpose company legislation at both the global and regional levels, while preserving the diversity of domestic legal systems and facilitating legal certainty, cross-border recognition and the development of purpose-driven enterprises.

Accordingly, this Draft Model Law should not be understood merely as a codification of existing legislative trends. Rather, it constitutes a normative proposal informed by comparative analysis, combining the convergent principles emerging from existing legislative regimes with a normative assessment of those additional elements considered essential to ensure the coherence, effectiveness and future development of the dual-purpose company model.

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

1. The purpose of this Model Law is to establish a harmonised legal framework governing the voluntary adoption, organisation and operation of dual-purpose companies.
2. This Model Law seeks to facilitate the integration of profit-making and public benefit within the constitutional structure of business companies, while preserving the diversity of domestic company law systems.
3. This Model Law shall be interpreted in a manner that promotes legal certainty, transparency, accountability and the sustainable creation of economic, social and environmental value.

Official Comment

This Article defines the objectives of the Model Law. Rather than creating a new supranational corporate form, the Model Law provides a common legislative framework capable of being implemented within different domestic company law systems. Its purpose is to facilitate legal convergence while preserving national diversity and the voluntary nature of the dual-purpose company model.

Article 2

Scope of Application

1. The dual-purpose status established under this Model Law may be adopted by any company form established under the domestic company law of the enacting State that pursues a profit-making purpose.
2. The enacting State may extend the application of this Model Law to other legal entities recognised under its domestic law.

3. The acquisition of dual-purpose status shall not give rise to a new company form but shall constitute a voluntary legal status superimposed upon an existing company form recognised under domestic law.

4. Except as otherwise expressly provided in this Model Law, the domestic company law applicable to the relevant company form shall continue to govern the company.

Official Comment

This Article reflects one of the principal convergent elements identified by the comparative analysis. The Dual-Purpose Company is conceived as an optional legal status rather than as a distinct company form. Consequently, the Model Law operates together with domestic company law and does not replace the company forms already recognised within each jurisdiction.

Paragraph 2 allows domestic legislators, where considered appropriate, to extend the application of the Model Law to co-operative entities or other organisations pursuing a mutual purpose. Comparative analysis shows that several jurisdictions have adopted this solution, while others have limited the regime to for-profit companies.

Article 3

Definitions

For the purposes of this Model Law:

(a) **"Dual-Purpose Company"** means any company that has validly acquired the legal status established under this Model Law.

(b) **"General Public Benefit"** means the commitment to conduct the company's business in a responsible, sustainable and transparent manner while generating a positive impact on society and the environment as a whole.

(c) **"Specific Public Benefit"** means one or more specific social and/or environmental objectives expressly identified in the Articles of Association and voluntarily undertaken by the company in addition to the General Public Benefit.

(d) **"Dual-Purpose Clause"** means the provision contained in the Articles of Association whereby the company undertakes to pursue both its profit-making purpose and its General Public Benefit together with one or more Specific Public Benefit purposes.

(e) **"Annual Impact Report"** means the report prepared pursuant to Article 9 assessing the company's activities and performance in pursuing its public benefit purposes.

(f) **"Third-Party Standard"** means an independent, transparent and credible methodology used to assess the company's social and environmental performance in accordance with the requirements established under this Model Law.

(g) **"Articles of Association"** includes any constitutional document governing the organisation and corporate purpose of the company under the domestic law of the enacting State.

Official Comment

The definitions intentionally adopt functional rather than jurisdiction-specific terminology. Expressions such as "Articles of Association" or "Dual-Purpose Company" should therefore be interpreted in light of the corresponding concepts existing under the domestic law of each jurisdiction.

CHAPTER II

CORPORATE PURPOSE

Article 4

Dual-Purpose Clause

1. A company may acquire the status of Dual-Purpose Company only if its Articles of Association expressly provide that the company shall pursue, in addition to its profit-making purpose or, where applicable, its cooperative purpose, both:

(a) a General Public Benefit; and

(b) one or more Specific Public Benefit purposes.

2. The General Public Benefit and the Specific Public Benefit purposes shall form part of the company's corporate purpose.
3. The Specific Public Benefit purposes shall be described with sufficient precision to permit their effective implementation, monitoring and assessment.
4. The Articles of Association may specify the manner in which the General Public Benefit and the Specific Public Benefit purposes are to be pursued, provided that such provisions are consistent with this Model Law.

Official Comment

This Article establishes one of the defining characteristics of the Dual-Purpose Company. The company voluntarily incorporates into its constitutional documents not only a profit-making purpose but also both a General Public Benefit and one or more Specific Public Benefit purposes. While comparative analysis reveals different legislative approaches concerning the definition of public benefit, the Model Law adopts both elements as mandatory. The General Public Benefit expresses the overall commitment to responsible and sustainable business conduct, whereas the Specific Public Benefit purposes identify the concrete objectives voluntarily undertaken by the company and provide the benchmark against which directors' conduct and corporate performance may subsequently be assessed.

Article 5

Equal Status of Corporate Purposes

1. The profit-making purpose or, where applicable, the cooperative purpose, and the public benefit purposes shall constitute complementary and equal-ranking components of the company's corporate purpose.
2. Neither the profit-making purpose nor the public benefit purposes shall prevail over the other solely by reason of their legal nature.
3. In managing the company, the directors shall seek an appropriate balance between the company's economic objectives and the pursuit of its General Public Benefit and Specific Public Benefit purposes in accordance with this Model Law and the Articles of Association.
4. Nothing in this Article shall prevent the Articles of Association from establishing additional principles or criteria to guide the balancing of the company's corporate purposes, provided that no provision may exclude or substantially frustrate either the profit-making purpose or the public benefit purposes.

Official Comment

This Article gives legislative expression to one of the principal conclusions emerging from the comparative analysis. Rather than establishing a hierarchy between profit and public benefit, the Model Law recognises both as complementary and equal-ranking corporate purposes. This approach preserves the distinctive nature of the Dual-Purpose Company and differentiates it from both traditional for-profit companies and non-profit organisations and social enterprises. At the same time, the Article recognises that the balancing of these purposes necessarily involves managerial discretion and therefore allows the Articles of Association to provide additional guidance without altering the fundamental equilibrium between them.

CHAPTER III

ACQUISITION AND LOSS OF DUAL-PURPOSE STATUS

Article 6

Acquisition and Loss of Dual-Purpose Status

1. A company may acquire the status of a Dual-Purpose Company either upon incorporation as a Dual-Purpose Company or subsequently by amending its Articles of Association in accordance with this Model Law and the applicable domestic company law.
2. The acquisition of dual-purpose status shall require the incorporation of the Dual-Purpose Clause into the Articles of Association.
3. The acquisition or loss of dual-purpose status shall be approved by a qualified majority of shareholders or members. The enacting State shall determine the applicable qualified majority, either by establishing a specific majority requirement for resolutions concerning the acquisition or loss of dual-purpose status or by applying the qualified majority already required under domestic company law for amendments to the Articles of Association or equivalent constitutional documents.

4. A company shall cease to qualify as a Dual-Purpose Company where the Dual-Purpose Clause is removed from its Articles of Association in accordance with this Model Law and the applicable domestic company law.
5. Where provided by domestic law, the loss of dual-purpose status may also result from a decision of the competent public authority or a judicial authority adopted in accordance with the procedures established under domestic law.
6. The acquisition or loss of dual-purpose status shall become effective upon completion of the formalities required under the applicable domestic company law.

Official Comment

This Article regulates both the acquisition and the loss of dual-purpose status. Comparative analysis demonstrates that the public benefit commitment forms part of the constitutional identity of the company and must therefore be incorporated into, or removed from, the Articles of Association. For this reason, the Model Law requires that such decisions be adopted by a qualified majority, while leaving domestic legislators free to determine whether this requirement should be satisfied through an existing qualified majority applicable to amendments of the constitutional documents or through the introduction of a specific majority requirement for resolutions concerning dual-purpose status.

The possibility of administrative or judicial loss of status reflects the different enforcement mechanisms adopted by several jurisdictions. The Model Law does not require such mechanisms but allows them to operate where domestic legislation provides for systems of public supervision.

The requirement that the Dual-Purpose Clause be incorporated into the Articles of Association reflects the constitutional nature of the public benefit commitment and contributes to preserving the company's mission over time by strengthening its mission lock.

Article 7

Optional Right of Withdrawal

1. The enacting State may provide that shareholders or members dissenting from a resolution approving the acquisition or loss of dual-purpose status shall have a right of withdrawal under the conditions established by domestic company law.
2. The exercise of such right, including its conditions, procedures and financial consequences, shall be governed by domestic company law.

Official Comment

Comparative analysis reveals significant divergence among jurisdictions regarding the recognition of withdrawal rights in connection with the acquisition or loss of dual-purpose status. While some jurisdictions expressly recognise such protection, others rely exclusively upon the ordinary rules governing amendments to the constitutional documents or do not provide any withdrawal right. The matter is therefore left to the discretion of domestic legislators.

Article 8

Optional Company Designation

1. The enacting State may require or permit a Dual-Purpose Company to include in its company name, or in its official communications, a designation indicating its dual-purpose status.
2. The designation, where required or permitted, shall be determined by domestic law.

Official Comment

Comparative analysis reveals different legislative approaches concerning the use of a specific designation identifying the dual-purpose status. Some jurisdictions require the company to include such designation in its name, whereas others merely permit its use or do not regulate the matter. The Model Law therefore leaves this issue to the discretion of domestic legislators.

CHAPTER IV

DIRECTORS' DUTIES

Article 9

Directors' Duties

1. In managing the affairs of a Dual-Purpose Company, the directors shall act in good faith, in the best interests of the company, and in a manner they reasonably believe to be consistent with the company's profit-making purpose or, where applicable, its cooperative purpose, and its General Public Benefit and Specific Public Benefit purposes.
2. In exercising their powers and performing their duties, the directors shall balance the pursuit of the company's economic objectives with the achievement of its General Public Benefit and Specific Public Benefit purposes.
3. In carrying out the balancing required under paragraph 2, the directors shall take into account, where relevant to the circumstances of the particular decision:

(a) the long-term interests of the company;

(b) the interests of shareholders or members;

(c) the interests of employees;

(d) the interests of customers and consumers;

(e) the interests of creditors;

(f) the interests of local communities and society;

(g) the protection of the local and global environment;

(h) any other interests or factors that the directors reasonably consider relevant for the pursuit of the company's corporate purposes.

4. The directors shall manage the company in a responsible, sustainable and transparent manner, consistently with the corporate purposes set out in the Articles of Association.

5. Compliance with this Article shall be assessed having regard to the directors' duty to balance the company's corporate purposes and to the information reasonably available to them at the time the relevant decision was taken.

Official Comment

This Article establishes the distinctive fiduciary duties applicable to directors of a Dual-Purpose Company. Comparative analysis demonstrates a broad convergence in requiring directors to pursue both the company's economic purpose and its public benefit purposes while taking into account a broader range of interests than those traditionally considered under ordinary company law.

Rather than prescribing the outcome of directors' decisions, the Model Law requires directors to undertake an appropriate balancing of the company's multiple corporate purposes. The balancing exercise necessarily involves managerial judgment and should therefore be assessed in light of the circumstances existing when the decision was made, rather than on the basis of its subsequent outcome.

The list of interests contained in paragraph 3 is intentionally non-exhaustive. It identifies the principal categories emerging from comparative legislation while preserving sufficient flexibility to accommodate different factual circumstances and domestic legal traditions.

CHAPTER V

TRANSPARENCY AND DISCLOSURE

Article 10

Annual Impact Report

1. Every Dual-Purpose Company shall prepare an Annual Impact Report for each financial year.

2. The Annual Impact Report shall be prepared by the directors or by the body responsible for the management of the company.

3. The Annual Impact Report shall include, at a minimum:

(a) a description of the activities undertaken to pursue the General Public Benefit and the Specific Public Benefit purposes;

(b) an assessment of the extent to which those purposes have been achieved during the relevant reporting period;

(c) any circumstances that have significantly hindered or delayed the pursuit of such purposes;

(d) the methodology and Third-Party Standard used for the assessment;

(e) where applicable, any material changes affecting the General Public Benefit or the Specific Public Benefit purposes during the reporting period;

(f) any other information required under domestic law.

4. The directors shall be responsible for the accuracy and completeness of the Annual Impact Report.

Official Comment

The Annual Impact Report constitutes the principal mechanism through which accountability is ensured under the Model Law. Comparative analysis demonstrates that periodic reporting represents the most widely shared feature of existing dual-purpose company legislation. The minimum content established by this Article reflects the common elements emerging from the different legislative regimes while allowing domestic legislators to require additional disclosures where appropriate.

Article 11

Third-Party Standard and Optional External Verification

1. The Annual Impact Report shall assess the company's social and environmental performance by reference to an independent Third-Party Standard.
2. The Third-Party Standard shall satisfy the minimum requirements set out in Annex I and shall assess, where relevant, the areas identified in Annex II.
3. Member States may determine whether one or more recognised Third-Party Standards shall be designated under domestic law or whether companies may freely select an appropriate Third-Party Standard meeting the requirements established by this Model Law.
4. Member States may require or permit the verification or certification of the Annual Impact Report by an independent external person or body.
5. Any external verification or certification shall not affect the responsibility of the directors for the preparation and accuracy of the Annual Impact Report.

Official Comment

Comparative analysis reveals broad convergence regarding the use of an independent methodology for assessing corporate impact, while significant differences remain concerning external verification or certification. The Model Law therefore requires the use of a Third-Party Standard but leaves to domestic legislators the decision whether external verification should be mandatory, optional or unnecessary.

Article 12

Publication and Filing of the Annual Impact Report

1. The Annual Impact Report shall be submitted to the shareholders or members together with the annual financial statements or equivalent annual corporate documents.
2. The Annual Impact Report shall be made publicly available through the company's website or, where this is not reasonably practicable, through any other appropriate means ensuring public accessibility.

3. The Annual Impact Report shall be filed together with the annual corporate documents before the authority or body designated under domestic law.
4. Member States may establish additional rules governing the publication, filing and retention of Annual Impact Reports.

Official Comment

Transparency towards shareholders, investors, consumers and other interested persons constitutes an essential feature of the dual-purpose company model. Comparative analysis demonstrates different approaches regarding filing requirements and the competent authority responsible for receiving Annual Impact Reports. The Model Law therefore requires filing while leaving the designation of the competent authority and the applicable procedures to domestic legislation.

CHAPTER VI

OPTIONAL INTERNAL GOVERNANCE MECHANISMS

Article 13

Optional Governance Mechanisms

1. The enacting State may require or permit a Dual-Purpose Company to establish one or more internal governance mechanisms to support the pursuit and monitoring of its General Public Benefit and Specific Public Benefit purposes.
2. Such governance mechanisms may be established either as corporate offices or as internal corporate bodies, according to domestic law. They may include, among others:

(a) a Benefit Director;

(b) a Benefit Officer;

(c) an Impact Officer or other person responsible for monitoring the pursuit of the company's public benefit purposes;

(d) an internal committee responsible for supervising the implementation of the company's public benefit purposes, including a Mission Committee or any equivalent body or person;

(e) any other governance mechanism consistent with the objectives of this Model Law.

3. The functions, appointment, powers, composition and responsibilities of such governance mechanisms shall be determined by domestic law or by the Articles of Association, where permitted by domestic law.
4. The establishment of governance mechanisms pursuant to this Article shall not affect the duties or responsibilities of the directors under this Model Law.

Official Comment

Comparative analysis demonstrates that the introduction of dedicated governance mechanisms is not an essential element of the dual-purpose company model. While the majority of jurisdictions rely on the ordinary corporate governance structure, some have introduced specific governance mechanisms designed to strengthen the pursuit and internal monitoring of the public benefit purposes.

The Model Law therefore leaves this matter to the discretion of domestic legislators. The governance mechanisms listed in this Article reflect the principal solutions emerging from comparative legislation, including the Benefit Director and Benefit Officer developed in North American legislation, the Impact Officer introduced in Italy, and the Mission Committee established under French law. The list is intentionally non-exhaustive and allows domestic legislators to adopt equivalent or innovative governance solutions consistent with the objectives of this Model Law.

Regardless of the governance model adopted, responsibility for the management of the company and compliance with the duties established under this Model Law remains vested in the directors or in the body responsible for the management of the company.

CHAPTER VII

ACCOUNTABILITY AND ENFORCEMENT

Article 14

Accountability and Enforcement

1. Compliance with the duties and obligations established under this Model Law shall be ensured through the accountability mechanisms provided herein and, unless otherwise expressly regulated, through the remedies available under the applicable domestic company law.
2. Directors shall remain subject to the ordinary liability regime applicable under domestic company law for breaches of the duties established by this Model Law.
3. In assessing compliance with the duties established under Article 9, neither a court nor any other competent authority shall substitute its own judgment for that of the directors solely because the balancing of the company's corporate purposes resulted in a decision affecting those purposes differently, provided that the directors acted:

(a) in good faith;

(b) on an informed basis;

(c) consistently with this Model Law and the Articles of Association.

4. The enacting State may designate one or more public authorities responsible for supervising compliance with this Model Law.
5. Where public supervision is established, the competent authority may be entrusted, in accordance with domestic law, with powers concerning:

(a) the monitoring of compliance with the obligations established under this Model Law;

(b) the adoption of corrective measures;

(c) the imposition of administrative sanctions;

(d) the withdrawal of the dual-purpose status in the cases provided by domestic law.

6. Nothing in this Model Law shall prevent the enacting State from providing additional judicial or administrative remedies consistent with the objectives of this Model Law.

Official Comment

This Article establishes the general accountability framework governing Dual-Purpose Companies. Comparative analysis demonstrates that accountability is achieved through a combination of mechanisms rather than through a single enforcement technique. These include directors' fiduciary duties, transparency obligations, ordinary corporate remedies, and, in several jurisdictions, systems of public supervision.

Private enforcement constitutes the minimum level of accountability required under the Model Law and therefore forms part of its mandatory provisions. By contrast, public supervision reflects different legislative traditions and is therefore left to the discretion of domestic legislators.

Paragraph 3 recognises the discretionary nature of directors' managerial decisions when balancing the company's economic objectives with its public benefit purposes. Accordingly, judicial review should focus upon the decision-making process rather than upon the substantive outcome of the directors' business judgment. This provision does not create a separate standard of liability but adapts the general principles governing judicial review of directors' decisions to the specific characteristics of the dual-purpose company model.

CHAPTER VIII

FINAL PROVISIONS

Article 15

Final Provision

This Draft Model Law is intended to provide a coherent legislative framework capable of supporting the voluntary development of Dual-Purpose Companies while preserving the diversity of domestic company law systems. It does not seek to replace existing company law regimes but to facilitate the progressive harmonisation of those elements that comparative analysis has shown to constitute the defining characteristics of the dual-purpose company model. Accordingly, domestic legislators remain free to adapt the optional provisions of this Model Law to their own legal traditions, provided that the fundamental principles underlying the model are preserved.

Official Comment

This provision confirms that the Draft Model Law is intended as a legislative template designed to promote functional harmonisation while respecting the diversity of national company law systems. Implementing States may adapt the optional provisions to their domestic legal traditions, provided that the essential features of the Dual-Purpose Company model are preserved.

ANNEX I

Minimum Requirements for an Independent Third-Party Standard

1. Purpose

The Third-Party Standard referred to in Article 11 shall provide a credible, objective and transparent methodology for assessing the social and environmental performance of a Dual-Purpose Company in pursuing its General Public Benefit and Specific Public Benefit purposes.

The Standard shall support consistency, comparability and accountability in the preparation of the Annual Impact Report while allowing sufficient flexibility to accommodate different business sectors, company sizes and domestic legal systems.

2. Minimum Requirements

A Third-Party Standard shall satisfy the following minimum requirements.

(a) Independence

The organisation or body developing the Standard shall be independent from the companies assessed under the Standard and from any person or entity having a material financial interest in the assessment.

(b) Transparency

The methodology, assessment criteria, indicators and evaluation process shall be publicly available and sufficiently clear to permit external understanding of the assessment.

(c) Credibility

The Standard shall be developed on the basis of recognised scientific, technical or professional knowledge and shall be subject to periodic review to reflect developments in sustainability practices and impact assessment methodologies.

(d) Comprehensiveness

The Standard shall assess the company's overall performance in pursuing its General Public Benefit and Specific Public Benefit purposes, taking into account the principal areas of impact identified in Annex II.

(e) Objectivity

The Standard shall be based upon measurable or verifiable criteria capable of supporting a fair and consistent assessment of the company's activities.

(f) Flexibility

The Standard shall permit appropriate adaptation to the characteristics of different sectors of economic activity, company size and organisational structures, provided that the minimum requirements established under this Annex continue to be satisfied.

3. Recognition of Standards

The enacting State may:

(a) designate one or more recognised Third-Party Standards;

(b) establish a procedure for the recognition of qualifying Standards; or

(c) permit companies to adopt any Third-Party Standard satisfying the requirements established in this Annex.

Official Comment

Comparative analysis reveals significant differences among jurisdictions concerning the identification of the Third-Party Standard to be used for impact assessment. Some legal systems designate or recognise specific standards, while others leave companies free to select an appropriate methodology.

Rather than prescribing a particular standard, this Annex identifies the minimum qualitative requirements that any Third-Party Standard should satisfy. This approach promotes international harmonisation while preserving flexibility and encouraging the continued development of innovative assessment methodologies.

ANNEX II

Minimum Core Areas for Impact Assessment

1. Purpose

Any Third-Party Standard adopted pursuant to Article 11 shall assess the company's performance in each of the core areas identified in this Annex. The assessment methodology may determine the specific indicators applicable within each area according to the nature, size and activities of the company, provided that none of the core areas identified in this Annex is omitted.

Nothing in this Annex shall prevent domestic law or the applicable Third-Party Standard from requiring the assessment of additional areas or more detailed indicators.

2. Corporate Governance

The assessment shall include, where relevant:

(a) the integration of the General Public Benefit and the Specific Public Benefit purposes into the company's governance and decision-making processes;

(b) the governance mechanisms adopted to pursue and monitor the public benefit purposes;

(c) transparency, accountability and ethical business conduct;

(d) internal control and risk management systems relating to the company's public benefit purposes.

3. Workers

The assessment shall include, where relevant:

(a) working conditions;

(b) health and safety;

(c) equal treatment and non-discrimination;

(d) education, training and professional development;

(e) employee participation and engagement;

(f) workers' well-being.

4. Stakeholders

The assessment shall include, where relevant:

(a) customers and consumers;

(b) suppliers;

(c) business partners;

(d) creditors, where relevant;

(e) other stakeholders affected by the company's activities.

5. Communities and Society

The assessment shall include, where relevant:

(a) relationships with local communities;

(b) social inclusion;

(c) contribution to economic and social development;

(d) respect for human rights;

(e) contribution to the public interest.

6. Environment

The assessment shall include, where relevant:

(a) climate change mitigation and adaptation;

(b) greenhouse gas emissions;

(c) energy efficiency;

(d) sustainable use of natural resources;

(e) biodiversity;

(f) pollution prevention;

(g) waste management and circular economy.

7. Other Relevant Areas

The Third-Party Standard may include any additional area of assessment that is relevant to the General Public Benefit, the Specific Public Benefit purposes or the specific characteristics of the company or its sector of activity.

Official Comment

This Annex establishes the minimum areas that every Third-Party Standard adopted pursuant to Article 11 shall assess. It does not prescribe specific indicators or methodologies, nor does it require the use of any particular reporting framework. Those matters remain governed by the applicable Third-Party Standard and, where relevant, by domestic law.

The purpose of this Annex is to ensure a minimum degree of consistency and comparability among different assessment methodologies while preserving sufficient flexibility to accommodate different sectors of economic activity, company sizes and domestic legal systems. The areas identified in this Annex reflect the convergent elements emerging from the comparative analysis together with internationally recognised principles of sustainability and impact assessment.

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