Introduction to the Law of Benefit Corporations and Other Public Purpose-Driven Companies

Luis Hernando Cebriá

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L. H. Cebriá (✉)
Facultad de Derecho, University of Valencia, Valencia, Spain
e-mail: luis.hernando@uv.es

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1 International Developments of Corporate Social Responsibility: New Forms and New Legal Requirements

1.1 A First Approach from the Common Law

Benefit corporations originate from different legal means to attend to corporate social responsibility in the United States company law. In some of its jurisdictions, at the end of the last century, rules aimed at recognizing an "enlightened value" were adopted, in contrast to the notion of "maximizing shareholder value," to assess the scope of the company's economic activity for its stakeholders. [1] In the first decade of this century, other states went one step further and accepted the establishment of a special type of company called the benefit corporation as a way to internalize the consideration of general or collective interests and to reconcile the lucrative interest of the shareholders with the institutional consideration of the company. [2] By doing this, regulations contemplate a broader vision of the common interest than the exclusive maximization of the financial interests of the shareholders. [3]

Although benefit corporation has attracted greater recognition due to its acceptance in the State of Delaware and others after its enactment in the State of Maryland in 2010, other public purpose-driven companies have followed this trend to render the profit maximization rule more flexible. [4] This is the case, in the first place, of the Low-Profit Limited Liability Company (L3C) created in Vermont in 2008, [5] which has a more restrictive vision of profit maximization. Previously, inserted in this phenomenon of the public purpose-driven companies, from across the Atlantic the Community Interest Company, introduced in the United Kingdom through the Companies (Audit, Investigations and Community Enterprise) Act of 2004, retains a limitation regarding distributable profits.

[1] About the "Constituency Statutes," in general, see Mitchell (1991); Bainbridge (1992); and Springer (1999).

[2] As example, § 362 (a) of Subchapter XV of Book 8 of the Delaware General Corporation defines the "public benefit corporation" as a for-profit corporation that is intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner. To that end, a public benefit corporation shall be managed in a manner that balances the stockholders' pecuniary interests, the best interests of those materially affected by the corporation's conduct, and the public benefit or public benefits identified in its certificate of incorporation. According to the Model Benefit Corporation Legislation, on the other hand, a benefit corporation is deemed to have the corporate purpose of creating general public benefit, but also may elect to pursue specific public benefits.

[3] The bibliography is very extensive. Some of the first papers on this matter are Munch (2012) and Hiller (2013).

[4] The legal treatment of the Public Benefit Corporation is limited to just nine articles, from 361 to 368 of Subchapter XV of Book 8 of the Delaware General Corporation Law, with effect in 2013.

[5] Vermont Statutes § 4001 (14) (-Vermont Statutes Title 11: Corporations, Partnerships and Associations, Chapter 21: Limited Liability Companies-) in relation to § 4161 and 4162. About the L3C, refer to Schmidt (2010); Artz et al. (2012); and Bishop (2017).

The Community Interest Company is, thus, situated between traditional companies and charities (non-profit) and allows economic operators to enjoy the organizational flexibility of commercial companies and to overcome the limitations that the directors of "traditional" companies face in guiding their decisions for securing the interests not exclusive of the shareholders. [6] However, the general purpose of an "inclusive economy" that gives proper consideration to the stakeholders is also recognizable in section 172 of the English Companies Act of 2006. It sets forth the need to promote the success of the company for the benefit of its members as a whole. In doing so, section 172 demands that directors consider, among others, all the probable consequences of any decision in the long term and the interests of the company's employees as well as other stakeholders, including the community and the environment. [7]

Turning back to the United States' regulations, the States of California and Washington enacted in 2011 and 2012 other forms of public purpose purpose-driven corporations called the Flexible Purpose Corporation and the Social Purpose Corporation, respectively. [8] Subsequently, the State of Florida adopted the Social Purpose Corporation, while in 2015, the name of the Californian Flexible Purpose Corporation was changed to equate it with the Social Purpose Corporation and give greater emphasis to its social purpose or collective interest. [9] These regulations grant greater discretion to directors regarding the advisability of dedicating the entity's resources for social or environmental purposes. Although these corporations maintain the pursuit of an objective that does not particularly align with those of the shareholders, its intensity and the mechanisms for its achievement diverge from the benefit corporation schemes. [10]

[6] On the creation, orientation, and evolution of the figure, Lloyd (2010).

[7] It also includes the need to foster business relationships with suppliers, customers, and others, the convenience of maintaining the reputation of high standards of business conduct, as well as the need for loyalty toward company members. On the need to define and align the purposes of company, see the British Academy's publication, Reforming Business for the twenty-first Century (A Framework for the Future of the Corporation) 2018, pp. 16–17. Likewise, the 2018 UK Corporate Governance Code establishes, in principle A, the duty of the board of directors to "promote the long-term sustainable success of the company, generating value for shareholders and contributing to wider society." It must be complemented with principle B, as directors must attend to "the company's purpose, values and strategy, and satisfy itself that these and its culture are aligned."

[8] S.B 201 of October 9, 2011 for the Flexible Purpose Corporation in California; and HB 2239 of June 7, 2012 in Washington State for the Social Purpose Corporation.

[9] With the S.B. 1301 of California in 2015, the Flexible Purpose Corporation changed its name to Social Purpose Corporation to place greater emphasis on the entity's social orientation and promote its acceptance by the shareholders.

[10] § 2602 (2) of the California Corporations Code; § 23B.25.020 of the Washington Business Corporation Act; and § 607.501 of the Florida Business Corporation Act. For an approximation to the legal regimen in each jurisdiction, Kimball (2014); Ho (2015); and Ames and Cohn (2014).

1.2 The Phenomenon from the Traditional Continental European Company Law

Legal systems that allow greater involvement of employees' representatives in corporate bodies or even those that accept an overall institutional trend in company law, such as Germany, in principle, do not have the need for new legal forms that encapsulate the promotion of the general interest or collective interest. From this perspective, a broader conception of companies' interests goes beyond the contractual framework of the company and its orientation toward maximization of the shareholders' investment. [11] Nevertheless, even Germany—where traditionally an institutional conception of the company based on the Rhenish economy prevails—accepts certain forms of companies with general purposes through its tax regulations. To achieve this, the German legislation recognizes the qualification of the *gemeinnützige GmbH* and the *gemeinnützige Aktiengesellschaft* for companies with a non-for-profit and selfless interest, exclusively and directly pursued. [12]

In Spain, however, there are limitations in the company law with regard to accepting an aim other than obtaining profits for partners because of Article 116 of the Commercial Code and Article 1665 of the Civil Code, which has been in effect since the 19th century. As a result, the *Ley 5/2011 de Economía Social* includes a set of entities that pursue either the collective interest of their members the general economic or social interests, or both. Within this broad formulation, which gives primacy to stakeholders and to the general welfare over capital and to solidarity over investors, these entities of the "social economy" include some specific corporative forms. Labor companies (*sociedades laborales*) and agrarian transformation companies (*sociedades agrarias de transformación*), without prejudice of cooperatives, are, therefore, business associations that may benefit from a favorable tax treatment as entities of the "social economy." [13] However, recently, the Spanish Dirección General de Seguridad Jurídica y Fe Pública accepted the by-laws of a company according to which "the company lacks of any for profit interest" (*la sociedad carece de ánimo de lucro*), because the profit motivation shall just be seen as a natural element, usual, but not essential, unlike the common purpose of the company, whatever it is, that must always exist. [14]

From a broader perspective, in France, the most recent Loi n. 2019-486 of May 22, 2019, related to the growth and transformation of companies, known as "*Loi*

[11] With reference to the German case and the effects of co-determination and co-decision rights of employees, refer to Fauver and Fuerst (2006, p. 679) and Kim et al. (2018, p. 1251). In extenso, Habersack et al. (2016, passim).

[12] From the tax regulation (*Abgabenordnung*), see an overall study in Weidmann and Kohlepp (2014, passim).

[13] Articles 4 and 5 of *Ley 5/2011, de 29 de marzo, de Economía Social*. Regarding the typology of the social economy entities, Alfonso Sánchez (2016, p. 109) and Embid Irujo (2019, p. 15).

[14] Decision of the Dirección General de Seguridad Jurídica y Fe Pública on December 17, 2020 (BOE January 9, 2021).

Pacte," has rendered a relevant modification to Articles 1833 and 1835 of its 19th-century Civil Code. [15] In relation to the phenomenon of social responsibility, *Loi Pacte* has added the requirement to Article 1833 that the company must be managed according to its interest and, to that end, its directors must also consider the social and environmental challenges resulting from its activity. [16] Such provision, therefore, affects all French civil and commercial companies, even when its significance must be assessed in accordance with the general terms in which it is expressed. [17] In this way, the French legislator has not decided to create a new legal form to accommodate social and environmental concerns but rather demands that companies and their functioning adapt to a market economy more oriented toward social reality and "responsible capitalism." [18]

Beside Article 1833, Article 1835 of the current French Civil Code authorizes the bylaws to specify the *raison d'être* of corporate governance according to the principles that inspire decisions within the company, which may affect the means for its achievement. [19] The *raison d'être*, as a sort of "rule of reason" of the company, functions as the compass for directors' behavior and incorporates the assumption of responsibilities in the social or environmental order and in any other aspect of social life that the partners may consider in the bylaws. [20] In any case, the *Loi Pacte* also has an influence, in relation to the previous legal requirements, on the duties of the directors because of the reform of Articles L225-35 and 225-64 of the French Code de commerce. [21]

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[15] *Loi Pacte*, Loi n 2019-486 du 22 mai 2019 *relative à la croissance et la transformation des entreprises.*

[16] In any case, it must be considered as a duty of promotion (*obligation de moyen*) and not to achieve any specific result -Projet de Loi Pacte, 545-. In response to a more specific previous proposal, according to which any company must have a legal business plan and operate in the common interest of the partners and any third party, such as employees, collaborators, credit grantors, suppliers, customers, or otherwise, participating in the development of the company, that must be carried out under conditions compatible with the increase or preservation of the common assets ("*Toute société doit avoir un projet d'entreprise licite et être gérée dans l'intérêt commun des associés et des tiers prenant part, en qualité de salariés, de collaborateurs, de donneurs de crédit, de fournisseurs, de clients ou autrement, au développement de l'entreprise qui doit être réalisé dans des conditions compatibles avec l'accroissement ou la préservation des biens communs*"), Conac (2019, p. 574).

[17] Conac (2019, p. 570).

[18] Urbain-Parleani (2019, pp. 579–580).

[19] "*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.*"

[20] Urbain-Parleani (2019, p. 575) believes that this modification reflects an eminently political intention to influence corporate behavior and adapt companies' regulations to the new realities of the 21st century and is not limited to aspects of social responsibility, since it is an open concept that may be applied for different purposes of the shareholders.

[21] "*Le conseil d'administration détermine les orientations de l'activité de la société et veille à leur mise en oeuvre, conformément à son intérêt social, en prenant en considération les enjeux sociaux et environnementaux de son activité. Il prend également en considération, s'il and a lieu, la raison d'être de la société définie en application de l'article 1835 du code civil.*"

1.3 The Evolution of Large Companies Toward the Obligation to Disclose Their Non-Financial Activities

With a different profile, the social, environmental, and corporate governance concerns oriented toward improving relationships with employees and other groups, or even the whole community, have led to the imposition of disclosure requirements on large companies. Besides financial information, these companies, due to their size or sector of their economic activities and their relevance within the market, must also provide non-financial information to the stakeholders. [22] This regulation does not seek to interfere with the regular development of the company and, consequently, does not impose obligations of social and environmental practices but only of reporting such practices, if any. [23]

The OECD guidelines for multinational enterprises include social, environmental, and risk reporting; this is particularly relevant in terms of greenhouse gas emissions and biodiversity protection. Another example related to company activities is reporting of information on the environmental activities of subcontractors and suppliers or resulting from the commitments of these enterprises with partners in joint ventures. [24] Thus, the preparation of social and environmental reports, according to internationally accepted standards, has attained increasing importance for a wide variety of users, ranging from shareholders to other stakeholder groups, such as employees, local communities, governments, and society in general. [25]

Within the European Union, Article 19a of Directive 2014/95/EU, amending Directive 2013/34/EU, regarding the disclosure of non-financial and diversity information by certain large undertakings and groups, imposes the obligation of disclosing a specific non-financial statement on large undertakings that are "public-interest entities." The statement focuses on social and employee-related matters, such as gender equality, health and safety, and preventive measures against human rights

[22] Efficient information mechanisms, both economic and social, may help investors to define their position and company strategies within a competitive market—by identifying different values. To this end, investors and analysts may use them to better recognize the strengths and weaknesses of business strategies in the medium and long term to provide a more complete view of the situation and company policies, and to elicit greater shareholder involvement in corporate governance.

[23] According to Jentsch (2018, p. 2), this remains on the margins of self-regulation, while Portale (2018, p. 607) believes that it follows the principle of "comply or explain," which is merely voluntary.

[24] Pages 29 and 30, in its 2011 version. The OECD guidelines for multinational enterprises state that "Enterprises should apply high-quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist. The standards or policies under which information is compiled and published should be reported" (p. 28).

[25] For more details, see the OECD Due Diligence Guidance for Responsible Business Conduct of 2018.

violations, anti-corruption, and bribery matters. [26] Through this public information mechanism, the EU legislator attempts to convey the necessary transparency for collective or general interest activities, in addition to the financial statements of such entities. [27]

2 Environmental, Social, and Business Governance ("ESG") Objectives Within the Sustainable Development Goals ("SDGs") as a Typological or Transtypical Issue

2.1 The Voluntary Acceptance of Corporate Social Responsibility Through Ethical Codes and Self-Regulation

The conception of social responsibility as an external factor to the company, evidenced by non-financial statement disclosure, may induce the adoption of social, environmental, and governance measures aimed at serving collective interests beyond those of shareholders and partners. However, there are other mechanisms that serve to internalize these policies. The acceptance of ethical codes and self-regulation does not consist of information on whether the company has implemented such types of policies, but rather incorporates due behaviors for corporate bodies. By doing so, the company incorporates such commitments as part of the partners' and shareholders' own values, even when the actions of certain social groups may also encourage their voluntary acceptance. In contrast, the partners and shareholders may also consider the incorporation of codes of conduct or ethical commitments to improve the image and reputation of the company in the public domain. [28]

[26] For translation of this regime in each state member, refer to Schön (2019, p. 391); Henrichs (2018, p. 206); Bruno (2018, p. 974); and del Val Talens (2019, p. 183).

[27] This social responsibility concern, due to the economic crisis, had its first expression in European regulation with Directive 2013/34/EU on the annual financial statements. Directive 2013/34/EU included other non-financial matters, such as the transparency of payments made to governments by the entities active in the extractive industry or in logging of minerals, oil, natural gas, and primary forests. Likewise, Directive 2014/56/EU, amending Directive 2006/43/EC, on statutory audits of annual accounts and consolidated accounts, in relation to Regulation (EU) 537/2014, of the European Parliament and of the Council of April 16 on specific requirements regarding its statutory audit, added the concept of "public-interest entities," shaping a new typology of companies. More recently, see Regulation (EU) 2019/2089 of the European Parliament and of the Council of November 27, 2019, amending Regulation (EU) 2016/1011, as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks; in its Annex III, it contains the Methodology for EU Climate Transition Benchmarks, particularly, for carbon emissions.

[28] According to OECD Principles of Corporate Governance of 2015, "[h]igh ethical standards are in the long-term interests of the company as a means to make it credible and trustworthy, not only in day-to-day operations but also with respect to longer term commitments. To make the objectives

Self-imposed rules and codes of conduct become, by virtue of the principle of freedom to contract, a sort of due diligence, which requires, first, their correlative reflection in the decisions that the directors may consider. The codes of conduct can, therefore, include commitments to ethical values in areas such as environment, human rights, labor standards, consumer protection, or taxation. [29] Furthermore, for the sake of effectiveness, the companies must regularly communicate their achievements to the shareholders and disclose certain standards of behavior to the stakeholders. To that end, it is necessary to incorporate procedural aspects and information mechanisms that allow a correct evaluation of compliance. [30]

However, the incorporation of social, environmental, and corporate governance values aligned with stakeholder interests and company commitments to the community through codes of ethics and conduct or internal regulations of the corporate bodies may clash with the financial interests of the partners and stakeholders. This prompts us to consider two main aspects: First, its potential impact on the individual rights of the partners and shareholders, insofar as it affects the economic rights that they have recognized, even in abstract, as members of the company. Second, from a typological perspective, the introduction of this type of measure may also have an impact on the business purpose of the company contract as a shaping element compared to other typical forms of legal organizations, such as the associations. It seems that, in any case, even from a merely contractual conception of company, it is still plausible to admit that a company has the aim of reporting some patrimonial advantage, even indirectly, to the partners and shareholders *uti singuli* considered. [31]

Therefore, the typicity of commercial companies imposes certain limitations in company law to adapt the purpose of the company through contractual freedom. However, it is also convenient to avoid maximalist positions about the "share value"

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board clear and operational many companies have found it useful to develop company codes of conduct based on, inter alia, professional standards and sometimes broader codes of behaviour, and to communicate them throughout the organisation. The latter might include a voluntary commitment by the company (including its subsidiaries) to comply with the OECD Guidelines for Multinational Enterprises which reflect all four principles contained in the ILO Declaration on Fundamental Principles and Rights at Work" (p. 47).

[29] OECD Principles of Corporate Governance of 2015 further states: "Company-wide codes serve as a standard for conduct by both the board and key executives, setting the framework for the exercise of judgement in dealing with varying and often conflicting constituencies. At a minimum, the ethical code should set clear limits on the pursuit of private interests, including dealings in the shares of the company. An overall framework for ethical conduct goes beyond compliance with the law, which should always be a fundamental requirement" (p. 47).

[30] Information systems, operating procedures, and training requirements already appeared in the 2011 edition of the OECD Guidelines for Multinational Enterprises, in conjunction with the Global Reporting Initiative, to develop reporting standards that enhance companies' ability to communicate how their activities influence sustainable development outcomes.

[31] Such distinction is clarified in Article 1:1 of the Belgian Code of Companies and Associations of March 23, 2019 (*Code des sociétés et des associations*), according to which, in contrast to the disinterested objective of associations, a company must necessarily have the aim of "distributing or providing its members with a direct or indirect economic advantage" ("*Un de ses buts est de distribuer ou procurer à ses associés un avantage patrimonial direct ou indirect*").

doctrine in exclusive favor of the shareholders, and to accept other ways, not purely financial in nature, that may contribute to this end. Contractual freedom may allow some margin for this purpose as long as it does not affect the shaping principles of the corporate type. Nevertheless, legal certainty also requires the recognition of the internalization of these social and environmental concerns in company law. This is the framework adopted, from a more institutional perspective, in the modern Corporate Governance Codes for publicly listed companies, even when expressed in terms of "soft law." [32] There is still the alternative of some type of corporate model that gives legitimacy to the adoption of policies with a broader purpose than the one envisaged in general rules inspired in principles of the liberal economy of the 19th century in the times of codification.

2.2 Adoption of Public Purpose-Driven Companies

The *Société à finalité Sociale* (SFS) approved in Belgium in 1995 and introduced in Articles 661 to 669 of its *Code des sociétés*, although bypassed in the Belgian *Code des sociétés et des association*s of March 23, 2019, serves as a precedent among corporate types. This social form is a special case with respect to other general forms of companies, characterized by rules that limited the maximization of benefits, and

[32] As set forth in the German Code of Good Governance for Listed Companies (2015 revised version)—*Deutsche Corporate Governance Kodex* (known as "DCGK" or "Kodex")—the management boards and supervisory boards must consider the interests of the shareholders, the enterprise's workforce, and the other groups related to the enterprise (the stakeholders) to ensure the continued existence of the enterprise and its sustainable value creation (the enterprise's best interests). Moreover, in France, section 24.3.3 of the *Code of Government of Entrepreneurship of Societies Cotées* maintains the need to align the directors' interests with the "social interest of the company" and with those of the shareholders. The Code of Good Governance of Spanish listed companies of 2015, reviewed in 2020, describes in its Recommendation 12 the social interest of these companies as the achievement of a profitable and sustainable long-term business, which promotes their continuity and maximizes the economic value of the company, and adds that, in the pursuit of social interests, respect for laws and regulations and behavior based on good faith and ethics and respect for customs and accepted good practices. It seeks to reconcile the interest of the company with, as appropriate, the legitimate interests of its employees, suppliers, customers, and other interest groups and the impact of company activities on the environment and on the community as a whole ("*la consecución de un negocio rentable y sostenible a largo plazo, que promueva su continuidad y la maximización del valor económico de la empresa... en la búsqueda del interés social, además del respeto de las leyes y reglamentos y de un comportamiento basado en la buena fe, la ética y el respeto a los usos y a las buenas prácticas aceptadas, procura conciliar el propio interés social con, según corresponda, los legítimos intereses de sus empleados, sus proveedores, sus clientes y los de los restantes grupos de interés que pueden verse afectados, así como el impacto de las actividades de la compañía en la comunidad en su conjunto y en el medio ambiente*").

established the need for the satisfaction of collective interests and welfare in general. [33] Consequently, in the previous regulation, the correspondent subsidiary provisions of the elected general form of company were applicable to the *SFS* as a special type of company. [34]

From other perspective, some US jurisdictions have followed different paths. The Low-Profit Limited Liability Company L3C took the Limited Liability Company, widely accepted by the constituencies, as a reference to promote greater freedom in its contractual configuration. However, criticisms were pointed out against the difficulties in the adaptation of this special form and the lack of timely control over its activities. This favored the appearance of the benefit corporation, which submits its legal regime subsidiarily to the business corporation regulations. The constraints on corporate governance to act outside the financial interests of the partners contributed to its further development. Simply put, benefit corporations are organizations that, with the pertinent precautions in regard to translating solutions from legal systems with a different legal tradition, may be considered as a sort of "companies with enlightened values or with shared interests." [35]

As a special corporation, the Delaware General Corporation Law only dedicates Subchapter XV of its Book 8, paragraphs 361–368, to public-benefit corporations, while the Model Benefit Corporations legislation occupies just over a dozen paragraphs; additionally, it even allows benefit corporations to maintain the characteristics of closed corporations. [36] However, this legislative approach when regulating the benefit corporation contrasts with the broad legislative treatment that the Social Purpose Corporation receives, for example, in the State of California. [37] In this entire context, the legislator exercises particular caution in distinguishing these legal forms of corporations at the time of their "incorporation" from other special types of companies available. Nothing prevents, therefore, these special corporations from being compatible with other existing ones, such as insurance, banking, or

[33] Defourny et al. (1998, p. 73); and D'Hulstère and Pollénus (2008, passim). In any case, currently, see Articles 41 and 42 of the *Loi introduisant le Code des sociétés et des associations et portant des dispositions diverses*, of March 23, 2019.

[34] They include *la société en nom collectif*, *la société en commandite simple, la société privée à responsabilité limitée, la société anonyme* and *la société en commandite par actions*, together with *la société cooperative*. Furthermore, when the company adopted the form of a limited liability cooperative, which was the most frequent in practice, the regulation required certain capital guarantees (Articles 664 and 665 CdS).

[35] Hiller (2013, p. 290). Additionally, Brodsky and Adamski (2013, p. 1546–1547) highlight the tenuous line that separates the traditional for-profit and non-profit sectors due to the consideration of the modern entities of the social economy as entities with a business purpose and due to the appearance of the new benefit corporations as a result of the evolution of the law to attend to certain public needs.

[36] On the close social purpose corporation, see § 2602(b)(7) of the California Corporations Code.

[37] Both in the regulations of the States of Washington and California, which also admit the possibility to register public-benefit corporations; particularly, California has a complete legal regime for the Social Purpose Corporation (see to this effect § 2500 to 3503 of the California Corporations Code).

professional corporations. [38] In any case, it requires the obligatory mention of the general social purpose and, optionally, the specific aim that constitutes their entire corporate purpose.

Other jurisdictions outside the United States that have approved a kind of public purpose-driven company were inspired particularly by the form of benefit corporations. However, in some cases, they have not followed the North American pattern. [39] In contrast, even when recognizing a special type of company, and therefore not autonomous, they have allowed this new form of company to use the basic rules of any of the general companies admitted in law. Thus, in Italy, the *legge n. 208*, of December 28, 2015, of the *società benefit* does not limit the use of this regulatory model, as it would be correlative to the *società per azioni*, but allows to submit the *società benefit* to the regulation of any general type of company, including cooperatives. [40]

Under Article 2247 of the Italian *Codice civile*, the objective of the company remains to "divide the profits" (*allo scopo di dividerne gli utili*). This constraint has led to the recognition of the limitations of company law in its classical conception to accept social, environmental, and governance concerns in the stakeholders' interests as part of the organizational goals.[41] Thus, the Italian regulation of the *società benefit* validates that corporate governance integrates such purposes and internalizes the principles of social responsibility in the company. Consequently, the directors must balance shareholder interests with those of entities on whom the company's economic activity may have some impact.[42]

This characteristic adds to the purpose of the company other external purposes different from the internal interests owed to partners and to the shareholders by virtue of the company contract. However, the *società benefit* does not enjoy the freedom to adopt policies related to social, environmental and governance objectives, as large companies, due to their greater institutional nature. As a special legal form, its preferential use is oriented mostly to companies of smaller dimensions and of a predominantly contractual nature. Therefore, it grants legitimacy to corporate governance that aspires to attend to these other collective or general interests beyond the external regulations that protect the specific rights of the stakeholders.[43]

[38] See §2602(b)(4)(5)y(6) of the California Corporations Code.

[39] According to Montalenti (2017, pp. 82–83), la *società benefit* responds to a "transtypical model" adopted by the Italian company law.

[40] Relating the Book V, titles V and VI, of the Italian *Codice Civile*. About this, Corso (2016, p. 1000); and Stella Richter (2017b, pp. 278–279).

[41] Critically, Calandra Buonaura (2010, p. 101); Angelici (2014, p. 255); and Montalenti (2018, p. 303).

[42] Article 1, comma 377 of *legge n. 208/2015 de la società benefit*, that must be connected with the commentary to the §101 of the Model Benefit Corporation Legislation and with §362 of Book 8 of Delaware General Corporation Law. On this regime, De Donno and Ventura (2018, passim.); and Ventura (2018, p. 559). Also Stanzione (2018, p. 487).

[43] On the limitations of this legal form for large public companies, Stella Richter (2017a, p. 957).

Latin-American countries that have incorporated, with a different name, the specific figure of the *sociedad de beneficio e interés colectivo (sociedad BIC),* among their special social types in company law, have followed the same pattern as Italy. Despite other legislative projects related to this legal form, Colombia has been the benchmark in this region with the enactment of the Law of June 18, 2018, which has created and developed the commercial companies of benefit and collective interest (*Ley del 18 de junio de 2018, por medio de la cual se crean y desarrollan las sociedades comerciales de beneficio e interés colectivo*). In this sense, Articles 1 and 9 of the Law authorize any existing or future commercial company of any type recognized by law to voluntarily become a *sociedad comercial de beneficio e interés colectivo*. In such case, the law of the *sociedades BIC*, the provisions existing in the bylaws and regulations applicable to each type of company, according to this priority order, shall regulate the governance of the company.

More recently, the Ecuadorian company law has adopted a legislative model that also configures *la sociedad de beneficio e interés colectivo* as a special company. This regulation allows any commercial company under the control and supervision of the *Superintendencia de Compañías, Valores y Seguros*, on a voluntary basis, to assume such status. Therefore, it does not imply the transformation of the company or the creation of a new company, but only a specialization of a general category.[44] Along with the aforementioned legislation, within the Andean countries, as of November 23, 2020, Peru has also enacted the Ley 31.072 regarding the *Sociedad de beneficio e interés colectivo Sociedad BIC*.[45] By doing so, the legislature has also created a new legal category that presupposes the types established in the general law of companies, where the partners are expected willingly to generate a positive impact by integrating a purpose of social benefit into the company's economic activity. In this context, on July 14, 2021, Uruguay also enacted its *Ley de Sociedades de Beneficio e Interés Colectivo*, so that any of the entities regulated by the *Ley de Sociedades Comerciales* (No. 16,060), including trusts, may assume such status.[46] And even from a global dimension of the phenomenon, in Africa also Uganda passed the same year, on February 5, a Law governing companies (no 007/2021). Particularly, its Articles 269–273 regulate the "community benefit company" ("CBC") as a legal form that is to have a general positive impact on society and on the environment, and that may incorporate other specific public goals.

[44] *Sección Innumerada Empresas de Beneficio e Interés Colectivo*, added to the *Ley de Compañías* by the *Disposición Reformatoria Novena de la Ley s/n, Suplemento del Registro Oficial 151* as of February 28, 2020. About this legislative movement in Latin-America, Alcalde Silva (2018, p. 381) and Mujica Filippi (2019, p. 7).

[45] See also the regulation passed by the *Decreto Supremo núm.* 004-2021-PRODUCE as of February 23, 2021. On this topic, Caillaux and Ochoa (2021, pp. 15–22), and previously in Perú, Caravedo Molinari (2016, 1–155).

[46] On the evolution of the BIC Corporations' legislative production in Ibero-American countries and the state of the draft regulations in Chile, Argentina, Brazil, Panama or Mexico, in *Las empresas con propósito y la regulación del cuarto sector en Iberoamérica* (2021), pp. 14–16, and Alcalde Silva (2021, RR12-1.6).

3 Conclusions

Corporate social responsibility and its basic principles constitute a sociological reality that occurs with greater intensity at times following economic crises and extends beyond company law to cover the entirety of economic regulation. company law introduces this phenomenon through the rules of corporate governance for social, environmental, and governance matters oriented toward collective or general interests, based on the specific or general objectives envisaged in the law. The formulation of law for public purpose-driven companies, such as benefit corporations, however, adopts different projections according to tradition and the legal constraints of companies in pursuing socially responsible investments without contradicting the *causa societatis* and the "for-profit principle."

From an initial perspective, with the adoption of specific corporate forms such as the Belgian *Société à Finalité Sociale*, the English Community Interest Company or the North American Low-Profit Limited Liability Company, the different legislators have tried to overcome the operational and financial limitations of foundations and other non-profit entities. However, they have maintained a certain endowment of company assets, through limitations to distribute benefits in favor of the partners. Furthermore, their activity and projection for general or collective interests have been subject to the control of specific organizations, mostly public, in particular, because these entities may receive certain tax incentives or a more favorable tax regime than the strictly for-profit companies.

The formation of these "hybrid" companies, situated between for-profit companies and non-profit entities, presents certain limitations with regard to the freedom of the partners in exercising their economic rights due to the legal configuration of these organizations. In this sense, such entities are closer to non-profit organizations than to for-profit companies, even when they use their organizational framework, share their associative origin, and promote a common goal for their members. Therefore, the figure of the public benefit corporations or simply benefit corporations has arisen in certain US jurisdictions and, later on, in jurisdictions outside the United States that have imported its legal form. Nevertheless, the latter jurisdictions retain the freedom of adapting benefit corporations to any other existing general type and apply its regime subsidiarily. These regulations lay down the limitations regarding these companies' operations because of the need to cater to public or collective interests.

In consideration of its condition, the benefit corporation is required to have a relevant impact on public benefit, which leads to the imposition of rules on information disclosure and transparency. In principle, it extends to the standards of impact based on the principles of corporate social responsibility. This directly affects corporate governance, both by considering a shared interest adapted to these social and environmental values and, in some cases, delegating responsibilities of handling these matters to specific members of corporate bodies. Such obligations are extensible, due to their mandatory nature, to specific liability procedures and legitimation for the exercise of legal actions in the case of the directors' fault for the lack of promotion of the general or collective purposes recognized in the bylaws.

Benefit corporations face the problems of dual governance objectives, which require conciliating the different conflicting interests of the shareholders and the stakeholders. This task will not always be easy, but to maintain the status of a benefit corporation, evidence of compliance with its social and environmental requirements is at least required. Moreover, benefit corporations may be subject to eventual internal audits through third-party verification and external controls by the surveillance entities.

To overcome these problems, the social purpose corporation presents a more flexible character. Simply put, the social purpose corporation grants directors a wide range of freedom to decide whether to adopt social, environmental, or governance policies, allowing for these to be further limited than in the benefit corporations, without being subject to liability actions. Furthermore, the bylaws may configure the framework of the beneficiaries other than the shareholders very broadly, which grants an extensive autonomy to the directors. In any case, the shareholders maintain the censorship faculty over the directors and may revoke their position. In this context, the legal regime also maintains the need to disclose non-financial information in a timely manner. Nevertheless, the directors may implement a value system that goes beyond the pursuit of purely financial interests of the shareholders without being responsible for damages to the company.

In the European Union, the "public-interest entities," due to their size or the relevance of their activity in the market, are also bound to report information on their non-financial activities through specific reports separately from their financial statements and annual accounts. In this manner, at least the companies that cover large undertakings have to be transparent about their policies in aspects of collective and non-financial interests. Such requirements are also extended to the phenomenon of groups of companies and to accounting consolidation rules and reflect the orientation of large corporations towards an institutional perspective.

In some countries of continental Europe, where the institutional theory is more prevalent, as in the German or French cases, it seems that corporate social responsibility does not constitute mainly a matter of corporate typicity. In this sense, French law has allowed the inclusion of the values of social responsibility into its national company law by explicitly introducing the need to consider social and environmental issues in every general type, including civil companies. In other jurisdictions, the existence of specific "social economy entities" and their guiding principles, especially those that assume a corporate structure, also restrict the need to adopt the specific form of public purpose-driven companies or, simply, benefit corporations.

Alternatively, Italy has enacted *la società benefit* and some Latin American jurisdictions, where there are additionally various regulatory projects in progress, *las sociedades comerciales de beneficio e interés colectivo*. Here, it is possible to find certain "transtypicity" with respect to benefit corporations. Despite the corresponding adaptation to their regulatory schemes and their own legal policy concerns, these laws have accepted the basic features of the benefit corporation. Nevertheless, by doing so, they consider the different existing types among the companies generally recognized so that these special companies are not limited to a single general legal regime.

In conclusion, companies constitute, strictly speaking, instruments at the service of the partners and the shareholders for the management of their interests. Consequently, the usefulness of the benefit corporations and public purpose-driven companies depends, largely, on the legislative framework that allows their integration. Perhaps, a flexible or simplifying vision of the legislative model for these companies, with the appropriate legal security measures, along with the incentives to their formation with respect to other companies, may better promote their use. Nevertheless, the distinction between benefit and social purpose corporations do not favor a unitary vision of the phenomenon. Moreover, it is convenient to consider the imposition of the disclosure of non-financial information for "public-interest companies," which moves the issue of these special companies from typicity to typology to recognize their preferable use by private entities as legal forms for medium and small undertakings.

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