Social Enterprises and Benefit Corporations in Argentina

Dante Cracogna

Contents

1 Social Enterprises and B Corporations in Argentina

To date, social enterprises and benefit corporations have not been specifically legislated in Argentina. However, Section 148 of the Civil and Commercial Code provides for several types of private legal persons, three of which may be assimilated to social enterprises due to some shared characteristics. These types are associations, cooperatives, and mutual companies, which are all independently regulated.[1]

This publication is one of the results of the R & D & I project UAL2020-SEJ-C2085, under the European Regional Development Fund (ERDF) Andalusia 2014–2020 operational program, entitled "Corporate social innovation from Law and Economics."

[1] See Cracogna (2009, pp. 157 *et seq.*), in which the legal provisions for each of these types of companies are individually analyzed.

D. Cracogna (✉)
University of Buenos Aires, Buenos Aires, Argentina
e-mail: dcracogna@estudiocracogna.com.ar

H. Peter et al. (eds.), *The International Handbook of Social Enterprise Law*,
https://doi.org/10.1007/978-3-031-14216-1_18

Associations, which are included in the Civil and Commercial Code proper, have a common purpose for good and are not for profit. The contributions made by their members do not constitute individual capital accounts but make up the equity of the company. Furthermore, any surplus arising from their operations is not distributed but made part of the association's capital equity. In the case of liquidation, any remaining balance must have an altruistic end and may not be distributed among the members.

Cooperatives, which are specifically regulated by Law No. 20,337, provide services mainly to their members, and any surplus arising therefrom is returned to the members in proportion with their business with the cooperative. The capital contributions made by the members are only subject to limited compensation. Any surplus deriving from services rendered to nonmember third parties is allocated to reserves, which may not be distributed, and in the case of the company's dissolution, it must be surrendered to the local authority to contribute to the promotion of cooperatives.

Finally, mutual companies share characteristics with associations. The contributions made by their members do not constitute individual capital accounts, and any surplus arising from the services rendered by the company is not distributed but, instead, increases its equity. In the case of liquidation, all remaining assets have an altruistic end and are not distributed among the members. These companies are regulated by Law No. 20,321.

Meanwhile, the activities of B corporations (B Corps) began in Latin America in 2012. Since then, initiatives have emerged in different countries in the region, mainly in Chile, Brazil, and Argentina.[2] By 2020, 128 B corporations (B Corps) in Argentina had been certified following international standards.[3]

Concurrently with promoting the certification through which companies can become B Corps, an intense outreach campaign was conducted by *Sistema B., an ONG that promotes triple impact enterprises.* This campaign included not only information on the B Corp business's modality but also extensive advisory and advocacy work that aimed at achieving the enactment of a law that would expressly recognize B Corps.[4] Nevertheless, B Corps still lack their own legal status despite the fact that, as will be seen later, Argentina's National Congress has given preliminary approval to the draft bill on Benefit and Collective Interest Companies (BIC Companies).[5]

[2] It must be noted that companies with B Certification, originally certified by B Lab in the US and later by *Sistema B* in Latin America, may exist even if there is no legislation regarding benefit corporations (Connolly and Coniglio 2021).

[3] Sistema B, Reporte de impacto 2020.

[4] Illustrative of this phenomenon is the information presented by Alcalde Silva (2018).

[5] It should be highlighted that the topic of BIC Companies was subject to special consideration at the XIV Argentine Conference on Corporate Law held in Rosario on September 4/6, 2019, under the motto "Towards a new corporate law." On that occasion, a committee chaired by the author specifically addressed this issue. A noteworthy number of participants held an animated debate

Currently, existing B Corps are for the most part public limited companies, although a few are limited liability companies; that is to say, they correspond to the corporate types regulated by the General Corporations Law, whose profit motive is paramount. Therefore, it is not possible to speak about other legal forms of business organizations that have adopted this modality since associations, cooperatives, mutual companies or, even less, foundations cannot be qualified as such because—by definition—they are not for profit.

At present, the vast majority of B Corps are small and medium sized. Large companies are likely not in a good position to become B Corps since there is no legal regulation that protects them and, especially, since the liability of administrators for the pursuit of a social and environmental impact has not been defined. Regarding B Corps' activity, about 40% of them work in goods production, while the rest generally focus on commerce and services.

2 The Evolution of Argentine Corporate Law

In recent years, Argentine corporate law has undergone significant changes. This followed a relatively stable period, which began in 1972 with the enactment of Law 19,550 on Commercial Companies (Cracogna 2018, p. 83). The same Law 26,994, which approved the new Civil and Commercial Code, in force since 2015, introduced important reforms to the aforementioned Law 19,550, which was later renamed the General Corporations Law. Among other modifications, the requirement of a legal type, which was previously rigidly formulated, was practically abolished. The reformed law recognized the so-called limited partnerships and added sole proprietorship. In addition, it eliminated civil (noncommercial)-partnerships.[6] Shortly thereafter, Law 27,349 was enacted to create simplified joint-stock companies (SAS), with profound innovations in the corporate field.[7] Within this line of renewal sits the draft bill for the creation of BIC companies,

on the 15 papers that were submitted on the topic, thus evidencing the interest it arouses within both the professional and academic fields.

[6]The unification of the civil and commercial codes in the new Code led to the disappearance of the civil companies that had been legislated in the Civil Code since its enactment in 1869. For their part, the commercial companies that had been governed by Law 19,550 since 1972 continued within that legal framework, although it is now named the General Corporations Law. In sum, the unification resulted in the suppression of the distinction between both types of companies, which induced an extensive debate about what the fate of civil (non-commercial) societies should be, given that the new Code established nothing in this regard.

[7]It is worth mentioning that after a period of remarkable development, these companies have recently been questioned by a part of the doctrine, translated into restrictive resolutions established by the General Inspectorate of Justice (Res. IGJ Number 3/20, 9/20, 17/20, 22/20 and 23/20) body responsible for registering companies in the City of Buenos Aires. Additionally, a bill has even been presented in the Senate of the Nation in which limitations are foreseen to its constitution and action (Bill S-0350/220).

referred to below, and the projects for the creation of the so-called simplified social enterprises (SESS).[8] Finally, it is worth mentioning the recent comprehensive reform project of the General Corporations Law presented in the Argentine Senate on July 5, 2019, which postulates a broad and profound modification of the corporate legal structure.[9]

3 The Draft Bill of BIC Companies: Background

In November 2016, the Executive Branch submitted a bill to the National Congress "that aims to create a new form of business organization: the Collective Benefit and Interest Companies (BIC Companies)."[10] It should be mentioned that the presentation of the draft bill was not a spontaneous initiative of the Executive Branch but, as happened in other countries, was preceded by a high level of preparation and subsequent advocacy carried out by members of Argentina's *Sistema B* and a group of professionals with a vested interest, organized as the *Legal B Group*.[11]

The message that accompanied the bill notes that it intends to promote an ecosystem of sustainable companies aimed at caring for the environment and designing solutions for social problems that public policies and the traditional market have not been able to solve. At the same time, it offers entrepreneurs the possibility of implementing innovative solutions to address these matters.

The message of the Executive also specifically proposes this new legal form with the purpose of "protecting the administrators of commercial companies, who have a social interest in mind—understood as creating value for shareholders, and generating a social and environmental impact—in the face of actions or claims that could suffer from decisions that may generate a benefit to the community, even when they

[8] Bill 3837/18 by Senator Bullrich, who created the "Simplified joint-stock company," and Bill 7162-D-20 by deputies Carrizo and others, who established limited partnerships. With only minor differences, both were presented in 2018 in their respective chambers to be agreed on the same terms by both parliamentary assemblies. These original initiatives aim to create a corporate figure specially conceived to promote economic improvement through associated activity for people with fewer resources, in other words, a kind of simplified cooperative or small cooperative.

[9] This project was prepared by a qualified group of specialists and presented by Senators Pinedo and Iturrez de Cappellini (Bill S-726/19). It is currently under consideration in the Senate's General Legislation Committee. Critical studies of the bill can be found in Calcaterra and Lencova Besheba (2020). Project of reforms to the General Law of Companies, Argentine Jurisprudence, Special Issue, Fascicle 12.

[10] Message 139 entered the Chamber of Deputies on November 9, 2016.

[11] It is interesting to note that the so-called *Sistema B* has a presence in numerous Latin American countries, namely Argentina, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay, and the countries of Central America. In all of these countries, it has conducted an intense campaign aimed at promoting the creation of these companies—generally called *Empresas BIC*—and the enactment of laws that facilitate their development (https://sistemab.org/espanol/el-Movimiento-global/).

do not necessarily seek to maximize the profits of its shareholders as its sole and ultimate purpose."[12]

The Executive Branch highlights that the bill considers the following fundamental aspects: (a) the expansion of the company's purpose, going beyond mere economic benefit for the partners; (b) the obligation to precisely specify in the charter what social and environmental impact the company intends to generate; (c) providing protection to administrators regarding their responsibility for the pursuit of the company's objectives; (d) granting the right of withdrawal to the partners of an existing company when it decides to adopt the status of a BIC company; and (e) establishing a control and transparency framework based on an annual report audited by a specialized independent professional.

While a history of comparative law will not be explored here, the influence of the North American legislation on B Corps is evident, as well as that of the Italian law on *Societá Benefit* and the recent Colombian law on BIC companies. All this is actively and effectively conveyed by the actions of *Sistema B* and its legal group.

The bill received a favorable report from the General Legislation Commission and was included in the Order of the Day N° 1352 of 2017 of the Chamber of Deputies. However, it was not discussed within the respective legislative period, thus losing its parliamentary status.

Subsequently, a bill modifying the General Corporations Law was presented that introduced the so-called beneficial companies[13] and another for the creation of "BIC companies."[14] These bills were treated as a unified bill by the General Legislation Commission, which approved it on October 30, 2018.[15] In turn, the Chamber of Deputies approved the bill on December 6, 2018, and, consequently, it was passed to the Senate.

3.1 General Features

The bill comprises only nine articles. Article 1 states that BIC companies can be all those that are constituted according to any of the types provided in the General Corporations Law 19,550, as well as those that are incorporated or are created

[12] Message 139 entered the Chamber of Deputies on November 9th, 2016.

[13] Draft bill 2216-D-2017 presented by Deputy Cornelia Schmidt Liermann. This project proposes the modification of the General Law of Companies, incorporating its Article1, which establishes the concept of society in a new paragraph that states that companies will also be "those that, meeting the aforementioned requirements, prioritize social and environmental responsibility in their corporate decisions over profit, thus establishing it in their corporate purpose. " The modification also proposes that the Public Registry issue a biannual duration certificate that accredits conditions and controls to ensure that the companies fulfill the planned tasks.

[14] Draft bill 2498-D-2018 presented by Deputy Astrid Hummel and others.

[15] Chamber of Deputies, Order of the Day N° 567 of February 11, 2018.

independently in the future.[16] The article clarifies that a new type of company does not need to be created; however, it envisages that only a special modality or condition can be adopted by companies in general.[17]

However, reference to the company types provided in the General Corporations Law (general partnership, limited partnership, labor and capital partnership, public limited company, majority government-owned company, and partnership limited by shares) raises doubt about whether companies that are not classified in this Act—as is the case with simplified joint-stock companies, which are regulated by a special law—may become BIC companies. Likewise, a question remains regarding whether limited partnerships are included in Chapter IV of the General Corporations Law since they do not adhere to a specific type[18] and Article 1 of the bill refers to companies "constituted according to any of the types provided" in the aforementioned law. As for simplified public joint-stock companies, there seems to be no problem—regardless of the discussion about whether or not they constitute a type of company under Law 19,550—since the bill also mentions "those which are created independently" from it. Yet with respect to limited partnerships, due to the breadth with which the subject is treated, one may assume that they could be considered included, although the wording of the legal text does not explicitly stipulate this.

On the other hand, the project demands that the partners of BIC companies, "in addition to being required to make contributions geared to the production or exchange of goods or services, participating in the benefits and bearing the losses," must also commit to generating a positive social and environmental impact (Article 1).[19] Therefore, it uses, verbatim, the General Corporations Law's definition of partnership, which involves aspects such as the partners' contributions and the business organization. However, strictly speaking, the only relevant aspect is that

[16] A comparison between the Argentine project and the model legislation of the United States has been made by Mujica (2019), who summarizes that the Argentine legislation is conceived in a more restrictive manner than in the United States.

[17] It should be noted that the comprehensive Reform Project of the General Companies Law presented by Senators Pinedo and Iturrez de Cappellini adds a paragraph to Article 1 entitled "Companies with another purpose," which states, "The social contract or statute may foresee any destination for the benefits of the activity or the way to take advantage of them. They can also foresee the non-distribution of profits among the partners." The paragraph adds that in order to introduce these provisions into the contract or statute, a unanimous vote by the partners is necessary. Thus, the partners can foresee different purposes for the companies—which are to be constituted or are already constituted—complying with the requirement of unanimity. By virtue of this provision, any discussion about the final nature of the companies would seem to be settled: It will depend on the will of the partners, through which the BIC Companies could be subsumed. See Cracogna (2020a, pp. 55 *et seq*.).

[18] The companies of Chapter IV of the General Law of Companies have been called "residual companies" by some authors because they do not meet the requirements of any of the types established by law, despite which they are recognized as legal persons.

[19] The opinion of the minority of the General Legislation Commission that dispatched the project emphasizes that quantitative parameters are not detailed on how the benefit that the companies are mandated to generate should be weighed or through which specific mechanisms such positive impacts will be verified (Chamber of Deputies, Order of the Day N° 567 of February 11, 2018).

the objective of BIC company projects, beyond seeking profit (benefits or earnings)[20] for shareholders, should also be to produce a positive social and environmental impact. To avoid confusion, it would have been clearer to directly say that, in addition to maximizing shareholders' value, such companies should act in a manner that benefits society and the environment.[21]

Finally, the description of BIC companies is concluded by stipulating that the obligation to generate a positive social and environmental impact must be met "in such a manner and on such terms as established by the regulations": once the law is approved, it will be necessary to await the issuance of the regulations to understand the precise scope of the obligations assumed by companies in this matter. This reference to the regulations, unlike the laws of other countries, leaves open to interpretation what an infra-legal level regulation could provide in this context, which does not seem to contribute to legal certainty. Although the law requires greater precision, it is obvious that a legal text cannot become an extensive listing of specific circumstances.[22]

The company name is required to add the expression "collective benefit and interest," its abbreviation (although it is not indicated what this abbreviation is), or the acronym BIC (Article 2). Despite the fact that this provision was contested, it contributes both to informing potential contractors of the type of company with which they are engaging and to demonstrating the company's commitment to the public to observe such terms.

[20] It is clear that companies' objective is to obtain profit to be distributed among the partners (to maximize the value of their contribution), for which the activity they conduct through a company constitutes a means of an instrumental nature. Richard and Muiño (2004, p. 145) argue that "it could be accepted that the profit-making purpose—that is, obtaining profits—was the mediate cause of the constitution of the new entity, with the corporate purpose acting as an immediate cause."

[21] It is appropriate to remember that Article 3 of the General Law of Companies contains a curious provision that reads: "Associations, whatever their purpose, that adopt the form of a company under any of the types provided, are subject to its provisions." This led some companies to take advantage of this rule in order to develop an industrial or commercial economic activity under non-profit principles, typical of associations. However, the theoretical and practical problems that this hybrid figure raises have shown that it is not suitable to adequately fulfill its purpose. See Coniglio and Connolly (2019) and Cracogna (2019).

[22] The opinion of the minority of the General Legislation Commission that dispatched the project was that "other inescapable obligations could be envisaged for the figure, such as participation in the profits of the workers; equitable remuneration for all employees; training subsidies; population employment [for the] structurally unemployed, such as youth at risk, homeless individuals, people who have been released from prison, etc.; job vacancies for trans and disabled people; gender equality in the workforce; among others." (Chamber of Deputies, Order of the Day N° 567 of 2/11/16). Although the enumeration is biased toward personnel, it constitutes an example of possible concrete measures of social impact.

3.2 Formation of BIC Companies

BIC companies may add this term in its original formation or acquire it by amending their statute or social contract, duly registered in the respective public registry. In both cases, the positive and verifiable social and environmental impact that they are committed to generating must be specified precisely. The statutes of BIC companies must require a favorable vote of 75% of the partners in order to introduce any modification in the object of the company. This requirement regarding the constancy of "social and environmental, positive and verifiable impact" in the relevant instrument seems to contradict the requirement that the social and environmental impact must be conducted "in such a manner and on such terms as established by the regulations," which we criticized in the previous paragraph.

The requisite of the qualified majority to vary the company's objective seems an adequate measure to ensure that the company complies with the assumed obligations. However, in the case of companies already constituted, the adoption of BIC company status grants the right of withdrawal to the partners, who may vote against it, and to those absent who proved their status as shareholders at the time of the meeting. The projected rule refers to Article 245 of the General Corporations Law, which regulates the right of withdrawal of the partners of public limited companies and limited liability companies.

3.3 Responsibility of Administrators

One aspect of special interest is the administrators' obligations—and resulting responsibilities—given that companies' primary task is to maximize profit or benefit for their shareholders, as prescribed by Article 1 of the General Corporations Law.[23] Simultaneously, the article tries to broaden companies' business purpose while also seeking to correlate administrators' responsibilities with the execution of such a broadened purpose.[24]

[23] This is how the doctrine generally understands it. Nissen (2000, p. 24) expresses it in the following way: "The cause of the partnership contract is the purpose that the founders have had for the constitution of the same and it is none other than obtaining the profits that will be obtained from carrying out the activities provided for in the social contract." For his part, Etcheverry (2013, p. 109) argues, "In our countries, the legal definition of society always includes the objective of obtaining distributable profits." Meanwhile, Olivera García (2019, p. 11) highlights the importance of the issue of corporate administrators' responsibility in general, stating, "The legal regulation of the responsibility of administrators represents one of the essential pillars of the regulations of the commercial companies. Through it, the aim is not only to achieve the reparation of the damages that the improper action of the administrators may cause in the assets of the company, but also to induce and align their conduct with the social interest."

[24] The message from the Executive Branch that accompanied the original bill stated, "The objective of this regulation is to protect decision-making that, in addition to the economic factor, takes into

Hence, the project establishes that administrators must take into account "the effects of their actions or omissions" with respect to shareholders, employees, the communities with which they are linked, the local and global environment, and the long-term expectations of shareholders and the company. In this way, the interests of the different stakeholders are included, as well as the prospects of the company, thereby limiting or excluding the consideration of short-term benefits for everyone involved. This vision notably broadens the horizon of company activities, exceeding the narrow limit of shareholder primacy.[25]

However, this greater breadth and diversity of obligations that administrators must meet generates a responsibility that can only be demanded by the partners and the company itself. In other words, the remaining stakeholders do not acquire the authority to demand that administrators are responsible for the obligations imposed on them by the statute or the social contract of the BIC company. This limitation, which has provoked some criticism in the case of other countries inasmuch as it restricts the possibility of prosecuting the nonfulfillment of the administrators' duties, seems, however, to be well founded.[26]

3.4 Information and Transparency

Regarding information and transparency, Article 6 of the bill requires administrators to prepare an annual report in which they specify the actions completed to comply with the social and environmental impact provided for in the statute or social contract. This report must be audited by "a registered independent professional specialized in the areas in which it is intended to achieve positive social and environmental impact." It is difficult to determine who that professional will be since the areas of social and environmental impact are very diverse. It is also unclear where the annual report should be registered. Accordingly, conducting this kind of audit will be challenging.

Here, again, the project refers to the regulations regarding the information requirements and the guidelines for conducting the audit. The report must be submitted to the public registry within six months of the close of the annual fiscal year and must be published on the company's website.[27] Nevertheless, the regulation must also establish the mechanisms for the publication of the reports.

---

account others, so that the administrators of these companies can carry out actions aimed at achieving benefits for the group, without thereby unloading responsibilities on them."

[25] Refer to Zavala Ortiz de la Torre (2013, pp. 123 *et seq.*) for the meaning of the relatively new stakeholder theory compared with shareholder primacy or shareholder value, which for a long time were considered exclusive in societies.

[26] Likewise, one must consider the difficulties encountered by "D & O" insurance when the administrators' obligations reach an extensive or imprecise breadth and diversity.

[27] It is important to remember that the requirement that companies have a website is foreseen in the aforementioned Reform Project of the General Law of Companies of 2019 and is in line with the

The bill envisages a control and sanctions procedure that goes beyond the obligations of information and transparency (Article 7). Failure to comply with the obligations assumed by application of the law will mean the loss of BIC company status. Again, on this issue, the project refers to the regulations regarding the terms and conditions for the application of this approval and may not be sanctioned in case of noncompliance due to unforeseeable circumstances or *force majeure*. From the text of Article 7, it seems that the obligations referred to are both informative (preparing and presenting the annual report) and substantive, that is, actions aimed at generating social and environmental benefits; thus, the enforcement authority will have a significant range of discretion.

One aspect that raises doubts is the mechanism by which the noncompliant company will lose its BIC company status since this condition is acquired by decision of the partners, either in the act of incorporation or, later, by means of a statute or contract reform. The revocation of this condition by decision of the enforcement authority must, therefore, undergo some special procedure that the law does not establish.

Alternatively, the Executive Branch is charged with determining which will be the law enforcement authority.[28] This leads to the assumption that it will not be the proper authority of each local jurisdiction in charge of the public registry, that is, the General Inspection of Justice in the federal capital and similar agencies in each province. However, it should be noted that, by its nature, corporate control could not be centralized in the national government by virtue of the provisions of Article 75, Paragraph 12, of the National Constitution. At this point, the government's federal organization presents a problem that does not seem to have been duly recognized since the application of the substantive laws—precisely this case—is constitutionally reserved for the provincial jurisdictions, while the bill entrusts the national Executive Branch to determine the enforcement authority. Therefore, a question of unconstitutionality could be raised that would impact the validity of the law precisely on the point of significant importance to ensure its compliance. The issue is complicated since the monitoring of compliance with activities as diverse as those involving social and environmental objectives is complex in nature, unlike the control usually exercised by the public registries of companies.

trend of comparative law. Meanwhile, in terms of reports on social and environmental performance, there are already several experiences such as the social balance, the social report, and others that have been increasingly used.

[28] In the original project of the Executive Power, it was foreseen that the enforcement authority would be the Ministry of Production, which had been the promoter of the initiative.

3.5 Governing Rules

Regarding the order of priority of the rules applicable to BIC companies, the bill is not sufficiently precise since it determines that they will be governed by "the provisions of this law, the General Corporations Law 19,550, amended text 1984, and its modifications, of the regulations of the present and, in particular, by the norms that are applicable according to the type of corporation that they adopt and the activity that they carry out" (Article 1, last paragraph). The enumeration is confusing as it mentions the norms of the type of corporation after the regulation of the law and after having alluded to the General Corporations Law, which regulates the different types of corporations. On the other hand, the detailing of the rules that govern the activity is unclear since the proposed law deals with the corporate legal structure. This circumstance leads us to believe that conflicts could arise in this area.

The bill does not establish promotional measures, except for the authorization granted to the enforcement authority of Law 27,437 to include BIC companies in the National Supplier Development Program (Article 8).[29] On this matter, encouraging the creation of such companies has been identified as an appropriate promotion measure that induces new business behaviors more in tune with social and environmental needs. However, it has also been highlighted by authors such as Pereyra (2019) and Vítolo (2019) that this project basically aims to identify and acknowledge BIC companies, thus providing a platform for the subsequent adoption of promotional measures in tax, financing, and labor cost reduction matters, among others.

4 The New Bills

As previously stated, the legal requirement to reintroduce the bill passed by the Chamber of Representatives in Congress triggered the presentation of two other bills (one in each chamber of Congress and addressed to the General Legislation Commissions, with no progress up to the moment) that reproduce the content of the original project, with the addition of some innovations that address certain criticisms and contributions the bill had later received. All in all, these changes do not alter the nature of the original bill, and the proposed amendments are, generally speaking, for the better.

[29] Article 24 of Law 27,437 created the National Supplier Development Program in which it is specified: "Its main objective will be to develop national suppliers in strategic sectors, in order to contribute to the promotion of the industry, the diversification of the national productive matrix and the promotion of competitiveness and productive transformation. This program will favor the articulation between the offer of products and services, existing and potential, with the demand of the National Public Sector and legal entities operating in strategic sectors demanding these goods, with the purpose of channeling demands and developing suppliers capable of supplying them."

The first of the new bills was submitted to the Chamber of Representatives.[30] It introduces the following main innovations: more specifications regarding the meaning of positive social and environmental impact for purposes of the law; conformity of the annual report to an independent standard, widely known and used for the definition and assessment of corporate business in relation to the community and the environment; stronger control by the applicable enforcement agency in terms of compliance with companies' social and environmental purposes; and power vested in the applicable enforcement agency to promote the inclusion of triple impact companies in support programs for the development thereof.

The bill that was introduced in the Senate[31] takes into account the innovations included in the bill submitted to the Chamber of Representatives, such as the definition of positive social and environmental impact and further specifications regarding the power of control vested in the applicable enforcement agency. It also adds some other provisions, among which we should foreground those aimed at promoting the inclusion of micro, small and medium-sized enterprises (MSMEs) in the regulation of BIC companies and the minimum requirements to be complied with by triple impact companies in order to obtain legal recognition. The rationale of the bill highlights the importance of these companies in the scenario created by the COVID-19 pandemic and the damaging effects of climate change.

5 Conclusion

Corporate law is undergoing a period of profound change on a global scale, albeit with uneven intensity across different countries, depending on their particular individual conditions (Cracogna 2020b, Vol. 1, p. 213). Generally, it could be said that these changes are concomitant, or in solidarity, with those occurring in society as a whole: they deal not only with the narrow margins of law, as such, but also with the conditions of society overall, where current values undergo mutations that, like successive shock waves, are projected onto the universe of social culture.

The change is significant. For a long time, it could be argued that since their appearance on the Western economic horizon, corporations had the exclusive task of producing profits for those who contributed capital. They were constituted for this purpose, and their performance was evaluated according to the profit they earned.[32]

[30] Named 0737-D-2021 and signed by congresswoman Camila Crescimbeni et al. (See status: www.diputados.gov.ar/proyectos).

[31] Bill S-1840-2021, submitted by senator Gladys E. González et al. (See status: www.senado.gov.ar/parlamentario).

[32] However, Olivera García (2016, p. 24) notes, "The imperative force of the adoption of social responsibility policies does not arise from any specific legal norm. Its binding force comes from the intimate social conviction that failure to comply with these principles constitutes an infringement of a cultural norm. It is a social imperative, with an ethical content, that imposes certain behavior on companies."

The new orientation was, and continues to be, opposed.[33] However, it has made its way to many countries, including the United States, the champion of liberalism, where the legislation of several states, including Delaware, gradually made room for it. It should be noted that, as often happens, it was the companies themselves that incorporated care for other stakeholders (workers, clients, creditors, local community, and the environment) spontaneously and without the existence of a specific legal framework. Subsequently, and in many cases due to the advocacy activities of the entrepreneurs themselves, governments began to echo the new trend, giving it a place in their respective legislation.[34]

The issue seems clear, in principle, since it is a question of society serving the needs of the human, social, and environmental conditions in which it operates and to which, obviously, it must correspond since it depends on these conditions to carry out its activities, beyond the fulfillment of its strictly legal obligations. However, some aspects that may conflict with the legal implementation of the new trend remain to be resolved. Initially, it must be specified how it is possible and convenient for the law to deal with issues that, ultimately, have a moral foundation.[35]

In this regard, it is appropriate to consider whether a company that assumes the collective benefit commitment must adhere to a particular type or be any company that qualifies its corporate purpose through such obligation. On the other hand, it must be determined whether it is necessary to establish obligations for administrators regarding compliance with the company's social and environmental objectives and, where appropriate, who will be entitled to demand such responsibilities and to what extent. The issue of compliance is of paramount importance in avoiding the use of names that have no practical impact or actions that constitute mere social cosmetics, in keeping with only a passing fad.

No less important is the issue of information and transparency about the objectives of collective benefit and interest that the company must satisfy, starting with the eventual obligation to denounce them not only in its statute but also in the company name itself. The requirements and contents of the report, the social balance that the company must meet, and its advertising procedure must be determined. Additionally, a question arises about the eventual requirement to submit these reports to a specialized audit, with the consequent problem of defining which audits these are and their accreditation as such.

Finally, a matter that is controversial yet worth considering is whether these companies should be subject to a special state comptroller regime because of their objectives or if they should only be subject to the requirements common to other

[33] The work of Hadad (2016, p. 366) is enlightening and argues that "from a purely legal point of view to the extent that the CSR programs carried out by the board of directors do not generate value for society, this may entail responsibility for the administration."

[34] In the 1970s, Galgano (1990, p. 193) stated, "The private company, therefore, can only be affirmed that it is 'functionalized' for social utility if laws exist and only to the extent that those laws functionalize it."

[35] Some have questioned the need to establish a specific legal regime for triple impact companies, considering that they may exist within the current corporate system (see Basualdo 2019).

companies. In conjunction with this consideration is the question of the existence of a specific sanctioning body for when the previous obligations are not fulfilled, be they substantive or informative.

All these issues are complex and must be properly weighed when legislating for these companies because, if not adequately resolved, they can frustrate their performance and their very existence, regardless of the good intentions that inspire their legal purpose.

References

Alcalde Silva J (2018) Observaciones a un nuevo proyecto de ley que regula a las empresas de beneficio e interés colectivo desde la experiencia comparada. Revista Chilena de Derecho Privado 33:381–425

Basualdo ME (2019) ¿Es necesaria la regulación de las sociedades de beneficio e interés colectivo (BIC)? In: Hacia un nuevo derecho societario. XIV Congreso Argentino de Derecho Societario. Universidad Nacional de Rosario, Rosario

Calcaterra G, Lencova Besheba L (eds) (2020) Proyecto de reforma de la Ley General de Sociedades. Jurisprudencia Argentina, Número especial, fascículo 12, Buenos Aires

Coniglio A, Connolly C (2019) La empresa social: El modelo sostenible que quiebra el enfoque tradicional. In: Hacia un nuevo derecho societario. XIV Congreso Argentino de Derecho Societario. Universidad Nacional de Rosario, Rosario

Connolly C, Coniglio A (2021) Las empresas con propósito y la regulación del cuarto sector en Iberoamérica. Informe jurisdiccional de Argentina. Secretaría General Iberoamericana PNUD, Madrid

Cracogna D (2009) Las empresas de la economía social. In: Piaggi A (ed) Tratado de la empresa. Abeledo Perrot, Buenos Aires

Cracogna D (2018) Hacia un nuevo paradigma societario en el derecho argentino. In: Temas de Derecho Mercantil, Academia Nacional de Derecho y Ciencias Sociales de Buenos Aires. La Ley, Buenos Aires

Cracogna D (2019) El proyecto de ley de sociedades BIC. In: Hacia un nuevo derecho societario. XIV Congreso Argentino de Derecho Societario. Universidad Nacional de Rosario, Rosario

Cracogna D (2020a) La noción de sociedad en el proyecto de reforma de la Ley General de Sociedades. In: Calcaterra G, Lencova Besheva L (eds) Proyecto de reforma de la Ley General de Sociedades. Jurisprudencia Argentina, Número especial, fascículo 12, Buenos Aires

Cracogna D (2020b) Transformaciones en el derecho societario. Las sociedades de beneficio e interés colectivo. In: Olivera García R (ed) Estudios de Derecho Comercial. Homenaje al Dr. José A. Ferro Astray. La Ley Uruguay, Montevideo, vol I, p 213

Etcheverry RA (2013) Creación de un tipo societario de gran beneficio social. La Ley, Tomo E, Buenos Aires

Galgano F (1990) Las instituciones de la economía capitalista. Ariel, Barcelona

Hadad LA (2016) La responsabilidad social empresaria con dinero de otros. Revista de Derecho Comercial y de las Obligaciones 280:357–367

Mujica JD (2019) Benefit corporation legislation: assessment of a U.S. legal export. Harvard Law School, Cambridge, MA

Nissen R (2000) Curso de Derecho Societario. Ad Hoc, Buenos Aires

Olivera García R (2016) Lucro, sociedad y dividendo. Anales, Academia Nacional de Derecho y Ciencias Sociales Año LXI 54:7–30

Olivera García R (2019) Responsabilidad del administrador societario. Edición del autor, Montevideo

Pereyra AS (2019) Sociedades de beneficio e interés colectivo. Sociedades BIC o de triple impacto. El compromiso de nuestro país al Pacto Mundial de Naciones Unidas. In: Hacia un nuevo derecho societario. XIV Congreso Argentino de Derecho Societario, Universidad Nacional de Rosario, Rosario

Richard EH, Muiño OM (2004) Derecho societario. Astrea, Buenos Aires

Sistema B. Reporte de impacto 2020., www.sistemab.org

Vítolo DR (2019) La responsabilidad social empresaria (RSE), el desarrollo sostenible (DS) y las empresas "BIC". Doctrina societaria y concursal 378:373–382

Zavala Ortiz de la Torre I (2013) La pugna entre el *shareholder primacy model* y la *stakeholder theory* en la doctrina y práctica anglosajona. Estado de la cuestión. Deusto Estudios Cooperativos 2:103–132