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EXECUTIVE SUMMARY
INTERNATIONAL RESEARCH PROJECT

PURPOSE-DRIVEN COMPANIES AND THE REGULATION OF THE FOURTH SECTOR IN IBERO-AMERICA

International research project

Purpose-driven companies and the regulation of the fourth sector in Ibero-America

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MINISTERIO
DE ASUNTOS EXTERIORES, UNIÓN EUROPEA
Y COOPERACIÓN





• FOREWORD •



The pandemic has hit homes and economies around the world hard. But it has been felt particularly harshly in Latin America and the Caribbean, a region that is home to 8% of the global population, but accounts for 30% of deaths from COVID-19. In addition, according to the latest estimates from various international organizations, during 2020 more than 40 million people lost their jobs, 22 million fell below the poverty line, and almost three million companies had to close their doors.

Against this backdrop, women have been doubly affected: not only because 60% of women's jobs are in high-risk sectors — such as commerce, health, education or tourism — but also because job projections are much less optimistic due to the unequal role played by women in domestic work and household care tasks.

At the same time, this economic, political and social crisis, which has known no frontiers, has exposed the non-sustainability and inequalities caused by

an economic system that has been operating for decades with a short-term perspective, privileging profitability over social and environmental benefits.

Perhaps the most serious aspect is that this is not an isolated episode, nor is its root cause a chance occurrence. As stated in the new edition of the *Human Development Report* (HDR), produced by UNDP (2020),¹ there is a direct link between the outbreak of this pandemic and the increasing pressure that human activity has placed on the environment in recent years. The HDI has therefore evolved in 2020 to incorporate planetary pressures into a new index, the PHDI. This includes carbon dioxide emissions, in addition to the footprint caused by the extraction of raw materials from countries; variables that are largely determined by a private sector that mostly revolves around a linear, extractive model. The conclusion drawn from that report is also one we subscribe to here; we cannot go back to the old way of doing business (UNDP, 2020).

¹ UNDP (2020). *Human Development Report*.

Fortunately, it has not all been gloom in such a complex year: we have seen governments and supranational bodies raise the flag for green, sustainable recovery; the indices that have performed best have been those guided by sustainable investment criteria (ESG); many companies have accelerated their plans to become carbon neutral; and the centrality of women's leadership has also become evident.

Within this maelstrom, spaces for dialog and reflection have been opened in order to analyze the role the private sector should play in the development of our countries. Indeed, a question that has arisen in various international forums, and has found a place within company boards and government agendas, is whether, once the pandemic has been contained, we should look back and follow footsteps along the same path we have been following, or whether we should venture into an alternative, more equitable, more people-centered, long-term, climate action-oriented development.

Faced with this dilemma, our response is clear and categorical: we are firmly committed to turning the wheel and rerouting towards new development horizons. The arguments presented in this report are intended to lead the way and establish a road map for public policy to help promote a different, fairer, more inclusive, resilient and engaged private sector.

SUPPORTING NEW COMPANIES TO SOLVE OLD PROBLEMS

In recent years, we have seen a proliferation of companies seeking triple economic, social and environmental impact. We are talking about B companies, social companies, triple impact or triple bottom line companies, ethical banking, the fair-trade movement, the rise of the circular economy and sustainable fashion, to name just a few initiatives.

But while as we recognize their existence, we are aware that as long as there is no legal, regulatory framework to accompany their development, it will be difficult to see a true entrepreneurial ecosystem flourish that allows the scaling of these companies; that is, that makes it possible for them to go from being a niche to being the standard.

Seeking to support this institutionalization process, we have joined forces at SEGIB, UNDP and IDRC to support this research project, taking place in eight Ibero-American countries and in some jurisdictions outside the region. The idea has been to generate research that shows how regulation and the promotion of appropriate public policies can incentivize companies that already incorporate genuine, sustainable business purpose in their DNA. Likewise, how policies and regulatory frameworks can also provide an impetus for those companies that have not yet done so to set out on the path of change. Ultimately, we seek to propose specific measures that can be implemented by Ibero-American Governments, based on their own experience and comparative study, in four key areas.





First, the project focuses on regulatory frameworks and, in particular, on legal models that promote the creation and development of purpose-driven companies. Having such regulations in place – whether in the form of private certification, public regulation or a hybrid system – provides guarantees to entrepreneurs who seek to go beyond economic profit, while also attracting sustainable investment and purposeful talent, which is abundant in the region. We have seen significant progress in certain Ibero-American countries, some of which – in the midst of the pandemic – have passed new legal frameworks for companies providing social benefits and serving the collective interest. We hope that the studies will help those countries that are currently discussing these issues within their legislative or executive bodies, to pick up the pace and do so on the basis of the evidence generated.

In addition, the project has analyzed incentives in two areas that are vital for if the companies are to take off. On the one hand, tax incentives that have not been considered within legal reforms already approved in the region and which, if included, could allow purpose-driven companies, among other things, to deduct those costs designated for social and environmental purposes. A company that allocates a large part of its financial and human capital to social and environmental purposes should receive differentiated tax treatment that recognizes this positive social and environmental impact on our societies and our planet. The studies developed in this project show that tax incentives would allow companies to stop operating within the legal limbo in which they currently feel at times

a company, at times a foundation, and at times neither of the two.

On the other hand, the project has addressed incentives regarding sustainable public procurement. If we consider the public sector as the principal global contractor – according to OECD data, approximately 12% of countries' GDP goes to public procurement, a figure that rises to 20% in Latin America – incorporating environmental and social criteria within public spending decisions would have a transformative effect on markets, by promoting purchases from companies whose purposes are aligned with the public good. It would also reduce unnecessary demand for resources; minimize the negative impact of goods, projects or services throughout their life cycle; promote gender equity; open up markets for small and medium-sized companies; develop sustainable and innovative economic sectors; and ensure fair contracting conditions. Indirectly, this would allow public procurement to become a certification and regulation process in itself, capable of boosting purpose-driven companies and bringing countries closer to achieving SDG 12, which refers to sustainable production and consumption.

For several years, IDRC has been supporting the Inter-American Network on Government Procurement to advance the sustainable public procurement agenda. This project builds on those achievements and makes headway regarding specific proposals for strategic public procurement policies in order to achieve the SDGs.



The fourth backbone of this study has been the gender perspective within purpose-driven companies. The pandemic has interacted with glass ceilings and structural deficits in our region, causing a differentiated and disproportionate impact on women, placing at risk decades of fragile gains, including those achieved in the economic sphere. Gender equality must accompany any business challenge that claims to be sustainable. We are certain that, if there is a triple bottom line, there must be inclusion of female leadership and recognition of diversity, and specific consideration of the needs that women also face as workers in these companies, as part of their value chain, as customers, and as part of their impact. This will not only be a decision regarding justice for half the population, it will also be a decision regarding economic, social and environmental profitability.

For several years now, the Ibero-American General Secretariat has been promoting the development of purpose-driven companies on both sides of the Atlantic. UNDP has made progress in developing and promoting evidence for scaling up sustainable business models in the region. IDRC has supported research to strengthen entrepreneurship and impact investment ecosystems in Latin America.

Today, we are joining forces to raise our voices in favor of these companies that represent an asset in our economy and a firm response to the challenges of the future, and we therefore support public policies to promote them. Our countries are in an unbeatable position, supported by the feeling

of the majority of citizens to include and support them within a new social pact necessary to reset our economies, and thus turn Ibero-America into a leading and pioneering region regarding the regulation of these companies.

This report hopes to provide support in along those lines and, at the same time, aims to make available to the 22 Ibero-American governments all our technical capital and the evidence regarding public policy gathered in this research project.

Rebeca Grynspan

Secretary General

Ibero-American General Secretariat (SEGIB)

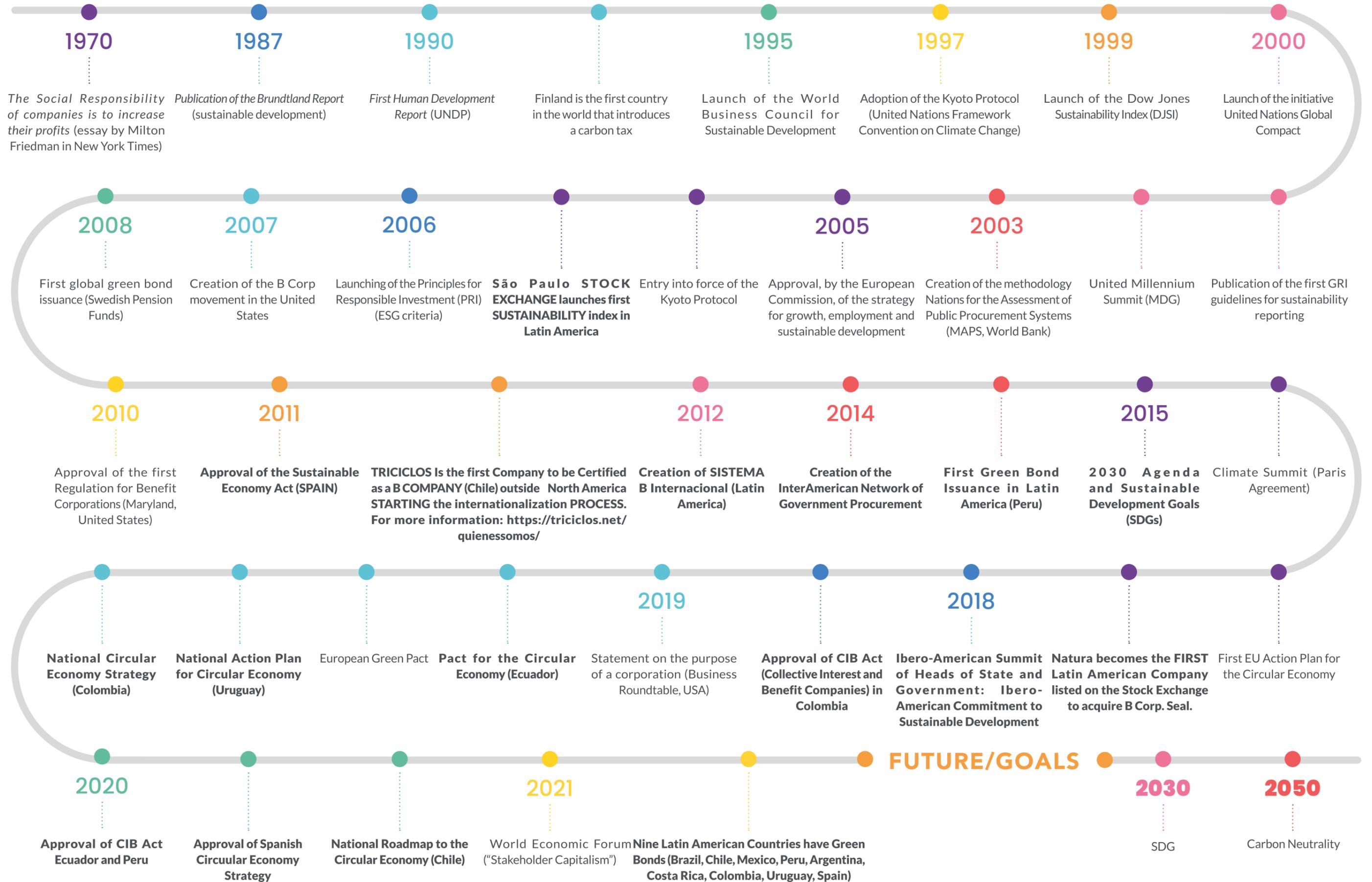
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TIMELINE





INDEX

01.	International research project	10
1.1.	Introduction	11
1.2.	Goals	12
1.3.	Purpose-driven companies	13
1.4.	Regulation of the fourth sector	17
02.	General recommendations	20
2.1.	Business model	21
2.2.	Impact measurement	23
2.3.	Tax proposals	25
2.4.	Access to public procurement	26
2.5.	Women's business leadership	27
03.	Thematic reports	29
3.1.	Methodology	30
3.1.1.	Selection criteria	30
3.1.2.	Methodological premise	31
3.2.	Studies	32

3.2.1.	Impact measurement	33
3.2.2.	Tax proposals	37
3.2.3.	Access to public procurement	39
3.2.4.	Women's business leadership	43

04. Jurisdictional reports 45

4.1.	Methodology	46
4.1.1.	Selection criteria	46
4.2.	Jurisdictions surveyed	47
4.2.1.	Ibero-American jurisdictions	48
	Argentina	48
	Brazil	50
	Chile	52
	Colombia	54
	Costa Rica	56
	Spain	58
	Mexico	60
	Peru	62
4.2.2.	Non-Ibero-American jurisdictions	64
	Canada	64
	United States	66
	Continental Europe	68
	Morocco	70
	United Kingdom	72

01.

**INTERNATIONAL RESEARCH
PROJECT**



1.1

INTRODUCTION

The *Purpose-driven companies and the regulation of the fourth sector in Ibero-America* research project is part of the international initiative The Fourth Sector for Ibero-America, sponsored by the Ibero-American General Secretariat (SEGIB), the United Nations Development Programme (UNDP) and the International Development Research Centre (IDRC). This initiative seeks to promote the creation of a new legal framework conducive to all those companies determined to combine financial success with social and environmental impact. In this sense, this new company and business model is being put forward as a contribution to achieving Sustainable Development Goals (SDGs) in the region.

The research project aims to generate and share knowledge on the importance of adequate regulation of the fourth sector. In this way, it is proposed that both the generation of laws and effective public policies are fundamental actions to boost the positive impact of companies with a social and environmental purpose in Ibero-America. In this regard, the project contains a body of publicly accessible documentation that analyses three main aspects. First, it compares the legal models of purpose-driven companies in various countries in the region. Secondly, it sets out the main legislative and regulatory best practices; furthermore, it looks at the legal, financial and technical obstacles to their standardization and operation. Finally, it presents proposals for public policy, including tax incentives and incentives for access to public procurement.

Through the project, the aim is to provide lawyers, academics, businessmen, public officials, politicians and public policy operators with updated information of high academic quality that will allow the 22 Ibero-American governments to make significant progress in the creation of a regulatory framework and an economic ecosystem conducive to the development of the fourth sector in the region.

Finally, this document aims to contribute to the systematization of knowledge about purpose-driven companies worldwide and to the consolidation of a legal framework to boost their positive impact in Ibero-America. This is done with the aim of helping to shape a new profitable, sustainable business ecosystem for people and the planet.

Juan Diego Mujica Filippi
Academic Coordinator

1.2

GOALS

The general objective of the international research project is to generate and share knowledge on the regulation of the fourth sector, mainly regarding the inclusion of different legal models for companies with a social and environmental purpose within Ibero-American jurisdictions. In particular, the project addresses the following specific objectives:

- **To provide** a legal approach to the concept of “business with social and environmental purpose”, from the perspective of the Latin American legal experience.
- **To synthesize** the current and pending legal framework regarding companies with a social and environmental purpose, in different jurisdictions within and outside Ibero-America.
- **To describe** the legal models that recognize the concept of “business with social and environmental purpose” which are most prevalent in the Ibero-American region.
- **To identify** those laws and public policies, in force or pending – at various levels of government – that interact with purpose-driven companies, particularly with respect to legal models, impact measurement, fiscal treatment and access to public procurement.
- **To point out** the main regulatory and administrative obstacles that hinder the recognition or implementation of purpose-driven companies as

an attractive legal model for entrepreneurs and businesspeople.

- **To propose** specific recommendations to boost the positive impact of companies with a social and environmental purpose in Ibero-America, through appropriate public policies that generate confidence in the various players, chiefly among public administration, the business community and citizens.

The general objective of the project is to generate and share knowledge on the regulation of the fourth sector, mainly regarding the typification of various legal models for companies with a social and environmental purpose in Latin American jurisdictions.

1.3

PURPOSE-DRIVEN COMPANIES

1.3.1. Terminology

During the development of the project, it has been possible to observe the interchangeable use by public and private players of various terms, including “social company”, “social entrepreneurship”, “triple impact company”, “B company”, “CIB company” and “purpose-driven company”.

This research, in line with previous studies by the Ibero-American General Secretariat and the International Development Research Centre, proposes the term “*empresa con propósito*” as a broad concept that encompasses all forms of business that combine financial success with social and environmental impact at the core of their business activity. The term “*empresa con propósito*” is intended to be the Spanish equivalent of “purpose-driven company”. This allows a terminological homologation, in the Ibero-American region, when talking about the companies that are part of the fourth sector.

In this sense, it recognizes the diversity of types of companies that are expected to be recognized in the Ibero-American jurisdictions in order to generate economic profitability and social and environmental impact, without trying to impose a single business model for the region or a homologation of conceptual content between the various business models. It will be the public and private players in each jurisdiction that will analyse which is the most appropriate purpose-driven company model for

their economic and social situation, in addition to the name given to them by legislators when defining them in their legal systems.

1.3.2. Diagnosis

For some years now, Latin America has been fertile ground for the emergence of business models in which the objective is not limited to the generation of profit for their shareholders. These new business ideas have taken on various legal forms, traditional – such as cooperatives, commercial companies and non-profit organizations – or recently created – such as the hybrid category of collective interest and benefit company (hereinafter, CIB) – to carry out their economic activity and generate impact. In the same way, they belong to various currents, such as social entrepreneurship, stakeholder capitalism or ethical banking, but all of them have the generation of a positive impact on society and the environment in common, through profitable economic activity and the strength of the market.

It is possible to agree that the so-called purpose-driven companies are aligned with the collective interest, since they seek to generate social and environmental welfare, thus solving public problems from the private sector. They also belong to an ecosystem of recent and heterogeneous development, which is being explored by legislators and policy operators in the region, through the promotion by different actors of legal models of



purpose-driven companies. The CIB category is particularly noteworthy, with law in force in Colombia, Ecuador and Peru, in addition to legislative projects in Argentina, Chile and Uruguay. Similarly, draft projects aligned with the CIB model are at different stages of development and internal discussion in Brazil, Spain, Panama and Mexico.

As previous studies by the Ibero-American General Secretariat show, it is estimated that Ibero-America was home to approximately 170,000 purpose-driven companies as of 2019, which employed 10 million people and contributed 6% of the regional GDP (SEGIB, 2019).² This same study, however, also showed that despite the fact that, in recent years, 11 countries in the region had initiated some debate on new laws and legal frameworks to typify purpose-driven companies, these lacked an adequate ecosystem that would allow them to develop by generating economic profitability and social and environmental impact.

Furthermore, recent regulatory evidence shows that the implementation of these legal models

focuses only on a corporate model that allows the provision of legal identity to the purpose-driven company, through the express inclusion in the statute of its social and environmental purpose, but not through legal architecture that encourages a large number of entrepreneurs and investors to consider these legal vehicles. While the legal-conceptual debate that has taken place in recent years within the field of business law is important, the real development of purpose-driven companies will come through comprehensive public policies that recognize their legal nature

The CIB category is particularly noteworthy, with laws in force in Colombia, Ecuador and Peru, in addition to legislative projects in Argentina, Chile and Uruguay. Similarly, draft projects aligned with the CIB model are at various stages of development and internal discussion in Brazil, Spain, Panama and Mexico.

² Ibero-American General Secretariat (2019). *Las empresas con propósito y el auge del cuarto sector en Iberoamérica* <https://www.segib.org/?document=las-empresas-con-proposito-y-el-auge-del-cuarto-sector-en-iberoamerica>



through differentiated tax regimes and access to public procurement based on sustainability criteria. Governments are called upon to encourage the emergence of agents of change with high social and environmental standards.

The reality described above comes in response to the fact that, although various countries in the region are debating or implementing laws and public policies related to purpose-driven companies, the understanding among political players, public policy operators and citizens in general regarding purpose-driven companies is limited. This shows the urgency of generating research at regional and local levels, as well as education regarding the fourth sector. In addition, there is the serious problem of a lack of trust among all the players involved (public administration, private companies and citizens) about the true intentions of the generation of public impact from the private sector and the imminent risk of impact-washing.

However, the devastating effects of the COVID-19 pandemic and the subsequent economic crisis make it clear that there is an urgent need to prioritize

an impactful economic revival. It should include economic, social and environmental indicators in its vision of development, with the private company as an ally of the State, since the company is as important as the State in the solution to public problems and in making a contribution towards achieving the Sustainable Development Goals. Therefore, the redesign of regional legal systems must be contemplated so that purpose-driven companies can succeed in the market, generating a transformative impact through public vocation. This project provides comprehensive recommendations from a systemic point of view for an enabling legal architecture for the fourth sector.

CIB LAWS IN SOUTH AMERICA

South America is the focus of the collective interest and benefit company legislative movement, which is based on the benefit corporation model for the United States. This legal model for the purpose-driven company is defined in the thesis *Sociedades de Beneficio e Interés Colectivo: un aporte societario al interés social y medioambiental* (Collective Interest and Benefit Companies: a corporate contribution to social and environmental interests) as “any legal entity, present in a commercial legislation, that performs economic activity, distributes profits to its shareholders. These shareholders and the managers of the company seek to build a social or environmental public benefit, as established in its by-laws” (Mujica Filippi, 2016).³ The main characteristics of this company model are:

- There is a purpose of social and environmental benefit in addition to economic activity.
- There is a variation in the liability regime for directors and administrators.
- There are reporting obligations and greater transparency mechanisms.

According to the research *Movimiento legislativo sociedades B.I.C.* (CIB Companies Legislative Movement, 2020), by Sistema B Internacional and the International Development Research Centre,⁴ the regional presence of the collective interest and benefit company (CIB) model in the Spanish-speaking countries of South America obeys three identifiable criteria:

- The state organization. Company law extends to the entire legal system, irrespective of whether they are central or federal states.
- The similarity of trade legislation in South American countries. Their codes of commerce and corporate laws have had common European references and reciprocal influences.
- The Spanish language has allowed an easy understanding of the conceptual content of this business model and its legal consequences.

Collective Interest and Benefit Companies Laws in South America

Country	project N.º	Presentation	Status
Argentina	2498-D-2018 (1. st Legislative Project)	6th November 2016	Debated in the Chamber of Deputies and loss of parliamentary status in the Senate
	0737-D-2021 (2. nd Legislative Project)	17 March 2021	Pending debate in the Chamber of Deputies
Chile	11273-03	13 Jun 2017	Pending debate in the House of Representatives' Economy Committee
Colombia	303/17	6 September 2016	Passed as Act 1901
Ecuador	351278	19 December 2018	Approved within the Organic Law of Entrepreneurship and Innovation
Peru	2533	8 March 2018	Passed as Act 31072
Uruguay	136868	3 October 2017	Pending debate in the Senate

³ Mujica Filippi, J. (2016). *Sociedades de Beneficio e Interés Colectivo: un aporte societario al bienestar social y medioambiental* [bachelor's thesis, Universidad de Lima]. http://200.11.53.159/bitstream/handle/ulima/3021/Mujica_Filippi_Juan.pdf

⁴ Connolly, C., Mujica Filippi, J. D. and Noel, S. (2020). *Movimiento legislativo de sociedades de beneficio e interés colectivo (B.I.C.) en América Latina: Análisis, desafíos, y propuestas para su avance*. Sistema B Internacional e International Development Research Centre. <https://drive.google.com/file/d/1kdsx4xelpfrtws7vt8tcaqymb1nh3sej/view>



1.4

REGULATION OF THE FOURTH SECTOR

The regulation of the fourth sector in Ibero-America has been driven mainly by citizens, through various players within the impact ecosystem. This diversity of players has been able to connect with parliamentarians and public policy operators at various government levels to gain regulatory momentum in national and local representative forums. Therefore, it is the governments and citizens who continue on the path of redesigning the legal systems, in order to ensure the progressive adoption of legislation and public policies which will allow consolidation of the fourth sector in the region.

In particular, this research project explores various legal models for purpose-driven companies and their regulation. As mentioned above, the redesign of legal systems begins with the insertion of purpose-driven company models within various jurisdictions. However, this is only the first step in achieving a transition to the triple impact economy. It must be accompanied by comprehensive public policies that recognize the legal nature of these companies as generators of public good through the chosen social and environmental impact.

Among them, the importance of rethinking tax systems through differentiated tax regimes, incentives or disincentives tied to behavior by business operators stands out. This raises controversial questions for various sectors of academia: Does the generation of social and environmental benefits by the company allow disbursements made, which are connected to its purpose, to be a necessary expense or cost that entitles deduction for tax purposes? Is it necessary

to create a special tax regime for purpose-driven companies?

Likewise, the debate regarding purpose-driven companies and their enlivening effect is synergistically connected with a transformative change in the vision of public procurement, in which States integrate sustainability within their selection criteria, in order to choose bidders that meet high social and environmental standards. In this regard, according to the OECD (2016),⁵ the world spends around USD 9.5 trillion annually on public contracts, which represents between 12% and 20% of a country's GDP. This shows how public procurement itself is the great global multinational, and so by directing part of its resources to purpose-driven companies could have multiplier effects in terms of generating social and environmental impact. In order to do this, it is important to address key concerns, including: is reform of the legal frameworks involved in public procurement necessary for sustainable procurement, and is it necessary to tie this to purpose-driven company legal model?

However, in order to rethink the tax and public procurement systems, purpose-driven companies must be able to prove they are truly having a social and environmental impact. At this point various debates arise regarding what is understood by social and environmental impact, and how and by whom this impact is measured. Particularly, should this accreditation be given by a private certifier, a public regulatory body, or a hybrid regime that provides for the participation of various members of the

public administration and civil society? The legal consequence of such accreditation will be to allow the recognition of the legal nature of these companies and their access to various public policies that allow them to develop during a migration to the Triple Impact Economy.

Finally, it is of great importance to recognize the role of women in purposeful entrepreneurship. Recent research shows that purpose-driven companies have a greater female presence in management roles, in addition to their workforces. However, the existence of cultural and structural bias continues to impose obstacles to the involvement of women in entrepreneurial activity, especially in the case of impact businesses, since they are the object of implicit bias when seeking access to traditional credit. To foster female entrepreneurial leadership in purpose-driven companies, should public policies be designed to target women only? Should they be linked to tax and public procurement proposals? Or should they be limited to general aspects?

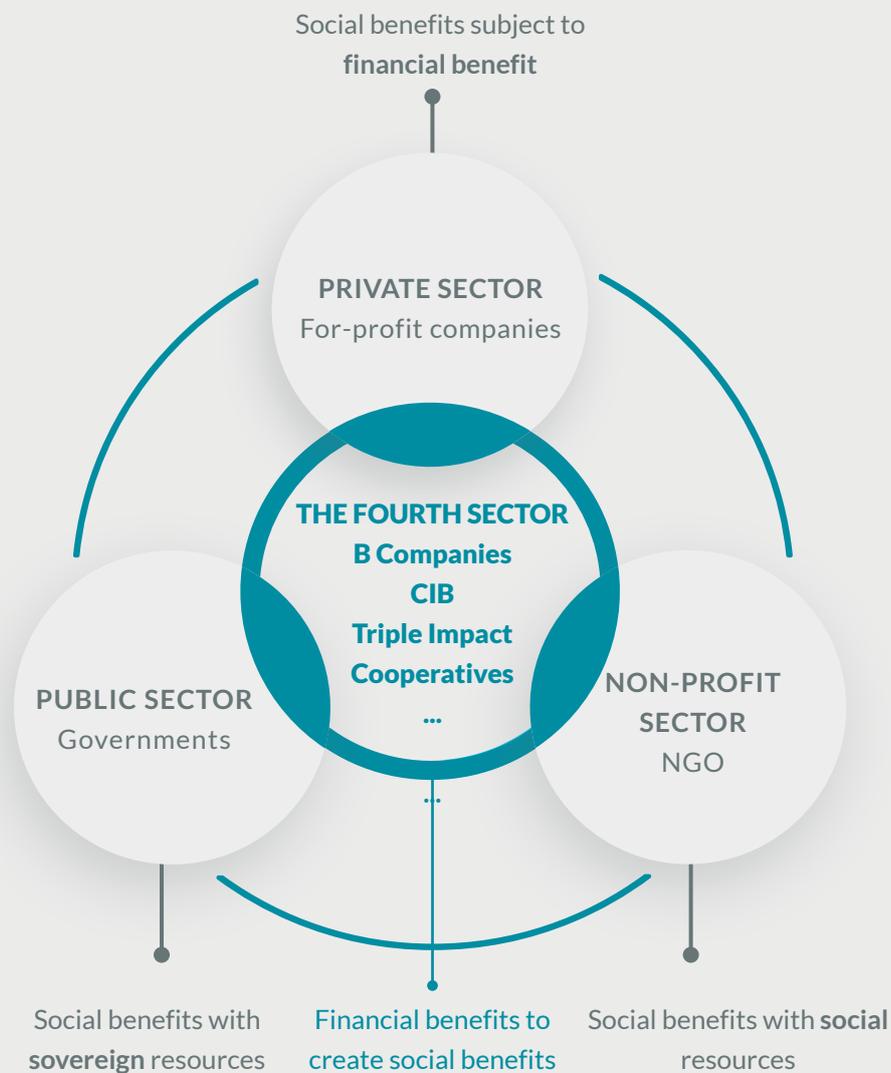
In the various jurisdictional and thematic reports that are part of this research project, approaches and recommendations are provided for these issues considered a priority on the agenda of the fourth sector. It is important to understand that while these conversations are a priority, there are no one-size-fits-all models or best legislative strategies. In this regard, each jurisdiction has the opportunity and the challenge to gradually regulate the fourth sector according to its national priorities, in addition to its legal, economic and social circumstances.

⁵ OCDE (2016). *Metodología para la evaluación de las compras públicas*. https://www.oecd.org/governance/ethics/ES_MAPS_Draft_consultation.pdf

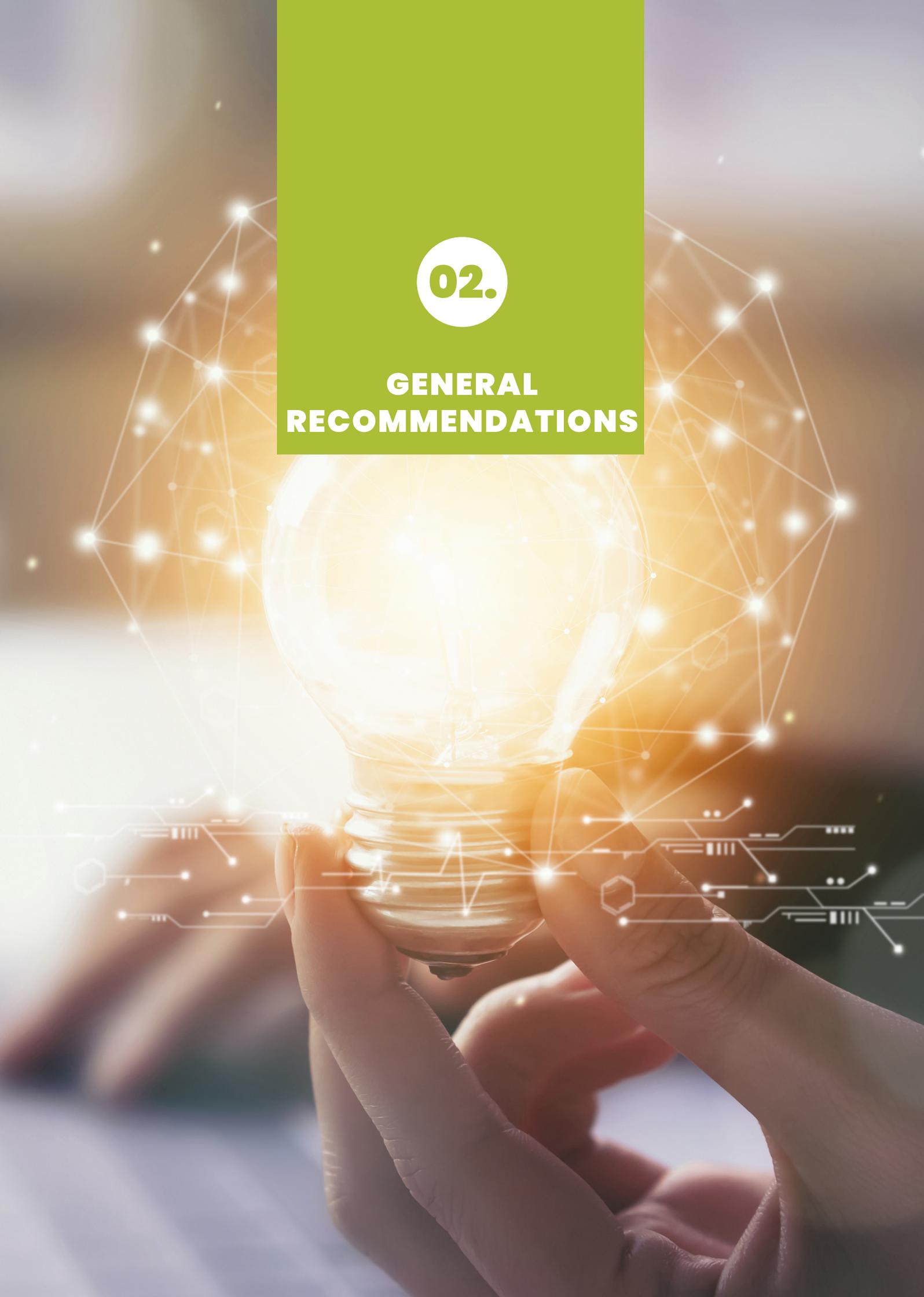
THE FOURTH SECTOR

Purpose-driven companies fall within the fourth sector, the same sector that occupies the intersection between the three traditional sectors (public, private and non-profit).

The following diagram is taken from “*Las empresas con propósito y el auge del cuarto sector en Iberoamérica*” (Business with purpose and the rise of the fourth sector in Ibero-America), a 2019 publication jointly developed by the Ibero-American General Secretariat and IE University’s Centre for the Governance of Change.⁶



⁶ Ibero-American General Secretariat (2019). *Las empresas con propósito y el auge del cuarto sector en Iberoamérica*. <https://www.segib.org/?document=las-empresas-con-proposito-y-el-auge-del-cuarto-sector-en-iberoamerica>



02.

**GENERAL
RECOMMENDATIONS**



2.1

BUSINESS MODEL

To redesign existing legislative frameworks and incorporate purpose-driven company models that in turn enable recognition of the fourth sector and build trust.

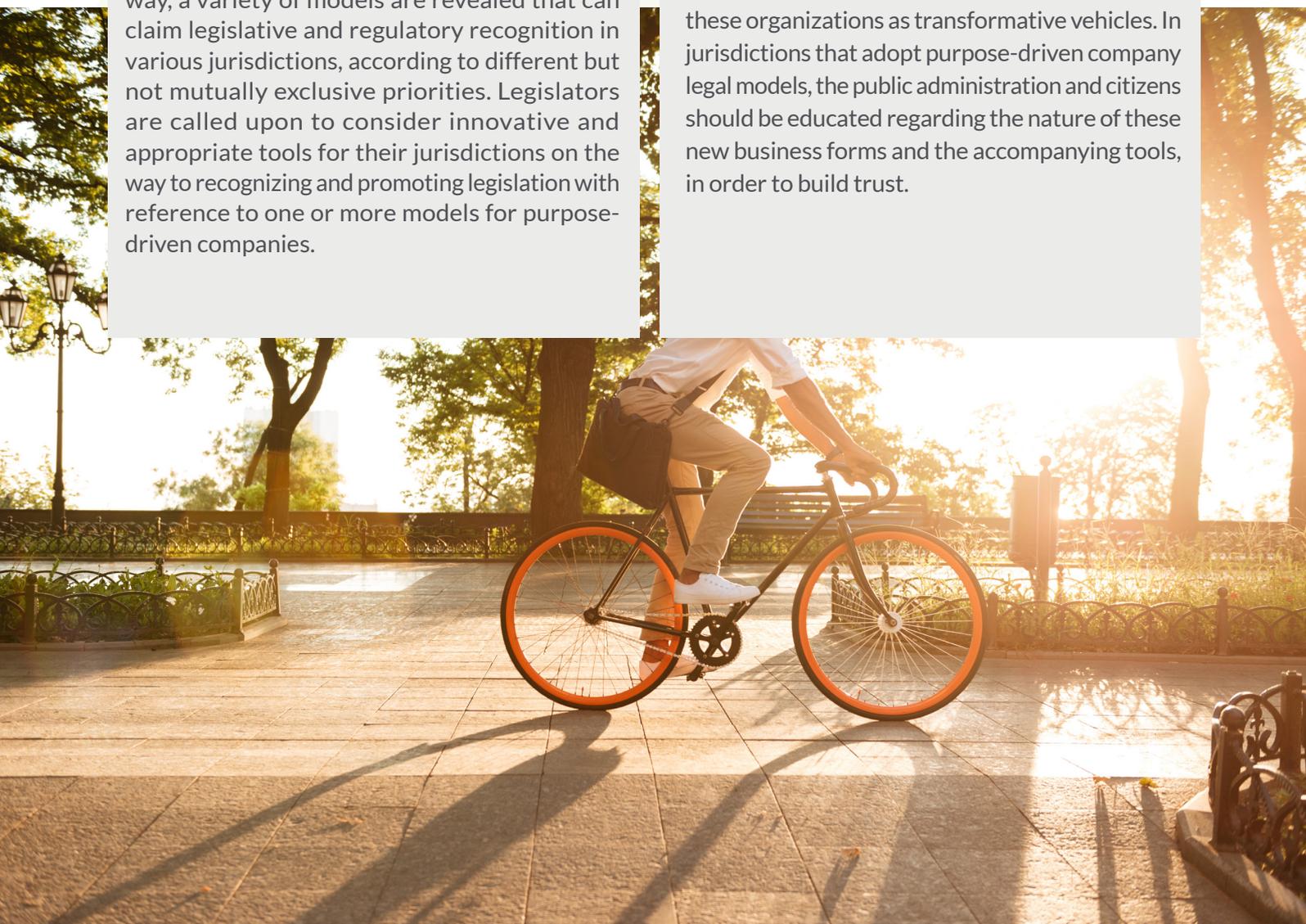
In order to make possible the creation of a new regulatory, economic and social space at the intersection of the three traditional sectors, it is impossible not to recognize the differentiated legal nature of companies with social and environmental purposes – which seek economic success in addition to the solution to problems of a collective nature – providing them with legal identity and security. In this sense, it is necessary to consider the redesign of the legal frameworks in force in Ibero-America, so that they include models for purpose-driven companies that are adapted to the objectives of the fourth sector and the particular circumstances of each jurisdiction, generating confidence within the public administration and among citizens.

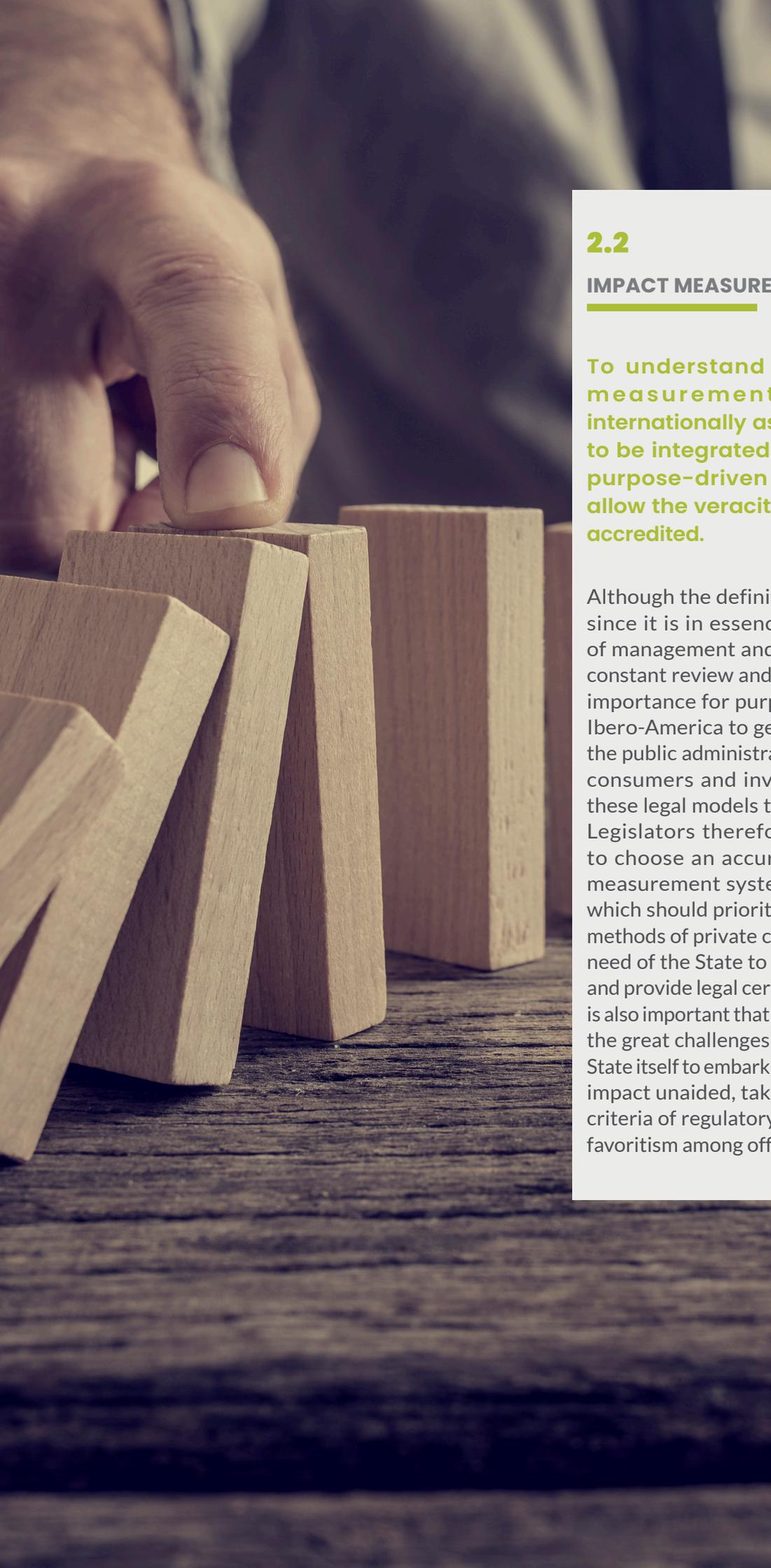
To respect the conceptual diversity and coexistence of the various models of purpose-driven companies with the expectation of being recognized in Ibero-American jurisdictions.

The lack of a unanimous definition of the concepts of purpose-driven company, social entrepreneurship, social company and triple impact company, in addition to the various discussions regarding the total or partial blocking of profit/profit sharing, reflect the multiplicity of ways of doing business with a social and environmental purpose in the region. In this way, a variety of models are revealed that can claim legislative and regulatory recognition in various jurisdictions, according to different but not mutually exclusive priorities. Legislators are called upon to consider innovative and appropriate tools for their jurisdictions on the way to recognizing and promoting legislation with reference to one or more models for purpose-driven companies.

To decisively promote spaces for research, education and dissemination based on legal models for purpose-driven companies, while generating publicly accessible records regarding their business models and social and environmental impact within each jurisdiction.

The fourth sector needs to be studied in order to expand public problem solving from within the private sector, to make purpose-driven companies the new normal in the business world, and to build trust in public and private players. It is also necessary to provide education and promote these organizations as transformative vehicles. In jurisdictions that adopt purpose-driven company legal models, the public administration and citizens should be educated regarding the nature of these new business forms and the accompanying tools, in order to build trust.





2.2

IMPACT MEASUREMENT

To understand the various impact measurement tools available internationally as public policy options to be integrated into legal models for purpose-driven companies. This will allow the veracity of their results to be accredited.

Although the definition of impact is complex, since it is in essence dynamic and its forms of management and measurement are under constant review and analysis, it is of enormous importance for purpose-driven companies in Ibero-America to generate confidence within the public administration, in addition to among consumers and investors, as this will allow these legal models to grow within the market. Legislators therefore have a responsibility to choose an accurate, appropriate impact measurement system for their jurisdictions, which should prioritize both the expertise and methods of private certifiers and the legitimate need of the State to protect the public interest and provide legal certainty to all stakeholders. It is also important that this understanding includes the great challenges that it would mean for the State itself to embark on the mission of measuring impact unaided, taking into consideration the criteria of regulatory rigidity and the danger of favoritism among officials.



To establish accreditation mechanisms with public validity for private certifiers, which allow the design of public policies that grant government incentives to legal models for purpose-driven companies.

In order for market forces and public policy decisions to be activated in order to create incentives for more businesses to generate social and environmental impact, it is essential to raise the level of trust and credibility possessed by purpose-driven companies. For this reason, it is recommended that a hybrid model be adopted that combines private knowledge and experience with State supervision, through a process in which the public administration grants special accreditation to various private certifiers that meet international criteria for measuring business impact and sustainability. Subsequently, purpose-driven companies that successfully certify through private organizations accredited by the State would be able to access government incentives within a framework featuring a high degree of trust and security, as it would have two levels of verification. Legislators are called upon to design these public accreditation mechanisms in an informed, reasonable manner, creating a system of checks and balances, thus combating the risks of corruption and money laundering. Particularly noteworthy in the design of these mechanisms is the creation of public bodies with institutional representatives from academia and the private sector who also have a say in the process.

Flexible, open legislative frameworks are also recommended, allowing for adaptation of the criteria for access to state accreditation as the concept of impact develops regionally and internationally.

Proteger a los modelos jurídicos de empresas con propósito del fenómeno denominado *impact-washing*, a través de distintas herramientas, entre las cuales destacan la medición de impacto, la protección del consumidor y la prevención de fraudes a la ley.

Purpose-driven companies are highly vulnerable to this phenomenon, and to abuses of their status by fraudulent companies seeking commercial and reputational gain. While impact-washing is one of the main risks faced by purpose-driven companies on the road to building trust, as it undermines the credibility of these business models, this danger should not be a reason not to promote legal models and regulatory ecosystems that recognize them and promote them. Therefore, it is suggested that the legislators apply adequate measures to mitigate or avoid impact-washing, especially in the event that it is linked to the aforementioned models, providing access to government incentives. It will be very important to demand corporate transparency, the application of existing consumer protection regulations, and the verification of compliance with the stated impact.

2.3

TAX PROPOSALS

To recognize the legal nature of purpose-driven companies from a fiscal perspective, in order to design regulations that identify their fiscal/tax implications and allow them to compete on equal terms with traditional companies based on the principle of tax equality.

The insertion of legal models for purpose-driven companies in Ibero-American jurisdictions, without any effects within the tax regime, places such companies at a competitive disadvantage, generating disincentives to investment in these business models. Tax regulations must adapt, on the one hand, to the fact that the company ceases to be a mere donor and becomes an active subject in carrying out activities with a social component; on the other hand, to the fact that although the purpose-driven company pursues the generation of social and environmental impact, investors in these companies continue to be private in nature, so they will need incentives in order to consider investment in organizations in the fourth sector as attractive. To this end, Ibero-American tax administrations should identify the main tax implications of the concept of purpose-driven companies, mainly considering that the maximization of the investor's economic return is no longer the sole purpose of the company, to the extent that part of that profit is allocated to activities aimed at generating social and environmental impact, which are equally important in such business models. Thus, from the point of view of the resources and profit obtained by the company, part of the solution lies in the regulation of the third sector and the possibility of extending it to the activity of the company in the fourth sector. From an investment point of

view, it is necessary to design incentives that to some extent compensate for the lower expected profit, in addition to the higher risk to which the investor is exposed when investing in this type of company.

To reinterpret the concept of “necessary expenditure” in Ibero-American tax legislation, as a first step in the redesigning of tax policies for purpose-driven company legal models.

In the same way that donations to non-profit organizations in the third sector are considered by the regulatory rules for such organizations as a deductible expense — either totally or partially — it is recommended that the concept of “necessary expenditure” be reinterpreted, in the sense that expenses associated with the performance of the activity related to the social and environmental purpose of the company may qualify as necessary expenditures for the development of its activity and be tax deductible, expressly excluding them from the concept of gratuitousness. In fourth sector organizations, the social and environmental purpose of the company serves the collective interest. In order to comply, the company must carry out various activities with a range of degrees of connection to its economic activity. In fact, a large number of these activities may qualify as donations in order to contribute towards their social and environmental objectives, which under the current regime does not give rise to a deductible expense for the donor company. The reinterpretation of the concept of “necessary expenditure” in Ibero-American tax legislation is only a first step in the necessary redesigning of a new economy that incorporates and promotes the fourth sector in the region.

2.4

ACCESS TO PUBLIC PROCUREMENT

To establish a Strategic Procurement Plan (SPP) that allows for the analysis, measurement and reformulation of the procurement cycle, based on continuous improvement and promoting the progressive integration of the fourth sector within the public procurement regime.

In order to bring the fourth sector closer to the universe of state procurement, the SPP must rethink each of the stages of the administrative procedure, ensuring a comprehensive and strategic treatment of the purchase. Adequate application of environmental and social impact criteria must be instituted throughout the process, strengthening the basic principles of contracting and democratizing access to the procurement regime, taking into account the existence of the legal model for purpose-driven companies. Likewise, the SPP should provide details of budget expenditure, report on the sustainable procurement perspective, conceptualize the notions of environmental and social impact, publicize its multiplier effects, and train the market.

To strengthen the professionalization of the public procurement agent with the premise of establishing the state procurement procedure as a mechanism for transforming societies, capable of managing social, environmental and market demands in line with current global challenges.

It is essential to project the degree of professionalization of the contracting agent, in order to achieve a greater contribution on their part towards goals that contribute to the strategic fulfillment of immediate policy objectives, which understand the required paradigm shift, accompany the evolution of the market and participate in the development of a sustainable economy. Considering that the SPP methodology requires, on the part of the governmental agencies, the proper functioning of the specialized area and the coordination of interaction among various players, it is necessary for the procurement agent to meet the appropriate management standards and capacities needed to promote the triple impact economy, carrying out their responsibilities in an effective and efficient manner.



2.5

WOMEN'S BUSINESS LEADERSHIP

To promote the acceleration of female business leadership, throughout the professional life cycle of women, in the design of the regulatory and economic ecosystem of the fourth sector in Ibero-America.

The existence of the cultural and structural bias that continually hinders the inclusion of women in business can be especially combated through public policies of a general nature, in addition to those public policies that are specific to companies with a purpose, since these companies are legally bound in their statutes to generate a positive impact on society and the environment. In this regard, there are various moments for support that legislators and public policy makers should take into account when promoting women's professional careers, including the following: (i) unbiased selection processes; (ii) adaptability of business models and internal business processes to women's needs; (iii) shared parental responsibility; (iv) promotion of women's participation on boards of directors, through a system of incremental quotas and registers of women directors in public and private companies.

To boost the financial success of women-led purpose-driven companies by specifically targeting public policies that encourage purpose-driven entrepreneurship.

In Ibero-America, it is essential to strengthen the ecosystem of a new economy that allows the fourth sector to flourish, combating the low levels of citizen confidence and polarization in the region, through a new form of relationship between the State, citizens and companies, with a special focus on implementing public policies that support women's leadership. Legislators and public policy makers must take into account the importance of women's business leadership when redesigning legal systems in light of the fourth sector in Ibero-America. In particular, it is important to promote verifiable financial success metrics, through access to the financial system, credit and investment; continuous training in technology and innovation, for profitable businesses with high social and environmental impact; and preference in public procurement for companies led by women. It is also extremely important for all economic sectors to support the generation and positioning of women's professional communities and networks, in addition to the appropriate involvement of men and children.



03.

THEMATIC REPORTS



BE TEAMWORK

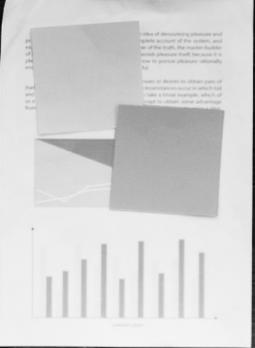
EMPOWERED TOGETHER

Teamwork is the lifeblood of any organization. It is the foundation upon which all great achievements are built. When team members work together, they can overcome any challenge and achieve their goals. This report explores the importance of teamwork and provides practical tips for fostering a collaborative environment.



Team Content

Effective team communication is essential for success. This section discusses the importance of clear communication and provides strategies for improving team collaboration.



3.1

BACKGROUND

According to a survey conducted by the Ibero-American General Secretariat and IE University in 2019, the vast majority of Ibero-American citizens want their governments to support purpose-driven companies through fiscal aid and changes to public procurement systems. The results show that:

- 85% think that governments should only work with companies that treat their workers well and respect the local and global environment, even when their services are more expensive than those of conventional companies.
- 91% think that companies that have a positive social or environmental impact should receive government aid and pay less tax.
- Nine out of 10 Ibero-American citizens support the creation of special aid, tax regimes and public procurement mechanisms to help companies that have a positive social and environmental impact.

However, one of the main challenges for the legislative and regulatory development of the fourth sector in Ibero-America is to address a serious problem of trust, which occurs on two main fronts. On the one hand, there is distrust within the public administration towards those companies that claim to have a social and environmental purpose. On the other hand, there is consumer and investor distrust towards those companies that promote the marketing of their goods or services on the grounds that they generate a positive impact or

reduce a negative material impact on society and the environment. This serious problem of trust is exacerbated by the complexity of measuring and verifying the generation of business impact within the solution to a public social and environmental problem from the private sector.

In view of this problem, which hinders the development of the fourth sector in the region, it is necessary to explore an academic approach to an impact measurement system that generates sufficient confidence in regional players. Thus, once such a system is implemented and coupled with legal models for purpose-driven companies, satisfactory measurements can be considered valid in order for companies to access both tax incentives that recognize their legal nature and sustainable public procurement.

One of the main challenges for the legislative and regulatory development of the fourth sector in Ibero-America is to address a serious problem of trust, which occurs on two main fronts.

3.2

METHODOLOGY

3.2.1. Selection Criteria

Together with the elaboration of jurisdictional reports, it was considered important to study four relevant topics for the understanding of concepts with direct impact on the evolution of the legal model for companies with social and environmental purposes in various jurisdictions. For that reason, thematic reports were commissioned from experts in impact measurement, tax proposals, sustainable public procurement and women's business leadership.

The thematic logic is due to the fact that the insertion of various legal models for purpose-driven companies in Ibero-America is limited, for the most part, to providing legal identity to these business models, but does not imply an ecosystem conducive to their better and greater development in terms of economic profitability, social and environmental impact and survival over time.

THEMATIC REPORTS

CERTIFICATION OR REGULATION OF IMPACT

The importance of adequate impact measurement, through public or private certifications, that generate confidence within the public administration and among consumers.

Purpose-driven companies must build trust in terms of fulfilling their chosen purpose. That is why an adequate, impartial measurement of impact, through public or private certifications, is essential for legal models, not only to identify these companies, but also to open the doors to incentives that make businesses with social and environmental impact more attractive to entrepreneurs and businesspeople.

ACCESS TO TAX INCENTIVES

The importance of fiscal recognition for the legal nature of companies with a verifiable social and environmental purpose.

Tax law has a significant role in the creation of incentives or brakes to the behaviors of social operators. The insertion of the legal model of purpose-driven companies in different jurisdictions raises interesting questions regarding possible tax incentives or benefits for the fourth sector, which are in the interest of the business community and should be treated with caution by the tax authorities. The tax analysis must be approached taking into consideration the legal nature of these companies, as well as the constitutional fit for any potential incentive.

ACCESS TO SUSTAINABLE PUBLIC PROCUREMENT

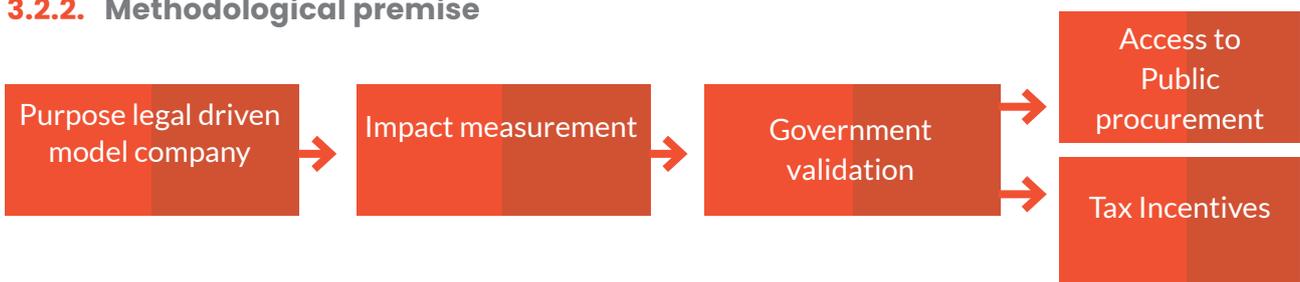
The importance of strengthening public procurement systems to obtain specific, sustainable results for the collective benefit, identifying business players that generate verifiable social and environmental impact.

SDG 12 target 12.7 seeks to promote sustainable public procurement practice in line with national policies and priorities. According to the OECD, the world spends USD 9.5 trillion on public contracts, which represents between 12% and 20% of a country's GDP. The consideration of public procurement as a means for sustainable development is directly related to the legal models of purpose-driven companies, which, when recognized by the State, can be prioritized in contracting, generating a chain of economic, social and environmental profitability for the collective benefit.

WOMEN'S BUSINESS LEADERSHIP

The importance of the recognition of the role of women as leaders of purpose-driven companies and business sustainability, in addition to the need for public policies with a gender focus that enable business purposes related to gender equality and female empowerment.

3.2.2. Methodological premise



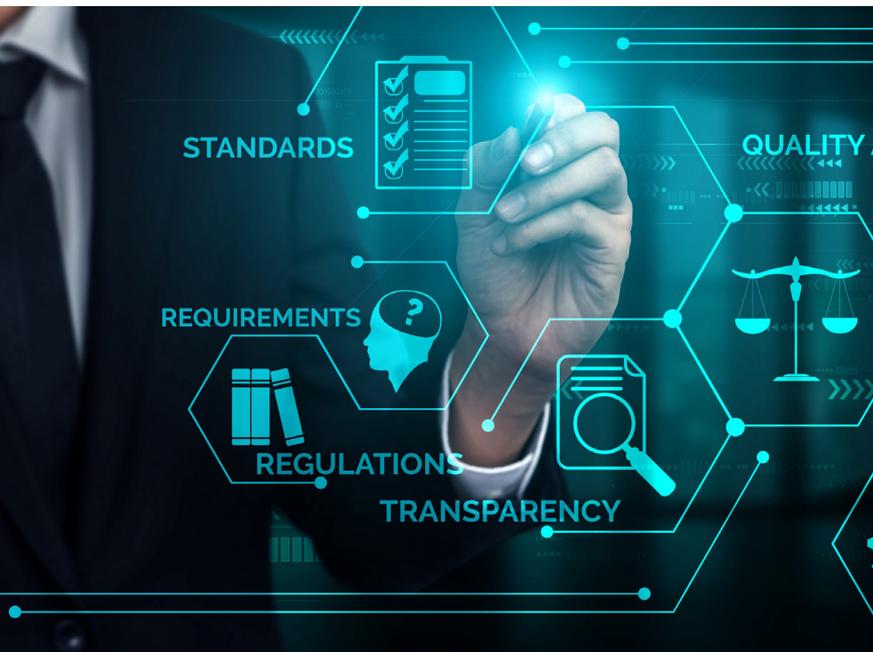
Although the identity of purpose-driven companies is a first and very important step in safeguarding their social and environmental mission, providing a differentiated responsibility regime for their managers and ensuring clear transparency policy regarding the measurement of their impact is not enough to energize the fourth sector.

For this reason, experts in the field were commissioned to produce thematic reports that

take as a premise the hypothetical existence of a legal model for business with a social and environmental purpose recognized in a given jurisdiction. The authors have worked on the basis of this premise to provide academic approaches to impact measurement mechanisms through regulations or certifications, tax proposals, access to public procurement and women's business leadership.

3.3

STUDIES



3.3.1. Certification or regulation of impact

Author:
Dr. Florian Möslein

The *Certificación o regulación del impacto* (Certification or Regulating Impact) thematic report addresses the concept of certification and its importance in the establishment of purpose-driven companies in various countries with public experience (through state regulations or certifications) and private experience (through private certifications), such as the United States, the United Kingdom, France, Germany and South Korea.

Certification processes are intended to function as an appropriate means of signaling product or service quality standards that are not readily observable by consumers or suppliers. According to recent studies, the majority of global consumers are willing to pay more to support companies committed to making a social and environmental impact. But for consumers, as well as investors, it is difficult to recognize sustainable business behavior. This leads to information asymmetries, which means that sustainable business behavior does not generate all the benefits that could be obtained from the market.

Certification schemes can help to overcome this market imperfection, since certification of “good companies” can serve as an instrument to make sustainable business behavior more attractive, as it may lead to some additional benefits for companies. However, the effectiveness of certification schemes is conditioned by the context in which they operate. Thus, private certification schemes are unlikely to work effectively if the private institutions generally lack public confidence within the specific context. Likewise, if public institutions are not considered trustworthy, public certification schemes will encounter the same problems. In other words, it is evident that there is no best choice between public and private certification schemes that are applicable worldwide.

Legal model

Regarding the legal model, the requirements or criteria demanded by the certification schemes imply the adaptation of the companies’ statutes,

in addition to the sustained fulfillment of the social and/or environmental purposes to which they have committed. In all regimes, these criteria cover a number of elements related to the legal model, corporate purpose, governance structure and financial structure of the organization in question. These requirements can be formulated as strictly necessary conditions, where each of the conditions must be met – as, for example, in the cases of France and South Korea – or they can be included within a multi-factor model, subject to a more flexible and generalized assessment of all criteria, such as *B Impact Assessment*.

As a general rule for certification schemes, only purpose-driven companies are eligible, and therefore applicant businesses should aim to achieve social and environmental impact. However, a more precise specification of that qualification differs between various certification schemes. Most public schemes focus on the business objective and require relatively specific preconditions (France and South Korea). Private schemes have a broader focus, but are often less specific.

Examples:

- In the UK *Social Enterprise Mark*, criteria are satisfied by any “social and/or environmental objective”, provided that this purpose is clearly articulated within the company’s articles of association. Similarly, any “clear social or environmental mission set out in its governing documents” is sufficient for the *Social Company*.⁷
- In Germany, PHINEO only requires the potential to have sustainable impacts on society.
- B Lab’s B Impact Assessment is both broad and more specific. On the one hand, it does not prescribe any specific corporate purpose, but requires a commitment to a triple bottom line business approach to be incorporated within the articles of association, usually embodied as an objectives clause stating that it exists to promote the success of the company for the benefit of its shareholders, in addition to having a positive material impact on society and the environment.

Governance Structure

On the governance structure of companies, certification schemes require reliable corporate structures that foster impartial, transparent management decisions, through effective governance bodies, control and compliance mechanisms, corporate information disclosure and a democratic distribution of power among stakeholders. B Impact Assessment is particularly detailed regarding this aspect, and the German, French and South Korean schemes stipulate similar public regulation requirements. In contrast, both UK schemes are less demanding.

⁷ Social Enterprise UK (s.f.). <https://www.socialenterprise.org.uk/what-is-it-all-about/>

Financial structure

Finally, regarding the financial organization of the applicant company, most of the regimes studied require profit-sharing clauses. The certifiers require that a significant portion of annual profits be reinvested in the social or environmental purposes of the company. While both the UK and French schemes set a threshold of more than 50% of annual income, South Korean law requires at least 66.6% of annual income. In addition, both French law and the UK Social Enterprise Mark program, unlike the

Social Enterprise badge in the UK and South Korean law, require dissolution clauses stipulating that any remaining residual assets be directed towards social or environmental purposes. In France, ESUS (unlike ESS) also requires salary caps for senior executives, set in relation to average salaries. In contrast, B Impact Assessment has a flexible, low threshold (20% of annual profit or 2% of sales), and allows for profit distributions of any kind.

Recommendations

FIRST LEVEL (Private)

Private certifiers offer their certification services to purpose-driven companies that wish to obtain their certificate or label in order to measure their social and environmental impact, in addition to fulfilling their purpose.

SECOND LEVEL (Public)

Private certifiers should obtain state accreditation, through a public accreditation system that builds public and consumer confidence in the fact that purpose-driven companies create impact.

CONSEQUENCE

Purpose-driven companies certified by accredited certifiers can access tax incentives or preference during public procurement.

From the experiences pointed out in the thematic report on jurisdictions with extensive experience in impact measurement, through public regulations or private certifications, the author recommends for Ibero-America the creation of hybrid regimes, combining the advantages of the public and private sectors through the creation of a legislative framework and public oversight of certification, while maintaining the possibility of private certifiers. The hybrid certification scheme would consist of two different levels. On a first level, private institutions would offer their certification services to private companies wishing to obtain the respective certificate or label, such as the certified B company seal.

However, to avoid the disadvantages of fully private schemes, a second tier would be introduced consisting of a public accreditation system for private certifiers. Under such a regime, in order for purpose-driven companies to qualify for tax incentives or preference during public procurement, they would necessarily have to choose those private certifiers that had obtained express public accreditation and achieved the certifications in a satisfactory manner. The accreditation procedure would test the trustworthiness of certifiers according to a specific set of criteria regarding both the substantive requirements and the institutional framework of the respective certification scheme.

Both the establishment of the accreditation system and the definition of the criteria to be used by this body would require a legislative basis. Ideally,

these should be defined at the supranational level in order to create a cross-border framework for both certifiers and certificates. A similar model exists in Europe with the technical safety certification system.

It is of interest to evaluate the proposed hybrid as a public policy option in Ibero-America, as it provides a multilevel solution to the mistrust expressed by the public administration, on the one hand, and by consumers and investors in purpose-driven companies, on the other, by avoiding the burden on the State to regulate and decide what impact means and how it can be measured.

The author recommends for Ibero-America the creation of hybrid regimes, combining the advantages of the public and private sectors through the creation of a legislative framework and public oversight of certification, while maintaining the possibility of private certifiers.



3.3.2. Tax proposals

Author:
Andrés Sánchez

Research team:
Paula Benítez Régil
Cristina Barrufet Borrell
Lucía Millán Serrano
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The thematic report *Propuestas fiscales para empresas con propósito* (Fiscal Proposals for purpose-driven companies) analyses the legal model, on the understanding that these organizations constitute an evolution from the traditional socially responsible company to an entity whose objective is also to generate a social and environmental impact, through the solution of public problems by the private sector.

Therefore, in purpose-driven companies, profit is presented, on the one hand, through the shareholder's remuneration; and on the other hand, in the surplus that is used for the purposes designated to the corporate purpose. While there are legislative proposals in the region that seek to endow companies in the fourth sector with capital, there is also a conspicuous absence of regulations that seek to adapt the current fiscal framework to these companies.

Entrepreneurs in the fourth sector have a significant volume of deliveries of goods or services which go without compensation. However, the current design of the tax system in the Ibero-American region, while not yet addressing the peculiarities of the fourth sector, penalizes purpose-driven transactions by companies by preventing a portion of the value added tax (VAT) from being deducted. Thus, this penalty becomes a business cost that ought to be avoided.

In addition, in the region, tax benefits are given to non-profit associations and incentives are provided for making donations to such entities of limited scope. This is evidence of the disadvantage that purpose-driven companies have over traditional businesses and non-profit organizations. Therefore, tax measures should, at least, ensure an equal tax floor between the various types of companies, recognizing their legal status. In addition, purpose-driven companies do not fit within the current tax system, as they combine the profiles of both the person who provides resources (donor) and the person who carries out the non-profit activity (donee) at the same time. Therefore, the authors point out that it is necessary to consider possibilities for the structure provided by the current system in the region.

The principles on which the reforms are based are to be found in the rules already in force. Firstly, third and fourth sector companies have their pursuit of a non-profit purpose in common, and it is internationally recognized that this activity is worthy of income tax exemption. Thus, purpose-driven companies need to be put on a par with non-profit entities. On the other hand, purpose-driven companies are usually found in the field of start-ups, while the "evolved traditional company" will be within the field of established companies. Therefore, measures concerning purpose-driven companies must have an economic activity promotion component to be taken into consideration when designing fiscal measures.

	Traditional company	Non-Profit Association	Purpose-driven company
Target	Generate profits.	Generate an impact in favor of society.	Generate a positive social and environmental impact within the framework of profitable economic activity.
Benefit	It obtains benefits for entrepreneurs and investors.	It does not obtain or seek personal gain.	It seeks a balance between profit and results for the community and the environment.
Fiscal framework	There are direct taxes according to the regulations of each country.	- There are tax benefits. - Donations are encouraged.	This type of company does not fit within the current tax system, so it is necessary to put forward possibilities for the structuring provided by the current system.

Recommendations

Based on the above, the following proposals are considered pertinent as a first review of the fiscal analysis of purpose-driven companies in Ibero-America:

- Firstly, it is proposed to recognize the right of purpose-driven companies to non-profit tax exemptions, applicable to income derived from purpose-driven activity. From a technical point of view, the company would have two accounts: profit and loss. One would correspond to its social and environmental activities, and the other to its economic activities. In this way, the allocation of resources from the latter in favor of the former would be considered as a donation deserving of the corresponding tax incentives.
- Secondly, a measure is proposed to make social expenses incurred by purpose-driven corporations directly deductible, at least in part, on terms quantitatively equivalent to those laid down for donations to non-profit organizations. This measure would be simpler to implement as it would not require the creation of a special tax regime or the management of two separate profit and loss accounts.



3.3.3. Access to public procurement

Author:
Franco De Pasquale

Considerations for sustainable public procurement



Conditions of production of the good or service to be acquired

Composition of materials

Direct and indirect consequences of production and consumption

Working conditions within the value chain

Promotion of strategic sectors

The thematic report *Access to Sustainable Public Procurement* invites reflection on the innovative concept of sustainable public procurement (SPP) as a methodology to promote a business sector linked to the creation of value and a sense of the public good.

In its origins, public procurement was conceived as a purely administrative procedure, associated with satisfying the needs of the State and serving its own functions. Currently, the “sustainable public procurement” procurement

approach has gained prominence, which implies the integration of environmental impact and social involvement criteria in each of the stages of the administrative processes for the acquisition of goods, services and infrastructure.

In this sense, SPP can be understood as an economic development tool that allows not only the integration of sustainability precepts within the purchasing system, but also the promotion of a market with high social standards and with

productive processes that generate positive impact on the environment. However, in order for the SPP to fulfill its purpose, it is essential to identify a market that offers what the State – not to mention society – and its purchasing methodology require. In view of this need, the importance of giving entity, within the contracting regime, to the triple impact economy arises, together with the legal model of purpose-driven company in force in a given legislation. The author uses the practical Latin American example of the collective interest and benefit company (CIB) and its standard certifications.

For purpose-driven companies, SPP is important because it represents a tool for innovation in the purchasing system, as it focuses on establishing procurement guidelines that achieve changes to production processes. Therefore, suppliers that integrate environmental impact and social involvement criteria in each of the stages of the administrative processes for the acquisition of goods, services and infrastructure, are closer to accessing the capital that the State allocates for its purchases.

Purpose-driven companies: Sustainable public procurement and the SDGs

<p>12 PRODUCCIÓN Y CONSUMO RESPONSABLES </p>	<p>16 PAZ, JUSTICIA E INSTITUCIONES SÓLIDAS </p>	<p>17 ALIANZAS PARA LOGRAR LOS OBJETIVOS </p>
<ul style="list-style-type: none"> • In order to bring the fourth sector closer to the area of state contracting, each of the stages of the administrative contracting process must be rethought. • A comprehensive approach to procurement must be ensured, instituting proper application of environmental and social impact criteria throughout the process, strengthening the basic principles of contracting, and democratizing access to the procurement regime. 	<ul style="list-style-type: none"> • Access to information and communication technologies (ICTs) is a great step forward for the effective implementation of the methodology of sustainable public procurement and, above all, for the measurement and individualization of the benefits that come with contracting in an economic sector whose purpose is in line with the objectives of the 2030 Agenda. 	<ul style="list-style-type: none"> • For sustainable public procurement for the development of a triple impact economy to become a reality, it is necessary to strengthen partnerships between governments, the private sector and civil society. For that reason, the generation of alliances is essential. These partnerships are built on principles and values with a shared vision and common goals that prioritize people and the environment.

This activity, which involves the State and purpose-driven companies in the development of an innovative market, strengthens the fulfillment of the 2030 Agenda and achievement of the Sustainable Development Goals (SDGs), particularly sustainable procurement (SDG 12), e-government and public procurement (SDG 16) and partnerships (SDG 17). Therefore, there is a need to strengthen and redirect public procurement systems, understanding public procurement as a means for sustainable development.

The report also provides an approximation to the entities of the fourth sector and to the universe

of state procurement, through each of the stages of the administrative process. In fact, the main proposal of the study to enliven the fourth sector is to rethink each of its stages.

It is important to ensure a full treatment of procurement, in which an adequate application of environmental and social impact criteria is introduced for the entire process, strengthening the basic principles of contracting and democratizing access to the procurement system.

Recommendations

Among the main recommendations to dynamize the fourth sector within the SPP, the following are described:

- To outline and publish the Strategic Procurement Plan, detailing the budgetary expenditure (making public the needs to be covered), reporting on the sustainable procurement perspective, conceptualizing the notions of environmental impact and social impact and publicizing its multiplier effects.
 - To project the degree of professionalization of the recruiting agent in order to achieve a real, increasing contribution on their part towards goals that contribute to the strategic fulfillment
- of medium-term policy objectives, understand the required paradigm shift, accompany market developments and contribute to the development of a sustainable economy.
 - To establish instances of public-private articulation and dialog and, such as supplier fairs and business circles, to bring supply and demand closer together.
 - To consider certifications that verify the company's actions in the generation of triple impact, in addition to the certificate of the International Organisation for Standardization (ISO) 26000, 14024, 14021, 14025 or equivalent.

- To implement sustainable technical sheets for goods and products already standardized in other jurisdictions, in order to facilitate the implementation of SPP.
- To strengthen the contracting platform by announcing needs, contracting deadlines and types of processes.
- To assign a sufficiently significant score in the evaluation of the offer with respect to the environmental and social impact of the goods, services or work to be contracted.
- To employ an appropriate methodology for measuring performance and evaluating the impact of the contracting regime. To this end, the results of any use of the public procurement system must be quantified in order to provide government managers with timely information regarding the benefits, costs and challenges of such use. It is crucial to obtain a clear measurement of the extent to which the effects of addressing the qualitative indicators we are seeking impact – quantitatively – on in the reduction of costs in social and environmental areas, not only in the immediate but particularly in the medium term (i.e., how much the State will save later on and how much more benefit will be achieved by contracting a company from the fourth sector compared to one using another business model).
- To emphasize that the procurement bodies will have the responsibility and margin of decision to verify whether or not the good or service provided meets the conditions established in the specifications governing contracting, providing greater security to the contractual purposes and the real impact promised.
- To implement a government policy of open data within the state contracting system, which helps and strengthens the creation of spaces for both citizen and private sector participation. This promotes competition, fair treatment, accountability and scrutiny. The objective is that the data is available and used intelligently by governments, civil society and the private sector, in order to bring about specific changes that achieve the true promotion of the triple-impact economic sector.



3.3.4. Women's business leadership

Author:
María Emilia Correa

The increasing number of women in leadership positions has a positive impact on business, politics and the economy, which is why policies to promote gender integration have been implemented around the world in recent years.⁸ However, while society and the economy benefit from increased gender equity in leadership, the underrepresentation of women is still persistent and widespread.⁹

Purpose-driven companies are pioneers in showing possible paths towards gender balance and the fair inclusion of women in the economy. The thematic report *Liderazgo empresarial femenino* (Women's Business Leadership) gathers initial research on purpose-driven companies that have obtained the B Certification in Ibero-America. It shows that certified B companies are further ahead than the average company in the region, although they have not yet achieved leadership with full gender balance.

The innovations proposed by organizations in the fourth sector are opportunities to scale their impact for the benefit of society, but gender

balance is not achieved through individual private sector efforts alone. It is a systemic change that requires the commitment of social and political leaders, and public policies that involve players from all sectors of society. This thematic report outlines the need for broad-based strategies that address the deeply entrenched structural and cultural conditions that women face, such as family care-giving roles, unconscious bias and exclusion from professional development networks.

These problems have been exacerbated by COVID-19. According to the UN, women have lost jobs at higher rates than men in the sectors most affected by the pandemic: tourism, domestic work and commerce. Extreme poverty in Latin America and the Caribbean will increase by 22% (extending to almost 120 million women and girls) as a result of the economic crisis caused by the health emergency.

The new way of doing business of the fourth sector organizations shows the way forward to accelerate

⁸ See Reykjavik Global Forum Pulse (<https://reykjavikforum.global/community/the-forum-pulse>).

When the number of employed women increases, economies grow. And increasing the proportion of household income controlled by women, whether from their own earnings or from cash transfers, changes spending patterns in ways that benefit daughters and sons (UN Women, s.f. *Facts and figures: Economic empowerment*. <https://www.unwomen.org/es/what-we-do/economic-empowerment/facts-and-figures#notes>. Retrieved February 2021).

⁹ Rhode, D. (2016). *Women and leadership*. Oxford University Press.

women's leadership in the business sector. Based on the experience of these pioneering companies and the reflections of women leaders in the fourth sector, the study seeks to highlight the opportunity to redesign corporate legal systems, with a focus on purpose and with particular attention to female leadership, which is essential in order to generate a transformative impact on society and nature.

For this purpose, an analysis has been developed based on the experience of certified B companies worldwide, with a special focus on Latin America.¹⁰ The main characteristic of these companies — most of which are small and medium-sized — is the legal, binding commitment by shareholders to make a positive impact on society and nature. In addition, they stand out for their inclusion results, which are higher than the average for the private sector:

- Overall, certified B companies are 28% more likely to hire women at management level, and are 13% more likely to provide additional benefits for their workers than the average for similar companies.
- 36% of B companies in Spain have women in management positions (16% more than the average for similar companies).
- In Latin America, 7% of B companies have a majority of female managers, which is 24% more than the average for companies in the region; 7% have a majority of women workers (52% more than the average for companies in the region); and

59% have an explicit non-discrimination policy (10% more than the average for companies in the region).

B Companies and their innovative characteristics in the fight for gender equality:

- Not only do they take gender into account but **take into account all inequalities** — such as ethnicity, religion, disability, sexual orientation or age — throughout their value chain.
- **They develop business models with the purpose of solving women's problems.** Companies such as Mujeres del Pacífico — created to develop ecosystems for women entrepreneurs — and Aequales — whose objective is to promote female leadership in Latin America — demonstrate that it is financially viable to develop businesses considering female inclusion as a measure of success.
- **They adapt their internal processes to include women's needs.** Companies like Crepes&Waffles — the restaurant chain that hires females who head households — and Terrium — dedicated to producing nutritious food through a business model designed to allow working mothers to spend time with their families — demonstrate that it is possible to design business processes around the needs of women.

¹⁰ Certified B companies are a type of fourth sector company. They stand out through the legal commitment of their shareholders to make a positive impact and include the interests of all stakeholders, in addition to the shareholders themselves. By April 2021, there were 3905 certified B companies in 74 countries, operating in 150 industries. In Latin America, there are 820 certified B companies in 21 countries, operating in 142 industries. In order to obtain certification, these companies are subjected to an external evaluation, thanks to which it is possible to gather reliable information, making them a useful sample set for this study (more information at www.sistemab.org).

Women leaders in the B business movement identify the need for recognition for this new way of doing business. Like most women entrepreneurs, they are motivated by the pursuit of positive business impact and come to the B movement in search of a community of values. They find, however, that being a woman and a purpose-driven entrepreneur is a double obstacle when attempting to access credit and investment. They also highlight the need for flexibility in order to attend adolescent children, barriers against returning to work or re-

entrepreneuring, performance appraisal — more demanding for women — and strong prejudices against public leadership roles.

Despite the many obstacles they encounter along the way, they are moving towards a “new kind of leadership” that is inspirational, mobilizing and involving collective action, and find that communities, mentors and women’s networks — in addition to the family — are indispensable in overcoming these obstacles.

Recommendations

Promoting women’s leadership is a complex challenge and requires systemic action on several fronts in order to accelerate cultural, legal and organizational change. It is essential to confront prejudices about women’s agency and to change the public narrative about women’s leadership. Within the scope of this study, and based on the experience of certified B companies and surveys conducted among of women leaders in the fourth sector and gender experts, two proposals are presented:

- **To promote laws that allow the creation of purpose-driven companies.** To grant clear legal identity to purpose-driven companies will increase the number of businesses that promote decent employment, adaptability, unbiased hiring and shared parental responsibility. It will also reduce barriers to female entrepreneurship and re-entrepreneurship in the fourth sector, which

facilitates access to funding and the creation of public policies to support diversity. Of particular relevance will be the incentives for female public procurement and tax benefits.

- **Creation of an Ibero-American Register of Women Company Directors.** This register will identify and give regional and global visibility to women in the fourth sector who have potential as company directors. It will be a great opportunity to strengthen networks, accompany women leaders and promote the recruitment of more women into management positions. This register could also work in alliance with the many national and international women’s leadership organizations and movements, all under the direction and coordination of the Ibero-American General Secretariat.



04.

**JURISDICTIONAL
REPORTS**



4.1

METHODOLOGY

4.1.1 Selection criteria

The research project has studied the status of legal models for socially and environmentally purpose-driven companies in 13 jurisdictions. Of these, eight correspond to Ibero-American countries and five to non-Ibero-American countries. The objective has been to gather information regarding legal models for the fourth sector in jurisdictions with various degrees of experience and dynamism.

The selection of the legal systems to be studied was made by taking into account a consideration of the following criteria:

- **Legislative and/or academic evidence:** Priority has been given to legal systems with evidence of legislative and/or academic production regarding companies with a social and environmental purpose, which could provide the authors with consolidated sources for the study of current or pending legal models in Latin American jurisdictions.
- **Geographic diversity:** The selection of jurisdictions has been prioritized in order to cover as many countries as possible from the Ibero-American region, reflecting a regional perspective on the legislative movement for companies with social and environmental purposes.

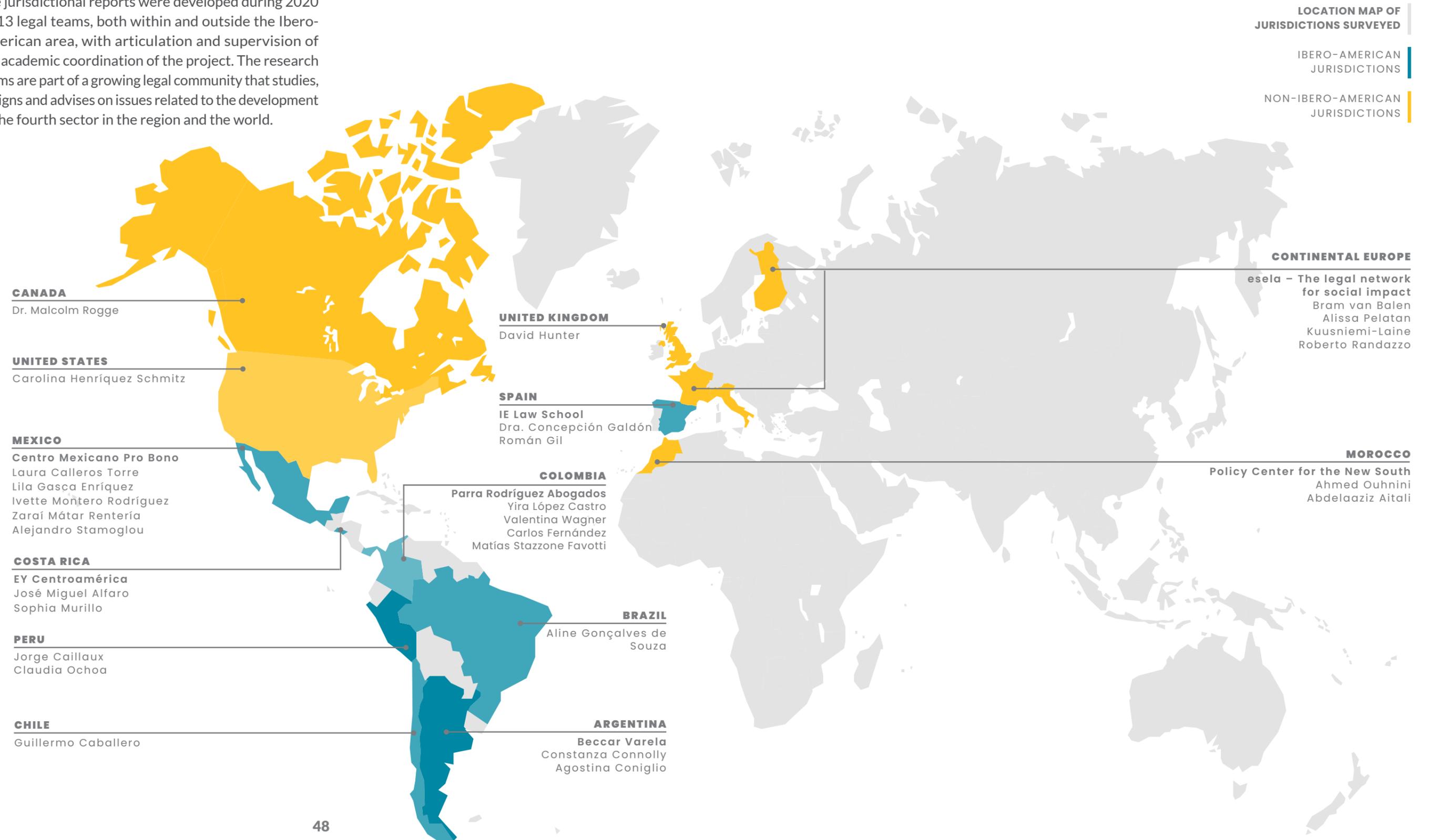
- **Identification of good practices and obstacles:** Priority has been given to the selection of legal systems employing good practices which address identifiable and replicable obstacles, with the aim that they can serve as a learning experience for other jurisdictions through their own processes regarding companies with a social and environmental purpose.

The research project commissioned jurisdictional reports from Ibero-American countries and international legislation based on criteria of legislative and/or academic evidence, geographic diversity and the identification of good practice and obstacles in relation to purpose-driven companies and regulation of the fourth sector.

4.2

JURISDICTIONS SURVEYED

The jurisdictional reports were developed during 2020 by 13 legal teams, both within and outside the Ibero-American area, with articulation and supervision of the academic coordination of the project. The research teams are part of a growing legal community that studies, designs and advises on issues related to the development of the fourth sector in the region and the world.



4.2.1 Ibero-American Jurisdictions

ARGENTINA

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BUSINESS MODEL

In Argentina, there is no legislation that recognizes the various models for companies with social and environmental purposes; however, there is no express legal impediment to their creation and operation. The purpose-driven companies that have emerged in recent years in Argentina have been formalized under traditional legal concepts, which can be for-profit or non-profit. Sometimes these companies also adopt a dual structure, i.e., a for-profit and a non-profit legal form, in order to generate a greater social and environmental impact.

Notwithstanding the foregoing, since 2016, there have been several legislative projects on the Collective Interest and Benefit Corporation (CIB), which have not yet been passed. The most recent was put before the Chamber of Deputies in March 2021.

IMPACT MEASUREMENT

Currently, measuring social and environmental impact in Argentina is voluntary for companies wishing to undergo a private certification process. This aspect and its relationship to purpose-driven companies has been one of the most controversial in the legislative path of the CIB company project. While legislating on impact is complex, it is necessary insofar as such dynamism must be regulated in order to establish what is meant by positive impact. The most widely used private certifications or sustainability reports in Argentina are Global Reportive Initiative (GRI), ISO 26000 and B Lab Certification.

TAX INCENTIVES

In Argentina, there are no specific benefits that encourage the creation of purpose-driven companies, so these companies continue to be subject to the general income tax regime. It would be important for purpose-driven companies to be able to count on specific tax regulations in order to generate the benefits and incentives that allow them to develop.

ACCESS TO PUBLIC

In Argentina, there is no specific regime for access to public procurement for purpose-driven companies. However, municipalities in the country have declared triple impact companies to be of interest, with the aim of encouraging them through their hiring. Thus, the positive case of purchasing goods and services from triple impact companies in Mendoza confirms, on the one hand, that public procurement strengthens the implementation of the triple impact vision. On the other hand, Mendoza's initiative allows us to affirm that local governments can encourage and promote the birth and growth of purpose-driven companies.

RECOMMENDATIONS

- To reform the current regulatory framework in order to recognize and promote the diverse business models for purpose-driven companies.
- To measure and report the impact generated by all the various types of purpose-driven companies.
- To encourage tax and other benefits for purpose-driven companies.

BRAZIL

Author:

Aline Gonçalves de Souza



BUSINESS MODEL

The Ministry of the Economy is processing a draft law to create a legal classification for benefit societies. This is a proposal for a voluntary business rating, inspired by benefit corporations. It consists in the fact that, for companies wishing to qualify, it will be necessary to include in their corporate events:

- (a) the definition within its social objective of the purpose of generating a positive social and environmental impact;
- (b) management bodies aimed at qualifying decisions in favor of social and environmental impact, in the short and long term, with the commitment of stakeholders; and (c) commitment to transparency through the measurement, publication and inclusion of the impact report in the approval of the annual accounts.

The text of the legislative project is the result of one of the actions of the National Impact Investment and Business Strategy (ENIMPACT), formalized in December 2017 (Decree 9244). The objective is to coordinate, over 10 years,

the agencies and entities of the federal public administration, the private sector and civil society, in order to promote a favorable environment for the development of investment and business impact.

Furthermore, in the Federal Senate, an amendment to the legislative project modifying the Commercial Code to create the legal designation of commercial companies as social benefit companies (Amendment 17/2019 to PLS 487/2013) is being processed. The proposal is criticized because it establishes a system of recognition, by public authorities, of what is or is not a social benefit company.

IMPACT MEASUREMENT

As a result of ENIMPACTO's actions, the proposal for the legal designation of purpose-driven commercial companies as "benefit companies" is currently being processed internally at the Ministry of the Economy. However, there is no provision stating that impact measurement must be carried out by the Government, nor that it is a specific task of the private sector. For that reason, the importance of using measurement instruments with verifiable, comparable and credible metrics is highlighted in order to (i) mitigate the legal risk of public administrators; (ii) improve social control; (iii) instruct administrators to internalize their externalities; and (iv) support the design of evidence-based public policies.

TAX INCENTIVES

There are no public policies on taxation to encourage the creation or operation of socially and environmentally oriented companies. There is also no express provision for a deduction based on social and environmental actions carried out by the company. What does exist is a recent interpretation, by the tax agency, on the possibility of recognizing credits related to expenses incurred by a company that adopts measures to conserve the environment (COSIT Resolution 1/2021 in the case of effluent treatment), which can be deducted within the calculation of social contributions. In addition, there is a provision for a tax benefit in relation to income from the trading of decarbonization credits related to the production of biofuels (CBIO) on the São Paulo Stock Exchange.

ACCESS TO PUBLIC

In 2010, the Bidding Act, used for the procurement of goods and services by the public administration, began to demand that the selection prioritize the most advantageous proposals for the administration and the promotion of sustainable national development (Art. 3, Act 8.666/93). However, there are still no specific provisions giving priority to purpose-driven companies. Therefore, ENIMPACTO seeks to coordinate various organizations and stimulate the strengthening of the field in the state and municipal areas, in order to improve the possibilities of these companies in public procurement and contracting.

RECOMMENDATIONS

- Conceptual alignment of the legal model: a clear definition within the standards of the minimum requirements for companies, in order to avoid a conceptual vacuum.
- Tax treatment: do not link the request for a favorable tax regime to discussions on legal qualification.
- Public procurement: a legal provision is required to provide the public administrator with security.
- The inclusion of controlling bodies and representatives of sub-national entities on the ENIMPACT Committee.

CHILE

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BUSINESS MODEL

Chilean legislation does not contemplate specific rules on purpose-driven companies. These can be organized under traditional legal forms, i.e., mainly as foundations, societies or cooperatives. Such models limit the potential operations of purpose-driven companies. Therefore, it is necessary to create a specific legal framework for this type of company. That lack, however, has not prevented the emergence of a growing number of purpose-driven companies, including those organized as B Companies.

Notwithstanding the above, in June 2017, a multi-party parliamentary motion was put before Congress that sought to regulate “collective interest and benefit companies”. In January 2018, the Executive presented recommendations regarding the original legislative project and, in January 2019, the Economy Committee of the Chamber of Deputies passed it in general terms, but when voting on its specifics, only

passed Article 1 and a transitory Article, which meant that the legislative project lost much of its content. To date, there has been no significant progress in the legislative process regarding the initiative in Congress.

IMPACT MEASUREMENT

Currently, there is no legislation regarding the measurement of the impact of purpose-driven companies. However, traditional companies that seek to fulfill social purposes voluntarily use private certifications to measure their impact, such as the B Certification.

The legislative project introduced in 2017 required directors to produce an annual sustainability report, subjecting non-compliance to general liability rules. The recommendations by the Executive in 2018 altered the original proposal in several aspects; among them, the designation of the Undersecretariat for Economy, Development and Tourism as the supervisory entity for the collective interest and benefit companies, and the requirement to submit the annual sustainability report to an audit carried out by an independent entity.

TAX INCENTIVES

Because there is not yet a specific regulatory framework on purpose-driven companies, there are no specific tax benefits or incentives. Foundations and cooperatives have a favorable tax regime compared to corporations, as they enjoy exemptions or reductions with respect to various taxes. The report contains a comparative table between foundations, companies and cooperatives.

ACCESS TO PUBLIC

There is no public procurement policy linked to purpose-driven companies. However, the State has promoted the National Plan for Sustainable Public Procurement for State Agencies and issued the Instructions for the Application of Sustainable Criteria, although neither of them mentions purpose-driven companies.

RECOMMENDATIONS

- To adopt a broad notion of purpose-driven companies, allowing a plurality of traditional forms of organization to have access to a specific legal framework. In this way, it seeks to promote and provide legal certainty to people who want to develop economic activities organized as purpose-driven companies.
- To establish the obligation of purpose-driven companies to issue a periodic public report audited in accordance with international standards, except in the case of small and medium sized companies.
- To establish mechanisms to control compliance with the purpose which, without inhibiting management by the administrators, make it possible to avoid abuses.
- To enrich the draft law under consideration, taking into account the recommendations outlined in the report.

COLOMBIA

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BUSINESS MODEL

Colombia was the first Latin American country to approve a specific regulation for purpose-driven companies. Indeed, the jurisdiction of that country recognizes the collective interest and benefit company (CIB) through Act 1901, of 2018, and its regulations, approved by Decree 2046, of 2019. In Colombia, any type of commercial company can adopt this corporate model.

The CIBs are commercial companies for all legal purposes, which — besides taking commercial action — are registered and include, within their objectives, the combination of the profit motive with the solution to social and environmental problems. In this sense, they incorporate a social and environmental purpose which goes beyond maximizing the economic interest of its shareholders. In addition, directors must ensure the collective interest enshrined in the company's statutes and promote transparency in the reporting of its business impact.

IMPACT MEASUREMENT

The social and environmental impact of the CIB company is measured through an annual report, presented by its legal representative. This document reports to members, interested third parties and the community in general on the impact of its business model over the last financial year. This report must be drawn up based on the independent standards recognized by the Superintendence of Corporations, the regulatory entity in charge of inspection, surveillance and control of corporations in Colombia. CIBs are subject to a state supervisory regime and, since the end of 2020, there has been a supervisory policy for CIBs.

TAX INCENTIVES

Act 1901 has no direct tax benefits for companies with a social and environmental purpose. Within this framework, existing or future CIBs are subject to the same tax regime as ordinary commercial companies, and must comply with the obligations of the ordinary income tax regime and complementary taxes, the common sales tax regime, and other national, departmental and municipal tax obligations. From the above, it can be seen that there is no corporate income tax deduction for expenditures on social responsibility or sustainability.

Notwithstanding this, Colombian legislation does provide for a differentiated treatment of the profits distributed, in the form of shares, to workers in CIB companies, meaning that profit received by the worker in shares released from the company do not affect the value of their taxable net income and do not represent occasional gain. Furthermore, Decree 2046 also established the possibility of creating benefits in tariffs for the registration of industrial property and for the development of special lines of credit, but the latter has not yet materialized.

ACCESS TO PUBLIC

Currently, in Colombia, there is no legal provision that establishes benefits or preferences for CIBs participating in public procurement and contracting procedures. Notwithstanding the above, the Colombian Congress of the Republic, through Act 2069 of 2020, included CIB status as one of the tie-breaking criteria in public procurement processes.

RECOMMENDATIONS

- To generate attractive incentives for the various players within the economy through the incorporation of CIB companies in Colombia.
- To improve the concept of collective interest enshrined in the statutes of CIB companies in Colombia.
- To incorporate collective interest as an additional factor in the selection of bids for public procurement in the Colombian state contracting system.

COSTA RICA

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BUSINESS MODEL

Costa Rican legislation does not envisage formal rules on purpose-driven companies. However, there is informal recognition, which allows certain traditional legal entities to incorporate underlying economic and social objectives within their statutes, without this implying any incompatibility with profit-making purposes. In this case, reference is made to cooperatives, associations, foundations, civil societies and certain commercial companies. There are also other private initiatives that seek to make a social and environmental impact: System B companies and ISO 26000 compliant companies. This lack of formal recognition of purpose-driven companies by the government means that the state's support for this type of economic activity through public policies is limited.

IMPACT MEASUREMENT

Currently, there is no legislation regarding the measurement of the impact of purpose-driven companies. Notwithstanding this, there are private Costa Rican companies that have voluntarily chosen to follow the guidelines established in ISO 26000, which is not intended to serve as a certifiable standard. This standard seeks to measure the impact of an organization in relation to the society in which it operates and its impact on the environment, without neglecting its overall performance and its ability to operate in a transparent manner. In addition, Costa Rica is one of the countries that is part of the global initiative of certified B companies.

TAX INCENTIVES

To date, there are no incentives in tax regulations regarding the creation of companies with a social and environmental purpose. Nor is the deduction of expenses related to corporate social responsibility or sustainability programs expressly provided for in income tax regulations. Foundations, associations, civil associations and micro, small and medium-sized organic producers are not subject to income tax, provided they meet certain requirements. In this way, they enjoy a favorable tax regime. Likewise, income tax taxpayers may deduct as costs duly proven donations made during the respective tax period.

ACCESS TO PUBLIC

Currently, in Costa Rica, there is no legal provision that establishes benefits or preferences for purpose-driven companies that participate in public procurement and contracting procedures. However, in 2015, the Presidency of the Republic, with various ministries, enacted the Sustainable Public Procurement Policy and created the National Steering Committee for Sustainable Procurement, although without any reference to purpose-driven companies. Then, in 2018, the Ministry of Economy, Industry and Trade published the Incentives Plan for Social Responsibility, which covers six main areas, within which the strengthening of training processes in sustainable public procurement was retained, but without mentioning purpose-driven companies.

RECOMMENDATIONS

- To create a regulatory framework that allows for the creation and formal recognition of purpose-driven companies, in order to encourage their use in practice.
- To include a system, in the public administration's supplier selection mechanism, that recognizes companies whose internal processes respect social and environmental practice.
- To introduce rules that expressly and clearly allow the deductibility of expenses linked to social responsibility or sustainability objectives.

SPAIN

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BUSINESS MODEL

At present, Spanish legislation does not contemplate any hybrid corporate model that explicitly recognizes companies with a social and environmental purpose; nevertheless, there are mixed models recognized in the Social Economy Law, such as cooperatives, special employment centers and social insertion companies, which can be considered as the only entities consistent with the broad definition of purpose-driven companies.

On the other hand, to date there has been no evidence of a sufficiently consolidated legislative project that reflects the concept of business with a social and environmental purpose. In this regard, the closest thing to a hybrid corporate model was the failed 2013 legislative project Limited Partnership of General Interest (SLIG). Its purpose was to provide a label for social companies registered as limited companies, allowing them and their investors to access tax benefits.

IMPACT MEASUREMENT

Currently, there is no legislation regarding the measurement of the impact of companies with a social and environmental purpose. Notwithstanding the above, there are companies registered in Spain — such as limited companies — that are looking for ways to demonstrate their socio-environmental commitment in the marketplace. To this end, they choose to highlight the possibility of being certified as a B company or communicate to the market that they are a social company, among other strategies.

In that respect, B companies do not have legal status in Spain, as the classification is a “label”, distributed by a private organization, which allows them to signal to the market the commitment of the company to social impact, in order to obtain an enhanced commercial image. For this reason, there are currently more than 90 companies with a B company rating in Spain. On the other hand, there is no legal model for social companies, but they can operate under any of the legal models currently provided for by Spanish law, such as that of limited company or public limited company, among others.

TAX INCENTIVES

Spanish legislation has provided a series of tax benefits accessible to existing legal entities. Although they do not reflect all purpose-driven companies, they are consistent with their definition and are included in the Social Economy Law. These benefits vary according to the type of company chosen, with cooperatives benefiting the most. Specialized employment centers and social insertion companies receive the least number of benefits.

In this regard, it is noted that most purpose-driven companies in Spain do not have access to tax deductions on various taxes, which would facilitate and encourage the entry of new businesses with social and environmental impact.

ACCESS TO PUBLIC

There are two Spanish laws – Social Economy Law and Public Sector Contracts Law – that refer to the opportunity to use public contracts to promote a company’s socio-environmental impact. However, Spain’s push to use public procurement to promote companies’ positive socio-environmental impacts has been very modest.

Within this framework, there is currently a special legal reserve, which allows certain public contracts to be awarded to social economy companies, including cooperatives, worker-owned companies, foundations and associations. There is also the mechanism of public procurement of innovation (CPI), which is a useful instrument that companies in the fourth sector can use to finance themselves in an accessible, effective way. In addition, in 2019, the Ministry of the Presidency enacted the Green Public Procurement Plan, which aims to encourage the public procurement of green energy in Spain, in addition to social impact bonds that seek to finance both social innovation and the development of social programs with proven evidence of impact in the country.

RECOMMENDATIONS

- To design a Spanish legal framework that specifies the level of regulation, incorporating incentives for the fourth sector.
- To establish tax improvements and encourage the participation of purpose-driven companies in public contract bidding in Spain.
- To promote greater debate and social education regarding the fourth sector and purpose-driven companies in Spain.

MEXICO

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BUSINESS MODEL

In Mexico, the ecosystem of purpose-driven companies is referred to as a “social innovation ecosystem” or “impact investment ecosystem”. However, the country does not have a specific legal model for the purpose-driven company, defined as a company that is created to meet a market need and along the way defines one or more social and/or environmental objectives, which are not necessarily linked to the business model.

This situation leads social companies in Mexico to use hybrid models, combining legal models such as for-profit corporations, cooperative societies, non-profit associations or civil societies, social solidarity societies and social economy organizations.

IMPACT MEASUREMENT

Currently, there is no Mexican legislation regarding the measurement of the impact of purpose-driven companies. Notwithstanding this, Mexico is one of the countries forming part of the global, private initiative of certified B companies.

Furthermore, there is a clean industry label for companies that carry out a voluntary audit, but there is no economic benefit per se from the Mexican State.

TAX INCENTIVES

To date, there are no incentives in the tax regulations to favor the creation of companies with a social and environmental purpose. Nor is the deduction of expenses related to corporate social responsibility or sustainability programs expressly provided for in income tax regulations.

Faced with this situation, the players within the ecosystem of purpose-driven companies have tried to use the resources available to them within the Mexican legal framework in order to carry out their activities. This is the case of some hybrid models that use the model of civil association with authorization to issue tax-deductible donations, thus achieving the objective of attracting donations, within an income tax exemption regime. There is therefore a need for public policy that includes certain characteristics of governance and fiscal stimuli which support the strengthening of purpose-driven companies, in order to mitigate the social and/or environmental problems facing Mexico.

ACCESS TO PUBLIC

Currently, there is no legal provision in Mexico which establishes benefits or preferences for purpose-driven companies that participate in public procurement and contracting bid processes. However, the Act of Acquisitions, Leasing and Services for the Public Sector, in addition to its regulations, which establish that agencies and entities must promote the purchase of furniture and office supplies through bidders that guarantee the origin and sustainable management of federal resources and that are registered with the Ministry of the Environment and Natural Resources. In this way, the Mexican Government seeks to promote the growth of new production models and encourage sustainable development, in addition to generating invitations or direct allocations to marginalized urban groups, or to awarding points for the allocation of tenders to companies in which 5% of employees have disabilities.

RECOMMENDATIONS

- To create a legal corporate category that allows the promotion of social and environmental impact undertakings.
- To encourage incentivizing mechanisms for social companies, in relation to tax incentives and public procurement.
- To establish the concept of the purpose-driven company within an official Mexican standard (NOM), in addition to the minimum requirements that must be met, only in the event that there is no legislation with respect to a new corporate category.

PERU

Authors:

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BUSINESS MODEL

In November 2020, Act 31072 (or the “CIB Act”) was passed in Peru, which created a new corporate category, the collective interest and benefit company (CIB company). In February 2021, its regulations were passed by supreme decree and complementary rules are expected to be issued in the following months.

It should be noted that these regulations encourage companies with social and environmental purposes to obtain legal recognition and operate in the market as agents of social and environmental change, in partnership with the State. They also allow them to take advantage of other opportunities for mutual collaboration and funding that prioritize the positive effects of their triple impact activities. The CIB Act and its regulations lay the foundation for public policies which advance the development of purpose-driven companies.

IMPACT MEASUREMENT

At the time of going to press, there was still no measurement of their social and environmental impact in Peru. However, there are private initiatives that promote impact measurement, such as B Certification.

TAX INCENTIVES

In Peru, there are no tax benefits that incentivize the creation of purpose-driven companies. In addition, the recently approved CIB Act and its regulations do not grant tax benefits to companies that choose to use this corporate category. However, it is likely that, in the future, CIBs will be able to consider as expenses deductible from taxable income those associated with their social and environmental benefit purpose.

ACCESS TO PUBLIC

In Peru, there is no regime of access to public procurement for purpose-driven companies. Sustainable Public Procurement (SPP) is one of the most effective policy options for using the purchasing power of state entities. However, initiatives are being evaluated by local governmental bodies to promote access to SPP for purpose-driven companies. Thus, the Municipality of Lima has been evaluating a draft ordinance to promote, through contracting, the development of companies committed to social and environmental purposes, such as CIB companies.

RECOMMENDATIONS

- The complementary regulations to the CIB Act and its regulations must be supervised by the Ministry of Production (PRODUCE), with the active participation of the Ministry of the Environment (MINAM), the National Institute for the Defense of Free Competition and the Protection of Intellectual Property (INDECOP) and the National Superintendency of Customs and Tax Administration (SUNAT).
- To develop a strategy for dissemination, communication and training, during the regulation stage, in order to explain the meaning and importance of the CIB Act.
- To coordinate programs and projects that include CIB companies, to contribute to the reduction of gaps related to decent work and economic growth and responsible production and consumption, in addition to health and welfare within the framework of economic recovery.

4.2.2 Non-Ibero-American Jurisdictions

CANADÁ

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BUSINESS MODEL

National level (Federal Government of Canada)

Although there is no specific legal form for purpose-driven companies at the national level, the Canadian Business Corporations Act (CBCA) reflects a model focused on stakeholders rather than shareholders. Section 122 of the CBCA states that directors and officers must act in the “best interests of the company” (CBCA, R.S.C. 1985, c. C-44, s. 122 [Can.]). According to this model, shareholders do not have priority over stakeholders. The Supreme Court of Canada has made clear that the concerns of corporate managers “are not limited to short-term profits or share value,” but, “[w]hen the corporation is an ongoing concern, they look to the long-term interests of the corporation” (BCE Inc., 3 S.C.R. at para. 38).¹¹ At the federal level, there is no “purpose-driven corporation” or purpose-driven corporation model; however, it is often argued that the approach of the stakeholders that is embodied in the CBCA is consistent with the purpose-driven

company model of the benefit corporation model in the United States, and is even more stakeholder-friendly.

At the provincial level, the legislation of British Columbia and Nova Scotia, in addition to the regulations pertaining to co-operatives at the federal and provincial levels, are of note.

IMPACT MEASUREMENT

Companies incorporated under the Canada Business Corporations Act (CBCA) must comply with all applicable disclosure requirements; they may also use third-party certification systems (such as B Lab, ISO 26000, etc.) to measure and track social and environmental benefits. With the adoption of the stakeholder approach in Canada, there is an opportunity to develop Canadian-wide organizations and tools for measuring the social and environmental impact of business.

¹¹ For more information: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6238/index.do>

TAX INCENTIVES

None of the federal and provincial business models discussed in this summary are subject to special tax treatment. As for-profit businesses, their income is subject to the applicable tax rate and they are required to file tax returns with the Canada Revenue Agency.

ACCESS TO PUBLIC

None of the purpose-driven company models discussed in this summary have specific advantages regarding public procurement. However, it has been argued that the British Columbia benefit corporation model and the community contribution corporation can be adopted by First Nations political organizations and administrators for the delivery of services and economic activities in Indigenous communities.

RECOMMENDATIONS

- Before proposing any new purpose-driven company legislation, particularly the benefit corporation model in Canada or in the provinces, extensive consultation with stakeholders across Canada (or in the relevant province) should take place. Such consultations are to include indigenous communities, with a view to tailoring an approach to benefit corporation legislation that supports and enhances the existing stakeholder approach in Canadian corporation legislation.
- To initiate consultations with Canada's cooperative sector (at the national and provincial levels), including financial services cooperatives, in order to develop amendments to cooperative legislation in Canada that will improve the efficiency of cooperative companies in the pursuit of social responsibility and environmental sustainability.
- To expand oppression remedy in Canadian business law to include, specifically, legal tools for non-contractual stakeholders/creditors regarding adverse impacts on human rights and the environment.
- Canada and the provinces should initiate broad consultations and develop "social procurement" strategies to support businesses and co-operatives "for the benefit" of the whole of Canada.

UNITED STATES

Author:

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BUSINESS MODEL

The U.S. legal framework recognizes various types of purpose-driven companies; for example: low-profit limited liability company (L3C), benefit limited liability company (BLLC), social purpose corporation (SPC), statutory public benefit limited liability partnership (SPBLLP) and benefit corporation. The aim is to enable companies which operate in the space between for-profit and non-profit organizations to meet their social and environmental objectives. As of 2020, 11 states had adopted more than one of the types of purpose-driven companies recognized by the United States, and 36 had adopted the benefit corporation model. As a result, there is a great difference between the states with respect to the type of purpose-driven company they recognize and the structure of those companies, which hinders and discourages their creation.

IMPACT MEASUREMENT

As corporate social and environmental purpose becomes more widespread and pervasive in the United States, and as various models of corporate social and environmental purpose are regulated in different states, impact measurement faces a number of legal issues that require innovation in terms of legal systems and structures. There are no government impact measurement mechanisms promoted by states; however, some states, such as Philadelphia, recognize private certifications as *prima facie* evidence of sustainable businesses.

TAX INCENTIVES

In the United States, corporate taxes are levied at the federal, state, and sometimes local levels. At the federal level, the Internal Revenue Code treats businesses as either taxable or tax-exempt. In the case of non-profit organizations, most of them qualify for exemption from federal income tax. Regarding purpose-driven companies, their treatment for tax purposes has generated intense debate in the United States. As a result, there is still no specific tax framework for the various types of purpose-driven companies. Thus, since these companies pursue both profit and public benefits, they do not fit within the category of organizations that are exempt from taxation under the Internal Revenue Code.

ACCESS TO PUBLIC

In the United States, public procurement has begun to be used to promote and encourage purpose-driven companies. Although no U.S. state has adopted legislation to that effect, the cities of San Francisco and Los Angeles, and Cook County, Illinois, have enacted ordinances that give purpose-driven companies a discount when bidding for public contracts.

RECOMMENDATIONS

- It is necessary to define clear, uniform structures for purpose-driven companies for the various states in the process of designing and implementing preferential tax treatment for these companies.
- Training on the relevant legal frameworks, which are still evolving, is needed for entrepreneurs and legal professionals.
- More experimentation and evaluation on purpose-driven procurement is needed in order to design appropriate public procurement policies and test them against the desired objectives.

CONTINENTAL EUROPE

Author:

esela-The legal network for social impact



JURISDICTIONS SURVEYED

The continental European jurisdictional report covers, at various levels, the development of purpose-driven companies in the countries of Belgium, Finland, France, Italy, Luxembourg and the Netherlands. In these countries, various models or legal categories have been identified based on a differentiating criterion: the withholding or non-withholding of profit or earnings. The following table shows this distinction in a comprehensive manner, with a listing by country:

Country	Purpose-driven companies with profit/ earnings retention	Purpose-driven companies without profit/earnings retention	Other
Belgium	<i>The cooperative company recognized as social enterprise</i>	-	- Broad definition - Hybrid constructions
Finland	-	-	- Finnish social company brand - Hybrid constructions
France	- ESS company (compañía ESS) - ESUS company (compañía ESUS) - SCIC (collective interest cooperative company)	- <i>Mission-driven company</i>	- Broad definition - Hybrid constructions
Italy	- <i>Social enterprise</i> - <i>Social cooperatives</i> - <i>Innovative start-ups with social vocation</i>	- <i>Benefit corporation</i>	- Broad definition - Hybrid constructions
Luxembourg	- SIS (social impact company)		
Netherlands	-		Broad definition

KEY LESSONS

The case of continental Europe, due to the heterogeneity of its legislations, allows us to extract a series of important lessons for the creation of an optimal legal framework for purpose-driven companies. A first point of reference is the

distinction made between three types of purpose-driven companies: (i) purpose-driven companies with a freeze/lock on assets; (ii) purpose-driven companies without a freeze/lock on assets; (iii) *de facto* purpose-driven companies, hybrid

constructions and private certification schemes. From this diversity of legislation, it can be concluded that it is best to have a very broad perspective on the recognition of purpose-driven companies. Therefore, any legislation should consider innovative tools which support a set of hybrid models, covering socially and/or environmentally oriented entrepreneurs regardless of the form and/or legal status of their business.

With respect to purpose-driven companies that have an asset freeze/lock, it is recommended that, at least for a defined period of time at the beginning of the company's useful life, this partial asset lock should be maintained. Also, a multi-stakeholder approach is suggested which involves all stakeholders in the decision-making process of the company. On the other hand, it is necessary to present an annual report based on uniform guidelines and standards; in addition, it is desirable to have an internal control body that verifies compliance with the company's social purposes. Finally, it is also advisable to stimulate tax benefits in order to encourage investment in these companies.

On purpose-driven companies without locked/frozen assets, it is important to incorporate specific language on the public benefit purposes served by the companies in their by-laws. In addition, it seems important to limit the number of mandatory rules on internal governance and stakeholder participation in corporate decision-making. On the other hand, it is necessary to provide clear language for the company's governing bodies regarding the balance between generating profits and social and environmental purposes. The goal is to avoid a possible legal conflict due to the

confusion of these company activities. Regarding reporting requirements and internal control, the recommendations are the same as for asset-locked purpose-driven companies. Finally, listed purpose-driven companies should be regulated under appropriate listing rules, and it is important to avoid legal uncertainty with respect to the tax regime and to consider the use of tax benefits.

For de facto purpose-driven companies, hybrid models and private certification schemes, it is important to provide clear legal language so that companies can allow their directors to take social or environmental concerns into account in their decision making while not creating legal problems. In addition, it is also important to avoid fiscal uncertainties, and to remove potential barriers for private certifiers. On the other hand, it is suggested that requirements should be established covering transparency and the presentation and publication of reports, for which it is necessary to develop a framework of impact measurement indicators. This is complemented by impact reports that companies may request from an external auditor.

Finally, regarding the follow-up of the fulfillment of the company's purpose, the presence of a government agency or department dedicated to that is important. It must go beyond checking formalities in order to retain the status: it must include a verification of the implementation of the company's activities and a measurement of their material impact. This goes hand in hand with the removal of barriers to private certifiers, which can be helpful in these procedures.

MOROCCO

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BUSINESS MODEL

In Morocco, there is no legal recognition of purpose-driven companies, despite the increase in their number. Rather, these types of companies continue to be identified as non-profit organizations linked to charity or as for-profit companies, even by officials and political players themselves.

Typically, large for-profit companies create their own non-profit associations that are likely to be recognized as providing public benefit. These non-profit associations are governed by the Public Liberties Act.

IMPACT MEASUREMENT

There is no measurement of the social and/or environmental impact of public utility organizations in Morocco, and it is thus important to carry out further research and investigation. An important case in the country is the OCP Group, as it promotes agricultural research and development, contributes to green industrial transformation, and fosters socio-economic inclusion through education and youth empowerment.

TAX INCENTIVES

In Morocco, tax advantages are given to non-profit organizations. However, there are no tax incentives for purpose-driven companies, as these entities are treated like any other business.

ACCESS TO PUBLIC PROCUREMENT

The Moroccan government has recently made a breakthrough with the use of innovative financing methods, such as the legalization of crowdfunding, which is likely to help small social companies emerge. In fact, in 2019, the Government adopted Legislative Project No. 15-18 on crowdfunding, which sought to define the legal framework for crowdfunding companies. However, there is still no policy aimed at public procurement from purpose-driven companies.

RECOMMENDATIONS

- Legal innovation is needed in order to recognize and support businesses with a social and/or environmental purpose.
- There is a need to clarify and raise awareness among political players regarding the difference between purpose-driven companies and non-profit organizations.

UNITED KINGDOM

Author:

David Hunter



In the UK, purpose-driven companies have a long legislative and regulatory history, through co-operatives, community interest companies, B companies and so on. However, they remain a small percentage of the economy. In this regard, the biggest lesson from the report is the importance for both companies and governments to be absolutely clear about the primary objective to be achieved when creating a regulatory and economic ecosystem for purpose-driven companies in a given jurisdiction. Moreover, such public policy decisions could these days even generate a larger debate, as the author provocatively points out: Should purpose-driven companies exist in an identifiable form and receive government support to increase their chances of success and impact, or should they simply be the new default approach to doing business in the UK?

The British experience suggests that this first path alone will be no more than a formal gesture, if it is not accompanied by measures that provide a solid legal infrastructure to

support these companies. The next step would be more radical and complicated, but there are indications that this type of business approach may be in line with what is required globally in order to address the collective challenges posed by the climate, biodiversity, social, etc. crises. In a detailed analysis of the state of the law, the author explains that there is currently no requirement in UK law for a company to state its purpose, although it may choose to do so. However, there are initiatives that push for it to be mandatory, either in terms of a specific purpose for the organization, or a more general commitment in order to take into account the social and environmental impact of its activities on the community.

On the legal model, the jurisdictional report argues that it may be advisable to allow more than one legal form. The models of cooperatives and community benefit companies are efficient at the local level, while the corporation form (and its variants) is appropriate where organizations have a broader scope. In this regard, requirements to

be met by companies should be established that respond mainly to the weight given to stakeholder interests in decision-making; the need to identify a social purpose for the company; and the commitment to making a positive social, economic and environmental impact through its activities.

With respect to the supporting infrastructure, creating incentives for investors, advisers and clients to engage in and promote such ventures involves an extensive and ongoing program, which will need regular monitoring to prevent unintended consequences from arising. In this regard, the author concludes that there are no specific incentives, through the tax system, for companies to adopt forms or practices that are not entirely profitable.

Finally, the report reflects on the need for reforms to be accompanied by the development of a “transition mindset” that recognizes the need for a drastic change from current levels of carbon intensity in the global economy and reduces the number of people at risk. Thus, the perception of a binary choice, between profit or social/environmental benefits, is undermined by evidence that all

stakeholders are necessary and must be nurtured in order to maintain a thriving economy. This will be most effectively achieved by sharing responsibilities with all companies, rather than some focusing exclusively on optimizing profits and others having to compete with them as they seek to fulfill purposes that their competitors ignore.

Requirements to be met by companies should be established that respond mainly to the weight given to stakeholder interests in decision-making; the need to identify a social purpose for the company; and the commitment to making a positive social, economic and environmental impact through its activities.

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