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REGULATING “SOCIAL ENTERPRISE” IN THE
UNITED STATES:
IS THERE ENOUGH THERE . . . THERE? (IS THERE
SUFFICIENT DIFFERENTIATION TO REGULATE
DIFFERENTLY? COULD THERE BE?)

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INTRODUCTION

Long before 2008—when the first legal structure to formally give heightened priority to social good vis-a-vis owners' financial interests was introduced in the United States—people were trying to navigate and accommodate various conceptions of purposes and priorities in their business pursuits: whether to owners' financial interests, charitable purposes, social good more broadly, and/or various combinations of them.

In the for-profit, traditional business space, when people wanted to elevate the importance or even priority of social good relative to owners’ financial interests, people used contracts, limited liability company structures, and different classes of shareholder rights in the corporate structure. They also chose to adopt and remain closely held with ownership through a person or small, select group of people aligned in their commitments to elevating social good, usually in very specific rather than generic ways.

Even since 2008, these approaches remain vibrant as is the desire among many to operate with varying—and often undisclosed or even unknown—degrees of dedication to owners’ financial interests and social good that differ from traditional conceptions. These businesses and their underlying approaches were and continue to be regulated as an inherent part of the traditional for-profit sector. Should they be, though?

At the other end of the spectrum were and are charitable nonprofits that operate under § 501(c)(3) of the Internal Revenue Code.¹ These organizations are prohibited by law from having owners or anyone with a right to receive profits distributions or to realize capital gains or losses.² Thus, their ability to attract capital for their pursuits is limited, although the generosity of the American public in terms of dollars donated to these organizations is unparalleled.³ Some charitable nonprofits, their funders, and other supporters want to pursue their charitable purposes using more market-oriented mechanisms, sources of capital, and incentives.

Over time, what has emerged is a broadly conceived of and tolerated “middle” space between priorities given to owners’ financial interests at one end and charitable purposes at the other. This “middle” space—grounded in attention to both owners’ financial interests and some conception(s) of social good—has been rationalized and/or inspired by the following perspectives, among others:

1. See 26 U.S.C. § 501(c)(3).

2. See *id.* See also John Tyler III et al., *Identifying and Navigating Impermissible Private Benefit in Practice*, TAXATION OF EXEMPTS 26, 27 (2018) [hereinafter Tyler et al., *Private Benefit in Practice*].

3. This is not to neglect the extent to which charitable nonprofits generate capital for their undertakings through earned revenue, contracts with government and otherwise, and use of loans.

- To reconfigure capitalism and the market, thereby eliminating the capitalist end of the spectrum, and shifting it all to the “middle,”
- To allow for more balanced decision-making that removes legal liability for arguably prioritizing other than owners’ financial interests;
- To make money with less guilt;
- To be perceived as caring more about socially good outcomes than they actually do;
- To attract capital and other resources to problems and opportunities that the three main sectors (business, charitable, and government) neglect;
- To make more money by considering the so-called “middle”; and/or
- To make less/same/more money but produce more social good by prioritizing the “middle.”

Too many current conceptions of this broad “middle” space accommodate all of the preceding; they do not differentiate even within themselves, much less from traditional for-profit approaches. Should all of the above perspectives be allowed to apply at the same time across the same structures, approaches, incentives, movements, and/or systems? Are any of them mutually exclusive of or inconsistent with others when applied such that not all of the above can (or should) survive scrutiny? Alternatively, which, if any, of the above is compatible in practice with one or more of the others? If so, do current conceptions allow for those applications? Should they?

Efforts to useably populate and promote awareness of this broad “middle” social space have included the certified B corp movement begun in 2007,⁴ along with new legal structures made available in the United States around the same time. Vermont introduced the low-profit limited liability company (L3C) as a new legal structure in 2008.⁵ Maryland introduced the benefit corporation in 2010,⁶ and California introduced its versions of the benefit corporation and social purpose corporation

4. See *FAQs: How Did the B Corp Movement Start?*, B CORPORATION, <https://www.bcorporation.net/en-us/faqs/how-did-b-corp-movement-start/> (last visited Jan. 20, 2025).

5. See VT. STAT. ANN. tit. 11, § 4001 (2022).

6. See MD. CODE ANN., CORPS. & ASS’NS §§ 5-6C-01, 5-6C-08 (2012).

in 2011.⁷ Another contributing factor may be the explosion of so-called “impact” investment funds and approaches to managing investments by considering both financial returns and the pursuit of social impact aspirations.⁸ Related but different efforts include operational and regulatory attention to environmental, social good, and governance (ESG) and its multivariate components and iterations.

All three—new hybrid/blended legal structures, “impact” investing, and ESG—too frequently suffer from a lack of clarity and occasional obfuscation about the degree to which any given purpose is a priority, and by not giving meaningful attention to whether or what social good is being pursued, much less accomplished (if at all). In other words, it is not clear that they are meaningfully different from traditional for-profit companies.

A case in point is an effort by the Missouri Secretary of State (among others) through its Securities Division to require that broker-dealers or their agents disclose and obtain written consent when they “incorporate[] a social objective or other nonfinancial objective” into their investment decisions, recommendations, and/or solicitations.⁹ The regulation further defined “‘incorporates a social objective’” to mean the following: the *consideration* of “socially responsible criteria in the investment or commitment of customer funds for the purpose of seeking to obtain an effect other than the maximization of financial return to the customer.”¹⁰

The required consent must acknowledge understanding that incorporating social or nonfinancial objectives “will result in investments and recommendations/advice that are not solely focused on maximizing a financial return for me or my account.”¹¹ The regulation does not appear to bar consideration

7. See CAL. CORP. CODE § 2500 (2015) (Initially named the flexible purpose corporation, effective Jan. 1, 2015, with California’s Corporate Flexibility Act of 2011, the Legislature renamed it the Social Purpose Corporations Act, and was codified at CAL. CORP. CODE § 2500).

8. The Global Impact Investing Network “estimates that over 3,907 organizations currently manage \$1.571 trillion USD in impact investing assets under management (AUM) worldwide.” Dean Hand et al., *Sizing the Impact Investing Market 2024*, GIIN (Oct. 23, 2024), <https://thegiin.org/publication/research/sizing-the-impact-investing-market-2024/>.

9. MO. CODE REGS. ANN. tit. 15, § 30-51.170(3)(A) (2023).

10. *Id.* at § 30-51.170(3)(B) (emphasis added).

11. *Id.* at § 30-51.170(3)(D).

of social objectives as long as they advance and do not subvert maximizing financial returns, but is that “ESG investing” if environmental, social, and/or governance factors are not given priority over financial returns? Or is the essence of ESG investing that those factors are incorporated into decision-making that strives to maximize financial returns?

On August 14, 2024, a Missouri federal district court judge entered summary judgment and enjoined the State from enforcing the regulations.¹² The court agreed with the plaintiff that the regulation was preempted by federal laws, violated the First Amendment, and was “unconstitutionally vague.”¹³ Among the terms ruled vague are “nonfinancial objective,” “maximization of financial return,” and “consider” as suggesting merely thinking about a course of action even if not subsequently adopted or recommended.¹⁴ After appealing to the Eighth Circuit, the State of Missouri withdrew that appeal and decided to let the injunction stand.¹⁵

Perhaps also contributing to expanded awareness and confusion about a broad “middle” space has been the Business Roundtable’s pronouncement in 2019, which some have characterized as declarations from leaders of America’s largest and most prominent companies, that the primary purpose of business is no longer owners’ financial interests but instead is other stakeholders,¹⁶ although such characterizations have been challenged.¹⁷

12. See *Sec. Indus. and Fin. Mkts. Ass’n. v. Ashcroft and Jacoby*, No. 23-cv-04154-SRB at *13 (W. D. Mo. C. Div. Aug. 14, 2024).

13. *Id.* at *4–*11.

14. *Id.* at *9–*11.

15. See Final Order, *Sec. Indus. and Fin. Mkts. Ass’n. v. Ashcroft and Jacoby*, No. 23-cv-04154-SRB (October 17, 2024), ECF No. 135.

16. See *Business Roundtable Redefines the Purpose of a Corporation to Promote ‘An Economy That Serves All Americans’*, BUS. ROUNDTABLE (Aug. 19, 2019), <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans>. For a list of references extolling the proposed virtues of the Roundtable’s statement, see Lucian Bebchuk and Robert Tallarita, *The Illusory Promise of Stakeholder Governance*, 106 CORNELL L. REV. 91, 124–125 (2020).

17. I submit that characterizations of the statement referenced in Bebchuk and Tallarita and others that are similar are mistaken, misleading, or perhaps (at best) aspirational. A more accurate understanding recognizes that businesses can prioritize owners’ financial interests by considering the effects of business decisions on various stakeholder groups and interests, including those listed. See John Tyler III, *Giving Priority to Social Good and Public Benefit with Meaningful Accountability Thereto: “Differentiated Social Good” and the Social*

Another might be Larry Fink’s missives as the president and CEO of the Blackrock investment enterprise in which he extols the financial merits of non-financial considerations that he more recently clarified are not standalone, independent purposes but are in furtherance of financial pursuits.¹⁸ That is, they are means to the end of financial returns rather than ends unto themselves.¹⁹

More recently, attention may have increased because of controversies involving OpenAI given its tandem structure as a charitable nonprofit parent owning a for-profit subsidiary heavily oriented towards pursuing profits ostensibly for ultimate distribution in furtherance of charitable purposes,²⁰ and more recently its efforts to convert to a fully for-profit status,²¹

Primacy Company, 88 UMKC L. REV. 955, 957-58 (2020) [hereinafter Tyler, *Giving Priority to Social Good*] (statement presents a catalog of stakeholders but does not prioritize them or require deprioritizing shareholders; the statement is characterized by ambiguity and deference rather than accountability or commitment); *see also* Bebchuk and Tallarita, *supra* note 16, at 98 (arguing that statement is “mostly for show, largely representing a rhetorical public relations move, rather than a harbinger of meaningful change.”). After extensive empirical analysis, the “Statement should be viewed as mostly for show.” *Id.* at 126; *see also* Colin Mayer, *Essay: Shareholderism Versus Stakeholderism—A Misconceived Contradiction: A Comment on “The Illusory Promise of Stakeholder Governance,”* by Lucian Bebchuk and Roberto Tallarita, 106 CORNELL L. REV. 1859, 1870 (2021) (characterizing the Roundtable Statement as “a smokescreen—a diversionary tactic” to “fend off threats of intensified regulation”).

18. Larry Fink, *Larry Fink’s 2022 Letter to CEOs: The Power of Capitalism*, BLACKROCK (2022), <https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter> (“Make no mistake, the fair pursuit of profit is still what animates markets; and long-term profitability is the measure by which markets will ultimately determine your company’s success.”); *see also* Andrew Ross Sorkin & Michael J. de la Merced, *It’s Not ‘Woke’ for Businesses to Think Beyond Profit, BlackRock Chief Says*, N.Y. TIMES (Jan. 17, 2022), <https://www.nytimes.com/2022/01/17/business/dealbook/larry-fink-blackrock-letter.html>.

19. *See* discussion *infra* note 61 and accompanying text and Part II.

20. *See* discussion *infra* Section V.B.2.

21. *See* Matt O’Brien et al., *OpenAI Looks to Shift Away From Nonprofit Roots and Convert Itself to For-Profit Company*, THE CHRONICLE OF PHILANTHROPY (Sept. 27, 2024), <https://www.philanthropy.com/article/openai-looks-to-shift-away-from-nonprofit-roots-and-convert-itself-to-for-profit-company>; *see also* Mike Isaac & Cade Metz, *OpenAI Executives Exit as C.E.O. Works to Make the Company For-Profit*, N.Y. TIMES (Sept. 25, 2024), <https://www.nytimes.com/2024/09/25/technology/mira-murati-openai.html>; Mike Isaac & Erin Griffith, *OpenAI is Growing Fast and Burning Through Piles of Money*, N.Y. TIMES (Sept. 27, 2024), <https://www.nytimes.com/2024/09/27/technology/openai-chatgpt-investors-funding.html>.

specifically that of a Delaware public benefit corporation.²² Less recently, the structural evolutions of high-profile brands and companies like Newman's Own (1982), Ben and Jerry's (1978), the Body Shop (1976), and others have also contributed.²³

Juxtaposed against the preceding, three rationales have been suggested for recognizing a narrower "middle" social business space. First, many opportunities exist to both make money and achieve socially good outcomes that are fundamentally different from those of the traditional for-profit and charitable sectors. Thus, they could fall into the "middle" social space.

Second, there are large sets of problems and opportunities that for-profit businesses, governments, and charities neglect or cannot fully engage with for various reasons. There is not sufficient risk-adjusted profitability perceived. There may not be enough political will to dedicate resources. There may be too much threat of impermissible private benefit for charitable resources (e.g., too much potential for profitability).

Third, a narrower "middle" social business space can better and more clearly apply incentives in ways that ensure that advantaged businesses are substantively differentiated from those that are disadvantaged. It can also help ensure that society receives value in exchange for its concessions: pursuit or even achievement of differentiated social good in return for lost tax revenues or higher bid contract prices. An expansive "middle" lacks these features.

Many people and businesses want to and do operate in this socially oriented conception of the "middle" space that most squarely resides in narrower conceptions of the actual middle.

22. See generally, Cade Metz, *OpenAI Details Plans for Becoming a For-Profit Company*, N.Y. TIMES (Dec. 27, 2024) <https://www.nytimes.com/2024/12/27/technology/openai-public-benefit-corporation.html>; Jaspreet Singh & Rishi Kant, *Explainer: Why OpenAI Plans Transition to Public Benefit Corporation*, REUTERS (December 27, 2024), <https://www.reuters.com/technology/artificial-intelligence/why-openai-plans-transition-public-benefit-corporation-2024-12-27/>; OPENAI, *Why OpenAI's structure must evolve to advance our mission: A stronger non-profit supported by the for-profit's success* (December 27, 2024), <https://openai.com/index/why-our-structure-must-evolve-to-advance-our-mission/>.

23. Ben and Jerry's was founded in 1978. *About Us*, BEN AND JERRY'S, <https://www.benjerry.com/about-us>, (last visited Nov. 26, 2024); The Body Shop was founded in 1976. *About Us*, THE BODY SHOP, <https://www.thebodyshop.com/en-gb/about-us/a/a00001> (last visited Nov. 26, 2024); Paul Newman started Newman's Own in 1982. *About Us*, NEWMAN'S OWN, <https://newmansown.com/about-us/> (last visited Nov. 26, 2024).

Social business fully immersed in this space, if done right and well, will attract capital, talent, and attention to addressing those social problems and opportunities.²⁴ There is demand, and there are opportunities. People and enterprises operate at the intersection of both. This is the part of the “middle” space that the abundant confusion hurts most.

Broad iterations of the “middle” space tend to invoke nebulous combinations or degrees of attention to owners’ financial interests, market participation, and social good. Because such invocations are the status quo, what has unfortunately predominated—even for regulators, policymakers, investors, entrepreneurs, managers, officers and directors, employees, customers, lawyers, researchers, for-profit businesses, charitable nonprofits, and others—is a tremendous amount of harmful confusion.

Nomenclature about how to refer to the “middle” space and those who purport to operate in it contribute to the confusion, perhaps even causally: social enterprise, social entrepreneurship, the social economy, social business, or social purpose business.²⁵ As Appendix 1 helps demonstrate, these and other labels mean different things to different people under different circumstances. Sometimes, the same words mean different things to the same people in the same circumstances, sometimes even in the same conversation! To prove the point, many

24. See generally Cynthia Giagnocavo, *B Corps, Benefit Corporations and Socially Oriented Enterprises in Canada*, in INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE DRIVEN COMPANIES 455 (Henry Peter et al. eds., 2023); see e.g. Francesca Calo & Simon Teasdale, *Governing the Social Enterprise Zoo* (Dennis R. Young et al. eds., 2016); see also Sarah Dadush, *Regulating Social Finance: Can Social Stock Exchanges Meet the Challenge?*, 37 U. PA. J. INT’L L. 139, 200 (2015) [hereinafter Dadush, *Regulating Social Finance*]; Rado Bohinc & Jeff Schwartz, *Social Enterprise Law: A Theoretical and Comparative Perspective*, 15 OHIO ST. BUS. L.J. 1, 1 (2021); Alan J. Abramson & Kara C. Billings, *Challenges Facing Social Enterprises in the United States*, NONPROFIT POL’Y F. 1, 1 (2019); Helmut K. Anheier & Stefan Toepler, *Policy Neglect: The True Challenge to the Nonprofit Sector*, NONPROFIT POL’Y F. 1, 2 (2019); Julie Langer, Book Note, *Handbook on Hybrid Organisations*, 12 NONPROFIT POL’Y F. 497, 499 (2021).

25. Throughout this article, I use “social enterprise”—despite the lack of clear definition—because it seems to be the most commonly used reference in other contexts and is the one most likely to resonate with most readers. It is a concession rather than an endorsement. I am concerned that clearer, more disciplined terms such as “social purpose business” or “social primacy enterprise” would distract from rather than enhance understanding.

would read the two preceding sentences without seeing themselves in them.

References and understandings might be to an overall movement and its variations. They might refer to specific legal structures or categories of businesses, to operations with certain features, even to discrete enterprises, or to some varying, interchangeable combination of the preceding. Some make no such distinctions when they use the terms. In nearly all cases, labels and understandings are common in implying undeclared degrees of relative attention to owners' financial interests and pursuing and/or achieving social good.

That commonality itself contributes to the confusion, not the least of which is giving rise to the following questions:

- (1) Is there actually a narrow, "middle" social business space;
- (2) If there is one,
 - (a) How large/small and inclusive/narrow is it and should it be,
 - (b) How should it be regulated, incentivized, and treated differently from traditional for-profit approaches; and
- (3) Is it differentiated enough from the traditional spheres, or are there at least parts of the "middle" space that can, are, or should be so differentiated?

More specifically, along with the evolution of the existing broad "middle" space, questions have emerged about how to regulate businesses that purport to operate in that space: Are they charities? For-profit businesses? Or something else? Questions also have arisen about whether or not, and if so how, to incentivize engagement in this space or its narrower conceptions, with very few incentives arising so far in the United States.²⁶ Additional questions include how to identify and what to do about greenwashing and social/purpose washing: whether intentionally, accidentally, or even unknowingly. And that is only the beginning.

In short, this confusion and these questions have exacerbated the need, if not demand, for regulatory and policy interventions

26. See discussions of the City of Philadelphia's tax credit and bid procurement preferences offered by Cook County, Illinois, and Los Angeles County, California *infra* at Sections III and V.B.3, respectively.

to help bring clarity to what does and does not operate or belong in the "middle" social space. The absence of regulatory and policy clarity risks hurting traditional for-profit businesses, the charitable sector and its enterprises, and even organizations that legitimately strive to operate in the so-called "middle" space where profits and purpose intersect more intentionally.

Among for-profit businesses, many are put at a competitive disadvantage in the marketplace because they are not perceived as doing enough to contemplate social good as conceived of by a broadly understood "middle" space. Some are given an unfair competitive advantage because they are perceived as operating in that "middle" space to some acceptable but indescribable degree. Some have that advantage because they intentionally deceive through greenwashing or social/purpose-washing. Others are advantaged because the "middle" space is conceived of so broadly as to permit those perceptions despite the lack of any intended or even aspirationally meaningful, unique, or differentiated contributions to the social good.

Prevailing conditions pose unique challenges for charitable nonprofits, philanthropies, donors, employees, boards of directors, officers, managers, and others. They can become confused about how to ensure that, as required by tax-exempt status under 501(c)(3), they are exclusively/primarily operating in pursuit of charitable purposes and protecting against impermissible private benefit.²⁷ Concerns become very real for them in at least three ways.

First, they are approached by so-called "social enterprises" and/or "social"/"impact" investors seeking collaborations, joint ventures, funding, personnel and expertise, shared resources (e.g., networks, lists, data, etc.), and other potentials for "impact"—or even with a willingness to provide the same to the charity in some way.

Second, they consider their own forays into for-profit market-oriented ventures either directly or through subsidiaries.

Third, they find themselves competing with "social enterprises" for capital, beneficiaries, customers, labor and talent, and otherwise. They learn that they are at a competitive disadvantage with organizations that are (1) not subject to a regulatory regime that demands resources in time, talent, and money and that imposes a clear priority of purpose that restricts

27. *See* I.R.C. § 501(c)(3).

opportunities or (2) do not prioritize the pursuit of socially good outcomes, much less charitable ones. Done poorly, there are risks of the “middle” space undermining the charitable sector and the contributions that its members make to society.²⁸

Even the current, broadly conceived social enterprise movement and its component parts would benefit from clear and consistent regulation. For instance, the part of the movement and its enterprises that prioritize owners’ financial interests and/or flexibility to choose when to prioritize which purposes could benefit because, at a minimum, they would no longer need to disclaim tolerating lower, concessionary returns; it would be clear that such returns are not within their scope.

Of course, a benefit of clarity for the more narrowly conceived movement and its entities would be that they would be competing for the limited incentives, reputations, and attention among themselves rather with a broader swath of companies that have not sufficiently and clearly focused their priorities away from owners’ financial interests.

There is not a current governmental, or even private, regulatory environment in the United States that clearly facilitates operating in, for, or through that “middle” space of social enterprise. Instead, the environment has been characterized as deficient, even potentially harmful.²⁹ The “regulatory void”

28. See Stelios Andreadakis, *Social Enterprises, Benefit Corporations and Community Interest Companies: The UK Landscape*, INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE DRIVEN COMPANIES 881, 888 (Henry Peter et al. eds., 2023).

29. See Dana Brakman Reiser, *Regulating Social Enterprise*, 14 U.C. DAVIS BUS. L.J. 231, 240 (2014) [hereinafter Reiser, *Regulating Social Enterprise*]; Bohinc & Schwartz, *supra* note 24, at 19; Ebrahim et al., *The Governance of Social Enterprises: Mission Drift and Accountability Challenges in Hybrid Organizations*, RSCH. IN ORG. BEHAV., 81, 86–87 (2014); Dadush, *Regulating Social Finance*, *supra* note 24, at 146, 184; Abramson & Billings, *supra* note 24, at 1; Anheier & Toepler, *supra* note 24, at 2; John Tyler III, *Structuring for Action and Longevity in the Green Economy: Being Intentional About Committing to Social/Green Purposes, Connecting Effort and Impact, and Addressing Harm and Accountability*, 86 UMKC L. REV. 1, 2 (2018) [hereinafter Tyler, *Structuring for Action*]; John Tyler III, *Essential Policy and Practice Considerations for Facilitating Social Enterprise: Commitment, Connections, Harm, and Accountability*, THE CAMBRIDGE HANDBOOK OF SOCIAL ENTERPRISE LAW 1, 8 (Benjamin Means & Joseph W. Yockey eds., 2018) [hereinafter Tyler, *Essential Policy*]; Tyler, *Giving Priority to Social Good*, *supra* note 17, at 956 and 960 (lack of clarity inhibits flow of capital), 963 (gaps in regulator clarity), 965 (danger from lack of differentiation); John Tyler III et al., *Producing Better Mileage: Advancing the Design and Usefulness of Hybrid Vehicles for Social Business Ventures*, 33 QUINNIPIAC L. REV. (2015) 235, 322 [hereinafter Tyler et al., *Producing Better Mileage*].

exists in the United States largely because of a lack of clear definition, scope, or characteristics that can be applied consistently and reliably over time and circumstance in ways that sufficiently differentiate “middle” space social enterprises from traditional counterparts.

The ability to differentiate is fundamental, if not essential.³⁰ People should clearly understand that social enterprises differ from other types of operations and why.³¹ This requires distinguishing features that are meaningful, worthwhile,³² and a clear alternative to existing laws and traditional approaches.³³

30. See Antonio Fici, *Models and Trends of Social Enterprise Regulation in the European Union*, INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE-DRIVEN COMPANIES 153, 157, 163 (Henry Peter et al. eds., 2023); Coline Serres & Tine De Moor, *Social Enterprises in the Netherlands: Towards More Institutional Diversity?*, INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE-DRIVEN COMPANIES 861, 864, 878 (Henry Peter et al. eds., 2023); Bohinc & Schwartz, *supra* note 24, at 4; David Hiez, *The Suitability of Luxembourgish Law to B Corp*, THE INT’L HANDBOOK OF SOC. ENTER. L.: INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE-DRIVEN COMPANIES 693, 696 (Henry Peter et al. eds., 2023) [hereinafter Hiez, *The Suitability of Luxembourgish Law to B Corp*]; Anheier & Toepler, *supra* note 24, at 5; Peter A. Dacin et al., *Social Entrepreneurship: Why We Don’t Need a New Theory and How We Move Forward From Here*, 24 ACAD. OF MGMT. PERSPS. 35, 42 (2017); Benedict Sheehy & Juan Diaz-Granados, *Social Enterprise: A Legal Definition of the Term*, in SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW, 635, 640, 650 (Dana Brakman Reiser et al. eds., 2024); Brenda Massetti, *The Social Entrepreneurship Matrix as a “Tipping Point” for Economic Change*, 10 EMERGENCE: COMPLEXITY AND ORGANIZATION 1, 7 (2008); Nicholas Romici Goldstein et al., *Social Enterprises in New Zealand*, in SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW 389, 393 (Dana Brakman Reiser et al. eds., 2023) [hereinafter Goldstein et al., *Social Enterprises in New Zealand*]; Abdul Karim Aldohni, *Social Enterprises in the United Arab Emirates*, SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW 563, 575 (2023) [hereinafter Aldohni, *Social Enterprises in United Arab Emirates*].

31. See Bohinc & Schwartz, *supra* note 24, at 2; see also Dacin et al., *supra* note 30, at 37; Sheehy & Diaz-Granados, *supra* note 30, at 635 (questioning whether social enterprise is a “distinct category” of entrepreneurship).

32. See Dadush, *Regulating Social Finance*, *supra* note 24, at 164; see also Sarah Dadush, *A New Blueprint for Regulating Social Enterprises*, in CAMBRIDGE HANDBOOK OF SOC. ENTER. L. 432, 439 (2018) [hereinafter Dadush, *A New Blueprint*]; Carol Liao, *Early Lessons in Social Enterprise Law*, THE CAMBRIDGE HANDBOOK FOR SOCIAL ENTERPRISE LAW 101, 112 (2018); Sheehy & Diaz-Granados, *supra* note 30, at 639 (“many social enterprises look like any other enterprise”).

33. See Liao, *supra* note 32, at 109; Sheehy and Diaz-Granados, *supra* note 30, at 638. But see Dacin et al., *supra* note 30, at 42; Carl Schramm, *All Entrepreneurship Is Social*, 8 STAN. SOC. INNOVATION REV. 21, 21–22 (2010)

Differentiation should determine who is in and who is out,³⁴ what is and is not subject to applicable regulatory oversight, and who can be advantaged by incentives and who cannot. Those who are advantaged should be structured or operated materially differently from those who are disadvantaged. They should contribute substantially differentiable social goods that the latter do not or cannot. Otherwise, society risks making concessions without getting an equivalent positive return for doing so and might even be harming itself by instituting unwarranted disadvantages.³⁵

Meaningful differentiation could facilitate attracting resources to the neglected “middle” and thereby address problems, pursue opportunities, and fundamentally change dynamics around applicable social goods in that “middle” space. In other words, a relatively narrow conception of the “middle” space.

Absent clear differentiation from the traditional approaches, anything that exists or operates in whatever “middle” space there is can and should be subject to regulation as traditional for-profit companies,³⁶ with exceptions for nuances related to statutory modifications of fiduciary duty that render

(noting that all entrepreneurship adds social value and is, therefore, “social”); Jeff Trexler, *Social Entrepreneurship as Algorithm: Is Social Enterprise Sustainable?*, in 10 EMERGENCE, COMPLEXITY AND ORGANIZATION: E:CO 497, 500, 514 (Kurt A. Richardson et al. eds., 2009) https://www.researchgate.net/publication/228162573_Social_Entrepreneurship_as_Algorithm_Is_Social_Enterprise_Sustainable.

34. See Dacin et al., *supra* note 30, at 40; Sheehy & Diaz-Granados, *supra* note 30, at 635.

35. See Abramson & Billings, *supra* note 24, at 7.

36. Regulation and incentivizing as charities under 501(c)(3) have been explored fairly thoroughly elsewhere, so will only be lightly considered here. See generally John E. Tyler III, *Analyzing Effects and Implications of Regulating Charitable Hybrid Forms as Charitable Trusts: Round Peg and a Square Hole?*, 9 N.Y.U. J. L. & BUS. 535 (2013); see also, Tyler et al., *Producing Better Mileage*, *supra* note 29, at 297-99; see generally Lloyd Hitoshi Mayer & Joseph R. Ganahl, *Taxing Social Enterprise*, 66 STAN. L. REV. 387 (2014). In summary, regulation as if charities or charitable trusts undermines the presence of and legitimate attention to the financial interests of owners of companies that operate in the “middle.” It also substantially limits the scope of activities and related decision-making about such scopes. Based on that analysis, there is a reasonable presumption that regulation, incentives, and accountability in the current environment should follow primarily from the for-profit realm rather than the realm of nonprofit charities such that any enterprise that is not 501(c)(3) should be treated as for-profit companies without additional benefits, preferences, or contrary presumptions.

flexibility as in the best interests of the company.³⁷ Regulating or incentivizing differently should only occur when there is a clearly stated and adhered to genetic basis for giving priority to social (perhaps even charitable) good in ways that differentiate decision-making, terminology, and behavior from either for-profit or charitable enterprises. Merely tolerating social good should not suffice for defining the "middle" space, nor should misalignment across words and deeds;³⁸ neither differentiates sufficiently.

Moreover, a lack of will to enforce existing laws and regulations should not justify ongoing confusion, support for ambiguity, or calls for more regulations that would be similarly fallow. More unenforced regulation without the will to understand and enforce that which is truly different is likely to exacerbate rather than resolve confusion and its accompanying problems.

This Article analyzes the status quo in the United States primarily from a regulatory perspective, but its analysis and recommendations have applications for other people and contexts. For instance, the framework proposed in Section 2 might facilitate clarity in conversations among investors, between investors and entrepreneurs, between companies and employees and consumers, etc.

With that specific regulatory eye, this Article answers some of the questions asked above to ascertain whether currently available approaches can meet the present circumstances or if there is an urgent need for new tools. Is there a usefully differentiated "middle" space? How can we know? Should it be narrow or nearly all-encompassing?

In substantive Section I, this paper weeds through common assertions about what should be regulated in a social "middle" sector: "impact," intentions, outcomes, processes, or otherwise. This Section concludes that each of the preceding assertions, except for focus on processes, too often facilitates people saying things that they do not mean and doing things that they have not said as it relates to pursuing socially good outcomes. As such, they have contributed to a status quo characterized by confusion and lack of meaningful differentiability.

37. See discussions of the benefit corporation and social purpose corporation *infra* Section IV.

38. See discussion and citations *infra* Section II.A.

Section 2 proposes a three-part framework for assessing whether there is sufficient differentiation to warrant new regulatory approaches (and perhaps how we might get there): (1) heightened commitment to social good; (2) intentionality about connecting behaviors to repeatable socially good outcomes; and (3) persistence through time and consistency across circumstances. This framework might also be applied to guide the future development of regulations, incentives, policies, and approaches that support differentiation and its attendant effects. It also can facilitate operational conversations to advance clearer relationships and understandings of priorities and decision-making in practice.

Section 3 considers who in the United States might regulate and ways of doing so exemplified by other countries, including how they have, or have not, arranged their uniquely applied legal structures that re-configure priorities of purpose.

Section 4 more deeply examines the hybrid/blended structures available in the United States since 2008 to ascertain how different they truly are from traditional for-profit approaches. Is there sufficient differentiation? As with modifications of traditional for-profit structures and although certain applications of the forms might be sufficiently different, this Section concludes that the hybrid/blended legal structures are overwhelmingly like those in the traditional for-profit sphere; there generally is not sufficient differentiation.

Section 5 considers the modality approaches used by non-United States countries to suggest ways of approaching differentiation in practice rather than through structure. It then considers various structurally agnostic models and approaches frequently characterized in the United States as operating in the “middle” space. Relying less on comparisons with other countries and more on the three-part framework, this Section concludes that this modality approach in the United States also lacks consistently and reliably applied differentiating features, although again specific iterations might be different enough.

Given the pervasive lack of differentiation from traditional for-profit approaches, Section 6 suggests that a more aggressively proactive use of existing for-profit regulatory regimes would be appropriate for addressing much of the confusion that exists in the status quo. Doing so can help identify green/social/purpose washing (whether done fraudulently, intentionally, carelessly, or accidentally), promote clearer communication of purposes and priorities, ensure that people say what they mean

and do what they say, facilitate responsibilities and accountability of decision-makers, and enhance alignment of interests and accountabilities. These efforts also can help clarify the starting point for the journey of future regulations and incentives and the development and growth of a differentiated social “middle” space in which priorities clearly favor pursuing socially good outcomes—albeit not necessarily at the expense of owners’ financial interests even though those interests would be only incidentally related to priority given to social outcomes.

Ultimately, this Article submits that the United States lacks coherence, predictability, differentiation, critical mass, and a general will to enforce a reliable ordering of priorities that persists over time and can weather changes in ownership priorities and personnel. We lack the distinguishing features of a “middle” social enterprise sector sufficient to enable a distinctive regulatory environment such as has emerged elsewhere. In addition to lacking a coherent, limiting definition of “social enterprise,”³⁹ we are also missing distinguishing features like those adopted elsewhere that evidence sufficient degrees of commitment, intentionality, and persistence: explicitly declared delimiting scopes (e.g., hard-to-employ workers (“WISE”)), distribution caps, asset locks, salary caps and ratios, stakeholder participation in governance, one-member-one-vote governance, discretely charged and empowered regulatory agencies, among other possibilities.

Stated differently, the structures and modalities in the United States do not support finding a cohesive “middle” space to support new, different approaches to regulation or providing incentives, yet. Somewhat paradoxically, then, there does not appear to be enough clarity and activity to support regulation, although proper regulation could provide useful clarity from which desirable activity may emerge. There is a bit of a “chicken and egg” problem.

In the meantime and until “yet” arrives, people and organizations that operate in or want to operate in that social “middle” space efficiently, with clarity, and with maximum potential for positive results—including investors—need to ensure that they are clear with themselves about what they are prioritizing, doing, and why. They need to be clearer with capital providers, employees, volunteers, consumers, regulators, and otherwise.

39. See Abramson & Billings, *supra* note 24, at 6.

They need to better understand who they are engaging with, in what ways, what is being asked of them, what they need to guard against, and what they can reasonably expect from the other enterprise(s).⁴⁰ In other words, they need to ask questions to ascertain alignment, the extent to which it is lacking, and whether the subject engagement still makes sense.⁴¹ They should not take anything for granted without probing more. This Article prompts some of the ways in which they may do so until new regulatory approaches are justified.

I.

REGULATING FOR WHAT: IMPACT? INTENTIONS? OUTCOMES? PROCESSES?

We begin by trying to understand what should be regulated in the United States in the context of the “middle” space for being a social enterprise or social purpose business. Unfortunately, ambiguous terminology pervades the social entrepreneurship space in the United States, and that presumes that the words used convey the most likely overt meaning possible, much less when chosen words are intended or understood to mean something else entirely. This is not to suggest bad faith or nefarious efforts; quite the contrary. Word selection in this space is usually well-meaning, hopeful, and full of aspirational goodwill. Unfortunately, it still too often lacks clarity about underlying possible meanings and/or applications in practice, which makes regulation and practical implementation challenging and unappealing.

Appendix 1 presents a compilation of nearly 170 definitions of relevant terms, such as social enterprise, social entrepreneur, social entrepreneurship, impact investing, social cooperative, benefit corporation, ESG investing, social and solidarity economy, social economy, and other terms commonly used to reference some aspect of other than maximizing owner

40. See generally Tyler et al., *Private Benefit in Practice*, *supra* note 2 (These concerns can be particularly acute in a public-private partnership setting).

41. For insights into potentially different ways of thinking about and approaching investment transactions in which owners' financial interests are not the overwhelming priority—and may instead be the means for pursuing and accomplishing other socially good ends, see John Tyler III, “*Think Different*” About Flow of Investment Capital When Prioritizing Outcomes, *TAX'N OF EXEMPTS* 24, 24–33 (Feb. 2021).

financial interests or charitable purposes. An analysis of those terms and their definitions revealed the following:

- 52 referenced no specific priority;
- 46 required that priority be given to social good over owner financial interests;
- 13 referenced not prioritizing owner financial interests;
- 43 allowed for either owner financial interests and/or social good to be prioritized;
- 8 prioritized traditionally neglected categories of workers;
- 8 permitted prioritizing such categories of workers or other social goods; and
- 3 permitted giving priority to such categories of workers, other social goods, or owner financial interests.

Any suggestion of a broad consensus would not be supported by that analysis.⁴² That statement is true as of this writing

42. See Dana Brakman Reiser & Steven A. Dean, *The Social Enterprise: A New Form of the Business Enterprise?*, in SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW 1, at 3, 26 (2024) (there is “no precise definition of social enterprise” (at 3); a “single definition is elusive” (at 26); definitions of social enterprise are “contested” (at 26)); see also Sheehy & Diaz-Granados, *supra* note 30, at 635, 636, 638 (the context for social enterprise is “ambiguous” (at 635); the context is “vague and lacks a clear, concise definition” (at 636) (citations omitted); none of the definitions analyzed provide a clear basis for allocating legal rights and duties or determining who is included and who is excluded (at 638)); Massetti, *supra* note 30, at 6 (there is a lack of a clear and comprehensive definition of “social entrepreneurship [sic]”); see also Aldohni, *Social Enterprises in United Arab Emirates*, *supra* note 30, at 563; Meng Ye, *Social Enterprises in China*, SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW 152–80 (2023) [hereinafter Ye, *Social Enterprises in China*]; Edison Tabra Ochoa, *Social Enterprises in Peru*, SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW 413, 414 (2023) [hereinafter Ochoa, *Social Enterprises in Peru*]; Ayşe Şahin, *Social Enterprises in Turkey*, SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW 537, 538 (2023); Wen-Yeu Wang, *Social Enterprises in Taiwan*, SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW 521, 521 (2023).

Definitional challenges are not new. See Appendix 1; see also Trexler, *supra* note 34, at 497; Jeffrey A. Goldstein, James K. Hazy & Joyce Silberstang, *Complexity and Social Entrepreneurship: A Fortuitous Meeting*, 10:3 EMERGENCE, COMPLEXITY AND ORGANIZATION 9, 10 (2009). https://www.researchgate.net/publication/220040522_Complexity_and_social_entrepreneurship_A_fortuitous_meeting; Paul Tapsell & Christine Rachel Woods, *A Spiral of Innovation Framework for Social Entrepreneurship: Social Innovation at the*

but also across time as the definitions in Appendix A range from 1995 throughout the 2000s and as recently as 2024. Thus, confusion and ambiguity are not a new phenomenon, which is particularly disheartening in many respects because opportunities to achieve consensus and accompanying clarity have existed but have not been successfully achieved.

Among frequent assertions in the definitions and otherwise are that social enterprises can or should variably be held to account, and thereby be regulated, for some combinations of the following: intentions; impact, outcomes, or results; effort; and even promise. For instance, while the “promise” of social enterprise is a fine expression of aspiration and hope,⁴³ the word is not helpful for regulatory accountability in practice.

Similar problems arise with the term “impact,” especially when used to characterize investing.⁴⁴ In conversations between an “impact” investor and a social entrepreneur or among “impact” investors, neither may truly know what the other means, how or even whether to engage with the other, or how the other will assess success or failure, much less progress.

On its face, the term “impact” as used here suggests a focus on outcomes, results, or effects, but the term gets re-configured to mean “intent”; that is, intending some indeterminate degrees of both financial returns and social good.⁴⁵ The levels or degrees of intentions can vary from one person or situation to the next, between investor and entrepreneur, and/or within groups of investors or entrepreneurs. All are within the ambit of being an “impact” investor or entrepreneur even if some minuscule level of intending both distributable profits and

Generational Divide in an Indigenous Context, 10 EMERGENCE, COMPLEXITY AND ORGANIZATION 25, 25 (2009) https://www.researchgate.net/publication/253062586_A_Spiral_of_Innovation_Framework_for_Social_Entrepreneurship_Social_Innovation_at_the_Generational_Divide_in_an_Indigenous_Context.

43. See Dadush, *Regulating Social Finance*, *supra* note 24, at 143; Dadush, *A New Blueprint*, *supra* note 32, at 432.

44. See Tyler, *Essential Policy*, *supra* note 29, at 6; Abramson & Billings, *supra* note 24, at 5.

45. See Lauren Kaufman & Helet Botha, *Who Loses in Win-Win Investing? A Mixed Methods Study of Impact of Risk*, J. BUS. ETHICS 13 (August 19, 2024) (finding that early definitions emphasized intention to create positive impact (at 13); *What Is Impact Investing*, GIIN <https://thegiin.org/publication/post/about-impact-investing/#what-is-impact-investing> (quoting Global Impact Investing Network definition “intention to generate positive, measurable social impact alongside a financial return”).

social good are present. Being only one percent committed to either purpose qualifies.

Contrary to the connotations of the nearly all-encompassing term, “impact” investors and entrepreneurs are not a homogeneous group. They come in different shapes and sizes and can fit anywhere within a wide-ranging calibration of permissible intentions.⁴⁶ Their varying and unstated degrees of relative importance and intensity thereof can be problematic and even harmful as they engage each other in ways that mistakenly suggest alignment that does not exist, despite even well-intentioned taxonomies and terminology that suggest it does.⁴⁷

As a practical matter, the “impact” terminology does not effectively differentiate capital sourcing in social enterprise from traditional investing. After all, the investor 100% focused on the owners’ financial interests and not willing to tolerate any social good whatsoever would be rare or nonexistent; all are willing to tolerate at least 1% social good, thereby qualifying as an “impact investors.” That lack of distinction undermines the ability to effectively regulate differently, not to mention the practical problems for people trying to put deals together or ascertain accountability, progress, or success or failure within them. Of course, there may be ratios that clearly qualify to differentiate from traditional approaches, but current all-embracing terminology is not that clear, nor does there seem to be a meaningful willingness to pursue clarity.

Moreover, intentions do not guarantee outcomes, whether intending financial returns or social good.⁴⁸ As Kaufman and Botha recently demonstrated in their empirical study of impact investors, intending social good on the front end of an investment transaction—even if to a presumptively high degree of commitment—does not necessarily translate into giving due attention to whether the venture is managed consistent with

46. See Dadush, *A New Blueprint*, *supra* note 32, at 435; Dadush, *Regulating Social Finance*, *supra* note 24, at 155.

47. See generally Dean A. Shepherd et al., *A Framework for Exploring the Degree of Hybridity in Entrepreneurship*, 33 ACAD. OF MGMT. PERSPS. (2019).

48. See Lauren Kaufman & Helet Botha, *Many ‘Impact Investors’ Don’t Track Whether Their Investments Are Good for Society or the Environment*, CHRON. PHILANTHROPY (January 10, 2025) <https://www.philanthropy.com/article/many-impact-investors-dont-track-whether-their-investments-are-good-for-society-or-the-environment> (arguing that intentions to do good do not guarantee that good will be accomplished).

those intentions, whether metrics are adopted to assess progress towards socially good outcomes, or whether performance aligns with those intentions.⁴⁹ Instead, the prevailing view appears to be that due diligence before entering the transaction is sufficient because financial success otherwise equates to achieving the desired social good given the inherent ties between the two.⁵⁰ Even then, due diligence may be less about commitment to social good and the presence of the tools to pursue it than it is about “impact risk” and de-risking the fact that inherent social goods are not likely to unduly interfere with financial returns.⁵¹

There is another set of problems with “impact” being converted to “intent” in practice, and that is their respective temporal distinctions,⁵² as demonstrated in part by Kaufman and Botha’s findings discussed in the preceding paragraph about giving attention to due diligence regarding social good (and even then, not always from a constructive, desirable perspective) but not necessarily to management, measurement, and performance. “Impact” follows from and occurs after an activity or decision. “Intent” is formed before or in conjunction with the activity or decision. Intentions that motivate behaviors are not formed afterward; they can be described or ascribed differently afterward, but not formed. People and organizations are using an “after-action” word to mean a “before-action” belief system, thereby leaving plenty of opportunity for confusion and misunderstanding among those involved in discussions, much less for policymakers trying to fashion or apply regulation.

“Impact” and “intent” simply are not synonymous in meaning, time, or otherwise, and confusion arises when these words and concepts are treated as if they are interchangeable.

Even words like “outcomes,” “results,” and “effects,” without regard to intentions, can be problematic as generic expressions for what social enterprises will be held to account through regulation or otherwise. Adding modifiers such as “positive,” while slightly better, can still be too vague to clearly differentiate understanding, especially in a regulatory context that incorporates consequences for noncompliance if for no other reason

49. Kaufman and Botha, *supra* note 45, at 5–6.

50. *Id.* at 2, 5, 7.

51. *Id.* at 5, 6.

52. See Tyler, *Essential Policy*, *supra* note 29, at 5.

than that too often one person or organization’s “positive” is another’s neutral, negative, or harm.

Relying on these concepts for regulation and accompanying accountability has at least two problems. First, finding causal connections between effort and results is “fraught, imprecise, and expensive.”⁵³ Setting aside causal relationships, being able to replicate or scale an intervention because its connections are at least correlational or instrumental should mean more to a social enterprise than connections that cannot be meaningfully understood or predicted because they are merely arbitrary, accidental, or incidental.⁵⁴

Stated differently, should a business get the benefits of being a social enterprise when socially good outcomes occur through mere happenstance? How do you incentivize accidents?

A second, more practical, problem with grounding regulation on outcomes, results, and effects is that it is likely to disincentivize engagement. It also would be inconsistent with approaches that are typical when regulating both traditional for-profit companies and charitable nonprofits. Why would anyone want to be personally liable for an enterprise’s failure to achieve projected future outcomes, results, or effects?

Legal or regulatory accountability in the for-profit context is not for outcomes, results, or effects. For-profit companies regularly and frequently lose money, some to the point of bankruptcy or dissolution, leaving owners and creditors at a loss financially. With the business judgment rule, there is no recourse to hold individual decision-makers or the company itself legally liable as long as they made decisions in good faith, with adequate information, and without unmanaged conflicts of interest consistent with the business judgment rule and duties of care and loyalty.⁵⁵

53. Dadush, *A New Blueprint*, *supra* note 32, at 444.

54. See Tyler, *Structuring for Action*, *supra* note 29, at 8; Tyler, *Essential Policy*, *supra* note 29, at 4.

55. See *eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1, 33 (Del. Ch. 2010) (“Promoting, protecting, or pursuing non-stockholder considerations must lead at some point to value for stockholders. When director decisions are reviewed under the business judgment rule, this Court will not question rational judgments about how promoting non-stockholder interests—be it through making a charitable contribution, paying employees higher salaries and benefits, or more general norms like promoting a particular corporate culture—ultimately promote stockholder value.”); see also *Maffei v. Palkon*, No. 125, 2024, 2025 Del. LEXIS 51, at *38–39 (Feb. 4, 2025) (citations omitted); *Bebchuk and Tallarita*, *supra* note 16, at 112–13, nn. 65–67.

A for-profit company's directors, officers, managers, and others might be removed by a majority of the owners, but that is a private decision rather than regulatory. Imposing personal liability or regulatory accountability for failure to achieve certain results under ordinary circumstances is not imposed; nor should it be. Through the fiduciary duty of care in for-profit companies, legal and regulatory accountability is not to outcomes, results, or effects but is to process.⁵⁶

The same assertions hold in the charitable nonprofit context, except that instead of losing money, the outcome, result, or effect may be failing to achieve charitable objectives (or perhaps even causing harm). For instance, the organization might not serve enough people, advance a person or community's quality of life as expected, heal an illness or health condition, sufficiently aid in spiritual development, etc. Of course, losing money might be involved too.

The charity's board may remove directors, officers, managers, and others—as in the for-profit context—but that is a private decision.⁵⁷ As long as decisions are made in good faith, with sufficient information, and without illicit conflicts of interest consistent with duties of care and loyalty (and perhaps obedience), there is no personal liability or regulatory

(citations omitted); *Simeone v. Walt Disney Co.*, 302 A.3d 956, 971–73 (Del. Ch. 2023); *Palella v. TMO VI LLC*, 2025 N.Y. Misc. LEXIS 521, 2024 NY Slip Op. 32933(U) at *2 (Sup. Ct. N.Y. Cnty. Aug. 19, 2024); *Giuliano v. Fleming* (In re Nobilis Health Corp.), 661 B.R. 891, 903 (Bankr. D. Del. 2024). For a history of the business judgment rule, see Gerard Mantese & Philip Louis, *The Verdict on the Business Judgment Rule*, 76 J. Mo. BAR 2 (Apr. 2020), <https://news.mobar.org/verdict-on-business-judgment-rule/>.

56. See, e.g., *Spence v. American Airlines, Inc.* 718 F. Supp. 3d 612, 617 (N.D. Tex. 21, 2024) (holding that in an ERISA context rather than that of business governance, the fiduciary duty of prudence focuses on decisions rather than on results) (citations omitted); *Spence v. American Airlines, Inc.* No. 4:23-cv-00552-O, 2025 U.S. Dist. LEXIS 11725 (N.D. Tex. Jan. 10, 2025) [hereinafter *Spence 2*] (holding that for ERISA, the prudence inquiry focuses on conduct, not results). The judge in both *Spence* rulings is Hon. Reed O'Connor. See also *Giuliano v. Fleming* (In re Nobilis Health Corp.), 661 B.R. 891, 903 (Bankr. D. Del. 2024).

57. In extreme cases, an attorney general or other state official responsible for overseeing charities and their governance may seek to remove board members. They can pursue such results through a negotiated settlement, or they can file suit and seek a court order that a board member(s) be forced out. See *In re the Otto Bremer Tr.*, 2 N.W.3d 308, (Minn. 2007). The basis for removal, however, is not connected to results, outcomes, or effects. Neither the attorney general nor the courts are in a position to second case decisions protected by the business judgment rule, even if they turn out to be wrong.

accountability;⁵⁸ nor should there be. Again, legal and regulatory duties in charitable nonprofits are also to process.⁵⁹

In both for-profits and charities, things sometimes do not go well and are beyond one’s ability to control or predict. In the United States, attaching personal liability and/or governmental accountability has been deemed undesirable in both contexts.

Some might contend that social enterprises should be held to a greater sense of legal duty and regulatory rigor than their purely for-profit counterparts. Maybe they should. But are social enterprises in the United States currently distinguishable enough from for-profit counterparts to be regulated differently, much less to expand their duties and impose increased rigor or consequences? A later part of this Article suggests that the answer is “no.” Nevertheless, social and owner accountability persist, and they should.

Asserting that social enterprises and their personnel should be held to a more rigorous and demanding standard than their charitable nonprofit counterparts makes even less sense. Why should the standard be different—and, especially, why should it be harsher—for social enterprises? Of course and as is discussed later, social accountability exists; and it should. Imposing enhanced regulatory accountability and/or personal legal liability for the outcomes, results, or effects of a social enterprise would likely destabilize approaches to social enterprise rather than encourage them.

Maybe when people invoke “accountability for outcomes,” they don’t mean personal liability or governmental accountability. But that only adds to the confusion and is part of the problem in trying to develop, regulate, or engage in the “middle” social space. People too often say one thing but mean something else entirely.

I suppose that regulatory consequences could be nonexistent such that either there is no regulatory overlay for social enterprises or that which might exist is ignored. Instead, accountability’s consequences are through “social” or reputational channels. Some might contend that the preceding

58. See RESTATEMENT OF CHARITABLE NONPROFIT ORGS. § 2.03 (AM. L. INST. 2021); *McCord v. Margaret* (In re Sci., Language, & Arts Int’l Sch.), 660 B.R. 21, 43, 49–52 (Bankr. E.D.N.Y. 2024).

59. See RESTATEMENT OF CHARITABLE NONPROFIT ORGS., *supra* note 58, § 2.03.

two sentences accurately portray the present state in the United States. It might, but it shouldn't, and it doesn't need to.

This does not leave a regulatory vacuum. There is and should be personal and governmental oversight and accountability based on fiduciary duties and whether decision-makers act in good faith, with requisite knowledge and information, and without illicit conflicts of interest—as is the case with for-profit companies and charitable nonprofits; that is, to process. However, in the United States, there is no legal structure that reorders fiduciary duties to require that heightened commitment to social good be consistently and persistently prioritized over owners' financial interests such as would evidence a “middle” space differentiated from traditional for-profits.⁶⁰

Moreover, and as is discussed in more detail below, there is still regulatory accountability for the current spate of social enterprises in the United States to and through other regimes, such as securities, consumer protection, anti-trust, employment, fair credit, intellectual property, etc. At some future point, differentiation in the pursuit of social good—both the what and the how—may be robust and disciplined enough to justify different regulatory approaches, exemptions, and incentives.

II.

“DIFFERENTIATED” SOCIAL GOOD: COMMITMENT, INTENTIONALITY, AND PERSISTENCE OVER TIME AND CIRCUMSTANCE

To create a new regulatory regime, add new features to the existing one, or even tweak around the edges for social enterprise, something must materially and substantively distinguish it and its enterprises from the traditional for-profit context. This is especially true if the new or revised regulatory approach will benefit some and disadvantage others. The same may be said about using incentives.

In some ways, meaningful differentiation might be thought about in terms of means and ends.⁶¹ Are socially good efforts

60. As is discussed later, the low-profit limited liability company (L3C) comes the closest to achieving this state of being, but it also has problems that still need to be addressed before the conclusion stated in the sentence to which this note is attached would need to be modified as incorrect.

61. See Tyler, *Giving Priority to Social Good*, *supra* note 17, at 970 (distinguishing among alternative ends to be pursued); Xenia Karametaxas & Giedre

and outcomes a means to the end of and incidental to owners’ financial interests? Or are such efforts and outcomes the ends for which financial interests are an incidental byproduct, conduit, or means? The first is consistent with traditional for-profit models and approaches, while the second might be more indicative of a social enterprise.

In that regard, the ultimate differentiating feature seems to be a heightened commitment to social good followed by whether that commitment remains consistent over time and persists through changed circumstances. A third feature might assess degrees of intentionality about whether behaviors connect to achieving socially good outcomes.

This standard, framework, or analysis can help assess the extent to which legal structures and approaches should or should not be designated as social enterprises and, thereby, regulated or incentivized differently as such. Do the legal structures and approaches impose a heightened commitment to social good? Do they persist through time and across circumstances? Do they adopt sufficient intentionality about connecting activities to repeatability and scale of socially good outcomes? The

Likeikyte Huber, *Social Enterprises in Switzerland*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 505, 508, 598 (Dana Brakman Reiser et al. eds., 2023) (citation omitted) [hereinafter Karametaxas & Huber, *Social Enterprises in Switzerland*]; see also *Spence 2*, *supra* note 56, at 27, 65 (distinguishing when ESG considerations are “an end itself rather than means to some financial end” (at 27), finding that BlackRock’s investment strategy during the relevant time focused on ESG “as an end itself rather than as a means to some financial end [which was] a major red flag” (at 65)); Bebhuk and Tallarita, *supra* note 16, at 109, 114 (characterizing “enlightened shareholder value” considering stakeholder factors as “a means to the end of shareholder welfare” (at 109); characterizing “stakeholderism” as treating stakeholder welfare “as an end in itself rather than a mere means” (at 114)); *Utah v. Micone*, 766 F. Supp. 3d. 669, 680–81 (N.D. Tex. 2025) (differentiating the financial objective/purposes/fiduciary duties (i.e., ends) from considerations and strategies towards achieving that objective/purpose and/or fulfilling that duty (i.e., means)); see, e.g., John Tyler III, *A Win-Win Connection* in *REFLECTIONS OF PHILANTHROPY FOR SOCIAL JUSTICE: A NEW ERA OF GIVING* 111, 112, 117 (2023) (differentiating between how philanthropy can use entrepreneurship as an end unto itself or as a means to other charitable ends). An early adoption of ends and means analysis and terminology in the for-profit context was expressed in the famous case of *Dodge v. Ford Motor Co.*, 204 Mich. 459, 507, 170 N.W. 668, 684 (1919), in which the Michigan Supreme Court noted that the powers of corporate directors are to be “employed” for the end of stockholder profits even as the directors had discretion “in the choice of means to attain that end” but had no ability “to a change in the end itself.”

question should also be posed from the other direction as well regarding owners' financial interests and commitment, persistence, and intentionality thereto.

As will be discussed in later sections, the benefit corporation and social purpose corporation introduce flexibility as a new type of business purpose: the ability to choose among competing purposes under and across any given circumstances without any one purpose being a consistent priority. Such flexibility to prioritize and deprioritize would mean that commitment to owners' financial value and social good could be anywhere along the spectrum of purposes at any given time without consistency, regularity, or predictability.

It might be argued that such flexibility is different from the traditional for-profit approach, and it is. However, the relevant question is less about being innovative and more about whether flexibility is different enough to justify different regulatory treatment or legal accountability. I submit that, as is discussed below, the remaining ambiguity and corresponding ability to prioritize—even be devoted to or focused on—owners' financial interests leave enough uncertainty about commitment to social good that flexibility is not sufficiently differentiable.⁶²

Later sections juxtapose how various countries approach differentiation—including particularly the commitment and persistence elements—using dividend or distribution caps, asset locks, governance participation mandates, scope limitations, and varying degrees of oversight and validation. Some have discrete legal structures while others adopt a modality approach that is not dependent on and may even be agnostic as to legal structures. These examples are presented as

62. See e.g., Andrea Fusaro, *Social Enterprises in Italy*, in SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW 325, 339 (Dana Brakman Reiser et al. eds., 2023) [hereinafter Fusaro, *Social Enterprises in Italy*]; see also, Oonagh B. Breen et al., *Social Enterprises in Ireland*, in SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW 297, 318 (Dana Brakman Reiser et al. eds., 2023) [hereinafter *Social Enterprises in Ireland*]; see also, Sofie Cools & Maxime Verheyden, *Social Enterprises in Belgium*, in SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW 81, 100 (Dana Brakman Reiser et al. eds., 2023) [hereinafter *Social Enterprises in Belgium*]; see also Cristina Criddle and Patrick Temple-West, *OpenAI Pursues Public Benefit Structure to Fend Off Hostile Takeovers*, FIN. TIMES (Oct. 9, 2024), <https://www.ft.com/content/5649b66e-fdb3-46d3-84e0-23e33bdaf363>; see discussion *infra* note Criddle & Temple-West, *infra* note 154 (public benefit corporations are subject to very little constraints).

comparators vis-a-vis the United States approaches and respective commitments, persistence, and intentionality.

A. *Heightened Commitment to Social Good*

Regarding commitment, even the greediest for-profit endeavors will at least tolerate social good as they maximize distributable profits and capital growth. Moreover, some for-profit endeavors sometimes pursue and achieve social good with great intentionality while still prioritizing owners' financial interests.⁶³ Differentiation would seem to require that social enterprises in the "middle" space demonstrate an elevated commitment to social good to provide clarity for regulation, legal accountability, and incentives. As a practical matter, clarity of such commitment also can facilitate alignment within and across stakeholder groups, especially investors and entrepreneurs, but others too.

Absent financial and governance restrictions such as those employed in the UK, Canada, and some EU countries, differentiation begins and ultimately ends with analyzing the depth, breadth, and extent of commitment to social good vis-a-vis owners' financial interests. How committed are the organization and its personnel to prioritizing social good? Are they devoted to it? Focused on it? Favorably inclined toward it? Permitting it to happen? Aware but neutral about it? Or merely tolerant of it because the social good is inherently necessary and unavoidable?

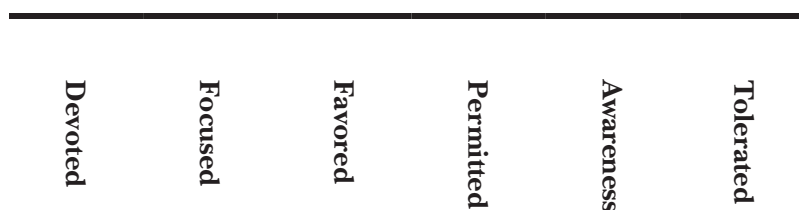
How are those questions answered when the subject is owners' financial interests instead of social good? The depth of commitment to both owners' financial interests and social good should be clearly identified and understood. Assessing only one or the other leaves open possibilities for inconsistency

63. See Ebrahim et al., *supra* note 29, at 84; Tyler et al., *Producing Better Mileage*, *supra* note 29, at 301. For example, Massetti has researched possible connections between degrees of owners' intentions about social good versus owners' financial interests, which she refers to as "market," and develops a framework with owner intent as one of two axes. Massetti also positions those two extremes along a continuum and references social enterprise as being somewhere in between. See Massetti, *supra* note 30, at 2–3; see also Tyler, *Giving Priority to Social Good*, *supra* note 17, at 960. However, I contend that "intent" and "commitment" are not synonymous and that "intent" alone is inadequate for a framework. See also discussion *supra* Section I.

and, thus, the ambiguity, uncertainty, and hypocrisy that need to be avoided.

Figure 1 below presents a spectrum for conceiving of relative commitments to priorities of purpose.⁶⁴ Both social good and financial interests can be juxtaposed on the spectrum, albeit not necessarily in a directly inverse relationship. For instance, devotion to owners' financial interests at one end of the spectrum likely means tolerating or perhaps awareness of social good toward the other end. Similarly, a focus on social good toward one end is likely, at worse, to have a neutral awareness of the owner's financial interests or perhaps even to welcome permissions for it.

FIGURE 1. COMMITMENT TO PRIORITY OF PURPOSES⁶⁵



A social enterprise's decision-makers cannot always be devoted to both social good and owners' financial interests. At some point, interests irreconcilably collide, and one or more purpose(s) must give way to another. That purpose will be the priority, which is why the above does not include a purely middle option. Also, a company and its personnel are not likely to be perpetually agnostic about social good and financial interests such that both are merely tolerated or permitted. A company will be devoted to or focused on one while tolerating or being aware of the other, or it could favor one and permit the other. The priorities might even change over time and circumstances.

A social enterprise could favor social good and permit profitability or favor owner financial interests and permit social

64. See Tyler, *Structuring for Action*, *supra* note 29, at 6–7; Tyler, *Essential Policy*, *supra* note 29, at 9–11; Tyler, *Giving Priority to Social Good*, *supra* note 17, at 969–70 (discussing how commitment could be ascertained and a description of each of these proposed points on the spectrum).

65. Tyler, *Structuring for Action*, *supra* note 29, at 6; Tyler, *Essential Policy*, *supra* note 29, at 9.

good. Either will be difficult to ascertain, and even more challenging to regulate or incentivize. Even so, on that scale, the interests are not likely to collide because there is a clear ordering and even weighting of priorities. However, consider whether favoring social good and permitting profitability distinguishes from traditional for-profit approaches sufficiently enough to justify a unique regulatory regime.⁶⁶

Query, too which combinations, if any, differentiate sufficiently from traditional for-profit approaches to justify a unique regulatory regime and corresponding incentives for operating in the “middle.” While many situations can allow for both social good and profitability, when interests collide, it seems that a social enterprise must prioritize social good over owners’ financial interests through devotion or focus using the above scale. Returns need not be concessionary as a feature or requirement, but circumstances may be such that concessions might become necessary. Of course, requiring concessionary returns, dividend caps, and asset locks would, by definition, most clearly reflect an ordering in which social good is the devotion or focus of the legal structure or enterprise, but they aren’t the only way to do so.

The context will matter,⁶⁷ and the spectrum presumes consistency across words and behaviors. Although behaviors alone may evidence the requisite level of commitment, words alone are not likely ever to suffice.⁶⁸ It is too easy for words

66. For instance, Gartenberg points out that owners who signal a strong commitment to social purposes generally might make different decisions than might owners who do not signal such a commitment or whose strong commitment is to advancing owner financial value, including about such things as criteria for the CEO, whether to merge with or acquire a particular company, compensation policies and practices, decisions about investments and financing, pursuing innovation and/or risk tolerances, and competitive strategies. See Claudine Gartenberg, *The Contingent Relationship Between Purpose and Profits*, 8 STRATEGY SCI. 256, 259 (2023). However, Gartenberg does not differentiate priorities within various purposes or commitments nor does she assess or investigate the underlying content, degree, or substance of the purpose. See *id.* at 259–60. She continues that a strongly signaled owners’ commitment to purpose is “conditionally correlated” to, as opposed to causally related to, sustainability in the long-run and ultimately even profitability. See *id.* at 257.

67. See Tyler, *Structuring for Action*, *supra* note 29, at 5; Tyler, *Giving Priority to Social Good*, *supra* note 17, at 969 (discussing how commitment could be ascertained and a description of each of these proposed points on the spectrum).

68. See Bohinc & Schwartz, *supra* note 24, at 5–6; Gartenberg, *supra* note 66, at 256 (citing Colin Mayer, *The Future of the Corporation and the Economics*

to be a “branding exercise,”⁶⁹ good marketing,⁷⁰ and/or reflect “greenwashing,” “purpose washing,” or being a “pseudo-social enterprises.”⁷¹

Behaviors must reflect the commitment to which those involved can align (e.g., investors, entrepreneurs, customers, employees, creditors, etc.), understand (e.g., researchers, regulators, etc.), promote, or incentivize (e.g., policymakers, others). Within the context of decision-making, those behaviors could include what options were considered, how the pros and cons of each were deliberated, whether or how accountability and assessment were factored, and ultimately what was rejected and why and what was decided and why.

B. *Persistence of That Commitment Through Time and Across Circumstances*

Another consideration for ascertaining differentiation is the ease with which decision-makers may change or deviate from any given priority. Stated differently, whether any commitment to social good is a—or even *the* sole—priority purpose for a truly social enterprise should be a nearly permanent, perpetual condition and not be subject to relatively easy modification.⁷² Easy modification, which is one of Brakman Reiser’s criticisms of the L3C⁷³ could present regulatory challenges, not to

of Purpose, 58 J. MGT. STUD. 887 (2021)); see, e.g., *Spence 2*, *supra* note 56, at 28, 36–37 (“bastardizing language to such a degree that ‘pecuniary’ no longer conveys any fixed meaning whatsoever would render ERISA’s financial-interest standard devoid of any utility.” (at 28); BlackRock often couched its ESG language to “superficially pledge allegiance to an economic interest. But BlackRock never gave more than lip service to show *how* its actions were actually economically advantageous to its clients” (36–37); BlackRock “regularly employed rhetorical devices” to cover for the “pretext” of using labels, especially regarding nebulous and unproven issues (37)).

69. Liao, *supra* note 32, at 13; See Gartenberg, *supra* note 66, at 256.

70. See Andreadakis, *supra* note 28, at 893–94; Gartenberg, *supra* note 66, at 256 (purpose or mission statements are not equivalent to actual purpose but instead are “often empty verbiage crafted by marketing departments or consultants”).

71. See Andreadakis, *supra* note 28, at 893; Liao, *supra* note 32, at 3; Fici, *supra* note 30, at 158; Gartenberg, *supra* note 66, at 256. See also *id.*, at 258 (noting the negative correlation between purpose and profits when “espoused purpose is far removed from the original reality”).

72. See e.g. Bohinc & Schwartz, *supra* note 24, at 20–21 (regarding Etsy).

73. See Dana Brakman Reiser, *Theorizing Forms for Social Enterprise*, 62 EMORY L.J. 681, 716–717 (2013) [hereinafter Reiser, *Theorizing Forms for Social Enterprise*]; Dana Brakman Reiser, *Blended Enterprise and the Dual Mission Dilemma*,

mention market engagement problems for investors and others, if a company can evade accountability by merely converting to something else.

In the book, *The Tipping Point: How Little Things Can Make a Big Difference*, there is a chapter on how certain marquis, for-profit businesses advanced their owners’ financial interests by focusing on and serving various social goods, including stakeholder interests.⁷⁴ Another part of the chapter points out how transient that emphasis can be and the potentially paradoxical effects of deviating to focus on profitability while, at best, permitting—but more likely tolerating—consideration of social good.

While flexibility across purposes and priorities may be useful in (even endemic to) a for-profit context, consistency and persistence of priority should be defining characteristics of social enterprise if it is to be understood and treated differently from traditional for-profit approaches. After all and as a parallel, part of the value to society of tax exemptions and deductible contributions to charitable nonprofits is the perpetual and substantially unchangeable nature of commitment to charitable purposes.

C. *Intentionality about Repeating, Scaling, and Replicating Social Good Outcomes*

The same may be said about the intentionality with which behaviors reliably and predictably result in achieving social good outcomes.⁷⁵ In the for-profit context, such reliability is generally connected to behaviors that generate revenues. For-profit companies do not last long if there is not at least some correlational (if not causal) connection between their goods and services and their revenue generation and profitability. Correlational, causal, and instrumental connections can be

35 VT. L. REV. 105, 109–110 (2010) [hereinafter Reiser, *Blended Enterprise*]; DANA BRAKMAN REISER & STEVEN A. DEAN, SOCIAL ENTERPRISE LAW: TRUST, PUBLIC BENEFIT AND CAPITAL MARKETS, at 44 (2017).

74. MALCOLM GLADWELL, *THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE* (2000).

75. See Tyler, *Structuring for Action*, *supra* note 29, at 11; Tyler, *Essential Policy*, *supra* note 29, at 5–6. See also Goldstein, Hazy, & Silberstang, *supra* note 42, at 15–16 (a key consideration for social entrepreneurship is whether the enterprise is organized to achieve the desired “**and predicted**” outcomes (emphasis added)).

replicated, repeated, and scaled because the business understands and can be intentional about connecting its behaviors to revenue outcomes. Arbitrary, accidental, or incidental connections between behaviors and profitability are substantially harder to reliably monetize and predict and, therefore, plan for and act upon. Arbitrary connections, by definition, cannot be explained. The latter two have degrees to which they are unplanned and unexpected but then remain merely accepted or tolerated without any change to make them a priority pursuit; they stay, at best, secondary to owners' financial interests.

The analysis should be similar for social enterprises in the "middle" space, except that the objective is not revenues for their own sake but instead is intentionality in connecting behaviors with socially good outcomes in ways that can be replicated, repeated, and scaled. Mere arbitrary, accidental, or incidental connections do not reliably enable pursuit of those socially good outcomes. Instead, enterprises that operate in the social, "middle" space require a high likelihood that intentions align with behaviors to achieve the desired outcomes.⁷⁶

From our later analysis, we will see that many EU member states, the UK, and Canada enshrine those differentiating features through combinations of scope, financial restrictions, and governance requirements. So many use financial restrictions that it might be fair to suggest that a key, if not *the* key, distinguishing feature in practice are modifications to conditions that normally advance owner financial interests: dividends, distributions, and return of capital. A few go even further and limit conditions for transferring ownership interests.

The status quo in the United States has eschewed that approach to differentiation. After all, if a goal is to attract more resources, especially financial, to address social problems and opportunities, putting disincentives to providing those resources seems inimical or paradoxical, especially if there are no corresponding incentives for doing.⁷⁷ The approach in the United States is to focus, instead, primarily on the nature of the underlying social good and decision-making around it while also factoring in owners' financial interests. Unfortunately, except for the L3C, none of the legal structures in the United States inherently prioritize social good over owners'

76. Kaufman & Botha, *supra* note 45, at 12.

77. See Reiser & Dean, *supra* note 42, at 18.

financial interests.⁷⁸ They may allow for modifications that embed the potential for prioritizing social good, but questions remain about the degree of commitment and mechanisms for accountability thereto.

III.

WHO IS REGULATING? AND HOW?

Regarding the question of who is regulating or who might do the regulating, the answer in the United States is complicated

78. An exception could arguably be the cooperative, of which there are many different approaches in the United States as to form, governance, decision-making, participation, investment, scope, etc. See Elaine W. Wilson, *Cooperatives: The First Social Enterprises*, 66 DEPAUL L. REV. 1013, 1016, 1022, 1077 (2017). Cooperatives generally do not prioritize owners' financial interests in the same way as the corporate legal structures, but they do not generically require that priority be given to social good broadly. Instead, cooperatives in their pure form tend to focus on member interests and outcomes, which may be financial but need not be. Cooperatives can be based on farmers, food, utilities, purchase of various goods and products, banking and insurance, or housing/real estate/condominium ownership, among other things. I combine cooperatives in with other traditional legal structures because, while they can be adapted to prioritize social good, their focus is generally and more narrowly member-based. See *id.* at 1016. Several countries also distinguish cooperatives generally from “social” cooperatives more specifically. See David Hiez, *The Suitability of Belgian Law to B Corp*, in INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE DRIVEN COMPANIES 441, 450 (Henry Peter et al. eds., 2023) [hereinafter Hiez, *The Suitability of Belgian Law to B Corp*] (Belgium); Carlos Vargas Vasserot, *Legal Regulation of Social Enterprises in Other European Countries*, in INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE DRIVEN COMPANIES 941, 945 (Henry Peter et al. eds., 2023) [hereinafter Vasserot, *Legal Regulation of Social Enterprise*] (Greece); Fici, *supra* note 30, at 168 (Italy); Paula del Val Talen, *Social Enterprises and Benefit Corporations in Spain*, in INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE DRIVEN COMPANIES 803, 804 (Henry Peter et al. eds., 2023) [hereinafter del Val Talen, *Social Enterprises and Benefit Corporations in Spain*]; Serres & De Moor, *supra* note 30, at 862, 864, 869, 878 (even as some acknowledge challenges differentiating social cooperatives from traditional ones, including whether distinctions are in a legal sense and/or a cultural one); Lucian Bercea, *Social Enterprises in Romania*, in SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW 457, 460 (Dana Brakman Reiser et al. eds., 2023) [hereinafter Bercea, *Social Enterprises in Romania*]; István Sándor, *Social Enterprises in Hungary*, in SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW 274, 296 (Dana Brakman Reiser et al. eds., 2023) [hereinafter Sándor, *Social Enterprises in Hungary*]; Szymon Byczko, *Social Enterprises in Poland*, in SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW 441, 456, (Dana Brakman Reiser et al. eds., 2023) [hereinafter Byczko, *Social Enterprises in Poland*].

because of our federalist system of government and notions of separation of powers.⁷⁹ Who is or should be regulating? Federal, state, or local government? If federal, which branch: Congress, executive, or independent agencies? There is even an option of suggesting that government regardless of level or branch should not be or does not need to be regulating at all, given possibilities for self-regulation⁸⁰ or the use of private stock exchanges to do so.⁸¹

Currently, the federal government does not regulate social enterprises differently than it regulates any other enterprise. Thus, social enterprises that are not charities or tax-exempt are subject to various federally-based statutory and regulatory schema on the same basis as traditional for-profit enterprises: securities law, consumer protection, fair marketing and advertising, anti-trust, banking, corrupt practices, RICO, bankruptcy, etc. Social enterprises that are charities or otherwise tax-exempt are regulated in the same way as all other 501(c)(3), (4), or otherwise enterprises. For purposes of 501(c)(3), that means being organized and operated exclusively for charitable purposes and with no impermissible private inurement or benefit and in compliance with other related laws and regulations regarding lobbying,⁸² political campaign activity,⁸³ unrelated business taxable income,⁸⁴ etc.

In other words, at the federal level in the United States, nothing differentiates social enterprises from traditional for-profit or tax-exempt/charitable entities, and they are regulated the same, as applicable.

At the state level, scores of states have entered the fray by passing laws that permit the establishment and operation of benefit corporations or LLCs, social purpose corporations, or L3Cs. These are creatures of state law just as corporations,

79. See Alicia E. Plerhoples, *Social Enterprises and Benefit Corporations in the United States*, in INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE DRIVEN COMPANIES 903, 905 (Henry Peter et al. eds., 2023).

80. See Brian D. Galle, *Self-Regulation of Social Enterprise*, in CAMBRIDGE HANDBOOK OF SOCIAL ENTERPRISE LAW 26, 26 (Benjamin Means & Joseph W. Yockey eds., 2018).

81. See Dadush, *Regulating Social Finance*, *supra* note 24, at 143; Dadush, *A New Blueprint*, *supra* note 32, at 10–11.

82. See *Regan v. Tax'n with Representation of Wash.*, 461 U.S. 540, 542 (1983); 26 U.S.C. §§ 501(c)(3), 501(h); 26 C.F.R. § 1.501(c)(3)-1(c)(3)(i).

83. 26 U.S.C. § 501(c)(3); 26 C.F.R. § 1.501(c)(3)-1(c)(3)(iii).

84. 26 U.S.C. §§ 511(a)(1), 511(b), 512(a)(1).

limited liability companies, partnerships, limited partnerships, etc. are creatures of state law. The extent of this regulatory effort is generally limited to the ability to create the entities by filing certain documents with the designated state official, usually the Secretary of State’s office, and ensuring that the documents contain the requisite statutory language. There may be rudimentary annual update filings, too, just as with corporate legal structures. Thus, many states have affected their own forty-plus registration regiments as the simplest and perhaps least useful form of regulation. Unfortunately, there is very little else that the states have done, including providing meaningful enforcement or accountability mechanisms much less fulfilling oversight or validation functions.

At the local level, a couple of jurisdictions have tiptoed into the regulatory breach by providing incentives for social enterprises. The City of Philadelphia provides a tax credit of up to \$4,000 for social enterprises, which it refers to as the “Sustainable Business Tax Credit.” Eligibility is limited to businesses (1) with a current certification issued from B Labs; or (2) that can demonstrate that they “give substantial consideration to employees, community and environmental interests in its practices, products, and services.”⁸⁵ The credit does not depend on, encourage, or incentivize any priority ordering of purposes.⁸⁶ The City also offers a variety of other tax credit incentives for businesses, including a program for pre-certified “RISE” employers who employ recently incarcerated and/or those on probation or parole.⁸⁷ But—as with the sustainable business credit and specifically unlike the L.A. County program⁸⁸—the credit does not depend on, encourage, or incentivize any priority ordering of purposes except as might be pursued by traditional for-profit companies.⁸⁹

Cook County in Illinois, where Chicago is located, offers a five percent bid procurement preference to pre-qualified social

85. *Sustainable Business Tax Credit*, CITY OF PHILA. (Jan. 19, 2023), <https://www.phila.gov/services/payments-assistance-taxes/taxes/tax-credits/business-tax-credits/sustainable-business-tax-credit-2/>.

86. *Id.*

87. *Id.*

88. See L.A. CNTY CODE tit. 2, div. 4, ch. 2.205 (2007).

89. See *Philadelphia Re-Entry Program (PREP) Tax Credit*, CITY OF PHILA. (July 9, 2024), <https://www.phila.gov/services/payments-assistance-taxes/taxes/tax-credits/business-tax-credits/philadelphia-re-entry-program-prep-tax-credit/>.

enterprises in awarding government contracts.⁹⁰ This means that the bid of a “social enterprise” could be up to five percent higher than the otherwise lowest bid, and the County’s Chief Procurement Officer *must* recommend that the County award the contract to the social enterprise and pay the higher amount.⁹¹

Cook County defines a “social enterprise” as a business that is one of the following:

- a) An Illinois benefit corporation;
- b) An Illinois low-profit limited liability company (L3C); or
- c) “[A] nonprofit or private-sector entity (or any business unit thereof . . .)” that:
 - 1) Uses earned revenue strategies exclusively or as a “significant part of a nonprofit’s revenue stream”,⁹² and
 - 2) Directly addresses social needs either
 - A. Through its goods and/or services; or
 - B. By employing⁹³ people who are disadvantaged;⁹⁴ or
 - C. Both.⁹⁵

Note that, as with the City of Philadelphia’s tax credits, the Cook County’s social enterprise bid procurement preference does not impose, expect, or incentivize any priority ordering of purposes. The County also has a “Re-entry Employment

90. COOK CNTY., ILL., CODE OF ORDINANCES ch.34, art. IV, div. 6, § 34-241 (2017).

91. *Id.*

92. *Social Enterprise Preference*, COOK CNTY., ILL. (2024), https://www.cook-countyil.gov/sites/g/files/ywwpo161/files/documents/2021-10/social_enterprise_preference_-_september_2020.pdf (defining “significant part” as being “at least 51%.”).

93. *Id.* (requiring that the enterprise be “employing a workforce of which 51% are disadvantaged.”).

94. *See* COOK CNTY, ILL., CODE OF ORDINANCES ch. 34, art. IV, div. 6, § 34-229 (2014); *see also* COOK CNTY., ILL., *supra* note 92 (the Municipal Code defines “disadvantaged” as “individuals who are mentally, physically, economically, or educationally disadvantaged.” This includes, but is not limited to, “those living below the poverty line, developmentally disabled, mentally ill, substance abusers, recovering substance abusers, elderly and in need of hospice care, gang members, on welfare, or people with arrest or conviction records.”).

95. *See* COOK CNTY, ILL., CODE OF ORDINANCES, *supra* note 94 at § 34-229 (2014).

Program” encouraging employment of “former offenders” through which a one-half percent or one percent “earned credit” is available to applicable bidders.⁹⁶ Unlike the Los Angeles County program discussed shortly, this program does not require that priority of purposes deviate from those of a traditional for-profit company.

The case of Los Angeles County and its bid procurement preference for social enterprises that employ “transitional workers” is treated later,⁹⁷ but for now, the Los Angeles County code orders priority of purposes and does so through its definition of “social enterprises” and its requirement that social good be the “primary” purpose for the enterprise and its operation.

As already noted, the applicable definitions in Philadelphia and Cook County for determining who is eligible and who is not are broad or ambiguous. For purposes of pursuing social good, they do very little to meaningfully distinguish those eligible from those who will be disadvantaged in their competition with the favored entities. As such, these few local efforts provide incentives without much clarity for ensuring that the public is actually benefiting from that which is purportedly being incentivized. At the same time, companies that are disadvantaged may be disincentivized from engaging, thereby potentially depriving the public of their contributions, which may be better in various ways. Perhaps there are perceptions of goodwill or of cities, counties, or policymakers being cutting-edge or innovative, but do those perceptions justify the actual or potential costs and harms?

I am not alone in asserting that current approaches in the United States to regulating social enterprises are inadequate, deficient, and potentially even harmful.⁹⁸ The regulatory void has contributed to ambiguity, confusion, uncertainty, opportunities for misrepresentations (even unintentionally) and/or

96. *Id.* at §§34-231-235 (2014).

97. See discussion *infra* Section VI.

98. See e.g. Tyler, *Structuring for Action*, *supra* note 29, at 938; Tyler, *Essential Policy*, *supra* note 29, at 50; Tyler, *Giving Priority to Social Good*, *supra* note 17, at 956 and 960, 963, and 965; Tyler et al., *Producing Better Mileage*, *supra* note 29, at 321-322; Tyler et al., *Private Benefit in Practice*, *supra* note 2, at 32; Reiser, *Regulating Social Enterprise*, *supra* note 29, at 240; Bohinc & Schwartz, *supra* note 24, at 19; Ebrahim et al., *supra* note 29, at 86-87; Dadush, *Regulating Social Finance*, *supra* note 24, at 146, 184. Cf. Goldstein et al., *Social Enterprises in New Zealand*, *supra* note 30, at 391, 393, and 399; Aldohni, *Social Enterprises in United Arab Emirates*, *supra* note 30, at 575.

fraud (including “greenwashing,” “social washing,” and “purpose washing”), and other negatives for investors and sources of financial capital, entrepreneurs and managers who put financial capital to use, regulators, policymakers, employees, consumers, financial markets, researchers, etc.

The problems are not just for nefarious actors or activities; they also plague people of good faith and goodwill trying to identify and engage with others who are aligned with their purposes, values, and objectives. This also affects policymakers who want to incentivize businesses that add value to society by pursuing social good and/or incorporation of social good among their pursuits in ways that justify different treatment than their traditionally structured or operated competitors.

There are a variety of approaches to “regulating” social enterprises, and they vary across a spectrum of having greater or lesser degrees of accountability and enforcement, which can also vary sometimes depending on whether the mechanisms operate in isolation or in combination with others. In other words, there is not necessarily a linear approach to describing “regulation.” However, there are options, some of which we might learn from based on use by member-states of the European Union, United Kingdom, Canada, Japan, and others. Among the things to pay attention to are the general lack of reliance solely or even mostly on definitions of social enterprise or various corollaries; the general absence of reliance solely on self-declarations; and the addition of criteria such as distribution caps, asset locks, and governance voting and/or participation mandates to heighten certainty about priority of purpose.

I am not suggesting that any of the non-United States jurisdictions reviewed as part of this paper regulate social enterprise correctly or that they are regulating “social enterprise” at all. However, their approaches are useful comparators for discussion and evidence of juxtaposition and the need for it.

Several countries have debated the need for social enterprise definitions, certifications, legal forms, or incentives in light of how their laws, markets, or cultures recognize obligations of otherwise for-profit businesses beyond maximizing value for owners.⁹⁹ For those that have entered the fray, government

99. See Birgit Weitemeyer, *Social Enterprises in Germany*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 249, 256, 259 (Dana Brakman Reiser et al. eds., 2023) (Germany; citations omitted)

efforts to regulate social enterprises range from maintaining lists and registrations by self-declaration to registration based on specified characteristics or modalities, authorizing formalized structures and their elements, and providing incentives.

A. Lists and Registrations

Regulation might be as simple as the government maintaining a list of self-identified social enterprises, that may or may not have rigor in their definitions or characteristic requirements. For instance, France maintains an official list of organizations that operate in the “social and solidarity economy.”¹⁰⁰ Canada also has a list of self-identified social enterprises.¹⁰¹ These are distinguished from private, non-governmental organizations that provide for registrations and/or otherwise have lists, such as in the Netherlands through the Code Social Enterprises,¹⁰² in the United Kingdom and Ireland through the Social Enterprise Mark CIC,¹⁰³ Social Trader in Australia,¹⁰⁴ the Akina Foundation

[hereinafter Weitemeyer, *Social Enterprises in Germany*]; Liao, *supra* note 32, at 102 (Canada); Cools & Verheyden, *Social Enterprises in Belgium*, *supra* note 62, at 82-83, 88 (Belgium); Aldohni, *Social Enterprises in United Arab Emirates*, *supra* note 30, at 570 (United Arab Emirates); Alan K. Koh & Samantha S. Tang, *Social Enterprises in Singapore*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 477, 478 (Dana Brakman Reiser et al. eds., 2023) [hereinafter Tang, *Social Enterprises in Singapore*] (“Singapore has a long and storied history of notionally private enterprises acting for social and public purposes.”); Karametaxas & Huber, *Social Enterprises in Switzerland*, *supra* note 61, at 510–11 (Switzerland); Nobuko Matsumoto, *Social Enterprises in Japan*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 343, 345–47 (Dana Brakman Reiser et al. eds., 2023) [hereinafter Matsumoto, *Social Enterprises in Japan*] (Japan); Goldstein et al., *Social Enterprises in New Zealand*, *supra* note 30, at 394 (New Zealand); Ochoa, *Social Enterprises in Peru*, *supra* note 42, at 414, 418 (Peru).

100. Carlos Vargas Vasserot, *Social Enterprises in the European Union: Gradual Recognition of Their Importance and Models of Legal Regulation*, in *INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE DRIVEN COMPANIES* 27, 39 (Henry Peter et al. eds., 2023) [hereinafter Vasserot, *Social Enterprises in the European Union*].

101. See Liao, *supra* note 32, at 107–108 tbl. 6.1.

102. See Serres & De Moor, *supra* note 30, at 866.

103. See Dana Brakman Reiser, *Trust and Scale in Global Social Enterprise Law*, *STAN. SOC. INNOVATION REV.*, Spring 2024, at 39, 42; see also *About Us*, *SOC. ENTER. MARK IRELAND*, <https://socialenterprisemark.ie/about-us/>; Breen et al., *Social Enterprises in Ireland*, *supra* note 62, at 318.

104. Reiser, *supra* note 103, at 41; *Unlocking Business for Good*, *SOC. TRADERS*, <https://www.socialtraders.com.au/>; Victoria Schnure Baumfield, *Social Enterprises in Australia*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL*

in New Zealand,¹⁰⁵ SENS in Switzerland,¹⁰⁶ and in the United States through B Labs.¹⁰⁷

A simple list based on self-reporting and assessment would provide little comfort or means of accountability, especially in the absence of coherent, consistently understood and applied definitions by which differentiated inclusion on and exclusion from the list are persistent and clear. If “virtually any organization can call itself a social enterprise” and be included on a list, it will lead to “blurriness as to which business is actually a ‘social’ one.”¹⁰⁸

There is also too much potential in the United States for confusion with charitable nonprofits because government maintenance of a list of “social enterprises” could appear too much like the list that the Internal Revenue Service maintains of charitable nonprofit organizations. The IRS list involves more requirements and accountability, albeit not a lot more.¹⁰⁹ There is a danger that the public will erroneously attribute those same expectations (such as they are) and degrees of accountability to a government-maintained list of social enterprises, thereby further exacerbating confusion.

Regulation might involve more formal registrations as a condition for holding oneself out as a social enterprise or using certain naming conventions to be understood as a “social enterprise.” Such registrations might be based on: (a) a modality approach through which eligible enterprises possess certain prescribed characteristics or qualities without regard to how

COMPARATIVE REVIEW 57, 58 n.4 (Dana Brakman Reiser et al. eds., 2023) [hereinafter Baumfield, *Social Enterprises in Australia*].

105. Goldstein et al., *Social Enterprises in New Zealand*, *supra* note 30, at 406, 410.

106. Karametaxas & Huber, *Social Enterprises in Switzerland*, *supra* note 61, at 507–08.

107. Plerhoples, *supra* note 79, at 906

108. Serres & De Moor, *supra* note 30, at 862; Sheehy & Diaz-Granados, *supra* note 30, at 639; *but see About Us*, *supra* note 103 (stating that it provides accreditation “dedicated to maximising social impact above shareholder profit.”); *see also Unlocking Business for Good*, *supra* note 104 (requiring that social enterprises be primarily dedicated to people and planet, which has its own vagaries).

109. Among requirements imposed on charitable nonprofits are the following: limitations on lobbying; prohibitions against engaging in political campaign activity for or against a candidate for office; limitations on unrelated business taxable income; prohibitions against excess benefit transactions; federal tax filings; certain state tax filings; registrations for soliciting charitable contributions; among others.

they are structured, or (b) formally authorizing designated legal structure(s) that adopt required elements into how they are organized and operated.

B. *A Modality Approach to Registrations*

One category for registration or formalized recognition by the State is based on characteristics or qualities rather than legal structure, although some countries limit availability to only certain structures. Hiez generally refers to this as a “modality” approach in that it can attach to any structure.¹¹⁰ Unlike in the following section in which registration involves some degrees of imprimatur that organizing documents contain certain language and provisions, government registration regimes based on modality seem to be more about advancing *social* accountability¹¹¹ (as distinguished from owner or legal accountability), including potential naming conventions, and explicitly do not enhance or vest legal rights of enforcement or accountability.

Four EU countries fall into this practice of facilitating brand recognition and social accountability without regard to legal structures: Finland, Denmark, Romania, and Luxembourg.¹¹² Finland and Denmark also have designated unique monikers that registrants may use to help distinguish them from other, traditional businesses: “social enterprise” in Finland and “registered socioeconomic company” or “RSV” in Denmark.¹¹³ Luxembourg formally began allowing for references to “societal impact company” in 2016, which it modeled after Belgium’s now-defunct “social purpose company.”¹¹⁴

110. See Hiez, *The Suitability of Belgian Law to B Corp*, *supra* note 78, at 449–50; Hiez, *The Suitability of Luxembourgish Law to B Corp*, *supra* note 30, at 701; see also Dana Brakman Reiser & Stephen Dean, *Introduction*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 1, 39–40 (Dana Brakman Reiser et al. eds., 2024).

111. See discussion *infra* Section III.C.

112. See Vasserot, *Legal Regulation of Social Enterprises* *supra*, note 78, at 942–44; Hiez, *The Suitability of Luxembourgish Law to B Corp*, *supra* note 30, at 701; see also Ochoa, *Social Enterprises in Peru*, *supra* note 42, at 422 (finding the main role for Peru’s adoption of the BIC is for companies to be able to identify as “BIC” and get public recognition for being labeled as a company that strives to create positive social and/or environmental value).

113. See Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 942–43.

114. Hiez, *The Suitability of Luxembourgish Law to B Corp*, *supra* note 30, at 700–01.

Belgium began offering the “social purpose company” in 1995 as an option for any legal structure to use as part of its naming and signaling purposes as long as direct financial profits and enriching shareholders were not the main purpose of the enterprise.¹¹⁵ Belgium discontinued this option in 2019 due to the low volume of use.¹¹⁶ However, Belgium offers a certification from the Ministry of the Economy only for cooperatives that meet the traditional requirements for being a cooperative provided that the following also apply: (a) the articles require that the main purpose of the enterprise is to have a positive social impact, which prohibits giving priority to serving owner financial interests; (b) there can be distributions of no greater than 6%; and (c) there is an asset lock that prevents contributors from recovering more than what they contributed upon liquidation.¹¹⁷ Belgium’s Federal Public Service of Economy monitors compliance, including the ability to revoke certifications.¹¹⁸ As with other jurisdictions, the certified cooperative is not the only means by which to operate as a social enterprise in Belgium,¹¹⁹ which is only vaguely defined.

Seven of the thirty-nine non-United States jurisdictions analyzed for their modality approaches, although also agnostic as to legal structure, allow for formal registration with government as long as the businesses comply with applicable scope, financial, and/or governance requirements: Colombia (“companies of collective benefit and interest” (BIC)),¹²⁰ Finland,

115. See Hiez, *The Suitability of Belgian Law to B Corp*, *supra* note 78, at 446.

116. See *id.* at 450.

117. See Cools & Verheyden, *Social Enterprises in Belgium*, *supra* note 62, at 97–98 (citations omitted).

118. See *id.* at 99 (citations omitted).

119. See *id.* at 82–83, 88.

120. Alvaro Pereira & Raymundo J. Pereira, *Social Enterprises in Colombia*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 180, 181 (Dana Brakman Reiser et al. eds, 2023) [hereinafter Pereira & Pereira, *Social Enterprises in Colombia*]. Colombia’s BIC permits including purposes other than profit-making, but those purposes may not compromise profit-making as the company’s priority purpose, *Id.* at 189, n.54, and, thus, “without altering the for-profit nature of these businesses.” *Id.* at 192. Somewhat like the benefit corporation, directors must “consider” the social purposes designated in their purpose clause, which serves as a shield from liability for doing so, but the consideration requirement does not explicitly change the priority of profits. *Id.* at 193. Peru also has a version of the BIC—“Benefit and common interest corporations”—that are conventional companies that have commitments to environmental and social issues through economic activities with duties the breach of which are enforced through consumer protection

France, Kazakhstan, Lithuania, Luxembourg’s “social impact company,” and Slovakia.¹²¹ Italy also does not have restrictions as to legal structure,¹²² but it historically has provided more favorable tax benefits and other treatment to social cooperatives than for other forms.¹²³

Two countries are mostly, but not completely, agnostic as to legal structure in that they generally permit any form, but they specifically exclude certain legal structures from being labeled or considered social enterprises or the equivalent. Greece excludes sole proprietorships,¹²⁴ and Denmark excludes sole proprietorships and “jointly owned companies” (a.k.a. partnerships).¹²⁵

Other countries have narrower perspectives and permit social enterprise treatment only for certain, listed types of entities. Romania permits registration for cooperatives, associations, foundations, mutual benefit societies for employees and pensioners, certain agricultural enterprises, and a few others.¹²⁶ Latvia allows only limited liability companies.¹²⁷ Slovenia allows only nonprofits.¹²⁸ Belgium allows only cooperatives to be certified.¹²⁹

and fair competition compliance, causes of action, and remedies. *See* Ochoa, *Social Enterprises in Peru*, *supra* note 42, at 422.

121. *See* Farkhad Karagusssov, *Social Enterprises in Kazakhstan*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 369, 370 (Dana Brakman Reiser et al. eds., 2023) [hereinafter Karagusssov, *Social Enterprises in Kazakhstan*]; Vasserot, *Social Enterprises in the European Union*, *supra* note 100, at 39; Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 942, 947, 949; Hiez, *The Suitability of Luxembourgish Law to B Corp*, *supra* note 30, at 700–01; Bercea, *Social Enterprises in Romania*, *supra* note 78, at 464; del Val Talen, *Social Enterprises and Benefit Corporations in Spain*, *supra* note 78, at 804.

122. *See* Calo & Teasdale, *supra* note 24, at 196; Fici, *supra* note 30, at 168; Livia Ventura, *Social Enterprises and Benefit Corporations in Italy*, in *INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE DRIVEN COMPANIES* 651, 658 (Henry Peter et al. eds., 2023).

123. *See* Fici, *supra* note 30, at 168.

124. *See id.* at 945.

125. *See id.* at 943. *See also* Karsten Engsig Sørensen, *Social Enterprises in Denmark*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 203, 206 (Dana Brakman Reiser et al. eds., 2023) [hereinafter Sørensen, *Social Enterprises in Denmark*].

126. Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 944; *see also* Bercea, *Social Enterprises in Romania*, *supra* note 78, at 460, 464 (regarding “social enterprises” and “insertion social enterprises”).

127. *See* Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 946.

128. *See id.* at 942.

129. *See* Hiez, *The Suitability of Belgian Law to B Corp*, *supra* note 78, at 450; *see also* Cools & Verheyden, *Social Enterprises in Belgium*, *supra* note 62, at 97.

C. *Authorization of Formalized Legal Structures*

Only two of the forty-one non-United States jurisdictions analyzed for this Article have discrete legal structures whose features formally differentiate them from for-profits and charities and require giving priority to social good. Although several of the studied countries offer the benefit corporation or variations thereof—including Canada and France—for reasons explained in the section analyzing legal structures available in the United States, benefit corporations are far too similar to traditional for-profit companies in meaningfully substantive ways to be generically considered social enterprises. At a minimum, they do not enshrine a sufficient commitment to social good, intentionality about connecting their activities to pursuing socially good outcomes, or persistence of commitment and intentionality through time and circumstance.¹³⁰

The United Kingdom's "community interest company" (CIC) is an example of a discrete legal structure of purported social enterprise that has been available since 2004. CICs register with the United Kingdom's CIC Regulator, must meet certain requirements as to the scope of its work and decision-making, and have in place prescribed distribution caps, asset locks, and other features.¹³¹

More than merely acknowledging that creation documents contain the right language, the CIC Regulator's duties are fairly extensive. It must screen applicants, monitor activities thereafter, ensure compliance with financial restrictions, receive and evaluate annual reporting, and receive and examine complaints. While its charge includes facilitating formation, it also has the authority to appoint, suspend, and dismiss board members and/or institute proceedings to force the termination of CIC enterprises.¹³² The United Kingdom's is the most extensive regulatory regiment of social enterprise, and it seems intended to provide a relative level of predictability, reliability, and consistency for those involved with a CIC. The apparent hope is that the market will react positively such that CICs can attract

130. See Cools & Verheyden, *Social Enterprises in Belgium*, *supra* note 62, at 100; Breen et al., *Social Enterprises in Ireland*, *supra* note 62, at 318; Fusaro, *Social Enterprises in Italy*, *supra* note 62, at 339; Pereira & Pereira, *Social Enterprises in Colombia*, *supra* note 120, at 193.

131. See Calo & Teasdale, *supra* note 24 at 4, 11; Liao, *supra* note 32, at 107; Andreadakis, *supra* note 28, at 890; Ebrahim et al., *supra* note 29, at 86.

132. See Andreadakis, *supra* note 28, at 891–92.

new investors and trading partners, inspire greater customer loyalty and transactions, and recruit and retain staff with shared values that can result in increased productivity.¹³³

Two Canadian provinces have variations of the United Kingdom’s community interest company. British Columbia has a “community contribution company,”¹³⁴ and Nova Scotia has a “community interest company.”¹³⁵ Some EU member states reference social cooperatives that are variations on the cooperative form but are not necessarily discrete, new structures requiring discrete registration and, thus, permission from the State to exist and operate. Belgium, however, will only “accredit” certain cooperatives as “social enterprises” that have a social purpose, distribution caps, and an asset lock.¹³⁶ Latvia only allows limited liability companies that incorporate certain characteristics to register.¹³⁷

Thus, except in the United Kingdom, registration of legal structures as social enterprises in these countries combines some aspects of the following:

- Reviewing submissions to ensure that the submissions contain the requisite language and provisions;
- Government recognition of status as a “person” or entity with certain underlying abilities to exist and operate (e.g., limited liability, right to hold property, ability to sue and be sued, etc.); and
- Some formal notice that might facilitate social accountability.

In other words, except in the United Kingdom, these registrations are very similar to—if not exactly overlapping with—the functions and effects of registering as a traditional for-profit or nonprofit company in the United States, except that there may be discrete naming or signaling conventions (e.g., L3C, CIC, CCC, BC, SPC) available as an effort to call attention to the purported potential for differentiation.

133. *See id.* at 884.

134. *See* Liao, *supra* note 32, at 106 (Figure 6.1); Giagnocavo, *supra* note 24, at 460–61.

135. *See* Giagnocavo, *supra* note 24, at 461.

136. *See* Hiez, *The Suitability of Belgian Law to B Corp*, *supra* note 78, at 450–51; *see also* Cools & Verheyden, *Social Enterprises in Belgium*, *supra* note 62, at 97–98.

137. *See* Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 946–47.

Of course, it seems fair to question whether presumptions about being a social enterprise should accompany registrations with the government to establish and/or do business through a discrete legal structure, especially in the absence of assessment or accreditation components, such as exist in the United Kingdom (or the Los Angeles County modality approach discussed below), or reliable accountability mechanisms that reinforce commitment, intentionality, and persistence regarding priority of social good. This should not be interpreted as suggesting that the United States or any of its States should impose a government-based accreditor or permit third-party enforcement rights. This paragraph's opening sentence reflects the status quo. Future approaches and applications require more deeply considered analysis and are beyond the scope of this paper.

D. *Incentives*

Incentives can be a way of regulating. Incentives encourage structures, behaviors, and approaches by rewarding those who comply or excusing them from obligations. As noted above, rewards might be in the form of tax credits, bid procurement preferences, access to public funding, favorable loan terms, and more. Exclusion from obligation might be a waiver of or looser attention to securities laws, anti-trust requirements, environmental standards (somewhat ironically), or banking regulations. Either way, there is favoritism, and it should be justified based on clear differentiation from traditional for-profit and charitable nonprofit approaches.

Favored treatment should generate something positive for society if society is giving something up to encourage or entice the behavior (e.g., tax revenue, fiduciary duty, consistency in representations, fair competition). That something positive should also factor in the harm it causes by disadvantaging others, especially those people or organizations in competition for resources. Stated differently, why should a benefit corporation that chooses to prioritize owner value be at a competitive advantage through tax relief or bid procurement preferences over a for-profit company that is required to prioritize owner value? What is it that substantively and meaningfully differentiates one from the other? Is it enough to justify the costs?

Eleven of the thirty-five non-United States countries evaluated for this Article and that permit distributions of some sort to owners provide tax or other incentives for their social enterprises.¹³⁸ France affords its "social and solidarity economy" companies with easier access to financing, tax-favored treatment, and bid procurement preferences.¹³⁹ In Italy, social cooperatives receive more favorable tax treatment than other legal structures, and some investors may be able to deduct parts of their investments if retained for five or more years.¹⁴⁰

Two countries provide tax incentives for social enterprises provided that the companies do not make distributions to owners. In Japan, public interest incorporated associations receive tax benefits¹⁴¹ as do Luxembourg's societal impact companies (and their contributors who can get charitable deductions) when: (a) they have only "impact" shareholders who can receive no distributions or the return of capital, and (b) there are no "return" shareholders.¹⁴² In the cases of both Japan and Luxembourg, these enterprises are very much like United States tax-exempt, charitable nonprofits, including that there are prescribed scopes within which they must operate.

Other government-provided incentives from among the jurisdictions reviewed include Belgium,¹⁴³ Chengdu Province

138. See Reiser, *supra* note 103, at 44–45. Thirty-nine jurisdictions were studied for their modality approaches. Of those, four (Australia, Latvia, Slovenia, and Switzerland) imposed complete non-distribution constraints as part of how they conceived of social enterprises. Hence, the reference to thirty-five jurisdictions that permit distributions of some sort to owners. Switzerland is still referenced separately because the tax benefits are capped in that the first CHF 20,000 of profits are exempt from taxation. See Karametaxas & Huber, *Social Enterprises in Switzerland*, *supra* note 61, at 517.

139. Vasserot, *Social Enterprises in the European Union*, *supra* note 100, at 39, 42 tbl. 1.

140. See Fici, *supra* note 30, at 168; Ventura, *supra* note 122, at 665; see also Fusaro, *Social Enterprises in Italy*, *supra* note 62, at 338.

141. See Matsumoto, *Social Enterprises in Japan*, *supra* note 99, at 356.

142. See Hiez, *The Suitability of Luxembourgish Law to B Corp*, *supra* note 30, at 702–03.

143. See Cools & Verheyden, *Social Enterprises in Belgium*, *supra* note 62, at 101 (favorable tax treatment for federally certified social enterprise cooperatives).

in China,¹⁴⁴ Denmark,¹⁴⁵ Poland,¹⁴⁶ Romania,¹⁴⁷ Switzerland¹⁴⁸ and Taiwan.¹⁴⁹

Even in the more rigorous social enterprise settings of nearly all thirty-nine non-United States jurisdictions analyzed for their modality approaches, only eleven are confident enough in their regimes to use incentives to encourage investment or activity and thereby disadvantage traditionally structured and/or operated competitors.¹⁵⁰ Of these eleven, only four (Belgium, France, Switzerland, and Taiwan) are among the eight jurisdictions that have versions of social enterprise that mandate giving priority to social good over financial interests. With even less rigor or formalized differentiation in United States approaches to social enterprise, similar carefulness/skepticism seems warranted regarding incentives.

IV.

DIFFERENTIATION BY LEGAL STRUCTURE IN THE UNITED STATES (OR NOT)

As noted above, the United Kingdom regulates the Community Interest Company (CIC) based on its formal structure and the characteristic requirements for qualifying as a CIC: a stated social purpose, an asset lock, a dividend/distribution cap or reinvestment minimum, mechanisms for obtaining stakeholder feedback, and filing annual reports to the Regulator.¹⁵¹ These qualifying characteristics begin with giving priority to

144. See Ye, *Social Enterprises in China*, *supra* note 42, at 175–76 (showing that tax credits are available as are preferential loans and access to federal contracts relative to for-profit entities).

145. See Sørensen, *Social Enterprises in Denmark*, *supra* note 125, at 221 (showing bid procurement preferences when the enterprise's main aim is social and professional integration of disabled or disadvantaged workers).

146. See Byczko, *Social Enterprises in Poland*, *supra* note 78, at 448, 454 (public funding is available for social cooperatives and no other incentives are available to or for other forms).

147. See Bercea, *Social Enterprises in Romania*, *supra* note 78, at 474–75 (showing public funding, bid procurement preferences, and other non-tax-related incentives are available to inclusion social enterprises).

148. See Karametaxas & Huber, *Social Enterprises in Switzerland*, *supra* note 61, at 518 (showing special tax treatment is available for idealistic companies).

149. Reiser, *supra* note 103, at 44.

150. See Reiser & Dean, *supra* note 110, at 45 (“[G]overnments are largely unwilling to bear the risk of a stag hunt gone wrong”).

151. Ebrahim et al., *supra* note 29, at 86; Dadush, *Regulating Social Finance*, *supra* note 24, at 161.

social purposes over owner value and are followed by more specific mandates or prohibitions designed to reinforce those purposes in practice (e.g., financial restrictions and/or governance requirements). Thus, CICs in the UK are inherently different from traditional for-profit enterprises as they are in Nova Scotia, Canada and as community commitment companies are in British Columbia, Canada. That differentiation is essential for approaches to regulation, whether affording incentives, requiring registrations or permissions, or allowing for exemptions.

Contrast that with how currently available forms in the United States (benefit corporation or LLC, social purpose corporation, and low-profit limited liability company (L3C) (collectively "United States Hybrids")) and the most prominent certification/brand recognition (B Labs' certified B corp) compare against traditional for-profit and public charity approaches on four benchmarks: taxation, presence of owners, purposes and priorities, and accountability.¹⁵² Forms and operations available in the United States generally lack the same degrees of differentiating features as contained in the CIC and CCC, which makes regulating them differently than traditional for-profits substantially more difficult, if not irrational.

Table 1 below highlights those comparisons. Note how similar the corporate hybrids (benefit corporation or LLC, social purpose corporation, and certified B corps (collectively "United States Corporate Hybrids")) are to traditional for-profit enterprises, especially their purposes and priorities. Consider, too, whether the two points of difference—requiring that owner value be maximized and approaches to accountability—suffice to warrant different regulatory treatment, especially if such treatment imposes meaningful disadvantages for enterprises that compete with those forms for customers, investors, employees, credit, etc.

152. Public charities are state level nonprofit corporations that apply for and receive recognition from the Internal Revenue Service as exempt from income taxation under I.R.C. 501(c)(3) and for whom donors may receive charitable deductions for their contributions to such entities under I.R.C. 170(b). As such, public charities are not technically a legal structure in themselves but are treated as such for purposes of this analysis and consistent with common usages. Similarly, certified B corps are also not a legal structure but instead exemplify the modality approach. Even so, they are included in the chart and as part of this analysis to facilitate understanding.

TABLE 1. COMPARING AVAILABLE UNITED STATES FORMS:
TRADITIONAL AND HYBRID/BLENDED

Characteristics		Traditional For-Profit Forms	Traditional Tax-Exempt Public Charities	Benefit Corporation	Certified B Corp (not a form)	Social Purpose Corporation	L3C
TAXES	Exempt From Taxes	No	Yes (generally)	No	No	No	No
	Contributions Deductible as Charitable	No	Yes	No	No	No	No
OWNERS: receive distributions and realize gains (or losses) in value		Yes	No (no owners)	Yes	Yes	Yes	Yes (if not significant purpose)
PURPOSES/PRIORITIES	<u>Must</u> Maximize Owner Value	Yes	No (no owners)	No	No	No	No (prohibited)
	<u>May</u> Maximize Owner Value	Not Optional (Must)	No (no owners)	Yes	Yes	Yes	No (prohibited)
	<u>Must</u> Be Charitable	No	Yes	No	No	No	Yes (significantly further)
	<u>May</u> Be Charitable	Yes	Not Optional (Must)	Yes	Yes	Yes	Not Optional (significantly further)
	<u>May</u> Pursue Social/Public/ Stakeholder Value	Yes (with limits)	Yes (Charitable Only)	Yes	Yes	Yes	Yes (if secondary to charitable)
	<u>Must</u> Pursue Social/Public/ Stakeholder Value	No	Yes (Charitable Only)	No	No	No	No
ACCOUNTABILITY		Owners/Legal/ Social	Legal/Social	Owners/Social	Social	Owners/ Social	Owners/ Legal/ Social

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The United States Hybrids all pay income taxes consistent with their corporate or otherwise disregarded status at federal, state, and local levels, except in Philadelphia which offers a social enterprise tax credit.¹⁵³ None can provide their sources of capital with charitable deductions. Also, all United States Hybrids have owners who have rights as and expectations of owners, although the L3C requires that such rights and expectations be de-prioritized. In these respects—having owners—the United States Hybrids mirror their traditional for-profit counterparts and are meaningfully distinguishable from public charities. Those similarities are darkly shaded in Table 1.

153. See discussion *supra* Section III.

Similar conclusions follow from analyzing their approaches to purposes and priorities: (1) maximizing owner financial interests at one extreme; (2) charitable purposes as under 501(c)(3) on the other; and (3) social/public good writ large in the middle space, which includes but is not limited to various stakeholder and/or environmental considerations through ESG. United States Corporate Hybrids are substantially far more similar to their traditional for-profit counterparts than they are different from them in terms of permissible priorities of purpose. Various high-level descriptions of purposes are categorized based on substantive scope as defined earlier in this paragraph. Priority among those purposes is categorized as to whether applicable law permits or requires where priority of purpose is given.

Focused for the moment on similarities regarding approach to purposes and priorities, United States Corporate Hybrids may but are not required to do the following:

- (a) Maximize owner value;
- (b) Pursue or prioritize charitable objectives as defined by 501(c)(3); and/or
- (c) Pursue or prioritize social/public good/stakeholder value.¹⁵⁴

154. Benefit corporations are required to pursue “general public benefits,” which involve “having a material positive benefit on society and the environment, taken as a whole, *as assessed against* a third party standard.” CAL. CORP. CODE § 14601(c) (West 2012) (emphasis added); *see also* MD. CODE ANN., CORPS. & ASS’NS § 5-6C-01(c) (2011). *Cf.* DEL. CODE ANN. tit. 8, § 362. (West 2015). *See also* William H. Clark, Jr. & Elizabeth K. Babson, *How Benefit Corporations are Redefining the Purpose of Business Corporations*, 38 WM. MITCHELL L. REV. 817, 839 (2012). *See also* MODEL BENEFIT CORP. LEGIS, §§ 102, 201(a) (Apr. 17, 2017).

Benefit corporations also may incorporate pursuit of “specific public benefits,” which have strong parallels to 501(c)(3) characteristics. *See* CAL. CORP. CODE § 14601(e)(1)–(7) (West 2012); MD. CODE ANN., CORPS. & ASS’NS § 5-6C-01(d) (2011); MODEL BENEFIT CORPORATION LEGISLATION, § 201(b) (Apr. 17, 2017). *See also* DEL. CODE ANN. tit. 8, § 362. (West 2025).

Most clearly and importantly, the benefit corporation enabling statutes redefine the “best interests of the corporation” as—and thereby impose a duty on the directors to act to ensure—consideration of the effects of decisions on various listed stakeholder groups and interests, including shareholders. *See* MD. CODE ANN., CORPS. & ASS’NS §§ 5-6C-06(c), 07(a)(1) (2011); Clark & Babson, *supra* note 154 at 839–40.

As such, directors have the flexibility to choose what purposes to prioritize and when to prioritize them, including the ability to prioritize maximizing owner financial interests and deprioritizing notions of social good or vice

Only the L3C among the United States Hybrids appears to differ from traditional for-profit enterprises across each of those

versa. *See id.* at 840-41, 850; *see also* Tyler et al., *Producing Better Mileage*, *supra* note 29, at 26, 28; John E. Tyler III, et al., *Purposes, Priorities and Accountability Under Social Business Structures: Resolving Ambiguities and Enhancing Adoption*, 19 *ADVANCES IN ENTREPRENEURSHIP, FIRM EMERGENCE AND GROWTH*, 39, 43-44 (2018); Reiser, *Blended Enterprise*, *supra* note 73, at 105; Reiser, *Theorizing Forms for Social Enterprise*, *supra* note 73, at 697; Abramson and Billings, *supra* note 24, at 2-3; REISER & DEAN, *supra* note 73, at 28.

Merely requiring consideration of other than owner interests does not fundamentally change or establish priorities of purpose. *See, e.g.*, Pereira & Pereira, *Social Enterprises in Colombia*, *supra* note 120, at 193; *see also*, Bechuk and Tallarita, *supra* note 16, at 102.

Characterizations of the benefit corporation, in conjunction with OpenAI's purported transformation to the form, illuminate some of the realities associated with the form. Metz relies on OpenAI's blog post about its intended conversion to declare that the form is "a for-profit corporation designed to create public and social good" and that the form "requires that a company 'balance' shareholder, stakeholder, and public benefit in decision-making." Metz, *supra* note 22. Singh and Kant characterize OpenAI's chosen form as requiring that its decision-makers "balance societal interests along with shareholder value" and that they are "legally required to pursue one or more public benefits, including social and environmental goals." Singh and Kant, *supra* note 22. However, both articles do not completely portray the form if for no other reason than that the Delaware statute does not impose any ordering of priorities for conducting said balancing or creations. Tyler, *Giving Priority to Social Good*, *supra* note 17, at 959. Singh and Kant do properly quote a source for the notion that the form does not guarantee that mission will be prioritized over profits and owner financial interests. Their source further suggests that the only reason to choose the form is the declaration to the public and that there is no real enforcement power. Singh & Kant, *supra* note 22.

Criddle and Temple-West present an even more skeptical view of the public benefit corporation and OpenAI's purported adoption of it, the primary benefits of which are: (a) its potential to thwart unwanted acquisition/takeover efforts or activist demands; (b) decreasing the probability of being sued for not acting in the shareholders' interests; (c) a way for incumbent management and directors to entrench themselves in their roles; and (d) conveying to the public that the enterprise is a good enterprise that is morally safe. Cristina Criddle and Patrick Temple-West, *OpenAI Pursues Public Benefit Structure to Fend Off Hostile Takeovers*, *FIN. TIMES* (Oct. 9, 2024), <https://www.ft.com/content/5649b66e-fdb3-46d3-84e0-23e33bdaf363>. What Criddle and Temple-West do not address is the ability of a critical mass of shareholders to replace directors and management when the former disagrees with the latter's decisions.

Social purpose corporation enabling statutes require that the directors consider the effects of their decisions on various stakeholder groups and interests, including shareholders, thereby also similarly redefining "best interests of the corporation." *See* CAL. CORP. CODE § 2602(B) (West 2015). Businesses that achieve certified B corp status are not subject to any similar absolute requirements in this regard, but there are general expectations within the certification process that consideration—although not necessarily priority—will be given to social good pursuits.

scopes and priorities because its enabling statutes mandate that priority be given to pursuing charitable objectives, thereby prohibiting priority being given to other types of social goods. The L3C statutes also expressly prohibit maximizing owner financial interests from being a significant purpose.¹⁵⁵ Again, similarities are darkly shaded in Table 1, and differences, exclusively applied to the L3C and its similarity to public charities, are left unshaded.

The primary difference across the purposes/priorities rows is whether the law requires that enterprises prioritize maximizing owner financial value.¹⁵⁶ Traditional for-profit entities *must* do so, but United States Corporate Hybrids are not so required. Traditional for-profit businesses *MAY* also pursue charitable objectives or social good as long as doing so advances owner financial interests.¹⁵⁷ Again, United States Corporate Hybrids are not so limited.

155. See VT. STAT. ANN. tit. 11; § 4162 (West 2024); see also John Tyler III, *Negating the Legal Problem of Having “Two Masters”: A Framework for L3C Fiduciary Duties and Accountability*, 35 VT. L. REV. 117, 124, (2010); Reiser, *Blended Enterprise*, *supra* note 73, at 108.

156. See Hiez, *The Suitability of Belgian Law to B Corp*, *supra* note 78, at 449 (Belgium); Giagnocavo, *supra* note 24, at 461 (Canada); Liao, *supra* note 32, at 102 (Canada); Henry Peter & Vincent Pfammatter, *Social Enterprises and Benefit Corporations in Switzerland*, in INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE-DRIVEN COMPANIES 843, 856 (Henry Peter et al. eds., 2023). (Switzerland). Although there are differences of opinion about whether United States law adopts this standard in practice, for purposes of this analysis, I adopt the still predominating view of the Delaware courts that maximizing owner value is the presumptive underlying fiduciary duty, while also respecting that other purposes can have a role provided they contribute in the long-term to owner value. For an extensive treatment of the history of Delaware law giving priority to shareholder value and giving consideration to other purposes or objectives that contribute to that end, see *McRitchie v. Zuckerberg*, 315 A.3d 518 (Del. Ch. 2024).

Juxtapose the U.S. approach with that of other countries that appear to more clearly and overtly tolerate or encourage consideration of other than maximizing shareholder value in their for-profit companies. See Karametaxas & Huber, *Social Enterprises in Switzerland*, *supra* note 61, at 510–11 (Switzerland); Aldohni, *Social Enterprises in United Arab Emirates*, *supra* note 30, at 570; Tang, *Social Enterprises in Singapore*, *supra* note 99, at 482–85; Matsumoto, *Social Enterprises in Japan*, *supra* note 99, at 345, 347–48; Goldstein et al., *Social Enterprises in New Zealand*, *supra* note 30, at 394; Ochoa, *Social Enterprises in Peru*, *supra* note 42, at 414, 418; Weitemeyer, *Social Enterprises in Germany*, *supra* note 99, at 256, 259; Cools & Verheyden, *Social Enterprises in Belgium*, *supra* note 62, at 83, 88.

157. Mayer, *supra* note 17, at 1869 (“[M]ay’ is permissive but imposes no obligation on board to support their stakeholders or protect against hostile predators”).

This is one of the key innovations of the United States Corporate Hybrids: they allow for, but do not require, that priority be given to other than owner financial interests, while also permitting owner financial interests to predominate as a priority in any other context.¹⁵⁸ In other words, there is flexibility in United States Corporate Hybrids according to their underlying statutes to choose to prioritize from among various, even competing, purposes as circumstances are assessed.¹⁵⁹ Arguably, the United States Corporate Hybrids thereby add a fourth permissible purpose: flexibility to choose. While certainly innovative, the question for our purposes is whether “flexibility” is enough of a differentiating feature from traditional for-profit entities to label and treat United States Corporate Hybrids as social enterprises and to regulate and incentivize them differently from their for-profit counterparts.

Flexibility still permits giving priority to owner financial interests in much the same way as traditional for-profit entities, albeit with different duties of consideration. Flexibility also does not mandate that owner financial interests be deprioritized as within public charities, L3Cs, or CICs. These abilities do not evidence a strong commitment to social good, nor do they demonstrate intentionality about connecting behaviors or activities to their replication or scaling in pursuit of social good. Finally, flexibility across purposes and priorities means that there is tremendous ease with which to move back and forth among purposes which suggests a corresponding lack of consistency or persistence across time and circumstances.

Thus, because they can choose to prioritize owners’ financial interests, United States Corporate Hybrids seem to have materially more in common with traditional for-profit entities than differences from them. Thus, the scale should tip towards

158. See Cools & Verheyden, *Social Enterprises in Belgium*, *supra* note 62, at 100; Breen et al., *Social Enterprises in Ireland*, *supra* note 62, at 318; Fusaro, *Social Enterprises in Italy*, *supra* note 62, at 339.

159. See Clark & Babson, *supra* note 154, at 840, 849; Tyler et al., *Producing Better Mileage*, *supra* note 29, at 260; Tyler et al., *Private Benefit in Practice*, *supra* note 2, at 30; Reiser, *Blended Enterprise*, *supra* note 73, at 105; Reiser, *Theorizing Forms for Social Enterprise*, *supra* note 73; Abramson & Billings, *supra* note 24, at 2-3; REISER & DEAN, *supra* note 73, at 28. See Bebchuk & Tallarita, *supra* note 16, at 102, 122 (“[O]ur analysis suggests that, by itself, mere incorporation of a stakeholderist purpose into a corporation’s governing documents should not be expected to deliver material benefits to stakeholders.” (at 102); (writing that stakeholderism ultimately depends on the discretion of corporate leaders (at 122)).

regulating them as traditional for-profit enterprises, unless the approach to accountability can weigh more heavily otherwise—which, as noted below, it does not.

In addition to adopting flexibility as a corporate purpose, another fundamental difference between United States Corporate Hybrids and traditional for-profit entities is how they approach accountability, which is the bottom row of Table 1. First, the similarities: all of the forms that have owners (i.e., the United States Hybrids and traditional for-profits but not public charities) recognize accountability to owners. The owners, or usually a majority of them, have the ability to appoint, remove, and/or replace directors and through them, if not directly, officers and managers.

Another similarity is that the entire bottom row recognizes a role for social accountability across all of the forms, even public charities. What the chart does not show overtly is the innovation in how the United States Corporate Hybrids substantially elevate social accountability to essentially replace and be a proxy for legal accountability to fiduciary duties of care.

Both the benefit and social purpose forms redefine fiduciary duties as requiring that boards *consider* the effects of their decisions on variously listed stakeholder persons or interests, thereby redefining the "best interests" of the enterprise and foreclosing lawsuits and causes of action for breaches of the traditional for-profit duty of care for not maximizing owner value or even for not prioritizing social good. Instead, as a way to facilitate social accountability, these statutes require varying degrees and types of reporting to the public and owners, although they generally do not require filing with government agencies or officials.

Social accountability involves ensuring that members of the public broadly (including government officials) and, more specifically, investors, consumers, employees, creditors, suppliers, distributors, exchanges, credit reporting agencies, etc., can better inform their decisions. With better information, they can choose whether and how to interact with individual benefit corporations or LLCs or with social purpose corporations based on how they assess the information made available to them through social accountability.

In theory, this is an extraordinary innovation. In practice, however, formalizing social accountability and effectively eliminating the duty of care and legal accountability thereto is suspect in its reliability, especially to justify special, favored

treatment or regulation using something other than traditional for-profit means.

To work reliably, social accountability depends on five factors. All five factors must be present to be reliable:

- (1) enough of
- (2) the right information getting to
- (3) enough
- (4) people who care and
- (5) are willing to act.¹⁶⁰

If any one of these factors is absent, social accountability fails. If reports are not forthcoming or if they lack the right information,¹⁶¹ whether enough people care and are willing to act is irrelevant. In each case, there will be no action, positive or negative, and, thus, no social accountability. If reports flow freely and are accurate and thorough but people do not care enough or are not willing to act, then the reports are irrelevant, and social accountability fails.

From a regulatory perspective, social accountability itself is not unique to United States Hybrids; it is and can be applied in the very same ways as to traditional for-profit enterprises. In fact, there are degrees to which filings that publicly traded companies make with the Securities and Exchange Commission and state equivalents serve a similar purpose. Other examples include successful boycotts and social media campaigns that oppose or favor various companies or products.

160. Tyler, *Essential Policy*, *supra* note 29, at 60; Tyler, *Giving Priority to Social Good*, *supra* note 17, at 991 (suggesting that having the capacity to act may be a sixth requirement, which can either stand on its own as proposed or be subsumed as part of the willingness to act component).

161. See Reiser & Dean, *supra* note 110, at 1, 50 (citations omitted) (writing that a most troubling concern is whether reports are actually being produced, with studies generally demonstrating wide-spread noncompliance, and even those reports that are filed are difficult to verify information and/or compare results from; moreover, they are generally not reviewed by experts or audited); see also Sørensen, *Social Enterprises in Denmark*, *supra* note 125, at 218 (citations omitted) (citing to a 2016 study of annual report filings of registered social enterprises in Denmark that revealed that only 21% had fully complied with reporting requirements and 32% had partially complied).

For purposes of social accountability and this analysis, reports are not limited to information made available by the companies themselves but can also include third party research and analysis, such as those done by RepRisk on greenwashing and social washing trends within and across geographies. See *Reports*, REP Risk, <https://www.reprisk.com/insights/reports> (last accessed June 23, 2025).

Thus, the question for our purposes becomes whether the vagaries and fragilities of social accountability combined with eliminating legal accountability for breach of the duty of care justify exempting the United States Corporate Hybrids from regulation as traditional for-profit entities. Rather than excuse regulation and oversight, one could conclude that additional approaches and intensity might be required. Otherwise, the purposes of regulation identified earlier, including protections for tax-exempt, charitable organizations, are not fulfilled, could even be undermined, and might even lead to harm.¹⁶²

Arguably, this leaves the L3C as a possibility for different regulatory treatment. Table 1 shows that the L3C is materially different from traditional for-profit entities and the United States Corporate Hybrids in several critical respects. First, maximizing owner value cannot be a significant purpose of the L3C (all of the other United States hybrid structures must or may so maximize absent unanimous shareholder agreement to the contrary). Second, L3Cs must be charitable and may not prioritize any other purpose—whether owner value, other social/public or stakeholder values (the United States Corporate Hybrids may do so, while traditional for-profits may do so in service to owner value), or flexibility. Finally, L3Cs are subject to all forms of accountability: owner, fiduciary duty, and social.

The difference is that L3C statutes clearly prioritize an ordering and weighting of purposes for L3Cs that at least implicitly, if not explicitly, give rise to legal fiduciary duty to prioritize charitable purposes and deprioritize owner value, even as distributions to owners and realization of capital gains are allowed and even as owners can replace managers.¹⁶³

Thus, L3Cs are more like public charities than traditional for-profits or United States Corporate Hybrids, but that does not mean that they should be regulated like charities or charitable trusts.¹⁶⁴ Charitable regulation neglects the fact that L3Cs

162. Dadush, *Regulating Social Finance*, *supra* note 24, at 184.

163. Tyler et al., *Producing Better Mileage*, *supra* note 29, at 266; Tyler, *Structuring for Action*, *supra* note 29, at 12–14, 21; Tyler, *supra* note 155, at 25, 28. *But see* Reiser, *Theorizing Forms for Social Enterprise*, *supra* note 73, at 696–97; Reiser, *Regulating Social Enterprise*, *supra* note 29, at 233; REISER & DEAN, *supra* note 73, at 75–76.

164. *See* Tyler, *Analyzing Effects and Implications of Regulating of Regulating Charitable Hybrid Forms as Charitable Trust*, *supra* note 36, at 541–42 (writing that the exception may be Illinois L3Cs for which the enabling statute imposes a regulatory regime rooted in charitable trust law).

have owners, even if deprioritized, and that they are market actors requiring decision-making that charitable regulation would inhibit.¹⁶⁵ Even so, lack of clarity about the fiduciary nature of the statutory ordering of priorities because of the statutory reference to automatic conversion to traditional limited liability company if the ordering is not followed,¹⁶⁶ leaves too much ambiguity not to subject L3Cs to regulation as other limited liability companies, except in Illinois, absent clarifying amendments or court rulings.

Moreover, there is not enough L3C activity or apparent interest to warrant creating a separate, distinctive regulatory regime, even though regulation might facilitate clarity and perhaps ultimately adoption. It would take something like the hypothetical “social primacy company”¹⁶⁷ or the mission-protected hybrid¹⁶⁸ for United States regulation to evolve beyond applying traditional for-profit approaches for registration or building out new accountability mechanisms. Both posited structures propose the unambiguous prioritization of social/public good over owner financial interests while still acknowledging the presence and certain rights of owners, and the draft legislation for the “social primacy company” expressly defines that prioritization as a fiduciary duty. That clear priority ordering of purposes would suffice as distinctive enough from traditional for-profit and charitable nonprofit structures and approaches to warrant new regulatory regimes. Alas, there is no such legal form in the United States.

This does not mean that the available legal structures in the United States cannot be adapted to function as social enterprises and, thereby, operate in the “middle” social space by demonstrating requisite degrees of commitment, persistence, and intentionality. They all can—corporation, limited

165. Tyler et al., *Producing Better Mileage*, *supra* note 29, at 298–299; see Tyler, *Analyzing Effects and Implications of Regulating of Regulating Charitable Hybrid Forms as Charitable Trust*, *supra* note 36, at 558.

166. Tyler, *supra* note 155, at 147; Tyler et al., *Producing Better Mileage*, *supra* note 29, at 268; Tyler et al., *Purposes, Priorities and Accountability Under Social Business Structures*, *supra* note 154, at 39, 54; Reiser, *Blended Enterprise*, *supra* note 73; Reiser, *Theorizing Forms for Social Enterprise*, *supra* note 73; REISER & DEAN, *supra* note 73, at 28.

167. Tyler et al., *Producing Better Mileage*, *supra* note 29; see generally Tyler, *Giving Priority to Social Good*, *supra* note 17.

168. REISER & DEAN, *supra* note 73, at 28; Reiser & Dean, *supra* note 64; see also Reiser & Dean, *supra* note 42, at 26.

liability company, partnership, limited partnership, benefit corporation/LLC, social purpose corporation, and L3C—and they have. That is the essence of the modality approach and its potential to more reliably differentiate at the enterprise level.

V.

DIFFERENTIATION BY MODALITY (OR NOT)

Social enterprises may exist without regard to legal structures based on their adoption of certain features and characteristics. These often evidence commitment to social good, consistency and persistence, and intentionality about connecting behaviors to socially good outcomes. A survey of thirty-nine non-United States jurisdictions—thirty-five countries and four Chinese provinces—exemplifies how the modality approaches can differentiate from traditional approaches. The survey has relied extensively on the recent publication of two edited volumes, each of which explored the status of social enterprise and its corollaries in various countries.¹⁶⁹ The information gleaned from these and other sources is not scientific or definitive. People may have different interpretations or opinions about aspects of certain information presented. The analyses and summaries in this Article are intended to be illustrative only to help make the normative points about the variety of approaches, the general lack of clarity and consistency, and as aggregated juxtapositions vis a vis approaches in the United States or in parallel therewith as those approaches seem to align with the eighteen countries that do not adopt financial and/or governance restrictive mandates or clearly articulate priorities of purpose.

Only eight of the studied countries arguably declare as a matter of law that social good *must* be a priority over distributable financial returns and owner gains as a substantive part of their modality approach to their social enterprise sector. Switzerland’s approach both prioritizes social good and de-prioritizes owner financial value. Its statutorily created “idealistic” companies’ profits must be “exclusively and irrevocably directed to [idealistic] purposes,” and the companies may only pursue

169. Andreadakis, *supra* note 28, at 881, 888; Reiser & Dean, *supra* note 42 at 26.).

“non-commercial” purposes, which means that they cannot seek to realize profits for owners or stakeholders.¹⁷⁰

Four jurisdictions focus on ensuring that requisite companies’ “main” or “primary” purposes are social. France and Belgium recognize social utility or positive social impact as the “main” purpose or objective.¹⁷¹ Shenzhen, China and Taiwan use “primary” or its derivatives to require that priority of purpose favors social purposes over owner financial value.¹⁷²

Hungary’s official but non-statutory approach is more explicit in ensuring that, in applicable enterprises, “social objectives take priority” when social and business objectives conflict even as they integrate social and environmental goals into their businesses.¹⁷³

Two jurisdictions have approaches that expressly deprioritize owners’ financial value ahead of social good. Slovenia excludes profits as a permissible “main” objective of the business’ activities and instead places focus on social impact.¹⁷⁴ Slovakia is close in recognizing that if the subject company is pursuing “other profit-making activities” aside from those associated with the “social economy,” it shall “not perform them with the objective of making a profit.”¹⁷⁵

Thus, the preceding eight approaches seem to differentiate from traditional for-profit operations through (a) overt commitments to the priority of social good to appropriate degrees relative to owner financial interests, (b) implicit intentionality about replicating activities that advance social good, and (c) ensuring persistence across time and circumstance. As

170. Karametaxas & Huber, *Social Enterprises in Switzerland*, *supra* note 61, at 518 (citations omitted).

171. For Belgium’s “social” cooperative, see *The Suitability of Belgian Law to B Corp*, *supra* note 78, at 450–51 and Cools & Verheyden, *Social Enterprises in Belgium*, *supra* note 62, at 97. Regarding France’s “social and solidarity economy,” see Vasserot, *Social Enterprises in the European Union*, *supra* note 100, at 39.

172. For Shenzhen, China, see Ye, *Social Enterprises in China*, *supra* note 42, at 173, which further also requires the presence of established mechanisms for ensuring focus and protecting against mission drift. For Taiwan, see Wang, *supra* note 42, at 521–22, describing how the Ministry of Economic Affairs has a social enterprise action plan that includes both a broad, general definition and a narrower one. The latter recognizes enterprises as social when their articles clearly declare that their “primary purpose is to contribute to social welfare and to solve social problems.”

173. Sándor, *Social Enterprises in Hungary*, *supra* note 78, at 278–79 (citation omitted).

174. Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 942.

175. *Id.* at 947.

mentioned previously, from 1995 to 2019, Belgium had an exemplar in clearly established priorities and ordering of purpose in its “social purpose company,” which explicitly de-prioritized financial profits and could not be about enriching shareholders even as it permitted distributions.¹⁷⁶

Otherwise, many countries adopt other or additional means by which to differentiate their social enterprises from traditional for-profit approaches in how they prioritize their purposes using financial restrictions, governance requirements, or limitations on the scope of permissible mission expectations. Among the preceding, only Shenzhen (China) and Switzerland seem to rely solely on their restrictive ordering of priorities and do not impose further financial or governance restrictions, although the underlying characteristics of the Swiss idealistic company inherently prohibit distributions to owners. These are considered next and are followed by consideration of several recognized modality approaches in the United States that are frequently invoked as different from traditional for-profit approaches.

A. *A Survey of Non-United States Approaches*

The three parts of this Section explore whether and/or how financial, governance, and scope of activities characteristics have been implemented across a survey of thirty-nine non-United States jurisdictions as ways to differentiate (or not) social enterprises and their corollaries from traditional for-profit businesses.¹⁷⁷ Any country may have more than one

176. Hiez, *The Suitability of Belgian Law to B Corp*, *supra* note 78, at 446.

177. In alphabetical order, the non-United States countries, including four Chinese Provinces and one Emirate from the United Arab Emirates, surveyed are as follows:

Abu Dhabi	Australia	Beijing, China	Belgium
Brazil	Bulgaria	Chengdu, China	Chile
Colombia	Croatia	Czech Republic	Denmark
Finland	France	Greece	Hungary
Ireland	Italy	Japan	Kazakhstan
Latvia	Lithuania	Luxembourg	Netherlands
New Zealand	Peru	Poland	Portugal
Romania	Shenzhen, China	Shunde, China	Singapore
Slovakia	Slovenia	Spain	Switzerland
Taiwan	Turkey	United Arab Emirates	

approach to its social enterprises such that “and/or” would be the proper conjunction between approaches based on legal forms, registrations with or without limitations as to legal form, informal acknowledgements/preferences for certain characteristics, *and/or* formally adopted conditions for qualifying. For instance, the United Kingdom and the two Canadian provinces do not necessarily limit their social enterprise sectors to their formally recognized legal forms. Romania, Hungary, and others have discrete definitions and treatment for social cooperatives but do not restrict social enterprises to those activities.

1. *Financial Restrictions: Distributions Caps, Asset Locks, Salary Ratios*

Financial restrictions are often imposed or expected as a way to differentiate the underlying legal structures or enterprises from traditional for-profit efforts. For instance, distribution caps while an enterprise is operating and asset locks that prohibit the return of capital upon dissolution are not necessary for distinguishing from charitable nonprofits that do not have owners able to receive distributions or return of capital. For-profit companies do have owners who can receive and usually expect distributions and returns on and of capital. Thus, the seventeen jurisdictions among the thirty-nine analyzed for modality approaches that impose financial restrictions but nonetheless allow some distributions to owners have done so to differentiate from traditional for-profit counterparts in the marketplace.

Twenty jurisdictions impose some form of financial limitations as part of considering an enterprise as a social one: distribution restrictions or reinvestment requirements; asset locks; and/or or salary caps/ratios. Sixteen impose restrictions on distributions to owners or otherwise require reinvestment into the company and/or its reserve fund (Abu Dhabi, Belgium,

Not factored into this modality analysis are the statutory forms available in the United Kingdom and the two Canadian Provinces. To avoid confusion, the extent to which these countries also have modality approaches, they are not considered in the modality analysis.

For a comprehensive, quick reference to the different jurisdictions and the various treatments discussed in this section, see Appendix A in John Tyler III, *Regulation and Incentives for “Social Enterprise” in the United States: But First Greater and More Substantive Differentiation*, NONPROFIT POLICY FORUM (forthcoming 2025) (manuscript at p. 20 on file with the author at jtyler@kauffman.org).

Bulgaria, Denmark, France, Greece, Hungary, Ireland, Italy, Kazakhstan, Luxembourg, Poland, Romania, Singapore, Slovakia, and Taiwan).¹⁷⁸ Four of these countries (Belgium, Denmark, Romania, and Luxembourg) require caps on distributions and dividends as conditions for registering with their governments, thereby promoting reinvestment back into the company and pursuit of its non-owner purposes.¹⁷⁹ Two of the Chinese Provinces (Shenzhen and Shunde) had restrictions on distributions but removed them.¹⁸⁰ Three other countries prohibit distributions generally but allow them for certain legal structures: Greece for cooperatives;¹⁸¹ Italy for partnerships;¹⁸² and Japan for for-profit forms of social enterprise.¹⁸³ Much like nonprofits in the United States, four countries (Australia, Latvia, Slovenia, and Switzerland) prohibit distributions altogether.¹⁸⁴ Seven countries impose asset locks that prohibit

178. Vasserot, *Social Enterprises in the European Union*, *supra* note 100, at 37 (France), 38 (Italy), 39 (Greece); Andreadakis, *supra* note 28, at 892; Giagnocavo, *supra* note 24, at 461; Aldohni, *Social Enterprises in United Arab Emirates*, *supra* note 30, at 574 (Abu Dhabi); Cools & Verheyden, *Social Enterprises in Belgium*, *supra* note 62, at 97-98; Sørensen, *Social Enterprises in Denmark*, *supra* note 125, at 216; Resier & Dean, *supra* note 42, at 26 (Hungary); Breen et al., *Social Enterprises in Ireland*, *supra* note 62, at 318; Fusaro, *Social Enterprises in Italy*, *supra* note 62, at 331-32, 335; Karagussov, *Social Enterprises in Kazakhstan*, *supra* note 121, at 372; Hiez, *The Suitability of Luxembourgish Law to B Corp*, *supra* note 30, at 700, 702, 704; Byczko, *Social Enterprises in Poland*, *supra* note 78, at 445; Bercea, *Social Enterprises in Romania*, *supra* note 78, at 463 (Romania); Wang, *supra* note 42, at 522 (Taiwan); Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 944 (Denmark), 945 (Romania), 946 (Greece), 948 (Bulgaria and Slovakia).

179. Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 943-45 (Denmark & Romania); Hiez, *The Suitability of Luxembourgish Law to B Corp*, *supra* note 30, at 702, 704; *see also* Reiser, *supra* note 103, at 41; Cools & Verheyden, *Social Enterprises in Belgium*, *supra* note 62, at 97-98.

180. *See* Ye, *Social Enterprises in China*, *supra* note 42, at 174 tbl. 4.

181. Vasserot, *Social Enterprises in the European Union*, *supra* note 100, at 39; Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 946.

182. Calo & Teasdale, *supra* note 24, at 196; Ventura, *supra* note 122, at 656, 659; Vasserot, *Social Enterprises in the European Union*, *supra* note 100, at 38.

183. N. Matsumoto, *Corporations with Social Aims in the Japanese Legal System*, in *INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE-DRIVEN COMPANIES* 675, 677, tbl.1. (Henry Peter et al. eds., 2023).

184. Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 942, 943, 947 (Slovenia and Latvia); Baumfield, *Social Enterprises in Australia*, *supra* note 104, at 59; Karametaxas & Huber, *Social Enterprises in Switzerland*, *supra* note 61, at 518 (citations omitted) (Switzerland).

or restrict distributions to owners upon liquidation (Belgium,¹⁸⁵ Denmark,¹⁸⁶ France,¹⁸⁷ Ireland,¹⁸⁸ Italy,¹⁸⁹ Japan (except for generally unincorporated associations),¹⁹⁰ Luxembourg,¹⁹¹ and Romania¹⁹²). Of those, only Japan does not have dividend caps or reinvestment requirements. Two of the Chinese Provinces (Shenzhen and Shunde) had asset locks but removed them.¹⁹³

Six countries (France, Greece, Italy, Lithuania, Luxembourg, and Romania) impose salary caps or ratios that limit salaries to a prescribed multiple of the lowest wages or otherwise require “fair” wages.¹⁹⁴ Four of these six impose both distribution caps and asset locks; Greece requires a cap but not an asset lock; and Lithuania does not impose either a cap or a lock.

2. *Governance and Decision-Making: Voting and Participation*

Nine of the analyzed countries impose governance and decision-making conditions to distinguish social enterprises from traditional approaches. Greece and Belgium deviate from traditional one-share:one-vote governance protocols with Greece giving each member one vote regardless of their ownership percentage otherwise, and Belgium limiting voting participation to no more than ten percent of the vote also

185. Hiez, *The Suitability of Belgian Law to B Corp*, *supra* note 78, at 451; Cools & Verheyden, *Social Enterprises in Belgium*, *supra* note 62, at 97–98.

186. Sørensen, *Social Enterprises in Denmark*, *supra* note 125, at 214, 219.

187. Reiser & Dean, *supra* note 42, at 18 (citation omitted).

188. Breen et al., *Social Enterprises in Ireland*, *supra* note 62, at 298 (standard recommends the asset lock).

189. Calo & Teasdale, *supra* note 24, at 4, 6.

190. Matsumoto, *supra* note 183, at 689.

191. Hiez, *The Suitability of Luxembourgish Law to B Corp*, *supra* note 30, at 702.

192. Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 94 (Canada and the UK are not considered here because they use asset locks as part of their formal legal structures rather than through a modality approach); Liao, *supra* note 32, at 107–08, tbl.1; Vasserot, *Social Enterprises in the European Union*, *supra* note 100, at 37; Andreadakis, *supra* note 28, at 893; Giagnocavo, *supra* note 24, at 456, 461; Bercea, *Social Enterprises in Romania*, *supra* note 78, at 463.

193. See Ye, *Social Enterprises in China*, *supra* note 42, at 174 tbl. 4.

194. Vasserot, *Social Enterprises in the European Union*, *supra* note 100, at 39 (France), 42, tbl.1 (Lithuania); Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 945 (Romania), 946 (Greece); Fusaro, *Social Enterprises in Italy*, *supra* note 62, at 335; Hiez, *The Suitability of Luxembourgish Law to B Corp*, *supra* note 30, 702; Bercea, *Social Enterprises in Romania*, *supra* note 78, at 463.

without regard to percentage ownership.¹⁹⁵ Four countries (Bulgaria, Denmark, Italy, and Latvia) require systems/positions for various stakeholders to participate in decision-making without also requiring one member one vote.¹⁹⁶ Hungary, Slovakia, and Slovenia require both one-member-one-vote processes and stakeholder participation.¹⁹⁷ Every one of these nine also incorporate financial restrictions along with their governance requirements, with Latvia and Slovenia prohibiting distributions altogether much like public charities in the United States.

Of the thirty-nine jurisdictions analyzed for modality approaches, seventeen did not incorporate some or all of the preceding financial or governance modality components: Beijing (China), Brazil, Chengdu (China), Chile, Colombia, Croatia, the Czech Republic, Finland, the Netherlands, New Zealand, Peru, Portugal, Shenzhen (China), Shunde (China), Spain, Turkey, and the United Arab Emirates.¹⁹⁸ This is the group to which the United States would belong.

195. Vasserot, *Social Enterprises in the European Union*, *supra* note 100, at 39; Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 946; Cools & Verheyden, *Social Enterprises in Belgium*, *supra* note 62, at 97 (Belgium); *see also*, Hiez, *The Suitability of Belgian Law to B Corp*, *supra* note 78, at 446.

196. Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 944 (Denmark), 947 (Latvia), 948 (Bulgaria); Sørensen, *Social Enterprises in Denmark*, *supra* note 125, at 215; Calo & Teasdale, *supra* note 24, at 4 (Italy); Fusaro, *Social Enterprises in Italy*, *supra* note 62, at 326, 331 (citations omitted); Vasserot, *Social Enterprises in the European Union*, *supra* note 100, at 38 (Italy).

197. Sándor, *Social Enterprises in Hungary*, *supra* note 78, at 278, 290 (Hungary); Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 943 (Slovenia), 948 (Slovakia);

198. Luciana Dias & Rafael Andrade, *Social Enterprises in Brazil*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 108–29 (Dana Brakman Reiser et al. eds., 2023); Juan E. Ibanez et al., *Social Enterprises in Chile*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 297–324 (Dana Brakman Reiser et al. eds., 2023) [hereinafter Ibanez et al., *Social Enterprises in Chile*]; Pereira & Pereira, *Social Enterprises in Colombia*, *supra* note 120; Plerhoples, *supra* note 79; Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 35 (Finland and Netherlands); Serres & De Moor, *supra* note 30 (Netherlands); del Val Talen, *Social Enterprises and Benefit Corporations in Spain*, *supra* note 78 (Spain); Peter & Pfammatter, *supra* note 156; Goldstein et al., *Social Enterprises in New Zealand*, *supra* note 30; Ochoa, *Social Enterprises in Peru*, *supra* note 42; Reiser, *supra* note 103, at 44 (note that Switzerland recognizes “associations” as social enterprises “irrevocably dedicated to ‘idealistic purposes,’ rather than pursuing profits for shareholders”); Ye, *Social Enterprises in China*, *supra* note 42 (Beijing, Chenzhu, Shenzhen, and Shunde). The reviewed literature references Croatia, the Czech Republic, and Portugal as making social cooperatives generally available but provided no further details about financial restrictions, governance requirements, or

Of these seventeen, two (Finland and Shenzhen (China)) seem to rely almost entirely on their definitions and/or the permissible or required scope of activities in which applicable entities engage. They use different definitions and scopes to protect against “mission drift” and over-prioritizing and/or over-weighting owner financial interests rather than pursuit of social good. The reporters on approaches in Germany, Japan, New Zealand, and Peru emphasize concerns less about for-profit ambiguity or confusion and more about differentiating from the nonprofit sector or the adequate lack thereof.¹⁹⁹

3. *Permissible or Required Scope of Activities*²⁰⁰

The remaining twenty-two jurisdictions seem to have incorporated financial and governance requirements for at least two reasons. One, their definitions of “social enterprise” and its corollaries are not uniform, consistent, or clear, and they often run some risk of otherwise being too inclusive and unable to differentiate from traditional market, for-profit pursuits. In other words, a definition alone is not sufficient to protect the priority

otherwise, although some democratic characteristics of governance might be inferred. See Reiser & Dean, *supra* note 42, at 26; Anthony Fici, *Social Enterprise in EU Law and Politics*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 657–658 (2024).

199. Weitemeyer, *Social Enterprises in Germany*, *supra* note 99, at 250 (noting that differences between social entrepreneurship and nonprofit social business/third sector “is not without ambiguity”); Matsumoto, *Social Enterprises in Japan*, *supra* note 99, at 347, 356-59; Goldstein et al., *Social Enterprises in New Zealand*, *supra* note 30, at 391; Ochoa, *Social Enterprises in Peru*, *supra* note 42, at 414.

200. In summary across all of the jurisdictions studied for modality approaches that allow for distributions to owners, their respective reliance to some degree or another on declaring social good as an expressly stated priority over owners’ financial interests (P), financial restrictions (\$), governance requirements (G), and/or scope (S) expectations or limitations (without regard to vagueness) are presented below per country along with those among the below whose governments provide incentives (I):

Abu Dhabi (\$)	Belgium (P, \$, G, I)	Bulgaria (\$, G, S)	Chengdu, China (I)
Denmark (\$, G, S, I)	Finland (S)	France (P, \$, I)	Greece (\$, G)
Hungary (P, \$, S, G)	Ireland (\$)	Italy (\$, G, I)	Japan (\$, I)
Kazakhstan (\$, S)	Lithuania (\$, S)	Luxemburg (\$, S, I)	Poland (\$, S, I)
Romania (\$, S, I)	Shenzhen, China (P)	Singapore (\$)	Slovakia (P, \$, G, S)
Switzerland (P, I)	Taiwan (P, \$, I)		

See also Tyler (forthcoming), *supra* note 177, at Appendix A.

of or emphasis on social good as "the" or even "a" mission, respectively. Nor do such definitions sufficiently differentiate such enterprises or efforts from traditional pursuits.²⁰¹

Second, they apparently have determined that clearly and unambiguously limiting (or eliminating) the profit incentive for capital flowing to the "social sector" or "social economy" is better than risks of green/social/purpose washing, perceptions of an over-abundance of profiteering from social good, or capital not flowing because of the ambiguity. The United States and its States have made different decisions.²⁰²

Finland, Hungary, Lithuania, Poland's social cooperatives' law, and Romania's "Insertion Social Enterprises" approach priority ordering of purposes by limiting the scope of permissible activities that the enterprise can undertake to those associated with being "worker integration social enterprises" (WISE). That is, employing the vulnerable, those with diminished capacity to work or who cannot compete in the labor market on equal terms because of a disability, age, long-term unemployment, or otherwise.²⁰³ Romania more specifically requires for "Insertion Social Enterprises" that at least thirty percent of employees or cooperating members belong to a vulnerable group or that the cumulative work time of such members aggregates to at least thirty percent of the work time for all employees.²⁰⁴

Four of these five countries (Hungary, Lithuania, Poland and Romania) also rely on other restrictions or requirements, such as financial or governance, to further differentiate WISE companies from traditional operations; the narrowly limited scope is not deemed sufficient. Only Finland does not also impose financial or governance requirements.

Among other conceptions of social enterprise that can operate more broadly and, perhaps, more vaguely, Hungary

201. See, e.g., Appendix A.

202. With apologies to Neil Peart for the implicit adaption of the notion that "to choose not to decide you still have made a choice."

203. Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 942 (Finland), 949 (Lithuania); Sándor, *Social Enterprises in Hungary*, *supra* note 78, at 290; Byczko, *Social Enterprises in Poland*, *supra* note 78, at 441-46, 448 (as part of the legal definition of "social cooperative"); Bercea, *Social Enterprises in Romania*, *supra* note 78, at 463-64.

204. Bercea, *Social Enterprises in Romania*, *supra* note 78, at 463-64. Other jurisdictions that apply WISE criteria for their social enterprises often have similar ratios or minimums for the disadvantaged or vulnerable that are employed or otherwise involved. See, e.g., Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 942, 948 (using Finland as an example).

explicitly defines social cooperatives as cooperative enterprises that focus on helping the disadvantaged improve their social situations, including by creating work opportunities.²⁰⁵

Among the twenty-two countries that use financial and/or governance mandates, five have some focus on or even give priority to WISE companies among other permissible social goods or purposes, which are nonetheless still otherwise vague: Bulgaria (i.e., WISE and/or combining “economic results with social activities, achieving a measurable positive social added value”);²⁰⁶ Kazakhstan;²⁰⁷ Latvia;²⁰⁸ Luxembourg (i.e., WISE and/or support for the vulnerable as employees, clients, members, or beneficiaries);²⁰⁹ and Slovakia (i.e., companies whose activities are typical of engaging the “social economy” with special attention to being a WISE company or addressing social housing problems).²¹⁰

Latvia’s approach is much looser in that it incorporates “groups at risk of exclusion” into its much broader notions of “generate favorable social impact” including social services such as an inclusive civil society, promoting education, conservation, protecting animal rights, or safeguarding cultural diversity.²¹¹

At least three more countries have vague definitions: Denmark—the entity must have “a benefit to society with social, cultural, labor, health, or environmental objectives”;²¹² Greece—“social and solidarity companies” with operations “based on the principles of democracy, equality, solidarity, cooperation, and respect for mankind and the environment”;²¹³ and Romania (for other than Insertion Social Enterprises)—enterprises that engage in the “social economy” or act for “social purposes and/or the general interests of community.”²¹⁴

As definitions, scopes of operations, and characteristics grow more vague and less directive, there is more overlap with

205. Sándor, *Social Enterprises in Hungary*, *supra* note 78, at 278, 290 (citations omitted) (discussing nonprofit and civil society organizations with viable economic goals in addition to social objectives).

206. Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 949.

207. Karagussov, *Social Enterprises in Kazakhstan*, *supra* note 121, at 370-71.

208. Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 946-47.

209. Hiez, *The Suitability of Luxembourgish Law to B Corp*, *supra* note 30, at 700.

210. Vasserot, *Legal Regulation of Social Enterprise*, *supra* note 78, at 942, 947.

211. *Id.* at 946-47.

212. *Id.* at 943.

213. *Id.* at 945.

214. *Id.*; see also Bercea, *Social Enterprises in Romania*, *supra* note 78, at 463.

that which traditional for-profit companies might choose to do, even within their ordinary course of operations and fiduciary duties. More overlap means less differentiation and a greater need for other distinguishing features (e.g., financial and/or governance components).

Differentiation from traditional approaches is fundamental for the success of social enterprise's objectives and to enable proper regulation when differentiation is reached.²¹⁵ People should be clear that social enterprises are unique from other types of operations,²¹⁶ which requires that distinguishing features be meaningful and worthwhile²¹⁷ so that social enterprises present a clear alternative to existing laws and traditional approaches.²¹⁸ As the preceding demonstrates, jurisdictions around the world adopt varying ways of trying to differentiate social enterprises from traditional for-profit and charitable nonprofit approaches. Those that make this effort use one or more of the following: formally declared priority of social good over owners' financial interests, distribution caps or reinvestment requirements, asset locks, salary ratio maximums, participatory governance, one-member-one-vote decision-making, scope limitations, and/or legal form restrictions. Only a small few jurisdictions have regulatory bodies; most do not. Of course, these observations make no assessment about whether or to what extent any of these efforts succeed.

B. *Approaches to Modality Recognition in the United States*

In the absence of a sufficiently differentiated legal structure in the United States, the modality approach focuses on discrete features, characteristics, behaviors, etc., as reflections of being or not being a social enterprise. However, in the United States, unlike as described in the prior section, there are no formally

215. See Fici, *supra* note 30, at 157, 163; Serres & De Moor, *supra* note 30, at 864, 878; Bohinc & Schwartz, *supra* note 24, at 4; Hiez, *The Suitability of Luxembourgish Law to B Corp*, *supra* note 30, at 693; see also Bercea, *Social Enterprises in Romania*, *supra* note 78, at 459; Karametaxas & Huber, *Social Enterprises in Switzerland* *supra* note 61, at 508; Dias & Andrade, *supra* note 198, at 121; Ochoa, *Social Enterprises in Peru*, *supra* note 42, at 414.

216. Bohinc & Schwartz, *supra* note 24, at 2.

217. Dadush, *Regulating Social Finance*, *supra* note 24, at 163, 184; Dadush, *A New Blueprint*, *supra* note 32, at 11; Liao, *supra* note 32, at 11.

218. Liao, *supra* note 32, at 114, 119; see also Goldstein et al., *Social Enterprises in New Zealand*, *supra* note 30, at 393; Aldohni, *Social Enterprises in United Arab Emirates*, *supra* note 30, at 575.

adopted means for assessing the modality approach. There are no express distribution caps, asset locks, salary ratios, voting or participation requirements (except for cooperatives), and/or limitations on scope of operations (except for Los Angeles County).

Of course, the key questions are whether any of these approaches are sufficiently different from being for-profit to justify treating them as social enterprises and giving them the benefit of new/different regulations, incentives, oversight, accountability, enforcement, etc. Do they have a differentiable commitment to social good as the priority? Are they intentional about connecting their behaviors to being able to repeat, replicate, and scale socially good outcomes? How entrenched are these commitments and connections; is it easy is it to deviate from and/or abandon them?

Consider that many for-profit businesses operate in the traditional charity space and do so with a focus on advancing owners' financial interests rather than avoiding impermissible private benefit: health care, education, theatre, museums, and more.²¹⁹ Are they social enterprises? I submit that competing with charitable nonprofits does not qualify nor does it justify regulating or incentivizing differently from other traditional for-profit enterprises.

Consider this question: If a traditional for-profit enterprise can implement the model or approach without fundamentally altering its duties, governance, and/or structure, then is the model or approach differentiable enough to be a social enterprise in the "middle" space, and, thereby, subject to alternative regulation and/or benefit from incentives?

Consider: Was Google a social purpose business at its founding or initial public offering? Was it a social enterprise? Should it have gotten special exemptions from securities filings, anti-trust oversight and compliance, etc.? Should it have received tax breaks or bid procurement preferences because it is a social purpose business or enterprise?

What about Ben & Jerry's? Does the answer change if the question is phrased in terms of pre-IPO and becoming publicly traded? Pre-acquisition by Unilever? Some other relevant time period? Does it matter?

219. Ebrahim et al., *supra* note 29, at 84; Tyler et al., *Producing Better Mileage*, *supra* note 29, at 301.

What about Tesla?²²⁰ Does the answer change if the question is phrased in terms of pre-IPO and becoming publicly traded? Pre-investment from Elon Musk? Pre-\$1 trillion valuation? Pre- or post-entry of General Motors, Ford, Toyota, Mercedes, Stellantis, etc. into the electric vehicle market? Pre- or post-evolution to a critical mass of applicable infrastructure?

These same types of questions can be asked about scores of companies large and small, long-established and only a few weeks or months old, across various industries and geographies, and more. What about The Body Shop, Tom’s Shoes, Warby Parker, Bomba, Kentucky Fried Chicken, McDonald’s, Starbucks, Exxon Mobile? The list goes on.

Countless permutations of for-profit companies dot the marketplace landscape and make claims (or have had claims made on their behalf) for being social enterprises and, thus, being regulated differently, if not explicitly more favorably—not by their legal structure but because of claimed distinctions in their approaches, models, behaviors, or operations. Among these are the following:

- Buy-one-give-one models
- Cause marketing
- Committing to donate percentages or dollar amounts from sales, including the now seemingly ubiquitous “rounding up” mechanism
- Tandem structures, whether parent-subsidiary or joint ventures
- Corporate social responsibility
- ESG/“impact” investing
- And more.

There is little or nothing that inherently differentiates any of the approaches on the above list from traditional for-profit companies, although unique applications might do so. The first three above could be generally described as wholly marketing efforts designed to generate goodwill and appeal to consumer sentiment as they make their purchases. Nothing about those approaches as a whole or CSR or ESG/“impact” investing inherently requires a commitment to social good, much less that the

220. With appreciation to Dr. Jennifer Kuan at California State – Monterey Bay for insights regarding Tesla and potential ways to approach and answer these questions. She and I have an article in the works on this very topic.

level of commitment rise to devotion or focus such that social good is the priority.

There also is no indication that any of the above models or approaches as a whole are adopted to favor social good over owners' financial interests consistently through time or otherwise persist through changed circumstances. Moreover, in the for-profit context, there may be fiduciary duties requiring that those models and efforts explicitly connect to owners' financial interests rather than to repeating, replicating, and/or scaling—much less conceding to—socially good outcomes, which none of the models or approaches may even track, measure, or assess.

Analyzing and understanding these permutations as a whole is necessary for evaluating the extent of social enterprise in the United States and whether/how to regulate it separately and apart from traditional for-profit regulation. It also advances certain of the points made above about how currently available United States Corporate Hybrid forms are more like traditional for-profits than they are distinguishable from them. At a minimum, these discussions further demonstrate the depth of ambiguity about what qualifies as a social enterprise and the problems with contemplating regulation, including the use of incentives, under that status quo.

As we generally work through these permutations, the key questions are whether they are or should be deemed social enterprises by virtue of the features mentioned. Do the features reflect enough of a commitment to social good and corresponding weighting of owners' financial interests to differentiate from overall for-profit regulation and justify imposing a new, different governmental regulatory regiment? Do the features and accompanying behaviors evidence sufficient intentionality about expanding or maximizing the pursuit of socially good outcomes? Do the features ensure that commitment and intentionality persist through time and across circumstances?

The analysis here will be only at a high level for many reasons. Ultimately, I contend that none of the above are inherently distinguishable enough, although any given discrete adaptation in practice could overcome that conclusion because of additional features.

1. *Social Good or Marketing: Buy-One-Give-One, Cause Marketing, Commitments to Donate?*

How should “buy-one-give-one” models be considered? Are they presumptively social enterprises or purveyors of quality

marketing campaigns through which owners’ financial interests are materially advanced by purporting to also advance, or perhaps actually advancing, a social good? I submit that there should be something substantially more than marketing to qualify. Perhaps that “something” could be overt intentionality about proactively pursuing discrete social good(s). It certainly should be based on more than mere declarations of actual or aspirational purposes.²²¹ It might at least factor in an assessment or awareness of potential or actual harms,²²² such as effects on local manufacturing, the charitable nonprofit sector and its entities and work, supply/distribution chains, retail, and/or entrepreneurship opportunities where the “give-one” occurs, or exacerbated use of landfills to dispose of goods, if any, replaced by the “give-one” component.

The lack of intentionality about and/or failure to adequately consider potential harms in decision-making and/or to take reasonable steps to understand and promulgate them might be indicators of a marketing strategy rather than a commitment to social good, especially in a “buy-one-give-one” model.

Cause marketing is overtly labeled “marketing,” but there can be an accompanying halo effect that can cause confusion about whether social good is elevated as a purpose. After all, not all cause marketing campaigns are mercenary. Some are heartfelt, values-laden, and principle-driven. But even under the best of circumstances and intentions, it seems reasonable to at least wonder from a social enterprise perspective—if not demand to know—if the cause marketing seeks to prioritize company sales and profitability so as to advance owners’ financial interests or to raise money and awareness for charitable organizations or causes.

221. Bohinc & Schwartz, *supra* note 24, at 4.

222. Tyler, *Structuring for Action*, *supra* note 29; *Giving Priority to Social Good*, *supra* note 17. At some point, it is probably worthwhile to explore whether, and if so, how a balancing of harms factors into the analysis of commitment to social good and being a social enterprise. It may be that harmful behaviors or practices should not be a factor, or maybe they should not be a factor every time. After all, purity and perfection are very hard to achieve, if ever. But it may also be that awareness of harms, acknowledging them, and trying to mitigate them within the reasonable confines of available resources might be relevant factors when evaluating commitment to social good. *See also* Kaufman & Botha, *supra* note 45, at 12 (investors seeking positive returns should also acknowledge negative effects and externalities).

What is the weighting of each objective relative to the other, especially for the for-profit company claiming social enterprise status? Does it even matter? It might matter for purposes of assessing regulation. Is something more required in a cause marketing context beyond truth-in-advertising and other consumer protection regimes along with state-mandated registration requirements to protect charitable nonprofits? Or are regulatory benefits justified because of cause marketing efforts without regard to other factors?

A related tactic could be instances in which a company commits to donating a percentage of or dollar amount from every sale or all sales to charity(ies). Designating the charity(ies) could equate with cause marketing, so this analysis considers a commitment generally without specifying recipients. The devil may be in the details here, including based on the percentage(s) or dollar amounts so designated.

At its initial public offering, Google committed to setting aside one percent of profits annually in furtherance of social good through Google.org, and it adopted a multi-tiered approach to shareholder classes to legally allow that commitment without undue exposure to fiduciary duties and claims about their breach.²²³ Google's founders were literally in a class by themselves with the only shares devoted to governance and able to vote on those matters while all classes shared in distribution rights.²²⁴ Moreover, subscription and other documents ensured that investors were told about one percent of equity and profits being dedicated to Google.org and its pursuit of social good.²²⁵

As for details, the following could matter: the percentage or amount designated for charity, when and with what frequency distributions will be made; what happens to any growth in the

223. Google Inc., Registration Statement (Form S-1), at vi (Apr. 29, 2004) ("Following this offering, we will have two classes of authorized common stock, Class A common stock and Class B common stock. The rights of the holders of Class A common stock and Class B common stock are identical, except with respect to voting and conversion. Each share of Class A common stock is entitled to one vote per share. Each share of Class B common stock is entitled to ten votes per share and is convertible at any time into one share of Class A common stock.").

224. *Id.* at iii.

225. *Id.* at vi ("[W]e are in the process of establishing the Google Foundation. We intend to contribute significant resources to the foundation, including employee time and approximately 1% of Google's equity and profits in some form.").

funds awaiting distribution (e.g., interest earned; whether the company is benefiting from a charitable deduction, and more. These details also matter in the variation of cause marketing based on “point-of-sale” or “rounding up” contributions as well. They may even be more important, not only from a perspective of characterizing the transactions as “social enterprise” or regulating them as such but especially from the perspective of whether those contributions are indentured under charitable trust law, which seems likely at least in theory if not in practice. Existing laws and regulators can and should intervene, when necessary, in the case of abuses or misrepresentations.

The percentage or amount designated can have other implications as well. For instance, if 100% of net profits are to be donated to charity and there are zero distributions to owners, is that a social enterprise? Consider Newman’s Own when the business was owned entirely by Paul Newman.²²⁶ There was already owner accountability based on Mr. Newman’s objectives. There was and is social accountability based, at a minimum, on sales and customer decision-making. What about legal accountability? An argument could be made that the net profits are encumbered as charitable assets and, therefore, subject to treatment under charitable trust law—an already existing regulatory regime. But what about the company’s operations before its net profits are determined; how is that regulated? As a traditional for-profit? Charitable nonprofit? Charitable trust? Or do we need new regulatory approaches?

In short, though, donative activities without more generally should not be deemed as social enterprises or as operating in the “middle” social space.²²⁷

2. *Tandem Structures*

The Newman’s Own model evolved with Paul Newman’s passing. The company is now 100% owned by a private foundation, which raises another possible social enterprise model—that of a wholly-owned subsidiary of a charitable nonprofit.²²⁸ A charitable nonprofit parent with a for-profit subsidiary is an example

226. *See* Newman v. Newman’s Own Found., X08-FST-CV-22-6058968-S, 2023 WL 4197166 (Conn. Super. Ct. June 22, 2023).

227. *See* Sheehy & Diaz-Granados, *supra* note 30, at 640.

228. *See* 26 U.S.C. § 4943(g) (allowing a private foundation to own 100% of a business enterprise in certain circumstances as an exception to the excess business holdings rule).

of a tandem model, which models might also include various types of joint ventures, collaborations, and public-private partnerships.²²⁹

I submit that such tandem structures alone are not inherently different enough from traditional approaches that new regulatory regimes are justified. The charitable parent remains subject to laws applicable to charities (including about how it engages with its own subsidiary), and the subsidiary is subject to regulation as a traditional for-profit company. The overlap can certainly present complexities in practice, especially for the charity regulator, but the underlying principles are the same: the parent's purposes and resources must be dedicated to charitable purposes, and any private benefit must be permissibly inherent or inextricably intertwined with those purposes.

A sole charitable nonprofit parent operating a wholly owned for-profit subsidiary has or should have the degrees of control required by the IRS. Even so, complications remain in practice. Complexities can morph significantly if there are other capital sources, whether financial or in-kind and whether through an investor relationship or as a joint venture. Regardless, the charity must retain sufficient controls to ensure consistency with its charitable purposes with no impermissible private benefit.²³⁰ Regulatory mechanisms exist through the status quo.

A current case in point is that of OpenAI. Its current structure as of this writing has a public charity that owns and controls a subsidiary for-profit company operating in the artificial intelligence space. While easy enough to summarize in a sentence, the structure, enterprise, and regulation thereof are anything but easy,²³¹ and its efforts to become fully for-profit exacerbate

229. Allen R. Bromberger, *A New Type of Hybrid*, 9 STAN. SOC. INNOV. REV. 49, 51 (2011); see also MICHAEL I. SANDERS, JOINT VENTURES INVOLVING TAX-EXEMPT ORGANIZATIONS 33 (4th ed. 2013).

230. See SANDERS, *supra* note 229, at 384; Rev. Rul. 98-15, 1998-12 I.R.B. 6 (March 4, 1998).

231. Alnoor Ebrahim, *How OpenAI's Nonprofit-Corporate Structure Fueled the Tumult Around CEO Sam Altman's Short-Lived Ouster*, CHRON. PHILANTHROPY (Nov. 30, 2023), <https://www.philanthropy.com/article/how-openais-nonprofit-corporate-structure-fueled-the-tumult-around-ceo-sam-altmans-short-lived-ouster>; Ellen P. Aprill et al., *Board Control of a Charity's Subsidiaries: The Saga of OpenAI*, 182 TAX NOTES FED. 289 (Jan. 8, 2024); Rhodri Davis, *OpenAI and the Challenges of Combining Profit With Purpose*, WHY PHILANTHROPY MATTERS (Nov. 23, 2023), <https://whyphilanthropymatters.com/article/openai-and-the-challenges-of-combining-profit-with-purpose/>.

the complexity.²³² While the parent retains decision-making authority and control, Microsoft has a claim on 49% of the subsidiary’s distributable profits as part of its investment of \$13 billion with no voting rights.²³³

The Securities and Exchange Commission launched an investigation into whether those involved with the enterprise misled investors or potential investors.²³⁴ The Federal Trade Commission is more broadly investigating the current competitive landscape of the growing artificial intelligence technologies to assess the state of competition and/or anti-trust concerns about the extent to which behaviors “risk distorting innovation and undermining fair competition.”²³⁵ OpenAI is a part of that landscape. Britain’s Competition and Markets Authority is also assessing the enterprise structure, particularly whether Microsoft’s investment constitutes a merger subject to additional regulatory oversight.²³⁶ The concerns are with regard to competition and follow from an examination by Germany’s Federal Cartel Office that found no merger or undue influence over the enterprise by Microsoft.²³⁷

Noticeably absent from the above list of government regulators wanting to understand more about OpenAI’s structure, relationships, and operations are the Internal Revenue Service and the California Attorney General.²³⁸ That void may be because there are no such efforts or because neither of these

232. See O’Brien et al., *supra* note 21; Isaac & Metz, *supra* note 21; see also Isaac & Griffith, *supra* note 21.

233. Deepa Seetharaman, *SEC Investigating Whether OpenAI Investors Were Misled*, WALL ST. J. (Feb. 28, 2024, 11:26 PM), <https://www.wsj.com/tech/sec-investigating-whether-openai-investors-were-misled-9d90b411>; Dave Michaels, *FTC Launches Probe of Big Tech’s AI Investments*, WALL ST. J. (Jan. 25, 2024, 6:11 PM), <https://www.wsj.com/tech/ai/ftc-announces-ai-review-to-probe-roles-of-microsoft-open-ai-4255398a>; Kim Mackrael, *Microsoft-OpenAI Partnership Draws Scrutiny from U.K. Regulator*, WALL ST. J. (Dec. 8, 2023, 8:47 PM), <https://www.wsj.com/business/microsofts-partnership-with-openai-to-be-probed-by-u-k-regulator-61e2379d>.

234. See Seetharaman, *supra* note 233.

235. Michaels, *supra* note 233 (quoting FTC Chair Linda Khan).

236. Mackrael, *supra* note 233.

237. *Id.*

238. Robert Weissman, *California Attorney General Bonta Should Investigate OpenAI’s nonprofit Status*, SACRAMENTO BEE (Mar. 1, 2024, 6:00 AM), <https://www.sacbee.com/opinion/op-ed/article285745936.html>; *California AG Must Investigate OpenAI’s Non-Profit Status*, PUB. CITIZEN (Jan. 9, 2024), <https://www.citizen.org/news/california-ag-must-investigate-openais-non-profit-status/>.

bodies has announced or can announce their respective inquiries, if any. That will undoubtedly change in light of OpenAI's efforts to convert to for-profit status as the California Attorney General must necessarily weigh in.²³⁹ Expressions of intent to convert to a Delaware public benefit corporation will further complicate that review if the form is not fully understood.²⁴⁰

The OpenAI situation also demonstrates the potential for private actors to have an oversight and accountability role. Elon Musk sued OpenAI and others in California state court for breach of contract, breach of fiduciary duty, and unfair business practices for prioritizing profits and commercial interests over the public good that Musk contends was and should still be the priority and that was the underlying reason for his prior contributions of \$44 million in cash and other valuable in-kind contributions.²⁴¹ Mr. Musk eventually dropped this suit after it was pending only a short time, thereby exposing a weakness in relying too heavily on legal accountability through private means.²⁴² On August 5, 2024, Mr. Musk refiled his case in federal court in California and added several claims.²⁴³

As another example of accountability via private action and actors, several news organizations, including the *New York Times*, sued OpenAI for allegedly violating the copyrights they hold in their underlying journalistic content.²⁴⁴

239. See O'Brien et al., *supra* note 21; Isaac & Metz, *supra* note 21; see also Isaac & Griffith, *supra* note 21.

240. For references to OpenAI's purported plans to convert to a Delaware public benefit corporation, see Metz, *supra* note 22; Singh & Kant, *supra* note 22; OPENAI, *supra* note 22.

241. Adam Satariano et al., *Elon Musk Sues OpenAI and Sam Altman for Violating the Company's Principles*, N.Y. TIMES (Mar. 1, 2024), <https://www.nytimes.com/2024/03/01/technology/elon-musk-openai-sam-altman-lawsuit.html>.

242. Mike Scarcella, *Elon Must Withdraws Lawsuit Against OpenAI*, REUTERS (June 12, 2024, 8:58 AM), <https://www.reuters.com/legal/elon-musk-withdraws-lawsuit-against-openai-2024-06-11/>.

243. Complaint and Demand for Jury Trial, Musk v. Altman, No. 4:24-cv-04722 (N.D. Cal. Aug. 5, 2024), ECF No. 1.

244. See Complaint and Demand for Jury Trial, New York Times Co. v. Microsoft Corp., No. 1:23-cv-11195 (S.D.N.Y. Dec. 27, 2023), ECF No. 1 (suing Microsoft, OpenAI, and others). A few months later, eight daily newspapers owned by Alden Global Capital or its subsidiaries also filed suit against OpenAI and Microsoft. Katie Robertson, *8 Daily Newspapers Sue OpenAI and Microsoft Over A.I.*, N.Y. TIMES (Apr. 30, 2024), <https://www.nytimes.com/2024/04/30/business/media/newspapers-sued-microsoft-openai.html>; see also Corbin Bolies, 2024. *The Intercept and Raw Story, Progressive News Stalwarts, Sue OpenAI*, DAILY BEAST (Feb. 28, 2024), <https://www.thedailybeast.com/the-intercept-raw-story-and-alternet-sue-openai>.

The OpenAI situation helps demonstrate that existing mechanisms for regulation and accountability of tandem structures can be available using traditional means: securities law, fair advertising, consumer protection, anti-trust, etc.—even private rights of action. Until there is greater clarity and a critical mass of differentiation regarding social enterprise, the status quo can work.

Of course, most tandem structures involving a charitable parent and for-profit subsidiary or for-profit joint ventures with a charitable nonprofit are not OpenAI level enterprises. However, these approaches are not unusual and have been used, especially in the health care field, for a very long time,²⁴⁵ and they may or may not meet the differentiable criteria for being a social enterprise. However, they are not usually discussed in that context. Certainly, some tandem structures seem to meet the criteria for being a differentiated social enterprise: Greyston Bakeries, owned by the Greyston Foundation; the Water Equity and Water Credit vehicles provided through water.org.; among others.²⁴⁶

Existing regulatory approaches have proven generally adequate without needing to recharacterize these enterprises as social and adopting or adapting new regulatory approaches.

Of course, the presence of a regulatory regime should not be confused with the will or resources to implement it, but a failure of will or resources is not likely to change if a new regime is created or overlaid. There will just be more regulations not being enforced and more financial, time, and talent burdens imposed on people and organizations of goodwill—not to mention the risk of diminished credibility and integrity of government.

245. SANDERS, *supra* note 229, at 729-938; DOUGLAS M. MANCINO & FRANCES R. HILL, 385-435 TAXATION OF EXEMPT ORGANIZATIONS (2023); *see also* Reiser & Dean, *supra* note 42, at 27.

246. *See A Pioneering Social Enterprise That Changes Lives with Brownies*, GREYSTON BAKERY, <https://shop.greyston.org/pages/about-greyston> (last accessed June 23, 2025); *see also* WATER EQUITY, <https://waterequity.com/> (last accessed June 23, 2025); *WaterCredit Initiative®*, WATER.ORG, <https://water.org/solutions/watercredit/> (last accessed June 23, 2025).

3. *Jettisoning or Advancing Owner Financial Interests: CSR, ESG, “Impact”?*

Other concepts and approaches are sometimes aggregated into discussions about social enterprise, too. The relevant questions include whether they should be part of this discussion. Are they distinguishable enough from traditional for-profit or charitable structures and operations? Are any differences that might exist clear and unambiguous enough to justify alternative treatments, including the costs and effort to develop those treatments? The answer eventually may be “yes,” but in the meantime, I submit that it would be fair to regulate these enterprises as traditional approaches provide. I also contend that, as generally conceived, such an approach should be retained until there is enough critical mass of permutations and demand for them to warrant differentiation and a basis for new regulation.

Consider corporate social responsibility, which generally factors in social and/or stakeholder considerations and programming as part of and subservient to the business’ for-profit pursuits and furthering owner financial interests. CSR generally aligns with owners’ financial interests as opposed to drawing differentiating distinctions that may support treatment or labeling as a “social enterprise,” although explicit incarnations of it might.²⁴⁷

Neither do so-called sustainable businesses/investing or generally socially responsible businesses/investing for whom social mission is not the *raison d’être*.²⁴⁸ Nor does or should being employee-owned,²⁴⁹ factoring in stakeholders generally as they may contribute to or detract from the financial bottom line—even if in a double- or triple-bottom line context for which owners’ financial interests remain one of many or the sole priority,²⁵⁰ or including various stakeholders in governance or other decision-making roles.²⁵¹

Generally, ESG investing or operations and/or “impact” investing, likewise lack clear and unambiguous priorities or

247. Fici, *supra* note 30, at 157–58; *see also* Ochoa, *Social Enterprises in Peru*, *supra* note 42, at 414.

248. Fici, *supra* note 30, at 157–58; Bohinc & Schwartz, *supra* note 24, at 5; Dadush, *Regulating Social Finance*, *supra* note 24, at 150.

249. Bohinc & Schwartz, *supra* note 24, at 11.

250. *Id.* at 5; Dadush, *A New Blueprint*, *supra* note 32, at 441.

251. Dadush, *A New Blueprint*, *supra* note 32, at 447; Ebrahim et al., *supra* note 29, at 86.

purposes. Approaches to both are varied, inconsistent, and even incompatible in certain incarnations,²⁵² especially when it is unclear whether priority will be given to social good, owners’ financial interests, or flexibility. After all, ESG does not inherently deviate from shareholder primacy and can be implemented with total fealty to that priority.²⁵³ Moreover, across ESG and “impact” approaches, definitions are permissive enough to include all organizations that value social good along with financial interests to any even negligible degree, which makes the labels broadly and overly inclusive.²⁵⁴ ESG is also increasingly controversial for a variety of reasons, particularly as a function of regulatory directives.²⁵⁵ The labels and underlying definitions or applications fail to sufficiently distinguish from

252. Dadush, *Regulating Social Finance*, *supra* note 24, at 154, 163. A truly skeptical point of view: the “average prosocial investor is a ‘warm glow’ optimizer rather than a consequentialist who optimizes the impact of her investments’ in a calculative way.” Kaufman & Botha, *supra* note 45, at 3 (citation omitted).

253. See *Spence 2*, *supra* note 56, at 24-25 (describing the environmental, social, and governance elements of “ESG” and their focus on bringing about certain types of societal change); *id.* at 25-26 (explaining that it is not ESG investing to consider risk-return factors relating to environmental, social, and governance risks and opportunities when done in the context of maximizing financial benefits; doing so in that context and without changing priorities is “no different than the standard investing process”); *id.* at 65 (writing that while it is permissible to consider ESG risks through a “strictly financial lens,” BlackRock did not do that but instead had an investment strategy not focused on maximizing financial benefits); see also *Utah v. Micone*, 766 F. Supp. 3d. 669 (N.D. Tex. 2025) (discussing social returns and supporting consideration of other than financial benefits in an ERISA context as long as maximizing financial returns remains the purpose for those considerations).

254. See discussion *supra* at Section I.

255. Christina Parajon Skinner, *Capitalism Stakeholderism*, 47 SEATTLE UNIV. L. REV. 643-76 (2024). See also Statement from Mark T. Uyeda, Acting Chairman of the United States Securities and Exchange Commission (Feb. 11, 2025) (characterizing March 6, 2024 Rule regarding climate-related disclosures for investors as “deeply flawed” and with potential to “inflict significant harm on capital markets and our economy”; questioning the Commission’s authority to issue the Rule and disagreeing with its substance; notice provided to the Eighth Circuit Court of Appeals of the changed circumstances and asking that the court not schedule argument pending an opportunity for the Commission to deliberate and determine its next steps) <https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-climate-change-021025>; see also *Sec. Indus. and Fin. Mkts. Ass’n v. Ashcroft and Jacoby*, No. 23-cv-04154-SRB (W. D. Mo. C. Div. Aug. 14, 2024); see also *Utah v. Micone*, 766 F. Supp. 3d. at 674-76, 678-84 (determining whether and, if so, how ESG principles comport with two regulatory pronouncements about ERISA’s fiduciary duties).

traditional ones,²⁵⁶ or they are too opaque regarding trade-offs or the lack thereof to justify different regulatory treatments.²⁵⁷

In some ways, all of the preceding are consistent with expectations that businesses be good corporate citizens. But being a good corporate citizen should not be confused with having an advanced level of commitment to social good.²⁵⁸ While all social enterprises should be good corporate citizens, not all good corporate citizens are, or should be, treated as social enterprises; sufficient differentiation is lacking.²⁵⁹ This does not mean that they are bad or that they are somehow “less than” social enterprises, or even that social enterprises are inherently good, better than, or “more than” for-profit companies.²⁶⁰ This also does not mean that there is sufficient differentiation from traditional for-profit models. Nor does it mean that there should be different regulatory treatment, incentives, favoritism, exemptions, competitive advantages, or even halo or pedestal effects.

Other applications and characterizations also should be understood in these contexts: blended or shared value,²⁶¹ family offices, and structures that rely on the presence of a 501(c)(4) like Patagonia’s new incarnation.²⁶² Efforts to fundamentally alter the traditional for-profit marketplace, enterprises, stock exchanges, and capitalism’s very structures and priorities also should be evaluated and understood differently from social enterprises.²⁶³ Such a comprehensive change would require new and different approaches to regulation than what the status quo can provide in any context.

256. Dadush, *Regulating Social Finance*, *supra* note 24, at 157.

257. Skinner, *Capitalism Stakeholderism*, *supra* note 255, at 674.

258. Fici, *supra* note 30, at 158.

259. *Id.* at 158.

260. Peter and Pfammatter, *supra* note 156, at 857.

261. Dadush, *A New Blueprint*, *supra* note 32, at 440.

262. See Ray Lu, *Set It in Stone: Patagonia and the Evolution toward Stakeholder Governance in Social Enterprise Business Structures*, 57 COLUM. J.L. SOC. PROBLEMS 587, 589 (2024); Reagan Jacobs, *What Patagonia’s New Ownership Structure Means for Global Retail*, MCMILLAN DOOLITTLE (Oct. 3, 2022), <https://www.mcmillandoolittle.com/what-patagonias-new-ownership-structure-means-for-global-retail/> (last visited Jan. 19, 2025); Patagonia, *Patagonia’s Next Chapter: Earth is Now Our Only Shareholder*, PATAGONIA WORKS (Sept. 14, 2022), <https://www.patagoniaworks.com/press/2022/9/14/patagonias-next-chapter-earth-is-now-our-only-shareholder> (last visited Jan. 19, 2025).

263. Tyler et al., *Producing Better Mileage*, *supra* note 29, at 302; J.W. Stoelhorst & Puspika Vishwanathan, *Beyond Primacy: A Stakeholder Theory of Corporate Governance*, 49 ACADEMY OF MANAGEMENT REV. 107, 123-24 (2022); Dadush, *A New Blueprint*, *supra* note 32, at 440.

A recent entrant to this space is the “social profit orientation.”²⁶⁴ In this approach, which adopts the modality methodology and is agnostic as to legal structure, “sustainable, social and environmental impact [are] central to [the company’s and nonprofit’s] missions” where “financial profits and benefits for the common are equally prized” and the orientation is embedded “directly into the organization’s mission, integrating social good with economic goals.”²⁶⁵ The research on which this approach is based is substantially informed by interviews with seventy-eight people from twenty-one “for-profit companies and nonprofit organizations around the world,”²⁶⁶ with twelve of the twenty-one organizations being nonprofit.²⁶⁷

The approach is fundamentally and legally flawed in presuming that nonprofits, which I take to mean “public charities,” can equally prize, embed, or integrate social good and community benefit on the same terms as financial profits and economic goals as pursued by for-profit companies. The contexts and environments are not similar or even comparable. As noted earlier, nonprofit charities *must* be organized and operated exclusively in furtherance of charitable purposes with no impermissible private benefit. Legally, they *must* already prioritize social good and community benefit over having a for-profit orientation.

264. Leonard L. Berry, et al., ‘Social Profit Orientation’ Can Help Companies and Nonprofits Alike Do More Good in the World, CHRON PHILANTHROPY (Sept. 6, 2024), <https://www.philanthropy.com/article/social-profit-orientation-can-help-companies-and-nonprofits-alike-do-more-good-in-the-world> [hereinafter Berry, ‘Social Profit Orientation’ Can Help Companies and Nonprofits Alike Do More Good in the World]; Leonard L. Berry, et al., *Social Profit Orientation: Lessons from Organizations Committed to Building a Better World*, 89 J. MARKETING (2025) [hereinafter Berry, *Social Profit Orientation: Lessons from Organizations Committed to Building a Better World*].

265. Berry, ‘Social Profit Orientation’ Can Help Companies and Nonprofits Alike Do More Good in the World, *supra* note 264; Berry, *Social Profit Orientation: Lessons from Organizations Committed to Building a Better World*, *supra* note 264.

266. Berry, ‘Social Profit Orientation’ Can Help Companies and Nonprofits Alike Do More Good in the World, *supra* note 264 (reporting interviews with 78 people from 21 firms); Berry, *Social Profit Orientation: Lessons from Organizations Committed to Building a Better World*, *supra* note 264, at 2 (reporting interviews with 62 people based on a submission date for the article of August of 2022, which is three years earlier than the other article that reports interviewing 78 people).

267. Berry, *Social Profit Orientation: Lessons from Organizations Committed to Building a Better World*, *supra* note 264, at Table I, p.4.

Thus, nearly sixty percent of the sample is already pre-disposed to some version of orientation toward “social profit” and therefore, not qualified for operating in the social “middle” space. Query whether the remaining sample of nine companies is sufficient to test the posited hypotheses or otherwise support the conclusions and recommendations especially since over half of those companies are from outside the United States and may have other cultural or legal orientations that skew the outcomes in any event.²⁶⁸ This is not to express any point of view regarding whether any of the remaining nine for-profit companies might operate in the social “middle” space. They might be, but given the presumption of being “equally prized,” clarity of priority seems lacking despite language about being central and embedded.

We need to be clear about what we mean by “social enterprise,” what is included or covered and why, and what is excluded and why. A “broad tent” fomenters confusion, which can harm investors, entrepreneurs, employees, consumers, charities, donors, volunteers, etc. It might also generate unfair and unwarranted competitive advantages and corresponding disadvantages. Therefore, we also need to be clear about whether the current regulatory environment can adequately, even if imperfectly, bring requisite degrees of clarity or if new regulation is necessary and, if so, what type. We also need to be clear about the objectives for the underlying regulation and what is being regulated in service to those objectives, including the potential downsides.

Some discrete iterations of the approaches discussed above are social enterprises. Details about their implementation, governance, and operation show that they differentiate themselves from traditional approaches. They have a different, deeper commitment to social good that is consistent and persists through time and circumstances. They have greater intentionality in connecting their behaviors to repeating and/or scaling socially good outcomes. Most importantly, they are clear and unambiguous about “saying what they mean” and “doing what they say” regarding the ordering of their purposes and prioritizing social good over owners’ financial interests.

From a regulatory perspective through the modality approach in the United States, a potential exemplar is a program

268. *Id.*

in Los Angeles County. The County Code provides bid preferences to “Social Enterprises” that the requisite governing authority certifies as being a “social enterprise.”²⁶⁹ The certification is available to any for-profit or nonprofit business—thus using the modality approach and being agnostic as to legal structure—that distinguishes themselves “by accounting for their measurable social, public health, and environmental impact”:²⁷⁰ a standard that, without more, would barely suffice to differentiate anyone from anyone else. Fortunately, there is more.

The Code specifically identifies requisite distinguishing features: one generic and another explicit. Generically (and I submit insufficient by itself) certified companies *must* provide “transitional and permanent employment to a Transition Workforce,” which is a limited scope very similar to the European “WISE” approach.²⁷¹ More explicitly and importantly, the County further requires that the “primary” purpose of the business must be the “common good” through market-oriented mechanisms to advance its social good agenda.²⁷²

While the ordering of purposes with common good as primary is helpful, and arguably necessary for differentiation purposes, the County risks generating confusion by providing that the purposes “*may* include ‘maximizing social impact rather than profits for external shareholders.’”²⁷³ Using the permissive language of “*may*” rather than a consistent mandatory ordering of purposes could call into question whether “common good” really is “primary” as otherwise stated.

Going further to differentiate certified enterprises from traditional approaches, the County provides for legal

269. L. A. CNTY., CAL., CODE tit. 2, div. 4, ch. 2.205 (2007).

270. *Id.* at ch. 2.205.010.

271. L. A. CNTY., CAL., CODE., *supra* note 269, at ch. 2.205.020, 2.205.030(L). In mid-2023, the California Office of the Small Business Advocate announced the California Regional Initiative for Social Enterprise (CalRISE) program. The program will invest a total of \$25 million in “employment social enterprises”: “businesses [that] employ, train, and support talented Californians overcoming barriers to employment, including people often overlooked by employers because of their experiences of homelessness, incarceration, or mental health or substance abuse challenges; refugees, survivors of domestic violence and trafficking; and youth who have been in foster care”. Press Release, California Business and Economic Development, CalOSBA Invests \$25 Million for Launch of Nation’s First Statewide Program to Support Employment Social Enterprises (Jul 17, 2023).

272. L. A. COUNTY, CAL., CODE., *supra* note 269, at ch. 2.205.030(F).

273. *Id.* (emphasis added).

accountability and enforcement²⁷⁴ and a process for investigating third-party complaints about a company's eligibility.²⁷⁵ The County Code delineates offenses as subject to "penalty of perjury": knowing misrepresentations in obtaining or retaining the certification, knowingly making false statements to influence the certification or denial of certification, furnishing or withholding information relevant to a certification request, and/or failing to update the certifying body of changes in status that would affect a previously issued certification.²⁷⁶ Among the consequences are monetary payments, penalties, and "debarment" from future contracts.²⁷⁷

There also is a review process for investigating third-party complaints about a company's eligibility,²⁷⁸ which distinguishes it from other formal approaches that either do not allow third-party actions or expressly forbid them.

The Code also allows certified social enterprises to notify the certifying body of changed circumstances and, thereby, give up the right to future bid procurement preferences even as they enjoyed those benefits in the past.²⁷⁹ Thus, some degrees of intransigence that might jeopardize compliance with the persistent element.

Compare Los Angeles County's approach with other approaches listed earlier in this section and the approaches taken by Philadelphia and Cook County discussed earlier. Unlike the others, Los Angeles County clearly differentiates its approach through: (a) heightened degrees of commitment to social good; (b) formal expectations of persistence through time and circumstance absent notice to the contrary; and (c) legal accountability with consequences for representing otherwise.

VI.

ENFORCEMENT AND ACCOUNTABILITY IN THE PRESENT

There is a current quiver of regulatory accountability mechanisms available to address compliance under the status

274. *Id.* at ch. 2.205.080(D).

275. *Id.* at ch. 2.205.090.

276. *Id.* at ch. 2.205.080.

277. *Id.* at ch. 2.205.080(D).

278. *Id.* at ch. 2.205.090.

279. *Id.*

quo. Most of these are based on an underlying premise that companies and their personnel should "say what they mean" and "do what they say." Of course, all depend on relevant government agencies and personnel having access to applicable information about uses and abuses along with the resources and will to act. Unfortunately, a failure of will or resources is not likely to change if a new regulatory regime is created or overlaid. The likely result will be more harm than good as regulations are not enforced and compliance-oriented people and organizations divert their resources from substantive pursuits without any corresponding gain or benefit.

At federal and state levels in the United States, there are laws and regulations to protect investors and consumers, even the environment, including actions by regulatory agencies and private recourse. Securities laws and regulations govern representations and information available in and through the investment process. Consumer protection laws and regulations govern misrepresentations in promoting sales of goods and services and the safety/dangers of various goods and services.²⁸⁰ Anti-trust and anti-monopoly laws and regulations protect the marketplace to ensure fair competition and access. Other federal laws and regulations also apply, including those relating to employment discrimination, conditions of employment, intellectual property, environmental compliance, etc. While not as connected to whether an enterprise is a "social" one, these laws and agencies charged with compliance can also have a role, but I submit that we have yet to differentiate social enterprises enough to justify exempting them from such compliance.

At state levels, whether using the United States Hybrid forms or any other legal structure for which the enterprise registers with a state, those registrations have meaning. In exchange for protection from personal liability, permission to conduct business in the state, and other conditions, the registered businesses provide a scope for their activities. In theory, if a registered organization deviates from that declared scope, it loses the protections and permissions made available by the state. Thus, liability for the enterprise's contracts and behaviors can become personal and is no longer limited to invested capital. Contracts might even be at risk of being voided to the detriment of the company and those involved with it.

280. Reiser, *Regulating Social Enterprise*, *supra* note 29, at 244, 245.

However, it is often, even almost always, the case that a scope specified in organizing documents is followed by language like the following: “and any other activities as allowed by law.” This blanket, catch-all provision makes sense in most instances. However, for an enterprise purporting to be a “social” one, this language means that the enterprise reserves the right not to be a “social” one at or after any given time. This means that those who deal with the entity cannot rely on it being or remaining “social.” It also means that the state attorney general, secretary of state, or other official with oversight of business formations and governance will not generally be able to void the registration, remove various protections and permissions, or otherwise hold the enterprise and its personnel legally accountable to any declared scope of pursuing social good.

It might not be going too far to suggest as a threshold matter for identifying an entity as a “social enterprise” that it not have the catch-all clause in its origination filings.

A few minor regulatory tweaks may still be helpful to facilitate social enterprises. For instance, states that require prioritizing owners’ financial interests as a condition of incorporating or organizing a limited liability company might consider relaxing that standard to allow for other purposes or priorities, including those deemed social. As Professor Anthony Luppino has pointed out, the Internal Revenue Code also might need to be amended to adjust the “hobby loss” rules to accommodate for pursuing other than profits.²⁸¹

For those situations in which an entity does not say what it means and/or do what it says, there is already recourse and potential liability as noted above, and it is more meaningful than merely revoking the right to use a moniker or designated name. Frankly, active “greenwashing” or “social/purpose washing” should involve consequences more severe than a tap on the wrist, and securities and consumer protection laws, at a minimum, can provide that recourse, albeit imperfectly.²⁸²

281. Tyler et al., *Producing Better Mileage*, *supra* note 29, at 312; Tyler et al., *Private Benefit in Practice*, *supra* note 2; *see also* Ibanez et al., *Social Enterprises in Chile*, *supra* note 198, at 144 (discussing that there is a risk that the Chilean taxing authority will not permit business deductions for expenses associated with anything other than pursuit of maximizing profits for owners, although a 2022 law tries to bring clarity in that regard).

282. Dadush, *Regulating Social Finance*, *supra* note 24, at 169.

For those very few places that provide tax benefits and/or bid procurement preferences, forward-looking loss of those can be useful for regulatory accountability as can the potential additional ramification of needing to make restitution for past violations. Accountability for these benefits and preferences and imposition of consequences for noncompliance require degrees of specificity and detail that are generally lacking, although the regiment in Los Angeles County may be an exception.

Clarity about eligibility on the front end facilitates accountability on the back end. If eligibility criteria are vague, ambiguous, or overly inclusive, it will be very difficult to revoke benefits or preferences much less obtain retroactive relief because it will be very difficult to discern noncompliance.

CONCLUSION

For purposes of regulation, practice, research, and otherwise, there is a lack of clarity about what "social enterprise" and its corollary words mean, what they cover and why, and what they exclude and why. Far from being neutral or meaningless, the ambiguity leads to confusion that negatively affects investors, entrepreneurs, officers and directors, managers, employees, consumers, charities, donors, volunteers, researchers, etc. It might also generate unfair and unwarranted competitive advantages and corresponding disadvantages.²⁸³ Perhaps a differentiating term, such as "social purpose business" or another label, might also be useful when accompanied by a clear, generally applicable definition.

Perhaps there is a critical mass of enterprises in the United States whose operations meet the standards for sufficient differentiation as social enterprises that operate in the "middle" as described throughout this paper. If so, then perhaps regulation and incentives might be appropriate and even helpful for bringing greater clarity and better accountability.

However, the status quo in the United States regarding regulatory designation or treatment of social enterprises—much less cultural or operational understandings as such—is generally lacking. After all, the United States does not have distribution caps, asset locks, requirements of being WISE (except in Los Angeles County), other expressly designated

283. Peter & Pfammatter, *supra* note 156, at 841, 852.

and defined scope limitations, compensation ratios, an oversight agency for enforcement (again, except in Los Angeles County), limits on transferring ownership interests, caps on interest rates charged for extensions of credit, prohibitions on converting to traditional forms, and/or enforceable reporting mechanisms—much less actual requirements about the relative priority of social good over owners' financial interests (except for the L3C and perhaps in Los Angeles County).

This does not mean that there are no social enterprises in the United States; there are many, including some that would meet any reasonable definition of the term. It also does not mean that social enterprises and those who purport to be among them are immune to accountability. There is accountability, and there can be consequences for failing to say what one means and doing what one says.

The primary means of accountability is through the owners. After all, they can replace directors, officers, and others—rather, those with a majority of ownership interests can. Note that in the United States accountability to owners is based on shares or ownership interests held rather than being an owner, such that even one person can impose accountability or not if they hold more than 50% of the voting shares or interests. The exception is the cooperative model generally in which the one-person-one-vote standard usually applies. For charitable nonprofits, there is not much comfort in this type of accountability because they have no owners. As far as charitable nonprofits being able to pursue accountability as owners, it will only be effective if they, or enough of them together, hold the requisite level of ownership interests and/or have other influence over other owners to impose consequences.

Another form of accountability is through social or reputational means. This can be a meaningful avenue for charitable nonprofits to impose some degree of consequences and accountability if they are able to activate their networks, connections, and relationships to mobilize enough people to act in favor of or against a given entity. Of course, those efforts can come at a cost of distraction from core operations and purposes.

Social accountability can also include private actions by others to impose consequences, even on a small scale. This means making decisions about whether to provide capital, go to work for, purchase goods or services from, and/or otherwise engage with a particular entity. Such decisions can be informed or even driven by adherence to principles about social enterprise,

including assessing whether priority is discretely declared and understood as given to social good over owners' financial value. If it is not, then don't invest in, buy from, work for, or otherwise engage with the entity; perhaps even try to engage the public more broadly if there are misrepresentations or hypocrisy involved. Of course, different decisions can also be made to engage anyway and do nothing to advance accountability.

This private actor accountability could also include filing lawsuits or pursuing regulatory relief, provided they are a party to an applicable transaction. That is, they have invested or made a purchase based on a misrepresentation. Private actors, however, are not likely to have standing to sue a social enterprise that is hurting fund and capital raising and other efforts if the private actor has been misrepresenting its own effectiveness, priorities, scope, or otherwise.

Private accountability can be meaningful in a given circumstance but is not likely to operate at a scale or uniformity sufficient to protect the sector or even the public more broadly. That is where governmental, regulatory accountability is or should be at its best.

Meaningful regulatory facilitation and/or accountability of social enterprises is possible. We are seeing degrees of that in the OpenAI and ESG scenarios. Perhaps we can and will see more in terms of enforcing applicable securities, consumer protection, or even anti-trust standards. Even so, people and organizations that become aware of violations have the option of reporting bad behavior to relevant agencies or government oversight personnel (e.g., attorneys general, secretaries of state, etc.).

Perhaps there will be enough confusion, even harm, derived from the status quo's exhausting ambiguity that a concentrated regulatory regime might arise. Perhaps there will be enough demand for clarity, even certainty, that an applicable regime develops. Perhaps there will be efforts to differentiate forms or enterprises more clearly from traditional endeavors. In the meantime, there is a status quo that can and should be deployed.

APPENDIX A: CATALOGUE OF RELEVANT TERMS,
DEFINITIONS, AND
ASSESSMENTS OF PRIORITY OF PURPOSE, IF ANY

	Term	Definition	Priority
1	Benefit And Collective Interest Companies	Peru Sociedad de Beneficio e Interés Colectivo (BIC) : Companies that voluntarily look forward to generating a positive impact; or to reduce a negative one, into the society or environment, are eligible to be under the scope of this new BIC Law. They must integrate its benefic social/environmental social purpose within its economic profitable activity. Nevertheless, in the term of 90 days since November 24th 2020 will be enacted: (i) the regulations of BIC Law and (ii) the concrete steps for registering these new qualifications for companies into the Public Registry. ²⁸⁴	Financial or Social Good
2	Benefit And Collective Interest Companies	Chile BIC: According to the bill, enterprises formed under existing organizational forms can become Sociedades de Beneficio e Interés Colectivo ("Sociedades BIC"). To become a Sociedad BIC the enterprise must include in its by-laws the positive social and environmental impact that it will generate. The enterprise must also make an annual sustainability report that addresses the social and environmental impact generated by the Social Enterprise during the year. ²⁸⁵	Financial or Social Good

284. *Social Enterprise Law Surveys (Peru)*, LEXMUNDI (2024), <https://www.lexmundi.com/guides/social-enterprise-law-surveys/jurisdictions/latin-america-caribbean/peru/>.

285. *Social Enterprise Law Surveys (Chile)*, LEXMUNDI (2024), <https://www.lexmundi.com/guides/social-enterprise-law-surveys/jurisdictions/latin-america-caribbean/chile/>.

	Term	Definition	Priority
3	Benefit And Collective Interest Companies	Colombia: Benefit and Collective Interest Companies (“BICs”) are for-profit companies that voluntarily seek to comply with social and environmental standards, for which they have complied with the requirements determined by law to be recognized as BICs. ²⁸⁶ “without altering the for-profit nature of these businesses.” ²⁸⁷	Financial or Social Good
4	Benefit Corporation	A Delaware Public Benefit Corporation, or B-Corp, is a type of business entity that aims to generate profit while having a positive impact on society. ²⁸⁸	Financial or Social Good
5	Certified B Corp	Certified B Corporations are legally required to consider the impact of their decisions on all of their stakeholders - a model known as stakeholder governance. ²⁸⁹	No Priority Given (except geography)
6	Community Social Entrepreneur	A community social entrepreneur prioritizes the needs of a small geographical region, usually the community they live in. This type of social entrepreneur is less concerned about the specific nature of their endeavor; the primary purpose of their entrepreneurship is to benefit their local area. ²⁹⁰	No Priority Given (except geography)

286. *Benefit and Collective Interest Companies (BIC)*, LLOREDA CAMACHO & CO. (2024), <https://lloredacamacho.com/wp-content/uploads/2023/07/EBOOK-BIC-INGLES.pdf>; see also Alvaro Pereira and Raymundo J. Pereira, *Social Enterprises in Colombia*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 180–202, 181 (Dana Brakman Reiser et al. eds., 2023) (certification available to all registered businesses committed to pursuing profits and social objectives).

287. Alvaro Pereira and Raymundo J. Pereira, *Social Enterprises in Colombia*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 180–202, 192 (Dana Brakman Reiser et al. eds., 2023).

288. *Why Form a Delaware Public Benefit Corporation*, HARV. BUS. SERVS., INC. (2024), <https://www.delawareinc.com/public-benefit-corporation/why-form-a-delaware-public-benefit-corporation/>.

289. *The Legal Requirement for Certified B Corporations*, B LAB GLOB. (2024), <https://www.bcorporation.net/en-us/about-b-corps/legal-requirements/>.

290. Adam Hayes, *Social Entrepreneur: Definition and Example*, INVESTOPEDIA (May 31, 2024), <https://www.investopedia.com/terms/s/social-entrepreneur.asp>.

	Term	Definition	Priority
7	RSV	Denmark: Any legal person. . . . can register as an RSV if they: Have “a social purpose” as its objective, that is, to be beneficial to society with a social, cultural, labor, health, or environmental objective; • Develop a “significant commercial activity,” which must be the company’s main source of income; Have an “inclusive and responsible governance,” involving workers, clients, partners, and interested parties in their management, which must be carried out in a responsible manner in accordance with social objectives; • Carry out “a social management of its profits,” applying these to reinvestment in the company, investments, or donations to other registered social companies, charities, non-profit organizations, or pay. ²⁹¹	Financial or Social Good
8	Environmental, Social, Corporate Governance (ESG) Investing	ESG investing describes investments that are made with environmental, social, and corporate governance (ESG) criteria as an explicit focus of the investment. These often involve investment screens, either positive or negative, to shrink the field of investable companies based on environmental, social, or governance factors. An example of an ESG screen would be removing oil and gas companies from investment consideration (a negative environmental screen) or choosing to only invest in companies with diverse leadership teams (a positive governance screen). ²⁹²	Financial or Social Good

291. Carlos Vargas Vasserot, *Legal Regulation of Social Enterprises in Other European Countries* in INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE-DRIVEN COMPANIES 941, 943–44 (Henry Peter et al., 2023); *see also* Karsten Engsig Sorenson, *Social Enterprises in Denmark*, in SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW 202–23, 204–05 (Dana Brakman Reiser et al. eds., 2023).

292. *What is Impact Investing?*, SOCAP GLOB. (2024), <https://socapglobal.com/what-is-impact-investing/>.

	Term	Definition	Priority
9	ESG Investing	ESG investing refers to how companies score on these responsibility metrics and standards for potential investments. Environmental criteria gauge how a company safeguards the environment. Social criteria examine how it manages relationships with employees, suppliers, customers, and communities. Governance measures a company's leadership, executive pay, audits, internal controls, and shareholder rights. ²⁹³	Financial or Social Good
10	Social Enterprise	Finland: Any type of enterprise, non-profit association, foundation, cooperative and limited liability company is eligible to register as a WISE if it meets the following social enterprise act's criteria: is listed in the trade register; it has a social goal; it is run as a business to produce commodities (services and goods); at least 30% of its employees are disabled and/or long-term unemployed (required percentage of subsidised employment); all of its employees are paid a collectively agreed wage that is considered appropriate for employees with a full work ability within the given sector regardless of their productivity or if such a collective agreement does not exist, a normal and reasonable wage or salary. Finland's "Act on Social Enterprise" (1351/2003) revised 924/2012. ²⁹⁴	Certain Workers
11	Impact Investing	Impact investing is the term for the deployment of investment capital with not only consideration of financial returns, but also social and/or environmental considerations. ²⁹⁵	Financial or Social Good
12	Impact Investing	Building the field of impact investing and providing catalytic capital to address social and environmental challenges around the world. ²⁹⁶	Social Good

293. Gordon Scott, *What is ESG Investing*, INVESTOPEDIA (Jul. 30, 2024), <https://www.investopedia.com/terms/e/environmental-social-and-governance-esg-criteria.asp>.

294. The Act on Social Enterprise (1351/2003 revised 924/2012) (Fin.) https://social-economy-gateway.ec.europa.eu/my-country/finland_en.

295. *What is Impact Investing?*, SOCAP GLOB. (2024), <https://socapglobal.com/what-is-impact-investing/>.

296. *Impact Investments*, MACARTHUR FOUND., <https://www.macfound.org/programs/field-support/impact-investments/strategy>.

	Term	Definition	Priority
13	Impact Investments	Impact investments are investments made with the intention to generate positive, measurable social and/or environmental impact alongside a financial return. ²⁹⁷	Financial or Social Good
14	Social Cooperatives	Italy: Social cooperatives essentially provide <i>a</i>) social services, such as healthcare and educational services, or <i>b</i>) work integration (i.e., the performance of any activity with the aim of providing employment for disadvantaged people). To be eligible as a “social enterprise,” an organization must be privately owned, have a social purpose, comply with the nondistribution constraint, and make publicly available its financial statements and social report on the fulfillment of its social mission. A “social enterprise” must perform an “entrepreneurial activity” (i.e., the activity must be productive, professional, economic, and organized), but its business has to be of social utility (i.e., working in the sectors of welfare, health, education, training, research, culture, environmental protection, and social tourism or helping the integration into the workplace of underprivileged or disabled people, regardless of the sector of activity). ²⁹⁸	Certain Workers or Other Social Good
15	Società Benefit (Italy)	Società benefit shall pursue, in addition to the profit-making purpose, one or more public benefit purposes (i.e., the specific public benefit) and operate in a responsible, sustainable, and transparent manner vis-à-vis several categories indicated in a not exhaustive definition, such as individuals, communities, territories and the environment, cultural and social heritage, entities and associations as well as other stakeholders (i.e., the general public benefit). ²⁹⁹	Financial or Social Good

297. *What you Need to Know About Impact Investing*, GIIN (Jan. 1, 2023), <https://thegiin.org/publication/post/about-impact-investing/#what-is-impact-investing>.

298. Livia Ventura, *Social Enterprises and Benefit Corporations in Italy* in *INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE-DRIVEN COMPANIES* 656 (Henry Peter et al., 2023).

299. *Id.*

	Term	Definition	Priority
16	People And Planet First Verification	Around the world there is a growing movement of enterprises that prioritize people and planet over private profit. ³⁰⁰	Social Good
17	Social and Solidarity Economy	Social and Solidarity Economy (SSE) refers to forms of economic activities and relations that prioritize social and often environmental objectives over profit motives. It involves citizens acting collectively and in solidarity for democratization of economy and society, including producers, workers, and consumers. It is often used as an umbrella term to encompass “social economy,” “solidarity economy,” or third sector organizations and enterprises. SSE is fundamentally about reasserting social control over economy and relinking economy with society and nature. While many SSE organizations and enterprises (SSEOEs) are established to respond to specific needs of people and communities, some also aim to transform the economic operating system into the ones based on such values as participatory democracy, solidarity, equity, human and Earth rights, self-determination, mutuality, and cooperation. All SSEOEs emphasize human social values and ethics in economic activity and relations, and economic practices built upon democratic governance and self-management, reciprocity, solidarity, and active citizenship. ³⁰¹	Social Good

300. *People and Planet First Verification*, SOC. ENTER. ALL. (2023), <https://socialenterprise.us/verification>.

301. *New Economics for Sustainable Development: Social and Solidarity Economy*, UNITED NATIONS ECONOMIST NETWORK, https://www.un.org/sites/un2.un.org/files/social_and_solidarity_economy_29_march_2023.pdf.

	Term	Definition	Priority
18	Social Cooperative Enterprise (SCE)	Greece: 1. The Social Cooperative Enterprise (SCE) is established as an entity of Social Economy. It is a civil cooperative with a social cause and possesses entrepreneurial capacity by law. The SCE's members can be either natural persons or natural and legal persons and participate with one vote, regardless of the cooperative shares that they possess. 2. SCEs, depending on their specific purpose, are divided into the following categories: a) Integration SCEs, which focus on integration of individuals belonging to vulnerable population groups into the economic and social life. At least 40% of their employees must come from the vulnerable Population Groups. The Limited Liability Social Cooperatives (L.L.S.C.) are automatically considered as integration SCEs and are subject to the provisions of this law. The L.L.S.C.s are governed by the provisions of the ar. 12 of law 2716/1999 and additionally by the provisions of this law and by law 1667/1986, as well as by the ar. 12 of law 3842/2010. b) Social care SCEs, which focus on production and provision of goods and services of social / social-care character towards certain population groups, such as the elderly, the infants, the children, the disabled and the chronically ill. c) Social Cooperative Enterprises of Collective and Productive Purpose, which focus on the production of products and the provision of services to meet the needs of collectivity (culture, environment, ecology, education, social benefit services, promoting local products, saving traditional activities and crafts etc.) which promote local and collective interest, the development of employment, the enhancement of social cohesion and the strengthening of local or regional development. (Greece Law 4019/2011: Social Economy and Social entrepreneurship and other articles: Article 2.). ³⁰²	Certain Workers or Other Social Good

302. Social Economy and Social Entrepreneurship and Other Articles (4019/2011), https://base.socioeco.org/docs/greek_law_4019_of_2011_on_sces-1-1.pdf.

	Term	Definition	Priority
19	Social Economy	Romania: “Social Economy is the sum of activities organized independently from the public sector, activities aiming to serve the general interest, the interests of a community and/or one persons non patrimonial interests by increasing the degree of occupation of the persons belonging to vulnerable groups and/ or by producing and supplying goods, services.” Romanian Law 219/2015. ³⁰³	Financial or Social Good
20	Social Enterprises	Slovakia: It is expected that social enterprises, registered according to the Act 112/2018 on Social economy and social enterprises, will offer quality job opportunities for disadvantaged and vulnerable groups, with the main focus on long-term unemployed, youth, ethnic minorities or people with disability. Along with employment, social enterprises may provide their disadvantaged employees with training opportunities, increasing their chances on the open labor market. Slovakia Act 112/2018 on Social Economy and Social Enterprises. ³⁰⁴	Certain Workers, Other Social Good, or Financial
21	Social Enterprise	CGM elaborates the concept of a social enterprise that is attached to the traditional figure of cooperatives, but with a change in orientation to respond to social initiatives not satisfied by the market, especially in the field of labor integration and social services. ³⁰⁵	Certain Workers or Other Social Good
22	Social Enterprise	“Businesses providing social services and/or goods and services to vulnerable persons” (access to housing, health care, assistance for elderly or disabled persons, inclusion of vulnerable groups, childcare, access to employment and training, dependency management, etc.). ³⁰⁶	Certain Workers or Other Social Good

303. Violeta Stanciu (Chiriloaie), *Comments on the Law of Social Economy – no. 219/2015 from Economic Efficiency and Ethics Point of View*, 12 REV. APPLIED SOCIO-ECONOMIC RSCH. 43, 45 (2016).

304. Act on Social Economy and Social Enterprises (112/2018) (Slovakia) <https://ec.europa.eu/social/PDFServlet?mode=mlpPractice&practiceId=83>.

305. Vasserot, *Social Enterprises in the European Union: Gradual Recognition of Their Importance and Models of Legal Regulation* in INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE-DRIVEN COMPANIES 27 (Henry Peter et al., 2023).

306. *Id.*

	Term	Definition	Priority
23	Social Enterprise	"Businesses with a method of production of goods or services with a social objective (social and professional integration via access to employment for people disadvantaged in particular by insufficient qualifications or social or professional problems leading to exclusion and marginalization) but whose activity may be outside the realm of the provision of social goods or services," such as companies dedicated to the labor market integration of people at risk of exclusion, which is known as work integration social enterprises (WISE). ³⁰⁷	Certain Workers or Other Social Good
24	Social Enterprise	In accordance with its articles of association, statutes, or with any other legal document by which it is established, its primary objective is the achievement of measurable, positive social impacts rather than generating profit for its owners, members, and shareholders, which provides services or goods that generate a social return and/or employs a method of production of goods or services that embodies its social objective; • Uses its profits primarily to achieve its primary objective and has predefined procedures and rules covering any distribution of profits to shareholders and owners that ensure that such distribution does not undermine the primary objective; and • Is managed in an entrepreneurial, accountable, and transparent way, particularly by involving workers, customers, and stakeholders affected by business activities. ³⁰⁸	Social Good
25	Social Enterprise	They do not necessarily have to be non-profit organizations; they are enterprises whose purpose is to achieve their social goal, which may be to create jobs for vulnerable groups, provide services for their members, or more generally create a positive social and environmental impact, and which reinvest their profits primarily in order to achieve those objectives. ³⁰⁹	Certain Workers or Other Social Good

307. *Id.*

308. *Id.*

309. *Id.*

	Term	Definition	Priority
26	Social Enterprise	However, now, social enterprises are generally understood as part of the social economy. Social enterprises operate by providing goods and services to the market in an entrepreneurial and often innovative fashion, with social and/or environmental objectives as the reasons for their commercial activity. Profits are mainly reinvested to achieve societal objectives. Their method of organization and ownership also follows democratic or participatory principles or focuses on social progress. ³¹⁰	Social Good
27	Social Enterprise	A “Social Enterprise” is any organization that sells products or services to achieve its social or environmental purpose. Nonprofit public charities with earned revenue models qualify, as do social businesses, which are businesses that have officially declared a corporate purpose that goes beyond maximizing profit for shareholders. ³¹¹	Social Good
28	Social Enterprise	A mission-driven organization with a market-based strategy. ³¹²	No Priority Given (except geography)
29	Social Enterprise	“A social enterprise is a project or undertaking that applies innovative and entrepreneurial thinking through a sustainable structure, to positively impact a social challenge.” ³¹³	No Priority Given (except geography)
30	Social Enterprise	Social enterprises are do-gooding companies with social or environmental goals. ³¹⁴	Financial or Social Good

310. *Id.*

311. *PRIs for Social Enterprises*, VENN FOUND., <https://www.vennfoundation.org/social-enterprise/> (last accessed June 23, 2025).

312. *Supporting Social Entrepreneurship*, ROCKEFELLER PHILANTHROPY ADVISORS, <https://www.rockpa.org/guide/supporting-social-entrepreneurship/> (last accessed June 23, 2025).

313. *What Makes Something a Social Venture*, SOC. VENTURES ZONE, <https://www.torontomu.ca/svz/apply/incubation/what-makes-something-a-social-venture/> (last accessed June 23, 2025).

314. Craig Kielburger, *How Canada Became a Hub for Social Enterprise*, WE CHARITY (2021), <https://www.we.org/en-US/we-stories/opinion/canada-leading-the-way-for-social-enterprises>.

	Term	Definition	Priority
31	Social Enterprise	Social enterprises are social mission driven organizations which apply market-based strategies to achieve a social purpose. ³¹⁵	Financial or Social Good
32	Social Enterprise	Social enterprises are businesses. Like any other business, they seek to make a profit and succeed commercially. But how they operate, who they employ, how they use their profits and where they work is transforming lives and communities across the UK and around the world. ³¹⁶	No Priority Given (except geography)
33	Social Enterprise	A social enterprise combines entrepreneurial activity with a social purpose. Its main aim is to have a social impact, rather than maximize profit for owners or shareholders. Businesses providing social services and/or goods and services to vulnerable persons are a typical example of social enterprise. ³¹⁷	Social Good

315. *What is a Social Entrepreneur?*, CSEF (2024), https://www.csef.ca/what_is_a_social_entrepreneur.php.

316. *All About Social Enterprise*, SOC. ENTER. UK, <https://www.socialenterprise.org.uk/all-about-social-enterprise/> (last accessed June 23, 2025).

317. *What Is Social Entrepreneurship?*, HEC PARIS, <https://www.hec.edu/en/faculty-research/centers/sustainability-organizations-institute/think/so-institute-executive-factsheets/what-social-entrepreneurship>.

	Term	Definition	Priority
34	Social Enterprise	United Kingdom structures: In the UK, social enterprises can adopt various legal structures, each with its benefits and limitations. The choice of structure depends on the enterprise’s objectives, funding requirements, and operational model. Common legal forms include the Community Interest Company (CIC), Charitable Incorporated Organisation (CIO), and Social Enterprise Limited by Guarantee or by Shares. The Community Interest Company (CIC) is a popular choice for social enterprises due to its flexibility and clear focus on community benefit. CICs operate like any other company but with special features ensuring their activities benefit the community. They are subject to an asset lock, which prevents the distribution of profits to shareholders beyond a certain limit, ensuring profits are primarily used for social purposes. Charitable Incorporated Organisations (CIOs) offer another pathway, particularly for enterprises focusing on charitable activities. CIOs benefit from tax advantages and have a legal personality, which simplifies the process of entering into contracts and holding assets. However, they are subject to stricter regulatory oversight, including compliance with charity law. ³¹⁸	Not Financial
35	Social Enterprise	Finland: Law 1351/2003 on social enterprises (Laki sosiaalisista yrityksistäuna) Finnish law limits the object of social enterprises to providing employment opportunities to people with disabilities and to the long-term unemployed. ³¹⁹	Certain Workers

318. Legal Foundations, *The Legal Guide to Social Enterprise and Impact Investing in the UK*, LEGAL FOUNDATIONS (Feb. 14, 2024), <https://legalfoundations.org.uk/blog/the-legal-guide-to-social-enterprise-and-impact-investing-in-the-uk/>.

319. Carlos Vargas Vasserot, *Legal Regulation of Social Enterprises in Other European Countries* in INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE-DRIVEN COMPANIES 941, 942 (Henry Peter et al., 2023).

	Term	Definition	Priority
36	Social Enterprise	Latvia: The Social Enterprise Law (Sociālā uzņēmuma likums) was enacted in Latvia in 2017. It aims to: promote the improvement of people's quality of life and employment of population groups at risk of social exclusion - which it calls the target group - by creating a favorable environment for the economic activities of social enterprises (Article. 1). The law defines a social enterprise as: "a limited liability company that has been granted the status of a social enterprise in accordance with the procedure specified in this Law and that carries out economic activities that generate a favorable social impact" (Article. 2.1), such as the provision of social services, the formation of an inclusive civil society, the promotion of education, conservation, the protection of animals, or the safeguarding of cultural diversity. ³²⁰	Financial or Social Good
37	Social Enterprise/RSV	Denmark: The registration tool for social enterprises—Registreret Socialøkonomisk Virksomhed (RSV)—was introduced in Denmark under the National Strategy for Social Enterprise (2014 Act on Registered Social Enterprises (Act 711/2014)) and is run by the Danish Business Authority. All legal forms with limited liability are eligible to be accredited by this voluntary legal status if they comply with a specific set of criteria. These criteria require that: the purpose of the enterprises is social and concerns social, employment, health, environmental or cultural aims; a significant share of revenues is generated through sales of goods and services; both the management and operations are independent from the public sector; governance is inclusive and allows stakeholder involvement; and the profit generated is reinvested to support the social mission (a maximum of 35% of after-tax profits can be distributed to owners and investors). ³²¹	Social Good Not Financial

320. Vasserot, *Social Enterprises in the European Union: Gradual Recognition of Their Importance and Models of Legal Regulation* in INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE-DRIVEN COMPANIES 27 (Henry Peter et al., 2023).

321. *Designing Legal Frameworks for Social Enterprises: Practical Guidance for Policy Makers*, OECD 72, <https://www.oecd.org/content/dam/oecd/en/>

	Term	Definition	Priority
38	Social Enterprise	Australia: Social enterprises must do three things: Have a defined primary social, cultural or environmental purpose consistent with a public or community benefit, and Derive a substantial portion of their income from trade, and Invest efforts and resources into their purpose such that public/community benefit outweighs private benefit. ³²²	Social Good
39	Social Enterprise	Australia, Victorian Government: There is no legal structure called 'social enterprise' in Australia. However, the Victorian Government defines social enterprises as organisations that: <ul style="list-style-type: none"> • are driven by a public or community cause (social, environmental, cultural or economic) • get most of their income from business trade, rather than from donations or grants • use at least 50% of their profits to work towards their social mission.³²³ 	Social Good Not Financial

publications/reports/2022/04/designing-legal-frameworks-for-social-enterprises_a9925d00/172b60b2-en.pdf; *see also* Karsten Engsig Sorenson, *Social Enterprises in Denmark*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW 202-23*, 214-15 (Dana Brakman Reiser et al. eds., 2023).

322. *What is a Social Enterprise?*, SOC. TRADERS, <https://www.socialtraders.com.au/what-is-a-social-enterprise/>.

323. *Social Enterprise: What Is a Social Enterprise and What Support Is Available to Further Your Social Mission?*, BUS. VICTORIA, <https://business.vic.gov.au/business-information/start-a-business/business-structures/social-enterprise>.

	Term	Definition	Priority
40	Social And Solidarity-Based Enterprises	Bulgaria: Article 2. This act aims to promote the development of a social and solidarity economy as a branch of the economy with special rules for: 1. improvement of access to employment and training to acquire or improve professional qualification aimed to raise the living standard of the persons referred to in Item 4 of Article 7; 2. the creation of conditions for support of the social inclusion and independent lifestyle of the persons pursuant to Item 4 of Article 7; 3. reduction of social inequality and sustainable territorial development. Article 3. Social and solidarity economy is a form of entrepreneurship aimed at one or several social activities and/or social goals, including by the production of various goods or the provision of services in cooperation with state or local authorities, or independently. Article 4. The following shall be the principles of social and solidarity economy: 1. advantage of social before economic goals; 2. association for public and/or collective benefit; 3. publicity and transparency; 4. independence from state authorities; 5. participation of the members, workers or employees in managerial decision-making. ³²⁴	Certain Workers or Other Social Good
41	Social Enterprise	China Social Enterprise Service Platform: CSESC. It defines a social enterprise as “an enterprise or social organization with the primary objective of solving social problems without mission drift, innovatively solves social problems in a manner consistent with social entrepreneurship, with clear and measurable results.” ³²⁵	Social Good

324. Social and Solidarity-based Enterprises Act (Decree No. 240/2018), https://base.socioeco.org/docs/social_and_solidarity_based_enterprises.pdf.

325. Jian Li et al., *Social enterprises and Benefit Corporations in China* in INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE-DRIVEN COMPANIES 497, 511 (Henry Peter et al., 2023).

	Term	Definition	Priority
42	Social Enterprise:	Ireland: Although there are many definitions of the term “social enterprise”, the National Social Enterprise Policy for Ireland 2019–2022 defines a social enterprise as: “an enterprise whose objective is to achieve a social, societal or environmental impact, rather than maximizing profit for its owners or shareholders. It pursues its objectives by trading on an ongoing basis through the provision of goods and/or services, and by reinvesting surpluses into achieving social objectives. It is governed in a fully accountable and transparent manner.” (Ireland National Social Enterprise Policy 2019-2022). ³²⁶	Social Good
43	Social Enterprise	Kenya: A social enterprise is an organization which uses commercial or business strategies for the benefit of society or the environment. This is best done by maximizing social impact alongside profits. To be considered as a social enterprise your business should: 1. Have a clear social or environmental agenda included in your governing documents. 2. Re-invest a large chunk of your profits back into the business for sustainability purposes. 3. Generate most of your income through trading activities. 4. Not be a government institution. 5. Be transparent and accountable. ³²⁷	Financial or Social Good

326. *Social Enterprises in Ireland: Legal Structures Guide*, THOMPSON REUTERS FOUND. (2020), [HTTPS://RETHINKIRELAND.IE/WP-CONTENT/UPLOADS/2021/05/SOCIAL-ENTERPRISE-LEGAL-FORM-GUIDE.PDF](https://rethinkireland.ie/wp-content/uploads/2021/05/SOCIAL-ENTERPRISE-LEGAL-FORM-GUIDE.PDF). See also Oonagh B. Breen et al., *Social Enterprises in Ireland*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 297-324, 298 (Dana Brakman Reiser et al. eds., 2023) (citations omitted) (referencing 2019 definition from the Department of Rural and Community Development).

327. SESOK: SOC. ENTER. SOC’Y KENYA, <https://www.socialenterprise.or.ke/>.

	Term	Definition	Priority
44	Social Enterprise	Latvia: (1) Social enterprise is a limited liability company which in accordance with the procedures laid down in this Law has been granted the status of a social enterprise and which performs the economic activity that creates a positive and important social impact by employing the target groups or improving life quality of groups in society the life of which is affected by fundamental societal challenges (for example, provision of social, health care, or education services, and also production of specialised goods), or carrying out any other activities of relevance to society that create a lasting positive social impact (for example, formation of an inclusive civil society, support for science, environment protection and conservation, protection of animals, or ensuring of cultural diversity). Latvia Social Enterprise Law - Section 2. Concept of a Social Enterprise. ³²⁸	Certain Workers or Other Social Good
45	Social Enterprise	South Africa: A good legal form for a social enterprise is generally one that allows it to combine multiple sources of capital, private and public, philanthropic and commercial, in order to advance and scale the impact of the enterprise. While South Africa does not have a dedicated legal structure for social enterprises, the current structures allow for significant flexibility. ³²⁹	Financial or Social Good
46	Social Enterprise	Lithuania: Article 2. Aim of Social Enterprises The aim of social enterprises shall be, by employing the persons who are attributed to the target groups indicated in this Law and who have lost their professional and general capacity for work, are economically inactive and are unable to compete in the labour market under equal conditions, to promote the return of these persons to the labour market, their social integration as well as to reduce social exclusion. ³³⁰	Certain Workers, Other Social Good, or Financial

328. Social Enterprise Law (212.1/2017) (Ireland), <https://likumi.lv/ta/en/en/id/294484>.

329. *A Guide to Legal Forms for Social Enterprises in South Africa*, BERTHA CENTRE FOR SOC. INNOVATION & ENTREPRENEURSHIP 2 (Feb. 2016), https://www.gsb.uct.ac.za/files/Bertha_GuideToLegalForms.pdf.

330. Carlos Vargas Vasserot, *Legal Regulation of Social Enterprises in Other European Countries in* INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW:

	Term	Definition	Priority
47	Social Enterprise	Nigeria (via British Consul): Sustainable social enterprises can be created by individuals and organisations with a passion for finding solutions to social problems in the face of market failure and social injustice. These businesses focus on activities which offer goods and services to humanity in all sectors of our lives, including but not limited to the provision of environmental justice, equality, women’s empowerment, quality education, healthcare services, and agriculture. ³³¹	Financial or Social Good
48	Social Enterprise	Romania: any legal person under private law that carries out activities in the field of social economy, that has a certificate of social enterprise and that respects the foreseen principles of the social economy (Article 6.1.d). ³³²	
49	Social Enterprise	Russian draft law: Under the Bill, “social enterprises” will provide employment to socially disadvantaged citizen groups, with the share of such workers in each organisation being at least 50% and accounting for at least 25% in terms of the total wage bill. In addition, “social enterprises” will be classed as organisations that ensure access of goods, works and services produced by socially disadvantaged citizen groups to the market, or organisations that produce goods, works and services specifically for socially disadvantaged citizen groups “in order to overcome, replace or compensate for disability.” ³³³	Certain Workers, Other Social Good, or Financial

BENEFIT CORPORATIONS AND OTHER PURPOSE-DRIVEN COMPANIES 941, 949 (Henry Peter et al., 2023).

331. *The State of Social Enterprise in Nigeria*, BRITISH COUNCIL 21 (Feb. 2022), https://www.britishcouncil.org/sites/default/files/state_of_social_enterprise_in_nigeria.pdf.

332. Carlos Vargas Vasserot, *Legal Regulation of Social Enterprises in Other European Countries* in INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE-DRIVEN COMPANIES 941, 944 (Henry Peter et al., 2023).

333. *Russian Government Approves Draft Law on Social Entrepreneurship*, BEARR TRUST (Dec. 27, 2018), <https://bearr.org/regional-news/russian-government-approves-draft-law-on-social-entrepreneurship/>.

	Term	Definition	Priority
50	Social Economy	Spain: Article 2 defines “social economy” as “the group of economic and business activities carried out in the private sphere, which in accordance with the principles set out in Article 4, pursue the collective interests of its members, in terms of general economic or social interest, or both.” ³³⁴	Financial or Social Good
51	Social Entrepreneurship	Slovenia: The permanent exercise of a business activity through the production and sale of products or the provision of services in the market where obtaining profits is not the main objective of the business activity, but rather to achieve social impact (Article 2.9). Further, a social enterprise according to it is: A non-profit legal entity that acquires this status to clarify that they have not been established solely for the purpose of making profit (Article 2.8). ³³⁵	Social Good
52	Social Entrepreneur	A social entrepreneur is a person who pursues novel applications that have the potential to solve community-based problems. These individuals are willing to take on the risk and effort to create positive changes in society through their initiatives. Social entrepreneurs may believe that this practice is a way to connect you to your life’s purpose, help others find theirs, and make a difference in the world (all while eking out a living). ³³⁶	No Priority Given (except geography)

334. Cynthia Giagnocavo and Silvia Gerez, *An Introduction to Spain’s Social Economy Law*, DEP’T OF MGMT. AND BUS. ADMINISTRATION AT UNIVERSIDAD DE ALMERÍA (2011), <https://www.un.org/esa/socdev/social/meetings/egm11/documents/Giagnocavo-Spain%20Social%20Economy.pdf>.

335. Carlos Vargas Vasserot, *Legal Regulation of Social Enterprises in Other European Countries* in INTERNATIONAL HANDBOOK OF SOCIAL ENTERPRISE LAW: BENEFIT CORPORATIONS AND OTHER PURPOSE-DRIVEN COMPANIES 941, 942 (Henry Peter et al., 2023).

336. Adam Hayes, *Social Entrepreneur: Definition and Example*, INVESTOPEDIA (May 31, 2024), <https://www.investopedia.com/terms/s/social-entrepreneur.asp>.

	Term	Definition	Priority
53	Social Entrepreneur	A social entrepreneur has a different way to solve a social problem. They use earned income strategies to fulfill their goals by employing the group of the population who are physically or mentally challenged or disadvantaged, they also produce and sell products and services that make a social impact. (Boschee & McClurg). ³³⁷	Certain Workers
54	Social Entrepreneur	Social entrepreneurs are natural born innovators who work to solve challenging issues. ³³⁸	No Priority Given (except geography)
55	Social Entrepreneur	“Social entrepreneurs are society’s change agents, creators of innovations that disrupt the status quo and transform our world for the better.” ³³⁹	No Priority Given (except geography)
56	Social Entrepreneur	A social entrepreneur is someone who recognizes a social problem and uses entrepreneurial principles to organize, create, and manage a venture to make social change (a social venture). ³⁴⁰	Financial or Social Good
57	Social Entrepreneur (Global Social)	Sometimes, social entrepreneur endeavors aren’t limited by borders or geography. Sometimes, people may try to solve overarching social concepts such as poverty, depression, or lack of living conditions. ³⁴¹	No Priority Given (except geography)

337. Seema B. and Dr. Shekar Babu PhD, *Social Entrepreneurship: Study of the Definitions*, IEOM Soc’y INT’L 626 (2021), <https://www.ieomsociety.org/proceedings/2021india/166.pdf>.

338. *Supporting Social Entrepreneurship*, ROCKEFELLER PHILANTHROPY ADVISORS, <https://www.rockpa.org/guide/supporting-social-entrepreneurship/>.

339. *Id.*

340. *What is a Social Entrepreneur?*, CSEF (2024), https://www.csef.ca/what_is_a_social_entrepreneur.php

341. Adam Hayes, *Social Entrepreneur: Definition and Example*, INVESTOPEDIA (May 31, 2024), <https://www.investopedia.com/terms/s/social-entrepreneur.asp>.

	Term	Definition	Priority
58	Social Entrepreneur (Transformational)	As a start-up non-profit social enterprise grows, it often shifts into becoming a transformational social entrepreneur. As local non-profits grow, so can their mission. A transformational social entrepreneur looks to scale an operation from a single program to benefit various areas. For example, consider the broad reach of Goodwill; what started as a small non-profit social enterprise transformed into a much richer, broader entity with many more rules and regulations. ³⁴²	No Priority Given (except geography)
59	Social Entrepreneur: Non-Profit Social Entrepreneur	Non-profit social entrepreneurs are the more common type of social entrepreneur where the entity has a broadly stated goal that benefits someone but not necessarily their direct community. ³⁴³	Social Good
60	Social Entrepreneurship	In social entrepreneurship, hybrid organization blends the two elements of social gain and financial viability to generate a long-term impact. (Doherty, Haugh, & Lyon, 2014). ³⁴⁴	Financial or Social Good
61	Social Entrepreneurship	Social entrepreneurship is a for-profit business model that strives to make a positive impact on social issues or the environment. ³⁴⁵	Financial or Social Good
62	Social Entrepreneurship	Social entrepreneurship is a business model used by companies to help solve some of the world's greatest problems. ³⁴⁶	Financial or Social Good

342. *Id.*

343. *Id.*

344. Seema B. and Dr. Shekar Babu PhD, *Social Entrepreneurship: Study of the Definitions*, IEOM Soc'Y INT'L 627 (2021), <https://www.ieomsociety.org/proceedings/2021india/166.pdf>.

345. Sean Peek, *What is Social Entrepreneurship? 5 Examples of Business with a Purpose*, U.S. CHAMBER COM., <https://www.uschamber.com/co/startup/what-is-social-entrepreneurship>.

346. *What is Social Entrepreneurship?*, BUS. DEV. BANK CANADA, <https://www.bdc.ca/en/articles-tools/sustainability/environment/what-is-social-entrepreneurship>.

	Term	Definition	Priority
63	Social Entrepreneurship	In many parts of the world, the concept of entrepreneurship is no longer limited to the creation of capitalist firms, having expanded to encompass the ability to generate innovative organizational alternatives. These are innovative not merely because their models differ from those adopted by firms and corporations throughout the 19th and 20th centuries, but because they expand firms' strategic views beyond the market and its limited forms of transaction. In this expansion, social entrepreneurs' initiatives extend well beyond the commerce in products and services, in an attempt to: (i) increase the socio-environmental development of places left behind by capitalist economic growth; (ii) oblige society to include those who were deprived of the physical, social, and economic means required to become social actors, whether as people, consumers, or citizens; (iii) expand the opportunities for individuals to become emancipated through their own initiative, generating income and being able to freely choose the lifestyle they wish to pass on to their children; and (iv) ensure that future generations have the right to be born and live in freedom, with equal access to the world's natural resources. ³⁴⁷	Financial or Social Good
64	Social Entrepreneurship	Social entrepreneurship is the process of recognising social problems in society and addressing this social change through entrepreneurship. Social entrepreneurs find a specific social issue that they want to change and create a business venture to improve this issue. ³⁴⁸	Financial or Social Good

347. Graziella Comini et al., 19 *Social Business in Brazil*, INNOVATION & MGMT. REV. 1 (Jul. 15, 2021).

348. *Social Entrepreneurship in South Africa*, SME SOUTH AFRICA (Aug. 1, 2024), <https://smesouthafrica.co.za/social-entrepreneurship-in-south-africa/>.

	Term	Definition	Priority
65	Social Entrepreneurship	Broadly defined, social entrepreneurship includes both social innovation (e.g., new services and products, new processes or new target markets) and social enterprise (e.g. applying business and entrepreneurship principles in the social sector including earned revenue strategies that further mission and social impact). ³⁴⁹	Financial or Social Good
66	Social Entrepreneurship	Social entrepreneurship utilizes business skills to solve social and environmental problems. Social enterprise businesses focus on the triple bottom line: people, planet, and profit. ³⁵⁰	No Priority Given (except geography)
67	Social Entrepreneurship	It is the entrepreneurship that has as main goal to address pressing social challenges and meet social needs in an innovative way while serving the general interest and common good for the benefit of the community. In a nutshell, social entrepreneurship targets to social impact primarily rather than profit maximisation in their effort to reach the most vulnerable groups and to contribute to inclusive and sustainable growth. ³⁵¹	Social Good
68	Social Entrepreneurship:	Slovenia: The formal aspect is covered by the Social entrepreneurship Act from 2011 (amended in 2018), which defines that “a social economy is an economy that consists of social enterprises, cooperatives, companies for people with disabilities, employment centres and non-governmental organisations (societies, institutes, institutions or foundations) that are not established solely for the purpose of making a profit, but operate for the benefit of their members, users or wider communities and produce commercial or non-commercial products and services” (Social entrepreneurship Act, art. 2). Slovenia’s “Social Entrepreneurship Act” from 2011, amended in 2018. ³⁵²	No Priority Given (except geography)

349. *Social Entrepreneurship*, WAYNE STATE U.: SCH. SOC. WORK, <https://socialwork.wayne.edu/socialentrepreneurship>.

350. *Id.*

351. *Social Entrepreneurship in Europe—An OECD-European Commission Project*, OECD, <https://web.archive.oecd.org/temp/2019-03-20/345653-social-entrepreneurship-oecd-ec.htm>.

352. *Social Economy at a Glance*, EUR. COMM’N, https://social-economy-gateway.ec.europa.eu/my-country/slovenia_en.

	Term	Definition	Priority
69	Social Venture	Social ventures are companies that combine the impact-centric agenda of a charity with the profit generation strategies of a business. ³⁵³	Financial or Social Good
70	Socially Responsible Investing (SRI)	Socially responsible investing (SRI) is a method in which investments are made with the intent to create social change. SRI investments can include those made to empower marginalized communities, increase workforce diversity, and break down systemic barriers in the economy. ³⁵⁴	Financial or Social Good
71	Socially Responsible Investing	SRI is the practice of investing money in companies and funds that have positive social impacts. ³⁵⁵	Financial or Social Good
72	The Fourth Sector	But now a nascent fourth sector of the economy is emerging, one that combines market-based approaches of the private sector with the social and environmental aims of the public and non-profit sectors to address pressing problems. Endeavors in this sector, also known as for-benefit enterprises, come in a wide variety of models, from mission-driven businesses, social enterprises, and sustainable businesses, to cooperatives, benefit corporations, and faith-based enterprises, among many others. ³⁵⁶	Financial or Social Good
73	The Triple Bottom Line	The triple bottom line is a business concept that states firms should commit to measuring their social and environmental impact—in addition to their financial performance—rather than solely focusing on generating profit, or the standard “bottom line.” ³⁵⁷	Financial or Social Good

353. *Social Ventures*, OXFORD U. INNOVATION, <https://innovation.ox.ac.uk/about/social-ventures/>.

354. *What Is Impact Investing?*, SOCAP GLOB., [HTTPS://SOCAPGLOBAL.COM/WHAT-IS-IMPACT-INVESTING/](https://socapglobal.com/what-is-impact-investing/).

355. Adam Hayes, *Social Entrepreneur: Definition and Example*, INVESTOPEDIA (May 31, 2024), <https://www.investopedia.com/terms/s/social-entrepreneur.asp>.

356. *What is the Fourth Sector?*, FOURTH SECTOR GRP., <https://www.fourthsector.org/what-is-the-fourth-sector>.

357. Kelsey Miller, *The Triple Bottom Line: What it is & why it's Important*, HARV. BUS. SCH. ONLINE (DEC. 8, 2020), <https://online.hbs.edu/blog/post/what-is-the-triple-bottom-line>.

	Term	Definition	Priority
74	Social Enterprise	Los Angeles County: a business certified by the requisite governing authority that accounts “for their measurable social, public health, and environmental impact,” that must provide “transitional and permanent employment to a Transition Workforce,” that has a “primary” purpose being the “common good” using market-oriented mechanisms to advance its social good agenda, and whose purposes “MAY include ‘maximizing social impact rather than profits for external shareholders.’” ³⁵⁸	Certain Workers
75	Social Enterprise	Cook County, Illinois: a) an Illinois benefit corporation; b) an Illinois low-profit limited liability company (L3C); or c) “a nonprofit or private-sector entity (or any business unit thereof . . .)” that: 1) uses earned revenue strategies exclusively or as a “significant part of a nonprofit’s revenue stream”; and 2) directly addresses social needs either A. through its goods and/or services; or B. by employing people who are disadvantaged; or C. both. ³⁵⁹	No Priority Given (except geography)
76	Sustainable Business	Businesses “(1) with a current certification issued from B Labs; and (2) that can demonstrate that they “give substantial consideration to employees, community and environmental interests in its practices, products, and services.” ³⁶⁰	Financial or Social Good
77	Social Enterprise	Three characteristics that distinguish them: directly address social needs, common good is primary purpose, commercial activity as a strong revenue driver. ³⁶¹	Social Good

358. L. A. CNTY., CA., CODE tit. 2, div. 4, ch. 2.205 (2007).

359. COOK CNTY., IL., CODE OF ORDINANCES ch.34, art. IV, div. 6, § 34-229 (2014).

360. *Sustainable Business Tax Credit*, CITY OF PHILA. (Jan. 19, 2023), <https://www.phila.gov/services/payments-assistance-taxes/taxes/tax-credits/business-tax-credits/sustainable-business-tax-credit/>.

361. Benedict Sheehy and Juan Diaz-Granados, *Social Enterprise: A Legal Definition of the Term*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 636 (Dana Brakman Reiser et al. eds., 2024).

	Term	Definition	Priority
78	Social Enterprise	European Commission: (i) engage in economic activity, (ii) pursue explicit and primary social aim, (iii) have limits on distributing profits, (iv) be independent, and (v) inclusive participatory governance. ³⁶²	Social Good Not Financial
79	Social Enterprise	Social Enterprise Alliance: organizations that address a basic unmet need or solve a social or environmental problem through a market-driven approach. ³⁶³	No Priority Given (except geography)
80	Social Enterprise	Many approaches combine (i) innovation, (ii) reinvestment of income, (iii) business-led solutions, (iv) double-bottom line of both social and financial returns, and (v) a social purpose ³⁶⁴	Financial or Social Good
81	Social Enterprise	“[D]riven not by market demand, but by market failure.” ³⁶⁵	No Priority Given (except geography)
82	Social Enterprise	“[F]ocus on addressing perceived labor market failures.” ³⁶⁶	Certain Workers
83	Social Enterprise	“[C]ertain goods and services that are underrepresented in markets” such as “ecologically friendly product[s] or a market too small to support a critical niche medical device.” ³⁶⁷	No Priority Given (except geography)
84	Social Enterprise	“[A]im to improve social outcomes by supporting socially positive goods and services while discouraging the production of what may be described as ‘anti-social goods and services.’” ³⁶⁸	Social Good
85	Social Enterprise	“[P]rovides employment for certain groups that are discriminated against.” ³⁶⁹	Certain Workers

362. Benedict Sheehy and Juan Diaz-Granados, *Social Enterprise: A Legal Definition of the Term*, in SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW 637 (Dana Brakman Reiser et al., 2024).

363. *Id.*

364. *Id.* at 637–38.

365. *Id.* at 638.

366. *Id.* at 639.

367. *Id.*

368. *Id.* at 640.

369. *Id.* at 641.

	Term	Definition	Priority
86	Social Enterprise	"[P]rovide non-market goods and services"; "are for-profit organisations usually organized as a legal corporation"; and "have a clear social purpose which can be determined by their contribution to social objectives . . . which find parallels in the legal categories of charities and SOEs" ³⁷⁰	No Priority Given (except geography)
87	Social Enterprise	"[H]ave an explicit social purpose" to provide "some type of public good or service undersupplied by the market" or redistribute power that includes specific groups and access to specific goods and service ³⁷¹	No Priority Given (except geography)
88	Social Enterprise	A type of organization ³⁷²	No Priority Given (except geography)
89	Social Entrepreneur	An individual ³⁷³	No Priority Given (except geography)
90	Social Entrepreneurship	An activity or process ³⁷⁴	No Priority Given (except geography)
91	Social Enterprise	"[A] business that uses markets to have social impact"; "a business entity, a for-profit organization . . . With a social objective"; thus they have dual purposes: generating profits and providing some type of non-market public good, including cultural and environmental matters ³⁷⁵	Financial or Social Good
92	Social Entrepreneur	[C]reates innovative solutions to immediate social problems and mobilizes the ideas, capacities, resources, and social arrangements required for sustainable social transformations. ³⁷⁶	No Priority Given (except geography)

370. *Id.* at 645–46.

371. *Id.* at 647.

372. *Id.* at 647–48.

373. *Id.* at 648.

374. *Id.*

375. *Id.* at 650.

376. Peter A. Dacin et al., *Social Entrepreneurship: Why We Don't Need a New Theory and How We Move Forward From Here*, 24 ACAD. MGMT. PERSPS. 35-57

	Term	Definition	Priority
93	Social Entrepreneurship	[S]ocial entrepreneurship as innovative, social value creating activity that can occur within or across the nonprofit, business, or government sectors. ³⁷⁷	No Priority Given (except geography)
94	Social Entrepreneur	Social entrepreneurs are people with new ideas to address major problems who are relentless in the pursuit of their visions . . . who will not give up until they have spread their ideas as far as they possibly can. ³⁷⁸	No Priority Given (except geography)
95	Social Entrepreneur	A social entrepreneur is any person, in any sector, who uses earned income strategies to pursue a social objective, and a social entrepreneur differs from a traditional entrepreneur in two important ways: Traditional entrepreneurs frequently act in a socially responsible manner. . . . Secondly, traditional entrepreneurs are ultimately measured by financial results. ³⁷⁹	Social Good
96	Social Entrepreneurship	[A] set of institutional practices combining the pursuit of financial objectives with the pursuit and promotion of substantive and terminal values. ³⁸⁰	Financial or Social Good
97	Social Enterprise	[Social enterprise] differs from the traditional understanding of the nonprofit organization in terms of strategy, structure, norms, [and] values, and represents a radical innovation in the nonprofit sector. ³⁸¹	

(2017) (citing Sarah H. Alvord et al., *Social Entrepreneurship and Societal Transformation: An Exploratory Study*, 40 J. APPLIED BEHAV. SCI. 260, 262 (2004)).

377. Dacin et al., *supra* note 376, at 35–57 (citing James Austin et al., *Social and Commercial Entrepreneurship: Same, Different, or Both?*, 30 ENTREPRENEURSHIP THEORY & PRAC. 1, 2 (2006)).

378. Dacin et al., *supra* note 376, at 35–57 (citing DAVID BORNSTEIN, *HOW TO CHANGE THE WORLD: SOCIAL ENTREPRENEURS AND THE POWER OF NEW IDEAS* 1–2 (2004)).

379. Dacin et al., *supra* note 376, at 35–57 (citing Jerr Boschec & Jim McClurg, *Towards a Better Understanding of Social Entrepreneurship: Some Important Distinctions* 3, CALEDONIA CTR. SOC. DEV. (2003)).

380. Peter A. Dacin et al., *Social Entrepreneurship: Why We Don’t Need a New Theory and How We Move Forward From Here*, 24 ACAD. MGMT. PERSPS. 35–57 (2017) (citing Albert Hyunbae Cho, *Politics, Values, and Social Entrepreneurship: A Critical Appraisal*, in *SOCIAL ENTREPRENEURSHIP* 34–56 (Johanna Mair et al. (2006))).

381. Dacin et al., *supra* note 376, at 35–57 (citing Raymond Dart, *The Legitimacy of Social Enterprise*, 14 NONPROFIT MGMT. & LEADERSHIP 411 (2004)).

	Term	Definition	Priority
98	Social Entrepreneur	Social entrepreneurs are one species in the genus entrepreneur. They are entrepreneurs with a social mission. ³⁸²	Social Good
99	Social Entrepreneur	[They] have the same core temperament as their industry-creating, business entrepreneur peers. . . . What defines a leading social entrepreneur? First, there is no entrepreneur without a powerful, new, system change idea. There are four other necessary ingredients: creativity, widespread impact, entrepreneurial quality, and strong ethical fiber. ³⁸³	No Priority Given (except geography)
100	Social Enterprise	They are orthodox businesses with social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximize profit for shareholders and owners. ³⁸⁴	Social Good
101	Social Entrepreneur	[E]ntrepreneurs whose work is aimed at progressive social transformation. . . . A business to drive the transformational change. While profits are generated, the main aim is not to maximize financial returns for shareholders but to grow the social venture and reach more people in need effectively. Wealth accumulation is not a priority—revenues beyond costs are reinvested in the enterprise in order to fund expansion. ³⁸⁵	Social Good Not Financial

382. Dacin et al., *supra* note 376, at 35–57 (citing J. Gregory Dees, *The Meaning of “Social Entrepreneurship,”* in CASE STUDIES IN SOCIAL ENTREPRENEURSHIP AND SUSTAINABILITY 1 (2001)).

383. Dacin et al., *supra* note 376, at 35–57 (citing William Drayton, *The Citizen Sector: Becoming as Entrepreneurial and Competitive as Business*, 44 CAL. MGMT. REV. 120, 124 (2002)).

384. Dacin et al., *supra* note 376, at 35–57 (citing Rebecca Harding, *Social Enterprise: The New Economic Engine?*, 15 BUS. STRATEGY REV. 39, 41 (2004)).

385. Dacin et al., *supra* note 376, at 35–57 (citing Pamela Hartigan, *It’s About People, Not Profits*, 17 BUS. STRATEGY REV. 42, 45 (2004)).

	Term	Definition	Priority
102	Social Enterprise	Social enterprise is a collective term for a range of organizations that trade for a social purpose. They adopt one of a variety of different legal formats but have in common the principles of pursuing businessled solutions to achieve social aims, and the reinvestment of surplus for community benefit. Their objectives focus on socially desired, nonfinancial goals and their outcomes are the nonfinancial measures of the implied demand for and supply of services. ³⁸⁶	Social Good
103	Social Entrepreneurship	Social entrepreneurship can be loosely defined as the use of entrepreneurial behaviour for social ends rather than for profit objectives, or alternatively, that the profits generated are used for the benefit of a specific disadvantaged group. ³⁸⁷	Social Good Not Financial
104	Social Purpose Business	Social purpose business ventures are hybrid enterprises straddling the boundary between the for-profit business world and social mission-driven public and nonprofit organizations. Thus they do not fit completely in either sphere. ³⁸⁸	No Priority Given (except geography)
105	Social Entrepreneur	Social entrepreneurs are defined as individuals or private organizations that take the initiative to identify and address important social problems in their communities. [O]rganizations and individuals that develop new programs, services, and solutions to specific problems and those that address the needs of special populations. ³⁸⁹	No Priority Given (except geography)

386. Dacin et al., *supra* note 376, at 35–57 (citing Helen Haugh, *Social Enterprise: Beyond Economic Outcomes and Individual Returns*, in *SOCIAL ENTREPRENEURSHIP* (Johanna Mair et al. eds., (2006))); Sally A. Hibbert et al., *Social Entrepreneurship: Understanding Consumer Motives for Buying The Big ISSUE*, 4 J. CONSUMER BEHAV. 159-72 (2005).

387. *Id.*

388. Dacin et al., *supra* note 376, at 35–57 (citing Kai Hockerts, *Entrepreneurial Opportunity in Social Purpose Business Ventures*, in *SOCIAL ENTREPRENEURSHIP* 142, 145 (Johanna Mair et al. (2006))); BENGT JOHANNISSON, *ENERGISING ENTREPRENEURSHIP: IDEOLOGICAL TENSIONS IN THE MEDIUM-SIZED FAMILY BUSINESS* 46–57 (Denise E. Fletcher, 1st ed. 2002).

389. Dacin et al., *supra* note 376, at 35–57 (citing Ronnie L. Krosec and Evan M. Berman, *Municipal Support for Social Entrepreneurship*, 66 PUB. ADMIN. REV. 448-49 (2006)).

	Term	Definition	Priority
106	Social Entrepreneurship	Social entrepreneurship means nonprofit organizations that apply entrepreneurial strategies to sustain themselves financially while having a greater impact on their social mission (i.e., the “double bottom line”). ³⁹⁰	Social Good
107	Social Entrepreneur	A social entrepreneur is an individual, group, network, organization, or alliance of organizations that seeks sustainable, large-scale change through pattern-breaking ideas in what or how governments, nonprofits, and businesses do to address significant social problems. ³⁹¹	No Priority Given (except geography)
108	Social Entrepreneurship	[A] process involving the innovative use and combination of resources to pursue opportunities to catalyze social change and/or address social needs. ³⁹²	No Priority Given (except geography)
109	Social Entrepreneurship	We define social entrepreneurship as having the following three components: (1) identifying a stable but inherently unjust equilibrium that causes the exclusion, marginalization, or suffering of a segment of humanity that lacks the financial means or political clout to achieve any transformative benefit on its own; (2) identifying an opportunity in this unjust equilibrium, developing a social value proposition, and bringing to bear inspiration, creativity, direct action, courage, and fortitude, thereby challenging the stable state’s hegemony; and (3) forging a new, stable equilibrium that releases trapped potential or alleviates the suffering of the targeted group, and through imitation and the creation of a stable ecosystem around the new equilibrium ensuring a better future for the targeted group and even society at large. ³⁹³	Social Good

390. Dacin et al., *supra* note 376, at 35–57 (citing Gail A. Lasprogata and Marya N. Cotton, *Contemplating “Enterprise”: The Business and Legal Challenges of Social Entrepreneurship*, 41 AM. BUS. L.J. 67, 69 (2003)).

391. Dacin et al., *supra* note 376, at 35–57 (citing Paul C. Light, *Reshaping Social Entrepreneurship*, STAN. SOC. INNOVATION REV. 46, 50 (2006)).

392. Dacin et al., *supra* note 376, at 35–57 (citing Johanna Mair and Ignasi Martí, *Social Entrepreneurship Research: A Source of Explanation, Prediction, and Delight*, 41 J. WORLD BUS. 36, 37 (2006)).

393. Dacin et al., *supra* note 376, at 35–57 (citing Roger L. Martin and Sally Osberg, *Social Entrepreneurship: The Case for Definition*, STAN. SOC. INNOVATION REV. 29, 35 (2007)).

	Term	Definition	Priority
110	Social Entrepreneur	Based on whether a business has a more market- or socially driven mission and whether or not it requires profit, the SEM combines those factors that most clearly differentiate social entrepreneurship from traditional entrepreneurship. ³⁹⁴	No Priority Given (except geography)
111	Social Entrepreneurship	“[A] multidimensional construct involving the expression of entrepreneurially virtuous behaviour to achieve the social mission, a coherent unity of purpose and action in the face of moral complexity, the ability to recognise social value-creating opportunities and key decision-making characteristics of innovativeness, proactiveness and risk-taking.” ³⁹⁵	No Priority Given (except geography)
112	Social Entrepreneurship	[S]ocial entrepreneurship is exercised where some person or group: (1) aim(s) at creating social value, either exclusively or at least in some prominent way; (2) show(s) a capacity to recognize and take advantage of opportunities to create that value (“envision”); (3) employ(s) innovation, ranging from outright invention to adapting someone else’s novelty, in creating and/or distributing social value; (4) are willing to accept an above-average degree of risk in creating and disseminating social value; and (5) is/are unusually resourceful in being relatively undaunted by scarce assets in pursuing their social venture. ³⁹⁶	No Priority Given (except geography)
113	Social Entrepreneurship	We define SE as a dynamic process created and managed by an individual or team (the innovative social entrepreneur), which strives to exploit social innovation with an entrepreneurial mindset and a strong need for achievement, in order to create new social value in the market and community at large. ³⁹⁷	No Priority Given (except geography)

394. Dacin et al., *supra* note 376, at 35–57 (citing Brenda Massetti, *The Social Entrepreneurship Matrix as a “Tipping Point” for Economic Change*, 10 EMERGENCE: COMPLEXITY & ORG. 1, 7 (2008)).

395. Dacin et al., *supra* note 376, at 35–57 (citing Gillian Sullivan Mort et al., *Social Entrepreneurship: Towards Conceptualisation*, 13 AM. MARKETING ASS’N CONF. PROCEEDINGS 5, 76 (2002)).

396. Dacin et al., *supra* note 376, at 35–57 (citing Ana María Peredo and Murdith McLean, *Social Entrepreneurship: A Critical Review of the Concept*, 41 J. WORLD BUS. 56, 64 (2006)).

397. Dacin et al., *supra* note 376, at 35–57 (2017) (citing Francesco Perrini and Clodia Vurro, *Social Entrepreneurship: Innovation and Social Change Across*

	Term	Definition	Priority
114	Social Entrepreneur	[P]ersons who create or manage innovative entrepreneurial organizations or ventures whose primary mission is the social change and development of their client group. ³⁹⁸	Social Good
115	Social Entrepreneurship	Social entrepreneurship is the construction, evaluation, and pursuit of opportunities for transformative social change carried out by visionary, passionately dedicated individuals. ³⁹⁹	No Priority Given (except geography)
116	Social Entrepreneurship	I define social entrepreneurship as a process that includes: the identification of a specific social problem and a specific solution . . . to address it; the evaluation of the social impact, the business model and the sustainability of the venture; and the creation of a social mission-oriented for-profit or a business-oriented nonprofit entity that pursues the double (or triple) bottom line. ⁴⁰⁰	Social Good
117	Social Enterprise	A social enterprise is an organization that achieves large scale, systemic and sustainable social change through a new invention, a different approach, a more rigorous application of known technologies or strategies, or a combination of these. ⁴⁰¹	No Priority Given (except geography)
118	Social Entrepreneurship	Social entrepreneurship combines the resourcefulness of traditional entrepreneurship with a mission to change society. ⁴⁰²	No Priority Given (except geography)

Theory and Practice, in SOCIAL ENTREPRENEURSHIP 57 (Johanna Mair et al. (2006)).

398. Dacin et al., *supra* note 376, at 35–57 (citing Ganesh N. Prabhu, *Social Entrepreneurial Leadership*, 4 CAREER DEV. INT'L 140–145 (1999)).

399. Dacin et al., *supra* note 376, at 35–57 (citing Dave Roberts & Christine Rachel Woods, *Changing the World on a Shoestring: The Concept of Social Entrepreneurship*, 7 UNIV. AUCKLAND BUS. REV. 45, 49 (2005)).

400. Dacin et al., *supra* note 376, at 35–57 (citing Jeffrey Robinson, *Navigating Social and Institutional Barriers to Markets: How Social Entrepreneurs Identify and Evaluate Opportunities*, in SOCIAL ENTREPRENEURSHIP 95 (Johanna Mair et al. (2006)).

401. Dacin et al., *supra* note 376, at 35–57 (citing Jeffrey Robinson, *Navigating Social and Institutional Barriers to Markets: How Social Entrepreneurs Identify and Evaluate Opportunities*, in SOCIAL ENTREPRENEURSHIP 95 (Johanna Mair et al. (2006)).

402. Dacin et al., *supra* note 376, at 35–57 (citing Christian Seelos and Johanna Mair, *Social Entrepreneurship: Creating New Business Models to Serve the Poor*, 48 BUS. HORIZONS 241, 246 (2005)).

	Term	Definition	Priority
119	Social Entrepreneur	“[T]he social entrepreneur is acting as a change agent to create and sustain social value without being limited to resources currently in hand.” ⁴⁰³	No Priority Given (except geography)
120	Social Entrepreneur	“[T]he social entrepreneur aims for value in the form of transformational change that will benefit disadvantaged communities and ultimately society at large. Social entrepreneurs pioneer innovative and systemic approaches for meeting the needs of the marginalized, the disadvantaged and the disenfranchised—populations that lack the financial means or political clout to achieve lasting benefit on their own.” ⁴⁰⁴	Social Good
121	Social Entrepreneur	A legal person is a social entrepreneur from t1 to t2 just in case that person attempts from t1 to t2, to make profits for society or a segment of it by innovation in the face of risk, in a way that involves that society or segment of it. ⁴⁰⁵	No Priority Given (except geography)
122	Social Entrepreneur	[P]eople with the qualities and behaviours we associate with the business entrepreneur but who operate in the community and are more concerned with caring and helping than “making money.” ⁴⁰⁶	Social Good
123	Social Entrepreneur	[P]eople who realize where there is an opportunity to satisfy some unmet need that the state welfare system will not or cannot meet, and who gather together the necessary resources (generally people, often volunteers, money and premises) and use these to “make a difference.” ⁴⁰⁷	No Priority Given (except geography)

403. Dacin et al., *supra* note 376, at 35–57 (citing Moshe Sharir, *Gauging the Success of Social Ventures Initiated by Individual Social Enterprises*, 41 J. WORLD BUS., 6, 3 (2006)).

404. Dacin et al., *supra* note 376, at 35–57 (citing *Our Vision and Mission*, SKOLL (2024), <https://skoll.org/>).

405. Dacin et al., *supra* note 376, at 35–57 (citing Wee-Liang Tan et al., *Defining the “Social” in “Social Entrepreneurship”: Altruism and Entrepreneurship*, 1 INT’L ENTREPRENEURSHIP & MGMT. J. 353, 413 (2005)).

406. Dacin et al., *supra* note 376, at 35–57 (citing John L. Thompson, *The World of the Social Entrepreneur*, 15 INT’L J. PUB. SECTOR MGMT. 412, 413 (2002)).

407. Dacin et al., *supra* note 376, at 35–57 (citing John Thompson et al., *Social Entrepreneurship—A New Look at the People and the Potential*, 38 MGMT. DECISION 328, 328 (2000)).

	Term	Definition	Priority
124	Social Enterprise	"Social enterprises—defined simply—are organisations seeking business solutions to social problems." ⁴⁰⁸	No Priority Given (except geography)
125	Social Entrepreneurship	"[T]he notion of trading for a social purpose is at the core of social entrepreneurship, requiring that social entrepreneurs identify and exploit market opportunities, and assemble the necessary resources, in order to develop products and/or services that allow them to generate "entrepreneurial profit" for a given social project." ⁴⁰⁹	No Priority Given (except geography)
126	Social Entrepreneur	"[A]n individual who brings about changes in the perception of social issues. . . . [They] play critical roles in bringing about "catalytic changes" in the public sector agenda and the perception of certain social issues." ⁴¹⁰	No Priority Given (except geography)
127	Social Entrepreneurship	[A]ny innovative initiative to help people may be described as social entrepreneurship. The initiative may be economic or non-economic, for-profit or not-for-profit. ⁴¹¹	No Priority Given (except geography)
128	Social Entrepreneurship	Social entrepreneurship encompasses the activities and processes undertaken to discover, define, and exploit opportunities in order to enhance social wealth by creating new ventures or managing existing organizations in an innovative manner. ⁴¹²	No Priority Given (except geography)

408. Dacin et al., *supra* note 376, at 35–57 (citing John Thompson and Bob Doherty, *The Diverse World of Social Enterprise: A Collection of Social Enterprise Stories*, 33 INT'L J. SOC. ECON. 361, 362 (2006)).

409. Dacin et al., *supra* note 376, at 35–57 (citing Paul Tracey et al., *Bridging Institutional Entrepreneurship and the Creation of New Organizational Forms: A Multilevel Model*, 22 ORG. SCI. 60, 671 (2011)).

410. Dacin et al., *supra* note 376, at 35–57 (citing Sandra A. Waddock and James E. Post, *Catalytic Alliances for Social Problem Solving*, 48 HUM. RELS. 951–973, 393 (1995)).

411. Dacin et al., *supra* note 376, at 35–57 (citing MUHAMMAD YUNUS AND KARL WEBER, *CREATING A WORLD WITHOUT POVERTY: SOCIAL BUSINESS AND THE FUTURE OF CAPITALISM* 32 (2009)).

412. Dacin et al., *supra* note 376, at 35–57 (citing Shaker A. Zahra et al., *A Typology of Social Entrepreneurs: Motives, Search Processes and Ethical Challenges*, 24 J. BUS. VENTURING 519–532, 5 (2009)).

	Term	Definition	Priority
129	Social Enterprise	Led by economic, social, cultural, or environmental mission consistent with a public or community benefit; trade to fulfill mission; substantial portion of income from trade; reinvest a majority of profits/surplus to fulfill mission ⁴¹³ (definition endorsed by Social Traders). ⁴¹⁴	Financial or Social Good
130	Social Enterprise	“business that engage in market activities primarily in order to serve a social purpose.” ⁴¹⁵	Social Good
131	Social Enterprise	Belgium certification: main purpose to have a positive social impact on man, environment, or society, “as long as they are not seeking to serve the shareholders’ financial interests.” ⁴¹⁶	Not Financial
132	Impact Businesses	“enterprises aimed at generating a social and environmental impact and a positive financial result in a sustainable way” with the following determining characteristics: (a) “the objective” of generating positive social and environmental impact; (b) Pursuit of positive economic results; and (c) Sustainability of these business models. ⁴¹⁷	Social Good
133	Purposeful Corporations (or enterprises)	“commercial enterprises that aim to solve the needs of people of the planet in a profitable way, without causing more harm in the process.” ⁴¹⁸ (135-36)	No Priority Given (except geography)
134	Social Enterprise	Shenzen Provinc (China) certification: “primarily pursue social goals” and established mechanisms for ensuring focus to avoid mission drift; directed towards innovatively solving social problems through market measures; and having social impact and economic outcomes that are clearly identifiable and measurable. ⁴¹⁹	Social Good

413. Victoria Schnure Baumfield, *Social Enterprises in Australia*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 57, 58 (Dana Brakman Reiser et al. eds., 2023).

414. *Id.*

415. *Id.* at 81, 82 (Dana Brakman Reiser et al. eds., 2023).

416. *Id.* at 81, 97–98 (Dana Brakman Reiser et al. eds., 2023).

417. *Id.* at 108, 110 (Dana Brakman Reiser et al. eds., 2023).

418. Juan E. Ibanez et al., *Social Enterprises in Chile*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 297–324 (Dana Brakman Reiser et al. eds., 2023).

419. Meng Ye, *Social Enterprises in China*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 152, 173 (Dana Brakman Reiser et al. eds., 2023).

	Term	Definition	Priority
135	Social Enterprise	Four elements: (a) dedicated primarily to pursuing a social goal; (b) seeking opportunities for social change where government and market failures overlap; (c) using innovative methods to solve social issues; and (d) clear mechanisms to prevent mission drift. ⁴²⁰	Social Good
136	Social Enterprise	“should prioritise achieving a clear social goal and rely primarily on certain business models to financially support their endeavors to achieve their goals.” ⁴²¹	No Priority Given (except geography)
137	Social Enterprise	undertaking a primary objective to achieve social impact rather than profit for owners; uses surplus mainly to achieve social goals, and is managed by social entrepreneurs in an accountable, transparent, and innovative way—especially involving workers, customers, and stakeholders affected by the business activity. ⁴²²	Social Good Not Financial
138	Social Entrepreneurship Netzwerk Deutschland (SEND e.V.)	Having a primary goal of solving social challenges through sustained use of entrepreneurial means and results in new and innovative solutions. ⁴²³	Social Good
139	GmbH-gebV	Without requiring any social purpose, a new alternative LLC that is intended to meet demand for pursuing dual purposes and prohibits distributions to shareholders and their participation in increased value of the company. ⁴²⁴	No Priority Given (except geography)
140	Social Enterprise	“a consciously planned entrepreneurial activity created to solve social problems in an innovative way.” ⁴²⁵	Financial or Social Good

420. *Id.* at 156 (Dana Brakman Reiser et al. eds., 2023).

421. Meng Ye, *Social Enterprises in China*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 152, 157 (Dana Brakman Reiser et al. eds., 2023).

422. Birgit Weitemeyer, *Social Enterprises in Germany*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 248, 250 (Dana Brakman Reiser et al. eds., 2023) (reporting European Union definition from Parliament and Council 2013).

423. *Id.*

424. *Id.* at 269, 273 (reporting European Union definition from Parliament and Council 2013).

425. István Sándor, *Social Enterprises in Hungary*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 274, 277–78 (Dana Brakman Reiser et al. eds., 2023).

	Term	Definition	Priority
141	Social Enterprise	Hungary’s official but non-statutory definition: “those nonprofit and civil society organizations that have viable economic goals in addition to their social objectives; and they implement the principle of participatory decision-making in their budgets and organizational functioning” ⁴²⁶ with social and environmental goals integrated into business and taking priority when they conflict with business objectives. ⁴²⁷	Social Good
142	Social Enterprise	“[C]ompanies whose main purpose is to solve social problems through engagement in business activities.” ⁴²⁸	Social Good
143	Social Entrepreneurship	“[E]ntrepreneurial activity of subjects of social entrepreneurship contributing to solution of social problems of citizens and society carried out in accordance with the conditions provided . . . ” ⁴²⁹ , which conditions include participation of entrepreneurs in solving problems through social innovations and assistance in providing social services; ⁴³⁰ employment of socially vulnerable categories of people and creating opportunities for their labor and social integration; ⁴³¹ promoting goods manufactured, work performed or services rendered by social entrepreneurship entities by involving personal efforts of the vulnerable. ⁴³² Declaring fidelity to a social mission is not required and such a declaration if made is not sufficient. ⁴³³	No Priority Given (except geography)
144	Social Enterprise	“[A]im to pursue financial maximization, but alongside broader social or environmental objectives.” ⁴³⁴	Financial or Social Good

426. *Id.*

427. *Id.* at 278–79.

428. Nobuko Matsumoto, *Social Enterprises in Japan*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 343, 345 (Dana Brakman Reiser et al. eds., 2023).

429. Farkhad Karagussove, *Social Enterprises in Kazakhstan*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 369, 370 (Dana Brakman Reiser et al. eds., 2023).

430. *Id.*

431. *Id.* at 370–71.

432. *Id.*

433. *Id.*

434. Nicholas Romici Goldstein et al., *Social Enterprises in New Zealand* in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 389, 390 (Dana Brakman Reiser et al. eds., 2023).

	Term	Definition	Priority
145	Impact Company	Akina Foundation: prioritize mission in decision-making; ⁴³⁵ would include provisions in its constitution that identify the impact and “the prioritization of impact alongside distribution of profits.” ⁴³⁶	Social Good
146	Benefit and Common Interest Corporation	Peru Certification: Conventional company committed to environmental and social issues; organizing documents state a commitment to positive impact and integrating economic activity with achieving a chosen social/environmental benefit. ⁴³⁷	Financial or Social Good
147	Social Enterprise	Poland’s Ministry of Family, Labour and Social Policy identified flexibly applied characteristics not based on any legal definition, which from literature are as follows: private ownership and decision-making; distribution of profits takes into account needs of investors and the organization’s social objectives; purposes of socially useful needs and having a positive impact on the environment (social, cultural, natural, etc.) of the entity; and rules for managing the entity must parallel a social enterprise scheme regarding participation of employees, customers or beneficiaries. ⁴³⁸	Financial or Social Good
148	Social Cooperative	Poland: purpose to run a business although not so much to make a profit but instead to socially reintegrate members and employees of the enterprise or facilitate their employment; may only be established by said vulnerable persons. ⁴³⁹	Certain Workers

435. *Id.* at 410.

436. *Id.*

437. Edison Tabra Ochoa, *Social Enterprises in Peru*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 413, 421–22 (Dana Brakman Reiser et al. eds., 2023).

438. Szymon Byczko, *Social Enterprises in Poland*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 441, 444–45 (Dana Brakman Reiser et al. eds., 2023).

439. *Id.* at 448.

	Term	Definition	Priority
149	Social Economy	Priority given to individual and social objectives over increasing profits; collective solidarity and responsibility; aligned interests of associate members with general/community interests; democratic control by members; voluntary and free form of association; separate legal personality, management autonomy, and independence from government; allocation of greater part of profit/surplus to achieving objectives of community interests, general interests, or “non-patrimonial personal interests of the members”; transparency and responsible decision-making in interests of community it serves. ⁴⁴⁰ Not limited to entities legally defined as social enterprises. ⁴⁴¹	Social Good Not Financial
150	Social Enterprise	Romanian certification: an entity operating pursuant to the principles of the social economy and whose organizing documents provide that the entity acts with social purpose and/or general community interests, allocates at least 70% of profit/surplus to social purpose and statutory reserve, provides for an asset lock, and wages do not exceed a ratio of 1:8, ⁴⁴² and overseen by local parts of the National Agency for Payments and Social Inspection. ⁴⁴³	Social Good Not Financial
151	Insertion Social Enterprise	Romanian certification: A Romania certified social enterprise at least 30% of whose employees are members of a vulnerable group and at least 30% of cumulative work time of all employees are performed by vulnerable persons, ⁴⁴⁴ and overseen by local parts of the National Agency for Payments and Social Inspection. ⁴⁴⁵	Not Financial

440. Lucian Bercea, *Social Enterprises in Romania*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 457, 461 (Dana Brakman Reiser et al. eds., 2023).

441. *Id.* at 466.

442. *Id.* at 463.

443. *Id.* at 464.

444. *Id.* at 463–64.

445. *Id.* at 464.

	Term	Definition	Priority
152	raiSE	Singapore Centre for Social Enterprise: business entity with “clear social goals” with “clear management intent” and resources allocated to fulfill social objectives with at least 20% of resources committed for reinvestment towards social impact. ⁴⁴⁶	Financial or Social Good
153	Social Enterprise	Provide occupational and social integration services and opportunities for those disadvantaged in the regular labour market (WISE) ⁴⁴⁷	Certain Workers
154	Social Enterprise	Any entrepreneurial activity that pursues a social objective. ⁴⁴⁸	No Priority Given (except geography)
155	Social Enterprise	Have a dual purpose and follow a multi-stakeholder approach that considers economic and social parameters. ⁴⁴⁹	Financial or Social Good
156	Social Enterprise	“While their primary objective is the solution of specific social problems, they rely on the market-based instruments to achieve them.” ⁴⁵⁰	Social Good
157	Social Entrepreneurship	The purpose is to have a positive social, environmental, or cultural impact; decision-making authority and responsibility are autonomously in the organization; stakeholders have an opportunity to participate; at least 50% of revenues from services or products; and surplus income “largely” reinvested for social impact. ⁴⁵¹	Social Good
158	Idealistic Companies	Companies pursuing “idealistic purposes and realizing low profits that are exclusively and irrevocably directed to such purposes” while pursuing any “non-commercial purpose” thereby prohibiting realizing profits for oneself or stakeholders. ⁴⁵²	Not Financial

446. Alan K. Koh & Samantha S. Tang, *Social Enterprises in Singapore*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 477, 478-79 (Dana Brakman Reiser et al. eds., 2023).

447. Xenia Karametaxas & Giedre Likeikyte Huber, *Social Enterprises in Switzerland*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 505, 506 (Dana Brakman Reiser et al. eds., 2023).

448. *Id.*

449. *Id.*

450. *Id.*

451. *Id.* at 507 (Dana Brakman Reiser et al. eds., 2023) (from the Swiss Social Entrepreneurship association SENS as derived from the OECD and EMES and the Research Network on Social Enterprise).

452. *Id.* at 518.

	Term	Definition	Priority
159	Social Enterprise	Entity “that places equal emphasis” on profits and promoting specific social values, such as green consumption, fair trade, and humanitarian assistance; an economic activity that emphasizes social responsibilities and sustainable development goals, as well. ⁴⁵³	No Priority Given (except geography)
160	Social Enterprise	Taiwanese Ministry of Economic Affairs as part of a social enterprise action plan (not regulatory oversight): a business with a mission to solve social or environmental problems, with an economic surplus mainly used for reinvestment in itself. ⁴⁵⁴	Social Good
161	Social Enterprise	Taiwanese Ministry of Economic Affairs’ <i>narrower</i> definition as part of a social enterprise action plan (not regulatory oversight): enterprise whose articles clearly declare “that its primary purpose is to contribute to social welfare and to solve social problems” and that reserves at least 30% of surplus for social welfare. ⁴⁵⁵	Social Good
162	Social Enterprise	Motivation grounded in public welfare over profit; responsible to stakeholders, which is not limited to people in the enterprise but includes all members of society as opposed to only shareholders; and income mainly used to reinvest in operations and related social welfare projects versus distributions to shareholders. ⁴⁵⁶	Not Financial
163	Social Enterprise	Structure at the intersection of private sector and third sector and between socially responsible, ethical companies and nonprofit entities; concept melts social benefit and profit in same pot and gathers social goals and business methods under same roof. ⁴⁵⁷	No Priority Given (except geography)
164	Social Enterprise	Primary objective of making a social impact; obtaining revenue from an enterprise managed in entrepreneurial manner; and revenue is used to achieve its social objective. ⁴⁵⁸	Social Good

453. Wen-Yeu Wang, *Social Enterprises in Taiwan*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 521 (Dana Brakman Reiser et al. eds., 2023).

454. *Id.* at 522, 532.

455. *Id.*

456. *Id.* at 522.

457. Ayse Sahin, *Social Enterprises in Turkey*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 537, 538 (Dana Brakman Reiser et al. eds., 2023).

458. *Id.* (adapted from European Union principles for social entrepreneurship).

	Term	Definition	Priority
165	Social Enterprise	Social goal and acting to create social value; innovative and adaptive approach to opportunities to serve the social goal; engage with trading and the market such that the social mission “should remain the core” of its business; limited distribution of profits and asset lock; stakeholder participation and governance; and organizational autonomy, including from investors/owners of capital. ⁴⁵⁹ (566)	No Priority Given (except geography)
166 ⁴⁶⁰	Social Enterprise	Abu Dhabi Authority of Social Contribution accreditation scheme: organization with a social mission; licensed in Abu Dhabi; that reinvests at least 30% of profits into that business and/or social causes; that generates at least 40% of its capital from services or trading. ⁴⁶¹	Financial or Social Good

Totals for Each Priority:

Social Good – 46

Not Financial – 13

Certain Workers – 8

Certain Workers or Other Social Good – 8

Certain Workers, Other Social Good, or Financial – 3

Financial or Social Good – 43

No Priority Given (except geography) – 52

Total in which Social Good of Some Type is the Priority (including that Financial cannot be the Priority) – 75

Total in which Social Good is a Possible Priority – 127

Total in which Financial can be the Priority – 98

459. Abdul Karim Aldohni, *Social Enterprises in United Arab Emirates*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 563, 564, 566 (Dana Brakman Reiser et al. eds., 2023).

460. The total number of definitions will not match the footnotes because a couple of entries have multiple footnotes within them. The total number of definitions will not match the totals from the columns that show categorizations of the definitions because a few definitions satisfy more than one category and two definitions could not be categorized as is.

461. Abdul Karim Aldohni, *Social Enterprises in United Arab Emirates*, in *SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW* 563, 574 (Dana Brakman Reiser et al. eds., 2023).