

Can Corporations have a Social Purpose?



Irinna Vavaletskou Palaiologou

University of Bristol Law School
Wills Memorial Building
Queen's Road
Bristol
BS8 1RJ

bristol.ac.uk/law/research/legal-research-papers

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Can Corporations have a Social Purpose?

Is corporate social impact desirable? If so, how can corporate social impact be better implemented in the United Kingdom's corporate and legal culture?

Irinna Vavaletskou Palaiologou, University of Bristol Law School (2018-19)

Abstract

Shareholder primacy, as a guiding norm of whose interests corporations should be ran, has come into a sharp focus, occasioned by the recurring financial crises since the 1990s. Corporate stakeholders and corporations themselves are turning to a different ideology, so that a company can serve as a vehicle for profit creation as well as for positive social impact. Such corporations have many labels, but for this dissertation they will be identified as social impact corporations. The choice of a company to pursue a positive social impact, alongside its profit-oriented activities leads to many benefits; filling a structural gap in the market, increased functionality and efficiency, profit and sustainability. Even when juxtaposed with its potential drawbacks, such as practical concerns, greenwashing and issues of enforcement, this dissertation will argue that corporate social impact is a desirable element in the corporate world today. In light of this, the dissertation will analyse the possible soft and hard law reforms on how to better introduce and incorporate corporate social impact in the UK. The recommended soft law reforms are certification and integrated reporting, whereas hard law reform is focused around corporate governance, the legal implementation of a new corporate structure, and finally, changing UK corporate law. The purpose of this analysis is to enhance the understanding on the possible reforms and draw an overarching conclusion on the desirability and effectiveness of soft versus hard law reform.

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1. Introduction

The 21st century can be characterised by its series of financial crises, the apogee arising in 2008.¹ To this day, society is still experiencing the aftermath.² In the United States (US), scandals such as Enron using “false accounting” in 2002 and the collapse of its auditors³, are “business as usual”.⁴ Other scandals include corporate giants like Boeing, Goldman Sachs, Monsanto, Bayer, as well as banks such as Wells Fargo.⁵ It would be wishful thinking and grave ignorance “to view these cases as unrelated events caused by factors ranging from bad luck and human error to negligence and criminality”, especially when, since 2016, 200 million consumers, in the US alone, have experienced the negative impact of narrow-minded and inconsiderate business decisions.⁶ In the European Union (EU), the corresponding number is 30 million consumers,⁷ a smaller but still significant impact. In the United Kingdom (UK), this type of behaviour has been apparent since the 1990s.⁸ BP’s Deepwater Horizon scandal,⁹ Sports Direct mistreatment of its employees,¹⁰ and the collapse of BHS, all draw attention to the shortcomings of capitalism today, as founded on shareholder primacy.¹¹ Even with the UK’s corporate legal reform and section 172 of the Companies Act 2006¹² (CA 2006 or the Act), not much has changed.

The common element found in these scandals on both sides of the Atlantic is often identified as shareholder primacy.¹³ Through legal provisions, directors are encouraged to focus on the interests of the shareholders. This makes the operations of a corporation “a recipe for crisis”, because it instils a sharp focus on profit-generation.¹⁴ In the short-term this may be a functional model, however, as has been observed repeatedly, “the bubble bursts”.¹⁵ Corporate Social Responsibility (CSR) is creating little

¹ Nina Boeger, ‘Beyond the Shareholder Corporation: Alternative Business Forms and the Contestation of Markets’ (2018) 45(1) *Journal of Law and Society* 10 p 10

² *ibid* p 10

³ ‘Enron scandal at-a-glance’ (*BBC News*, 22 August 2002) <<http://news.bbc.co.uk/1/hi/business/1780075.stm>> accessed 20 August 2019

⁴ Beate Sjøfjell, ‘Chapter 4. Dismantling the Legal Myth of Shareholder Primacy: The Corporation as a Sustainable Market Actor’ in Nina Boeger, Charlotte Villiers (eds), *Shaping the Corporate Landscape – Towards Reform and Enterprise Diversity* (Hart Publishing 2018) p 78

⁵ ‘Scandals suggest standards have slipped in corporate America’ *The Economist* (6 April 2019) <<https://www.economist.com/business/2019/04/06/scandals-suggest-standards-have-slipped-in-corporate-america>> accessed 20 August 2019

⁶ *ibid*

⁷ *ibid*

⁸ David Hunter, Nina Boeger, ‘Mission-led business: CSR re-boot or paradigm shift?’ (2018) University of Bristol Law Research Paper Series Paper 1/2018, <https://research-information.bristol.ac.uk/files/140090861/Hunter_Boeger_Mission_Led_Business_v6.pdf> accessed 20 August 2019 p 5-6

⁹ Katie Allen, ‘Everyone loses out when corporate governance falls by the wayside’ *The Guardian* (11 September 2016) <<https://www.theguardian.com/business/2016/sep/11/corporate-governance-deepwater-horizon-shareholders>> accessed 20 August 2019

¹⁰ *ibid*

¹¹ Prem Sikka, ‘BHS is a victim of shareholder greed’ *The Guardian* (25 April 2016) <<https://www.theguardian.com/commentisfree/2016/apr/25/bhs-shareholder-greed-high-street-retailer-divident>> accessed 20 August 2019

¹² Department for Business, Energy & Industrial Strategy, *Corporate Governance Reform – The Government response to the green paper consultation* (August 2017) para 2.2 p 24; section 172 Companies Act 2006

¹³ Mike Martin, ‘The crisis of shareholder primacy’ (*University of Cambridge*, 19 March 2012) <<https://www.cam.ac.uk/research/discussion/the-crisis-of-shareholder-primacy>> accessed 20 August 2019

¹⁴ *ibid*

¹⁵ *ibid*

change in terms of adjusting a corporation's negative impact on society and the environment.¹⁶ This is because CSR cannot address the question that shareholder primacy was introduced to answer; in whose interests the corporation should be run¹⁷.

The first attempt to address this can be traced to the 1930s where Adolf Berle and Merrick Dodd, prominent academic figures of their time, argued in favour of shareholder primacy and stakeholder primacy respectively.¹⁸ The former school of thought, and the most prevalent today, supports that corporations exist to prioritise the interests of their shareholders, whereas the latter supports a corporation's "broader obligations to society."¹⁹ In the last two decades greater demand has been observed to distance the corporate world from shareholder primacy, in favour of a more stakeholder-oriented ideology.²⁰ Sustainability has entered the foreground of these discussions²¹ as a key objective to be achieved through the redirection of the corporation's "pursuit of profit".²²

Although these issues were first examined in-depth almost a century ago, reoccurring concerns have only recently been given the necessary attention to introduce a more wide-spread discussion on the company's purpose. Consequently, the conversation on the company's purpose has also gained newfound importance. Consumers have become increasingly suspicious of corporations, and potentially capitalism as a whole.²³ The scandals serve as evidence that their distrust is well-placed,²⁴ clouding some of capitalism's debateable benefits.²⁵ As a result, they have turned to "inclusive capitalism", which is a step away from shareholder primacy,²⁶ blending the distinction between non- and for-profit businesses.²⁷ Now, more than ever, for-profit companies are embedding the pursuit of a social impact in their operations,²⁸ "and are transparent about how they do it."²⁹ Even companies like Unilever are becoming part of the "responsible business agenda."³⁰

¹⁶ Antony Page, Robert A. Katz, 'Is Social Enterprise the New Corporate Social Responsibility' (2011) 34 Seattle University Law Review 1351 p 1352

¹⁷ Kevin V. Tu, 'Socially Conscious Corporations and Shareholder Profit' (2016) 84 The George Washington Law Review 121 p 122

¹⁸ *ibid* p 123

¹⁹ *ibid* p 123

²⁰ Suntae Kim, Matthew J. Karlesky, Christopher G. Myers, Todd Schifeling, 'Why are Companies Becoming B Corporations' [2016] Harvard Business Review < <https://hbr.org/2016/06/why-companies-are-becoming-b-corporations>> accessed 20 August 2019

²¹ Karsten Engsig Sorensen, Mette Neville, 'Social enterprises: how should company law balance flexibility and credibility?' (2014) 15(2) E.B.O.R. 267 p 271

²² Joseph Karl Grant, 'When Making Money and Making a Sustainable and Societal Difference Collide: Will 'Benefit Corporations Succeed or Fail' (2013) 46 Indiana Law Review 581 p 582

²³ Hunter, Boeger (n 8) p 6

²⁴ Eduardo Porter, 'The Spreading Scourge of Corporate Corruption' *The New York Times* (10 July 2012) <<https://www.nytimes.com/2012/07/11/business/economy/the-spreading-scurge-of-corporate-corruption.html>> accessed 20 August 2019

²⁵ Hunter, Boeger (n 8) p 6

²⁶ *ibid* p 7

²⁷ Dana Brackman Reiser, 'Blended Enterprise and the Dual Mission Dilemma' (2010) 35 Vermont Law Review 105 p 105

²⁸ Ofer Eldar, 'The Role of Social Enterprise and Hybrid Organizations' (2017) 2017 Columbia Business Law Review 92 p 95

²⁹ Advisory Panel, 'On a Mission in the UK Economy – Current state of play, vision and recommendations from the advisory panel to the Mission-led Business Review 2016' (Legal & General Assurance Society Limited., 2016) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/574687/Advisory_Panel_Report_-_Mission-led_Business.pdf> accessed 24 June 2019 p 5

³⁰ *ibid* p 5

Governments have acknowledged the impact of this ideological shift.³¹ For example, former Prime Minister Theresa May had shown support on the matter, and two Green Papers were published to determine the role of an “inclusive economy” in the current climate.³² However, provided the government’s repeated failure to address concerns on corporate governance and structure, as well as the size of the issues which a more ‘inclusive economy’ is trying to address, the businesses themselves have to become a part of the solution.³³ Involving a variety of actors and means in the reform of the current corporate governance structure is important in ensuring coherence.³⁴ Consumer distrust of corporations, the demand for social concerns in the corporate structure and the inability of the Government to act alone and effectively on these issues, makes the discussion on implementing a corporate social impact in the UK imperative.

Reforming the corporate sector will not only impact the sector itself; it has the potential of creating a positive social impact for a wide array of constituents and can result in long-term change. This dissertation will examine the desirability of corporate social impact, followed by a discussion on the possible reforms that can be introduced in order to do so successfully. Chapter II will provide information on the debate between shareholder and stakeholder primacy. Chapter III will focus on the desirability of corporate social impact and the social impact corporation (SIC). Finally, in Chapter IV, this dissertation will present possible soft and hard law reforms for better introducing corporate social impact in the UK jurisdiction.

2. Context

2.1 The Shareholder – Stakeholder Debate

2.1.1 The Roots of the Debate

One of the “most fundamental and enduring” debates that has shaped corporate law is on “the proper purpose of the... corporation”, narrowed down to the shareholder primacy approach and stakeholder primacy.³⁵ This is an important element in contextualising the issue of this dissertation on corporate social impact. Also known as the “Great Debate”,³⁶ it started in 1932³⁷ through the publication of Adolph A. Berle who argued that powers of the corporation or its members should be “exercisable only for the ratable benefit of all the shareholders”, in support of shareholder primacy.³⁸ Merick Dodd however, on representing stakeholder primacy, strongly supported that a corporation also has a social purpose with regard to its stakeholders, not merely to enrich its shareholders.³⁹ Literature continued to build upon these works throughout the 20th and 21st centuries, such as Friedman’s work,⁴⁰ the Chicago school of economists⁴¹, and finally through the work of Professors Hansmann and

³¹ J. Haskell Murray, ‘The Social Enterprise Law Market’ (2016) 75 Maryland Law Review 541 p 580

³² Hunter, Boeger (n 8) p 3

³³ Advisory Panel (n 30) p 5

³⁴ Martin (n 13)

³⁵ Lynn A Stout, ‘New Thinking on Shareholder Primacy’ (2012) 2 ACCOUNT ECON LAW xix p 2

³⁶ *ibid* p 2

³⁷ Lynn A. Stout, ‘Bad and Not-so-Bad Arguments for Shareholder Primacy’ (2002) 75 Southern California Law Review 1189 p 1189

³⁸ *ibid* p 1189

³⁹ *ibid* p 1189

⁴⁰ Yahav Lichner, ‘Should Shareholders’ Interests Be the Mainstay of Corporate Governance?’ [2009] EBLR 889 p 891-892

⁴¹ Stout (n 35) xix p 3

Kraakman.⁴² Today, shareholder primacy is acknowledged as the foundation of “Anglo-American corporate law”, prominent in the US and the UK.⁴³

2.1.2 Shareholder Primacy

In practice, shareholder primacy is an “ideology” and “judge-made law”⁴⁴, especially in the US⁴⁵, supporting that directors must prioritise shareholders over stakeholders.⁴⁶ This is comprised of shareholder wealth maximisation and corporate control, “judicially enforceable fiduciary duties owed by management” and the right of shareholders to “bring derivative action”.⁴⁷ In its most extreme form, shareholder primacy allows for a positive social impact if it also “generate[s] profits”.⁴⁸ However, in its more moderate, and perhaps more realistic, form, it supports that profit generation by corporations allows them to “contribute to the public good by paying taxes, hiring employees, and providing goods and services.”⁴⁹ Nonetheless, some of the biggest corporate failures of our time, such as Carillion⁵⁰, “Enron,... Tyco International and WorldCom”⁵¹, have all to some extent been attributed to the prevalence of shareholder primacy.⁵² As supported by Lynn Stout, reinforcing share price as the sole determinant of company success, “harm[s] long-term returns”, often at the expense of non-shareholder stakeholders.⁵³

2.1.3 Stakeholder Primacy

The negative externalities of shareholder primacy and the team production theory, highlight the importance of examining what stakeholder primacy can offer in terms of corporate purpose, as “Shareholders alone cannot make a firm”.⁵⁴ Consequently, this acknowledges the importance of stakeholder groups.⁵⁵ The stakeholder primacy theory focuses on “a better balance of all [stakeholder] interests”⁵⁶, simultaneously acknowledging that profit should not be the priority at all times.⁵⁷ Like the

⁴² *ibid* p 4; Henry Hansmann, Reinier Kraakman, ‘The End of History for Corporate Law’ (2001) 89 *The Georgetown Law Journal* 439

⁴³ A. Keay, ‘Getting to Grips with the Shareholder Value Theory in Corporate Law’ (2010) 39 *CLWR* 358 p 358

⁴⁴ Robert J. Rhee, ‘A Legal Theory of Shareholder Primacy’ (*Harvard Law School Forum on Corporate Governance and Financial Regulation*, 11 April 2017) <<https://corpgov.law.harvard.edu/2017/04/11/a-legal-theory-of-shareholder-primacy/>> accessed 20 August 2019

⁴⁵ Felicia R. Resor, ‘Benefit Corporation Legislation’ (2012) 12 *Wyoming Law Review* 91 p 96; *Dodge v. Ford Motor Co.*, 170 N.W. 668 (Mich. 1919)

⁴⁶ Keay (n 43) p 358

⁴⁷ Virginia Harper Ho, ‘Enlightened Shareholder Value: Corporate Governance beyond the Shareholder-Stakeholder Divide’ (2010) 36 *J CORP L* 59 p 72

⁴⁸ *ibid* p 73

⁴⁹ *ibid* p 74

⁵⁰ Jonathan Ford, ‘shareholder primacy is central to modern governance woes’ *The Financial Times* (4 March 2018) <<https://www.ft.com/content/b12be30e-1fa0-11e8-9efc-0cd3483b8b80>> accessed 20 August 2019

⁵¹ H. Jeff Smith, ‘The Shareholders vs. Stakeholders Debate’ [2003] *MITSloan Management Review* <<https://sloanreview.mit.edu/article/the-shareholders-vs-stakeholders-debate/>> accessed 20 August 2019

⁵² Ford (n 50); Lichner (n 40) p 896

⁵³ *ibid*; for more information on shareholder primacy see Lynn A. Stout, ‘Bad and Not-so-Bad Arguments for Shareholder Primacy’ (2002) 75 *Southern California Law Review* 1189, Kevin V. Tu, ‘Socially Conscious Corporations and Shareholder Profit’ (2016) 84 *The George Washington Law Review* 121, Tom C. Hodge, ‘The Treatment of Employees as Stakeholders in the European Union’ (2010) 38 *Syracuse J. Int’l L. & Com.* 91, Andrew Keay, ‘Ascertaining The Corporate Objective: An Entity Maximisation and Sustainability Model’ (2008) 71(5) *Modern Law Review* 663

⁵⁴ Stout (n 37) p 1195

⁵⁵ *ibid* p 1195

⁵⁶ Lisa M Fairfax, ‘The Rhetoric of Corporate Law: The Impact of Stakeholder Rhetoric on Corporate Norms’ (2006) 31 *J CORP L* 675 p 680

⁵⁷ *ibid* p 680

shareholder theory, stakeholder primacy exists on a spectrum of intensity, however, there are homogeneous underlying concerns on stakeholder representation and benefits,⁵⁸ especially on the practical application of who is a stakeholder.⁵⁹

2.2 Corporate Social Impact and the Social Impact Corporation

Concerns on shareholder primacy have shed further light on the role of sustainability in corporations, giving rise to a more “social economy”.⁶⁰ Although “contested”,⁶¹ in the corporate context, sustainability is identified as “demonstrating... social and environmental aspects in the... company and its interaction with its stakeholders”, indicating the significance of stakeholder involvement.⁶² Sustainability of the corporation is also identified through “the triple bottom line”: environmental, social and financial dimensions, but shifting more focus on the former.⁶³ However, the economic dimension is acknowledged as a necessity for corporate sustainability and pursuing social goals.⁶⁴

These social goals are essentially what is referred to here as corporate social impact or purpose. Corporate social impact is akin to the definition of public benefit; “a positive effect (or reduction of negative effects) on one or more categories of persons, entities, communities or interests (other than stockholders...)”.⁶⁵ Simply stated, impact is “the value created by the organization for society”,⁶⁶ the definition adopted for the purpose of this analysis. An in-depth definition of the social element of corporate impact will not be provided as this is a highly complex issue and earlier literature has abstained from its detailed discussion. Some companies may choose to embed their social impact promise in their charter, like Unilever⁶⁷, however, over the past decades a new form of corporation has emerged to better serve companies’ pursuits of creating a positive social impact. The definition of social impact is significant here, because not all corporations will choose to incorporate or re-incorporate as SICs.

This new type of corporate establishment has many names, however they all express the same underlying ideology. This paper will refer to this structure type as the SIC. Perhaps the most overarching concept that can be employed to describe the SIC is the hybrid organization, that fuses at “least two different sectoral paradigms, logics and value systems”⁶⁸, in this instance fusing economic and social considerations.⁶⁹ A social enterprise is a common example of such an organisation.⁷⁰

⁵⁸ Justin Blount, ‘Creating a Stakeholder Democracy under Existing Corporate Law’ (2016) 18 U PA J BUS L 365 p 371

⁵⁹ Lichner (n 40) p 892

⁶⁰ Engsig Sorensen, Neville (n 21) p 270

⁶¹ Andrew Keay, ‘Ascertaining The Corporate Objective: An Entity Maximisation and Sustainability Model’ (2008) 71(5) Modern Law Review 663 p 691

⁶² *ibid* p 691

⁶³ *ibid* p 691

⁶⁴ *ibid* p 693

⁶⁵ Mark J. Loewenstein, ‘Benefit Corporation Law’ (2017) 85 University of Cincinnati Law Review 381 p 391

⁶⁶ Filipe Santos, Anne-Caire Pache, Cristoph Birkholz, ‘Making Hybrids Work: Aligning Business Models and Organizational Design for Social Enterprises’ (2015) 57(3) California Management Review 36 p 39

⁶⁷ George A. Mocsary, ‘Freedom of Corporate Purpose’ [2016] Brigham Young University Law Review 1319 p 1378

⁶⁸ Bob Doherty, Helen Hugh, Fergus Lyon, ‘Social Enterprises as Hybrid Organizations: A Review and Research Agenda’ (2014) 16 International Journal of Management Reviews 417 p 418

⁶⁹ Santos, Pache, Birkholz (n 66) p 37

⁷⁰ Doherty, Hugh, Lyon (n 68) p 419; Brett McDonnel, ‘Benefit Corporations and Public Markets: First Experiments and Next Steps’ (2017) 40 Seattle University Law Review 717 p 720 “Social enterprises, as I use the term here, are businesses that are committed to both generating economic returns for their investors while also pursuing one more social missions.”

Another label is ‘blended enterprise’, whose definition acknowledges its corporate structure will pursue profit over social impact or social impact over profit, depending on the circumstances.⁷¹ A blended enterprise may also be labelled as mission-led business or dual-mission.⁷² Although different legal corporate structures have been created, such as the Community Interest Company in the UK,⁷³ and the L3C in the US⁷⁴, the B Corp certification⁷⁵ and the benefit legislation⁷⁶ are the closest practical embodiment of the SIC.

3. The Desirability of Corporate Social Impact

3.1 Advantages

3.1.1 Filling the gap

As mentioned previously, the SIC incorporates the hybrid organisation, the blended mission enterprise and the dual-mission enterprise constructs. The theoretical nature of these forms becomes tangible via the Benefit Corporation and the B Corp formats, two akin structures, that have been extensively examined and can be extrapolated to the SIC umbrella. These structures, as well as the overall integration of the pursuit of a social impact in the corporation, have drawn increased attention over the past decade and with good reason.

One of the primary benefits of the SIC, or the adoption of a social pursuit, is that it addresses the gap between for-profit and non-profit corporations.⁷⁷ Under conventional corporate law in the US and the UK, there is concern on the extent to which directors can consider “other purposes without breaching their duties.”⁷⁸ In the US, this is felt more intensely, given case law such as *Dodge v. Ford Motor Co.* and *Revlon Inc.*, arguably deterring pursuit of non-profit related activities.⁷⁹ Directors cannot clearly differentiate activities constituting sufficient base for shareholder action and what the role of “an environmental or social purpose” is in this context.⁸⁰

In the UK, there does not appear to be any formal, express constraint on pursuing a social goal through the conventional corporation; under company law, “The general [directors’] duties... are owed to the company.”⁸¹ However, the ordinary interpretation of this provision is often akin to shareholder value maximisation. Additionally, adopting a more “pluralist” approach to the CA 2006 was deemed “unreasonable and impractical”, further constraining the acknowledgment of “wider social policy

⁷¹ Dana Brakman Reiser, ‘Blended Enterprise and the Dual Mission Dilemma’ (2010) 35 Vermont Law Review 105 p 105

⁷² Hunter, Boeger (n 8) p 8

⁷³ Dana Brakman Reiser, ‘Benefit Corporations – A Sustainable Form of Organization’ (2011) 46 Wake Forest L. Rev. 591 p 593

⁷⁴ Brakman Reiser (n 71) p 108

⁷⁵ Jay Coen Gilbert, ‘Are B Corps An Elite Charade For Changing the World’ (*Forbes*, 30 August 2018) <<https://www.forbes.com/sites/jaycoengilbert/2018/08/30/are-b-corps-an-elite-charade-for-changing-the-world-part-1/#70df92717151>> accessed 20 August 2019

⁷⁶ Mark J. Loewenstein, ‘Benefit Corporations: A Challenge in Corporate Governance’ (2013) 68 The Business Lawyer 1007 p 1010

⁷⁷ Kennan El Khatib, ‘The Harms of Benefit Corporation’ (2015) 65 Am. U. L. Rev. 151 p 166

⁷⁸ Brakman Reiser (n 73) p 608-609

⁷⁹ Haskell Murray (n 31) p 548

⁸⁰ Tu (n 17) p 155

⁸¹ Companies Act 2006 ss 170

goals”.⁸² With certainty being a key issue of the for-profit corporation in pursuing a social mission⁸³, the SIC format, for example through the Benefit Corporation infrastructure, “provide[s] a seemingly easy fix.”⁸⁴ Expressly stated requirements in terms of stakeholder interests is merely one of the ways in which social impact corporations can address certainty concerns, arguably broadening director discretion in a positive way. Moreover, the reporting requirements under dual-mission provisions and certification schemes further reinforce the legitimacy of pursuing both profit and a social purpose.⁸⁵ Non-profit organisations that are not necessarily charities have increased flexibility with regard to their operations and choice of legal form.⁸⁶ However, they usually “dramatically cabin profit distribution”,⁸⁷ and have access to limited funding.⁸⁸ Because of the more traditional profit and funding structure of the SIC, in conjunction with the embedded social mission, or the choice to commit to creating a positive social impact, this corporate arrangement is an ideal filler between for-profit and non-profit corporations.⁸⁹ With today’s economy and corporate world becoming increasingly complex, the author argues that such a contribution brought forth by the SIC format, is a strong argument in favour of acknowledging the place which SICs should occupy today.

3.1.2 Functionality and efficiency

SICs greatly benefit from increased functionality and efficiency due to pre-existing corporate infrastructure, as they “tend to set up using the traditional [company limited by shares] form” in the UK.⁹⁰ The status quo of the movement is not to eliminate the conventional corporate structure, rather to harmoniously embed a social purpose “by adjusting the constitutional object clauses and reporting”.⁹¹ As the conventional corporate structure already occupies a central place in today’s economy, it is reasonable that a new format resulting from simple variations to a pre-existing structure should also occupy a place in today’s corporate world. Furthermore, a structure involving a more solid commitment to corporate social impact can be a first step towards a power equilibrium between shareholders and other company stakeholders. Essentially, transitioning from shareholder to “stakeholder capitalism” adjusts shareholder power, restoring it to other constituents of the company.⁹² Arguably, the most dramatic change is “branding”.⁹³

The argument on informational efficiency assumes that certification and legislation, both key aspects of the SIC, have acquired brand awareness like that of B Corp. The branding of B Corp and the Benefit

⁸² The Association of Chartered Certified Accountants, ‘A guide to directors’ responsibilities under the Companies Act 2006’ (Certified Accountants Educational Trust, July 2007) <<https://www.accaglobal.com/content/dam/acca/global/PDF-technical/business-law/tech-tp-cdd.pdf>> accessed 24 June 2019

⁸³ Tu (n 17) p 156

⁸⁴ *ibid* p 165

⁸⁵ Brakman Reiser (n 73) p 616

⁸⁶ Anne-Marie Piper, Philip Reed, Emma James, ‘Charitable organisations in the UK (England and Wales): overview’ (*Practical Law*, 1 November 2018) <[https://uk.practicallaw.thomsonreuters.com/8-633-4989?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1](https://uk.practicallaw.thomsonreuters.com/8-633-4989?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1)> accessed 24 June 2019

⁸⁷ Brakman Reiser (n 73) p 607

⁸⁸ Tu (n 17) p 157

⁸⁹ Brakman Reiser (n 73) p 616-617

⁹⁰ Advisory Panel (n 29) p 25

⁹¹ Boeger (n 1) p 19

⁹² Marc Gunther, ‘B Corps: sustainability will be shaped by the market, not corporate law’ *The Guardian* (12 August 2013) <<https://www.theguardian.com/sustainable-business/b-corps-markets-corporate-law>> accessed 24 June 2019

⁹³ Dana Brackman Reiser, ‘Governing and Financing Blended Enterprise’ (2010) 85 *Chi. – Kent L. Rev.* 619 p 643

Corporation, is a clear communication of its distinct value⁹⁴, allowing it to “stand[...] out “in the midst of a ‘greenwash’ revolution””.⁹⁵ The independence and efficiency of this certification mechanism, as a signal of a corporate social mission, is a desirable side-effect of introducing dual-mission corporate structures, as informational efficiency is one of the biggest desires of today’s market. An improved means of communication of company activity to shareholders and other constituencies strongly supports the argument that SICs can and should occupy a place in today’s markets, especially as recognition of the SIC branding continues to spread.

This informational efficiency can also be observed within the company. For example, B Corp is “a cost-effective way” for companies to become aware of their impact on the environment, the community and their employees.⁹⁶ It also aids them in identifying and eliminating “waste and operational inefficiencies”.⁹⁷ Consequently, due to certification mechanisms and transparency associated with corporate social impact structures, a positive cycle of change can be created, making it a desirable model in the long-term as well as the short-term.

3.1.3 Financial Incentives

Another key motivator for the adoption of a ‘blended’ format is its financial advantages. SICs enjoy significant financial benefits resulting from their status due to talent, consumer and capital attraction. Increased preference toward SICs is reflected by millennials, especially as part of the workforce.⁹⁸ The benefits that a dual-mission corporation offers are amongst the priorities for today’s workforce, leading to “more engaged and productive” employees.⁹⁹ Over the past decade, employee and consumer attraction has translated into money. In the US, as early as 2012, 68 million consumers reflected a preference for SICs.¹⁰⁰ In the UK alone, mission-led businesses had “a combined turnover of £165 billion and employ 1.4 million people”.¹⁰¹ Consequently, this preference toward SICs by a variety of non-shareholder stakeholders arguably indicates benefits for these groups, which they may not be able to get from companies following a more conventional structure. This desirability toward SICs and the possible benefit accrual, further supports that companies embedding a social impact pursuit in their activities deserve a prominent place in today’s corporate arena.

These trends have been noticed by investor firms like J.P Morgan¹⁰² as well as “socially responsible funds, foundations, high net worth individuals, and even public investors.”¹⁰³ The newest trend in investing is Socially Responsible Investing.¹⁰⁴ American investment funds like Eventide Gilead Fund and New Alternatives Fund invest in more stakeholder-oriented companies that “serve the common good”.¹⁰⁵ Additionally, mission-led businesses pursuing a social impact are going public and are at the forefront of major business transactions, as was the case with Laureate Education, Etsy and Natura

⁹⁴ Brakman Reiser (n 73) p 622

⁹⁵ Kim, Karlesky, Myers, Schifeling (n 20)

⁹⁶ Richard Stammer, ‘It Pays to Become a B Corporation’ (*Harvard Business Review*, 6 December 2016) <<https://hbr.org/2016/12/it-pays-to-become-a-b-corporation>> accessed 24 June 2019

⁹⁷ *ibid*

⁹⁸ Advisory Panel (n 29) p 11

⁹⁹ *ibid* p 12

¹⁰⁰ Xiujian Chen, Thomas F. Kelly, ‘B-Corps – A Growing Form of Social Enterprise: Tracing Their Progress and Assessing Their Performance’ (2015) 22(1) *Journal of Leadership and Organizational Studies* 102 p 104-105

¹⁰¹ Advisory Panel (n 29) p 10

¹⁰² El Khatib (n 77) p 167

¹⁰³ Eldar (n 28) p 173

¹⁰⁴ Tu (n 17) p 161

¹⁰⁵ Tu (n 17) p 161-162

going public.¹⁰⁶ Consequently, being a mission-led business is profitable, rebuffing that shareholder primacy is the only way to financial success.¹⁰⁷ Overall, this author concurs that a financial desire exists for SICs, alongside the important benefits of efficiency and practicality.

3.1.4 Sustainability and the public benefit

Provided the dual-mission nature of SICs, “mission-led benefits may sometimes take longer to be reflected in performance”.¹⁰⁸ This is expected¹⁰⁹, as mission-led businesses may have a more long-term perspective for the corporation, as opposed to focusing on short-term gains. This is a key factor of what makes SICs sustainable. Here, sustainability is the “triple bottom line” which “captures the essence of sustainability by measuring the impact of an organization's activities on the world ... including... its profitability and shareholder values and its social, human and environmental capital.”¹¹⁰ Furthermore, by shifting their focus to long-term sustainability they can “solve intertemporal or mission maintenance concerns”.¹¹¹

As becomes apparent from the triple bottom line, the public benefit created by a mission-led business, certified or not, is as much part of its identity as it is a key reason for its desirability, arguably earning it a place in today's corporate world. However, where a company chooses to officialise its status, for example under an American Benefit Corporation statute, it solidifies and legitimises its commitment to ‘doing good’,¹¹² by introducing an “oversight” mechanism.¹¹³ This directly relates to the benefits of transparency imposed by certification agencies. Such transparency can also help create a network between entities expressing similar values.¹¹⁴ A strong network between such similar-minded companies can also contribute to long term ideological change, which is perhaps necessary, provided the issues of the corporate status quo. The format which such companies employ as a vehicle for change, solidifies the necessity of their presence amidst the sea of companies narrowly focused on shareholder value maximisation.

3.2 Disadvantages

3.2.1 Impracticality and financial difficulties

Despite the SICs' increasing momentum, well-founded concerns still exist. Two questions echo throughout the literature; how can a company maintain its social impact mission in the long-term and how can one assess its public benefit impact. Primarily, within the UK jurisdiction, “the ultimate duty of directors is to promote the success of the company for the benefit of the company's shareholders/members”, theoretically allowing the consideration of stakeholder interests more widely.¹¹⁵ However, what happens when the company, at a crossroads, must choose between its

¹⁰⁶ Jay Coen Gilbert, Charmian Love, ‘The €1 bn Body Shop deal shows you can have profit and purpose’ (*WIRED*, 20 September 2017) < <https://www.wired.co.uk/article/b-corps-danone-profit-purpose-unilever-body-shop>> accessed 24 June 2019

¹⁰⁷ David Hunter, ‘The Arrival of B Corps in Britain: Another Milestone Towards a More Nuanced Economy?’ in Nina Boeger and Charlotte Villiers (eds), *Shaping the Corporate Landscape* (Hart Publishing 2018) p 263

¹⁰⁸ Advisory Panel (n 29) p 12

¹⁰⁹ *ibid* p 12

¹¹⁰ Timothy F. Slaper, Tanya J. Hall, ‘The Triple Bottom Line: What Is It and How Does It Work?’ (*Indiana Business Review*, Spring 2011) <<https://www.ibrc.indiana.edu/ibr/2011/spring/article2.html>> accessed 24 June 2019

¹¹¹ Page, Katz (n 16) p 1368

¹¹² Ryan Honeyman, ‘Has the B Corp Movement Made a Difference?’ (*Stanford Social Innovation Review*, 13 October 2014) < https://ssir.org/articles/entry/has_the_b_corp_movement_made_a_difference> accessed 24 June 2019

¹¹³ Grant (n 22) p 588

¹¹⁴ Honeyman (n 112)

¹¹⁵ Advisory Panel (n 29) p 25

mission of profit and its social mission? With “shareholders... uniquely hamstrung as enforcers”, increased financial return is likely to prevail, even at a cost to the company’s social label.¹¹⁶ Additionally, if standards are low, corporations could potentially maintain their social impact status without fully upholding their social commitment.¹¹⁷ A further issue on assessment, particularly within the context of the benefit corporation, is the definition of “general public benefit”, or lack thereof, as well as the lack of guidance by “an unregulated third-party standardsetter.”¹¹⁸ A lack of awareness and branding could prove detrimental to the funding of such corporations.¹¹⁹ These issues will be discussed in further detail later on. It is important to note that, although the issues mentioned here can pose a real risk to the underlying goals of the SIC format, they should not be viewed as grave enough to disregard the aforementioned benefits that can be accrued through employing this format as a company.

3.2.2 Lack of proper accountability, enforcement and transparency

With third party certifiers holding a vital role for corporations choosing to pursue a social impact, there is an overarching sense of accountability regarding their social and environmental promises. However, the relevant literature attempts to dispel this accountability to a significant extent. For example, the structure of the Benefit Corporation legislation has been criticised as being “vague and overarching, unable to provide sufficient accountability” despite state-specific amendments.¹²⁰ The lack of a comprehensive definition of “general public benefit” is problematic because it is unclear what these corporations should be accountable for.¹²¹ The provisions on director’s duties within the mission-led context lead to further confusion.¹²² This gives rise to issues on the maintenance of directors’ powers to serve shareholder interests, especially through the lack of financial constraints.¹²³ Some consolation, although illusory, can be found in the amendments of the company’s articles¹²⁴ and the increased transparency requirements¹²⁵. However, because the ownership structure remains “virtually unscathed”¹²⁶, what may be needed is an overarching ideological shift to realistically ensure that directors will use their extensive discretion to benefit all stakeholders. Still, a more large-scale ideological shift can result from the embedding of social impact within the corporation in the format of the SIC. Assumptions can be made on the use of their powers, but “It remains to be seen how differently B Corp directors will behave in practice.”¹²⁷

The third-party oversight, whether it be B Corp or another type of corporate entity making a social impact commitment, may be characterised as optional at best in many circumstances,¹²⁸ further contributing to the issue of directorial discretion. The justification for lack of explicit direction in this regard has been justified on the grounds of flexibility and the vital role it holds in the proper

¹¹⁶ Brakman Reiser (n 73) p 613

¹¹⁷ *ibid* p 611

¹¹⁸ *ibid* p 611

¹¹⁹ Brakman Reiser (n 93) p 650

¹²⁰ Michelle Cho, ‘Benefit Corporations in the United States and Community Interest Companies in the United Kingdom: Does Social Enterprise Actually Work?’ (2016) 37 *Nw. J. Int’l L. & Bus.* 149 p 157

¹²¹ *ibid* p 157-158

¹²² *ibid* p 159-160

¹²³ Bridges Ventures, ‘To B or Not To B An Investor’s Guide to B Corps’ (Bridges Ventures LLP, September 2015) p10

¹²⁴ *ibid* p 10

¹²⁵ Adam Sulkowski, Sandra Waddock, ‘Beyond Sustainability Reporting: Integrated Reporting Is Practiced, Required, and More Would Be Better’ (2013) 10 *University of St. Thomas Law Journal* 1060 p 1066-1067

¹²⁶ Brakman Reiser (n 93) p 649-650

¹²⁷ Bridges Ventures (n 123) p11

¹²⁸ Cho (n 120) p 154

functioning and growth of such enterprises¹²⁹, yet the extent of this leeway leaves room for “directors to favo[u]r their own interests.”¹³⁰ The convoluted nature of legislative and informational documents in conjunction with “the rapid proliferation of labels”, reduce transparency and the public’s ability to hold SICs accountable.¹³¹ Despite the aforementioned drawbacks of third-party oversight mechanisms, still, SICs can be viewed as more transparent than companies adopting a more conventional corporate structure.

3.2.2 Greenwashing, mission drift and ‘real’ reform

This leads to a highly reiterated and more well-substantiated criticism for social impact businesses, ““green washing” or “purpose-washing””, using labels and marketing associated with creating social or environmental benefits¹³² without creating this effect.¹³³ The dual-mission corporate format is particularly vulnerable to this; the inherent “‘prevalent and persistent’ tensions between their social mission and commercial activities” can result in “mission drift”.¹³⁴ Additionally, an individual can adopt the specific corporate structure to exploit its branding value¹³⁵, potentially allowing corporations to greenwash legitimately.¹³⁶ This can mislead both consumers¹³⁷ and investors.¹³⁸ Furthermore, it can negatively affect SICs genuinely trying to create positive change. Ultimately, the purpose of the newly emerging, dual-mission corporate structure was “to reduce greenwashing.”¹³⁹ If the third parties responsible for oversight and enforcement remain vigilant then greenwashing and mission-drift can be addressed.¹⁴⁰

Finally, the attention and resources enjoyed by businesses committing to create a social impact, even when engaging in greenwashing or experience ‘mission drift’, shifts attention from business structures that are “truly non-profit distributing (or restricted profit distribution) enterprises”.¹⁴¹ Such businesses usually employ asset-lock to solidify their mission as part of their identity, a financially constricting¹⁴² but effective mechanism. If entities such as Benefit Corporations want to maintain their mission-led identity, supplementary legislative attention is necessary to address these issues.¹⁴³ Chapter IV will expand on these concerns.

3.3 Is there merit in further examining how to better incorporate the SIC in the UK’s corporate and legal landscape?

In conclusion, despite drawbacks to the legal and non-legal structure of the SIC, SICs and corporate social impact more holistically are not just desirable, but necessary. Primarily, the SIC structure can help address the gap between for-profit and non-profit corporate formats. Potentially, this structure

¹²⁹ *ibid* p 158

¹³⁰ Afra Afsharipour, ‘Redefining Corporate Purpose: An International Perspective’ (2017) 40 *Seattle U. L. Rev.* 465 p 491

¹³¹ Tu (n 17) p 164

¹³² Advisory Panel (n 29) p 28

¹³³ El Khatib (n 77) p 154

¹³⁴ Wendy Stubbs, ‘Sustainable Entrepreneurship and B Corps’ (2017) 26 *Business Strategy and the Environment* 331 p 335

¹³⁵ Boeger (n 1) p 24

¹³⁶ Hunter, Boeger (n 8) p 8-9

¹³⁷ Grant (n 22) p 596

¹³⁸ *ibid* p 599-600

¹³⁹ El Khatib (n 77) p 167-168

¹⁴⁰ *ibid* p 168

¹⁴¹ Hunter, Boeger (n 8) p 9

¹⁴² Hunter, Boeger (n 8) p 12

¹⁴³ Tu (n 17) p 167

can provide more discretion for directors to pursue a wider array of interests, specifically non-shareholder interests, with a lesser risk of sanctions. More importantly, as today's global economy and corporate world are becoming increasingly complex and facing new challenges, the SIC can be a new and effective way to bring the corporate world into the future, allowing the SIC to prove its place in today's economy. The place of companies seeking to make a social impact is solidified further, as this format is built on the foundations of conventional corporate structures and can, therefore, be practical to implement whilst simultaneously introducing significant benefits for stakeholders. These benefits have led to a strong preference expressed by consumers, workers and investment funds. Therefore, in addition to solidifying its place by 'popular vote', the SIC format is also beneficial for the economy. Another way by which it is arguably good for markets and the economy is through increased communication efficiency, provided the brand recognition of third-party certifiers like B Lab and other certifications. Finally, there is a well-deserved place for SICs in today's markets and economies because of the much-needed contributions they make, and have made, in terms of sustainability and serving the public benefit. Incorporating as a SIC allows the company to make a solid, and even legal commitment to serving different interests, which may have been disregarded, such as those of workers, consumers and society as a whole. When these companies work together, they can create strong networks between them, potentially leading to long-term ideological change in terms of the purpose of the corporation in today's world.

Issues relating to practicality, transparency and certainty were identified above. However, these concerns should have little impact on acknowledging the necessity of SICs today. The advantages of this corporate format prove that it builds a bridge for companies to create monetary value for their shareholders whilst simultaneously creating social and environmental value for stakeholders. The disadvantages of corporate social impact mainly arise from the platform on which it stands, particularly how that platform can ensure a company honestly and transparently upholds its social or environmental mission. Consequently, there is significant merit in examining how to better incorporate corporate social impact in the UK's corporate and legal landscape because incorporating social impact in the corporation is vital in moving toward a better future. The following section addresses a series of recommendations, as well as an evaluation of the feasibility of each recommendation, to determine how to address the drawbacks of possible SIC formats. This discussion is crucial in better establishing the place of SICs, with a focus on UK jurisdiction.

4. Embedding & Reforming Corporate Social Impact and the Social Impact Corporation in the UK

4.1 Soft Law Reform

4.1.1 Certification

4.1.1.1 *The Status Quo – B Corporation and other Certifications*

The first analysis undertaken here is that of soft law reforms. Here, soft law encompasses certification, which serves as the starting point of corporate social impact. As the consumer of multinational corporations is gaining increasing access to information, his demands for the corporation's role in society are also increasing.¹⁴⁴ Consequently, such corporations occupy a key role in corporate

¹⁴⁴ Olivier Boiral, 'The Certification of Corporate Conduct: Issues and Prospects' (2003) 142 *International Labour Review* 317 p 317

regulation on national and supranational levels, alongside non-governmental organizations and other participants.¹⁴⁵

Key platforms filling a regulatory gap that have allowed corporations to assume this role include “certification programs and adopting code of conduct”,¹⁴⁶ such as the B Corp certification, awarded by B Lab. The process of B Corp certification is relatively simple; the corporation completes the B Impact Assessment (BIA or the Assessment), supporting its claims with the necessary paperwork, it changes its articles of incorporation to align with those provided by B Lab officialising its mission, also known as creating mission-lock¹⁴⁷, and pays a “certification fee” depending on its unique corporate characteristics.¹⁴⁸ Additionally, the company must qualify as a B Corp biennially.¹⁴⁹

A frequent concern is a potential conflict due to the certification fee.¹⁵⁰ However, the Standards Advisory Council (SAC), an independent authority of “representatives of different stakeholder groups”, is responsible for the BIA.¹⁵¹ To ensure that the BIA is as holistic as possible, it covers “four “impact areas”... governance, workers, community, and the environment”, each corresponding to certain points, as seen fit by the SAC.¹⁵² The scores must then become available electronically to the public.¹⁵³ The certification reform in this section will mainly be discussed through the lens of the B Corp certification, as it has already been applied in practice and extensive literature has been produced. The use of the B Corp certification framework will also be used to further support the author’s main argument brought forth earlier, that there is a place for SICs in today’s corporate world.

4.1.1.2 The Benefits of the B Corporation Certification

Efficiency and Assessment

The B Lab system for B Corp certification and support creates a significant positive impact, making it a highly viable way of implementing corporate social impact in the UK. These benefits are akin to those offered by the SIC more generally, discussed in Chapter III, which also further support the necessity of its underlying corporate ideology. Primarily, certifications which look at the company holistically, can noticeably affect management and resource allocation. It is possible to have a general sense of a company’s performance, however, an assessment through certification mechanisms, can lead to a deeper understanding of how effectively it is pursuing its social aim.¹⁵⁴ Thus companies can better “allocate resources to maximize social outcomes”¹⁵⁵, by “benchmark[ing] themselves” and better targeting their operational issues.¹⁵⁶ Additionally, public disclosure of BIA scores further encourages

¹⁴⁵ Issachar Rosen-Zvi, ‘Climate Change Governance: Mapping the Terrain’ (2011) 2 Carbon and Climate Law Review 234 p 237-238

¹⁴⁶ *ibid* p 238, 239

¹⁴⁷ Bridges Ventures (n 123) p 5

¹⁴⁸ Robert T. Esposito, ‘The Social Enterprise Revolution in Corporate Law: A Primer on Emerging Corporate Entities in Europe and the United States and the Case for the Benefit Corporation’ (2013) 4(2) William & Mary Business Law Review 639 p 696

¹⁴⁹ Tu (n 17) p 150

¹⁵⁰ Michael B. Dorff, ‘Assessing the Assessment: B Lab’s Effort to Measure Companies’ Benevolence’ (2017) 40 Seattle U. L. Rev. 515 p 522-523

¹⁵¹ *ibid* p 522-523

¹⁵² *ibid* p 523

¹⁵³ *ibid* p 525

¹⁵⁴ Cecillia Grieco, Laura Micheleni, Gennaro Iasevoli, ‘Measuring Value Creation in Social Enterprises: A Cluster Analysis of Social Impact Assessment Models’ (2015) 44 Nonprofit & Voluntary Sector Quarterly 1173 p 1174, 1177

¹⁵⁵ *ibid* p 1174, 1177

¹⁵⁶ Bridges Ventures (n 123) p 12

companies to improve in order to recertify biennially.¹⁵⁷ The quantification available through the BIA can help corporation to have a social impact more efficiently and effectively.¹⁵⁸

Public disclosure and transparency

Public disclosure is a key benefit that makes the B Corp Certification a central proposal brought forth by this author, targeting the troubling lack of transparency in conventional corporate practices. Public informational disclosure of companies' social impact gives rise to corporate accountability and supports better communication of information to stakeholders,¹⁵⁹ helping directors better consider risks on different stakeholder groups.¹⁶⁰ This is significantly based on the notion that "the... link between positive image and corporate survival is largely determined by available information and how it is communicated".¹⁶¹ Informational availability significantly empowers consumers and the public, as it allows them to convey a message through every purchase,¹⁶² and can ensure 'mission-lock'.¹⁶³ Empowering people through information both supports corporate social impact and leads to long-term ideology and legislative changes, as was the case with "Eco-labelling".¹⁶⁴ Convincingly, the increased disclosure to the public as a result of certification, makes certification a viable candidate for better implementing social impact in the UK. As these are also elements arguably lacking from conventional corporate practices, this once again indicates the importance of the SIC structure. A continuous preference toward dual-mission structures by consumers and the public indicates that the level of importance is perceived more widely.

4.1.1.3 The B Corp Certification and the UK Corporate Context

As mentioned previously, the B Corp Certification has been implemented in the UK, with over 190 corporations being certified.¹⁶⁵ Part of becoming a B Corp means "corporations must amend their organic documents... instructing directors to consider interests beyond those of shareholders".¹⁶⁶ This is not a novelty for the corporate and legal world, considering the CA 2006, and more specifically, section 172.¹⁶⁷ In the UK, the wording of the necessary amendments follows that of section 172

¹⁵⁷ *ibid* p 12

¹⁵⁸ George Serafeim, Bronagh Ward, Sophie Lawrence, 'B Corps & Benefit Corporations – Understanding the implications for companies and investors' (KKS Advisors, April 2017) p 6

¹⁵⁹ *ibid* p 6

¹⁶⁰ Bridges Ventures (n 123) p 10

¹⁶¹ Onyeka K. Osuji, 'Corporate social responsibility, juridification and globalisation: 'inventive interventionism' for a 'paradox'' (2015) 11(3) *International Journal of Law in Context* 265 p 286

¹⁶² Anne Field, 'Boosting Awareness of B Corps By Linking Them to Voting' (*Forbes*, 27 November 2018) <<https://www.forbes.com/sites/annefield/2018/11/27/boosting-awareness-of-b-corps-by-linking-them-to-voting/#191464426a70>> accessed 20 August 2019

¹⁶³ Hunter (n 107) p 262

¹⁶⁴ Colleen Theron, 'Setting standards for sustainable business' (2012) 24(6) *Environmental Law and Management* 304 p 306

¹⁶⁵ PWC, 'A guide to the UK B Corporation movement' (*PricewaterhouseCooper*) <<https://www.pwc.co.uk/industries/retail-consumer/insights/b-corp.html>> accessed 20 August 2019

¹⁶⁶ Theron (n 164) p 639

¹⁶⁷ Companies Act 2006 section 172

closely¹⁶⁸, in order to align “internal... and external” responsibilities of the company.¹⁶⁹ One of the most significant additions, that this author believes deals with drawbacks of section 172, is that the directors must uphold their duties towards stakeholders “through [the company’s] business operations”.¹⁷⁰ By explicitly placing all stakeholders on the same level¹⁷¹, the wording of the B Corp amendments further ensures that shareholder primacy does not prevail in this context. However, like section 172, directorial discretion is allowed when considering the relevant decision-making factors.¹⁷² Although the B Corp requirements have been tailored to a great extent to comply with pre-existing legal requirement, there are still drawbacks that must be discussed.

4.1.1.4 The Drawbacks of the B Corp Certification

The B Impact Assessment

A key criticism faced by the B Corp Certification is the BIA, despite its contributions in better integrating social impact pursuits in corporations. A corporation’s BIA score is not always reflective of the reality of its performance and social or environmental impact.¹⁷³ This is also expressed by certified corporations who feel that their improvement is not proportionately reflected by the Assessment results.¹⁷⁴ Additionally, discrepancies are also found across the Assessment’s ‘impact areas’; it is not guaranteed that a company will perform equally well across the board, skewing the image of the company’s overall positive impact.¹⁷⁵ A contrasting point may be true as well. Given the Assessment’s focus on a company’s positive actions and results, the company’s harmful actions may be overlooked,¹⁷⁶ giving rise to a fictional result. Unfortunately, only 10% of B Corps are reviewed per year.¹⁷⁷ Internal assessments by the company can potentially lead to greenwashing if the company is not committed to making a social impact.¹⁷⁸ Although some of these issues could be resolved through the provision of stricter metrics,¹⁷⁹ flexibility is necessary, given the extensive array of corporations that have been certified.¹⁸⁰ Even with the element of flexibility present in the Assessment, some companies struggle to fit into this model.

¹⁶⁸ Bridges Ventures (n 123) “1) The objects of the Company are to promote the success of the Company for the benefit of its members as a whole and, through its business and operations, to have a material positive impact on society and the environment, taken as a whole. 2) A Director shall have regard (amongst other matters) to: a. the likely consequences of any decision in the long term, b. the interests of the Company’s employees, c. the need to foster the Company’s business relationships..., d. the impact of the Company’s operations on the community and the environment, e. the desirability of the Company maintaining a reputation for high standards of business conduct, and f. the need to act fairly as between members of the Company... 3) For the purposes of a Director’s duty to act in the way he or she considers, in good faith, most likely to promote the success of the Company, a Director shall not be required to regard the benefit of any particular Stakeholder Interest or group of Stakeholder Interests as more important than any other.”

¹⁶⁹ Hunter, Boeger (n 8) p 15

¹⁷⁰ *ibid* p 15-16

¹⁷¹ *ibid* p 16

¹⁷² Hunter (n 107) p 260

¹⁷³ Serafeim, Ward, Lawrence (n 158) p 10

¹⁷⁴ *ibid* p 10

¹⁷⁵ *ibid* p 10

¹⁷⁶ *ibid* p 10

¹⁷⁷ *ibid* p 10

¹⁷⁸ Boiral (n 144) p 327

¹⁷⁹ Bridges Ventures (n 123) p 14

¹⁸⁰ *ibid* p 14

A general reform of the BIA could help address these concerns. Regarding this issue, the author supports B Lab's efforts in implementing "industry addenda"¹⁸¹ as to better reflect the distinct characteristics of different industries. Provided that different industries place more emphasis on different impact areas, a certified B Corporation should be given the option of selecting one area it wishes to highlight in its assessment. Another recommendation is to introduce minimum threshold for all impact areas to ensure that effort is being made across the board by the corporation.

Multinational corporations are the ultimate shapers of the corporate world today. It is therefore imperative that they can accurately reflect their performance as certified B Corps. However, due to their size, multinational corporations have highly intricate structures, e.g. the structure of their supply chain.¹⁸² As their "manufacturing activities are more and more widely dispersed"¹⁸³, how can they hold subcontracting parties accountable to the same values that they apply to their practice? They can try to hold themselves accountable on a purely internal and corporate level, as opposed to a more overarching level. Even then, if the same assessment is used for multinational and smaller companies, it would be unreasonable for the same number to reflect the same impact, given their vast difference in size.¹⁸⁴ Finally, one element of the Assessment that raises issues regardless of corporate size is quantifying qualitative data, which is the type of data that does not fit into "the traditional economic approach".¹⁸⁵ This issue will be further discussed in the context of integrated reporting.

Aside from introducing a conversion to proportionately compare Assessment scores between larger and smaller companies, a second assessment should be created to better reflect the realities of multinational corporations to facilitate them if they wish to certify as B Corps. This is also an important step in triggering a mass ideological shift regarding shareholder primacy and serving a social purpose in the multinational corporate context. In this instance, the assessment should be more centred on internal governance, the element which a multinational corporation would have the most realistic control over. Additionally, the assessment could also focus on the suppliers that the multinational corporation contracts with, and their social impact.¹⁸⁶

Lack of Enforcement and Accountability

Another criticism on the B Corp Certification's ability to implement corporate social impact is enforceability. Without proper enforceability, SICs may find themselves at risk regarding their place amongst conventional corporations, as, possibly, they can be subject to much greater scrutiny from the public. Essentially, the key 'enforcer' of the obligations undertaken by a certified company is "public pressure".¹⁸⁷ Previously, it was supported that public opinion is fundamental to the survival of corporate social impact, however, it is not necessarily sufficient to hold the corporation to its social commitments. In agreement with earlier literature, it is the author's view, that the certification is about "moral, rather than legal, assurances to non-shareholder constituencies and social interests"¹⁸⁸. Accordingly, auditing 10% of B Corps annually¹⁸⁹ is insufficient in ensuring compliance by the majority.

¹⁸¹ Larry Hamermesh, Bart Houlahan; Rick Alexander, Dan Osusky, 'A Conversation with B Lab' (2017) 40 Seattle U. L. Rev. 321 p 337

¹⁸² Serafeim, Ward, Lawrence (n 158) p 14, 15

¹⁸³ Boiral (n 144) p 317-318

¹⁸⁴ Dorff (n 150) p 527

¹⁸⁵ Grieco, Michelini, Iasevoli (n 155) p 1175, 1177

¹⁸⁶ Boiral (n 144) p 325

¹⁸⁷ Rosen-Zvi (n 145) p 239

¹⁸⁸ Esposito (n 148) p 696

¹⁸⁹ Brakman Reiser (n 73) p 614

In these earlier stages, compliance is necessary in proving that SICs are worthy of occupying a place in today's markets.

The reality is that the available routes for enforcement are those of the conventional corporate structure which are, more often than not, only available to shareholders.¹⁹⁰ Once again, stakeholders are left without "a right of action against the B Corporation".¹⁹¹ Thus, increased risk of unaccountability towards stakeholders and society, or at least specific groups of stakeholders, can be noted given the immense variety of interests within and outside the company.¹⁹² Harmfully, this situation can give rise to mission-drift, i.e. stepping away from one's mission usually to pursue monetary concerns¹⁹³, if the company is not seriously committed to its certification.¹⁹⁴ If this is the case, this mechanism would have failed in incorporating social impact in the UK corporate sector.

With regards to reform, changing the BIA would be virtually meaningless without addressing the issue of enforcement. Stricter guidelines on disclosure and reporting should be implemented, however, these will be further discussed in conjunction with integrated reporting in the following section. Requiring recertification annually could prove very costly both for B Lab as well as the corporations, consequently, more resources should be allocated for audits. This author recommends that a higher percentage of all B Corporations should be audited annually to ensure compliance and better statistics on compliance rates. The responsibility of enforcement and oversight should also fall on the hands of the company's stakeholder groups. One option is to create a "multi stakeholder advisory body"¹⁹⁵, to also be embedded in the amendments dictated by B Lab. The benefit director's role could be maintained in addition to this.¹⁹⁶ Further discussion on this role will be undertaken under the recommendation of a new corporate legal structure. Some power should be given to such bodies to bring internal action or action via B Lab if the company is straying from its social commitments.¹⁹⁷ A discussion on the structure and function of these roles in practice are beyond the scope of this paper.

4.1.2 Integrated Reporting

A further way by which corporate social impact can be better implemented in the UK is through improved reporting standards, more specifically through integrated reporting (IR). Society is becoming increasingly aware of the overarching impact of large corporations and "There is greater demand that companies disclose information on issues that are material to their operations".¹⁹⁸ Thus, it is becoming more apparent that conventional financial reporting is inadequate.¹⁹⁹ Provided the ever-expanding role of corporations in shaping the environment and society, it is only appropriate that corporate reporting also advances to reflect this new-found "long-term value-creation", as opposed to a narrow financial focus.²⁰⁰

¹⁹⁰ *ibid* p 614

¹⁹¹ Esposito (n 148) p 696

¹⁹² Grieco, Michelini, Iasevoli (n 155) p 1178

¹⁹³ IGI Global, 'What is Mission Drift' (*IGI Global*) <<https://www.igi-global.com/dictionary/the-fundraising-patterns-and-the-management-professionalization-in-independent-arts-organizations-in-see/55963>> accessed 20 August 2019

¹⁹⁴ Bridges Ventures (n 123) p 13

¹⁹⁵ Serafeim, Ward, Lawrence (n 158) p 16

¹⁹⁶ Brakman Reiser (n 73) p 614

¹⁹⁷ *ibid* p 614

¹⁹⁸ Theron (n 164) p 304

¹⁹⁹ Grieco, Michelini, Iasevoli (n 155) p 1176

²⁰⁰ Deloitte, 'Integrated Reporting – A better view?' (2011) p 4

4.1.2.1 Defining Integrated Reporting and Establishing a Framework

A more inclusive approach to corporate reporting started in the US following the Bhopal chemical leak in 1984 and has since expanded.²⁰¹ Today, IR is seen as “a single presentation” “of traditional financial reporting, sustainability reporting, and governance reporting”.²⁰² This is akin to the definition provided by the International Integrate Reporting Committee (IIRC), which highlights it as a useful tool for companies to become more sustainable and transparent.²⁰³

Yet, there is also no single agreed upon framework²⁰⁴, although the IIRC’s initiative is one of the more “notable” ones.²⁰⁵ This is the framework this paper will employ in presenting IR as a platform for corporate social purpose. The IIRC has provided a more unified set of elements for IR, in the form of six types of capital; financial, manufactured, human, intellectual, natural and social,²⁰⁶ which “should provide a window into the... company's relationships with key stakeholders”.²⁰⁷ In the UK, the Government and the Financial Reporting Council are making increased efforts toward more inclusive reporting, labelled as the Strategic Report²⁰⁸, in the context of the Companies Act.²⁰⁹

4.1.2.2 Critical Discussion on the Contributions of Integrated Reporting

IR is comprised of similar goals to those of the B Corp Certification and thus accrues several of the same benefits, most importantly through the increase in informational availability. For directors, IR allows the improvement of strategy development, overall functionality and short and long-term value²¹⁰ creation for the company given the “holistic” data that becomes available.²¹¹ Other stakeholders and investors also acquire further knowledge on the workings of the company.²¹² Consequently, they can make more informed²¹³ and risk-averse decisions.²¹⁴ In terms of composing one’s Integrated Report, corporations may already have the necessary foundations to do so.²¹⁵ Most of the necessary information on the report structure, especially key performance and risk indicators,

²⁰¹ Sulkowski, Waddock (n 125) p 1062-1063

²⁰² Deloitte (n 200) p 2

²⁰³ *ibid* p 5

²⁰⁴ Slotta, Werner p 8

²⁰⁵ Deloitte (n 200) p 2

²⁰⁶ Anniki L Laine, ‘Integrated Reporting: Fostering Human Rights Accountability for Multinational Corporations’ (2015) 47 GEO WASH INT’L L REV 639 p 655-656; “The IIRC named the following as six capitals that an Integrated Report should analyze: (1) *Financial capital*: the pool of funds available to the organization; (2) *Manufactured capital*: manufactured physical objects, as distinct from natural physical objects; (3) *Human capital*: the skills and experience of people, and their motivations to innovate; (4) *Intellectual capital*: intangibles that provide competitive advantage; (5) *Natural capital*: water, land, minerals and forests, biodiversity, and ecosystem health; and (6) *Social capital*: the institutions and relationships established within and between each community, group of stakeholders, and other networks to enhance individual and collective well being, including an organization’s social license to operate.”

²⁰⁷ Laine (n 206) p 655

²⁰⁸ Iris H-Y Chiu, ‘An Institutional Theory of Corporate Regulation’ (2018) (71)(1) Current Legal Problems 279 p 321

²⁰⁹ Sallie Pilot, ‘The changing face of UK reporting and the need to focus on long-term value creation’ (*Integrate Reporting*, 18 July 2018) < <https://integratedreporting.org/news/the-changing-face-of-uk-reporting-and-the-need-to-focus-on-long-term-value-creation/>> accessed 20 August 2019

²¹⁰ Slotta, Werner (n 204) p 6

²¹¹ Deloitte (n 200) p 4, 6

²¹² *ibid* p 4

²¹³ Sulkowski, Waddock (n 125) p 1080

²¹⁴ *ibid* p 1079

²¹⁵ *ibid* p 8

can be found through other integrated reports and organisations.²¹⁶ In conclusion, the benefits of IR make it a solid platform for corporate social impact to be implemented in the UK.

The main issue that is faced with non-financial reporting, extended to IR, is that “standardization remains elusive.”²¹⁷ This is an important concern because it indicates a lack of uniformity and comparability on a transnational scale. However, the relevant literature reflects an overarching preference on IR format, “[the Global Reporting Initiative] guidelines”.²¹⁸ Greenwashing remains an issue, even when such standards are legally required, thus undertaking IR voluntarily could be more effective²¹⁹. Even on a voluntary basis, it is important to introduce standardisation, to further aid the fight against greenwashing, as well as other drawbacks discussed previously. These criticisms do little to shake the confidence in the future of IR in corporate social purpose, therefore, further supporting the argument on the well-deserving place of SICs and corporate social impact.

4.1.3 Merging Certification with Integrated Reporting

The final proposal for the soft law reform on better incorporation of positive social impact by corporations in the UK is merging the B Corporation Certification with IR. The feasibility of this recommendation stems from the similarities identified between the certification mechanism and IR. Both methods reflect that with increased and more holistic informational transparency, the corporation and its stakeholders benefit under a more sustainable and efficient model of corporate directorship.²²⁰ Additionally, by incorporating a more standardised IR mechanism within the B Corp Certification, a significant number of the Certification’s issues would be addressed. Given that B Lab’s requirements, especially through the BIA, already embody some of the principles of IR, B Lab should adopt the IIRC framework in order to introduce a better form of reporting, leading to increased uniformity. Although different jurisdictions provide for different reporting requirements,²²¹ there is a real possibility of improving over time, and even “permeat[ing] into legislation.”²²² In this instance a solid “hard law framework” is necessary to further support soft law efforts of reform,²²³ only if appropriately structured.

4.2 Hard Law Reform

4.2.1 Reforming Corporate Governance

4.2.1.1 Transition from “government to governance”²²⁴

The suitability of a nation state to appropriately regulate its corporate sector, which is becoming increasingly self-governing, has arguably started to deteriorate.²²⁵ Expectedly, the increased rate of globalisation further weakens the government’s position.²²⁶ The legal and political landscape have become increasingly reliant on “parallel systems”,²²⁷ as hard law has failed the corporate landscape

²¹⁶ *ibid* p 8

²¹⁷ *ibid* p 5

²¹⁸ Sulkowski, Waddock (n 125) p 1064

²¹⁹ *ibid* p 1077

²²⁰ *ibid* p 1078

²²¹ Slotta, Werner (n 204) p 9

²²² Theron (n 164) p 304

²²³ Sulkowski, Waddock (n 125) p 1066

²²⁴ John Grin, ‘Reflexive modernisation as a governance issue, or: designing and shaping re-structuration’ in Jan-Peter Vob, Dierk Bauknecht, Rene Kemp (eds), *Reflexive Governance for Sustainable Development* (Edward Elgar Publishing Limited 2006) p 58

²²⁵ *ibid* p 58

²²⁶ *ibid* p 58

²²⁷ Inger-Johanne Sand, ‘Understanding the New Forms of Governance: Mutually Interdependent, Reflexive, Destabilised and Competing Institutions’ (1998) 4 *European Law Journal* 271 p 273

repeatedly.²²⁸ For the purpose of this paper, ‘parallel systems’ are regulators such as the Financial Reporting Council (FRC), responsible for the publication of the Corporate Governance Code (the Code) in the UK.²²⁹ This author argues that a quasi-hard law approach through regulators and corporate governance may be better equipped to address the shortcomings of UK corporate law. Primarily, from a cultural perspective, corporate governance codes stemmed from “Anglo-American practice” and can more frequently be found in common law jurisdictions.²³⁰ Additionally, as opposed to the hard law approach, regulators can perform the function of “conflict settlers and “agenda setters””²³¹ and can issue decisions, which although not in the form of law can “have a strong “technical” legitimacy”²³² without the intricacy of passing formal legislation.²³³

The overarching concept of governance has proven difficult to define uniformly across the legal and socio-political spheres, however there are common elements that can help advance one’s understanding on the topic. Corporate governance is a mechanism through which (1) “corporations are directed and controlled”²³⁴, (2) managerial and directorial decisions are encouraged in light of the company’s long-term interests²³⁵ (3) embody a “non-hierarchical” approach²³⁶, (4) advantageously merge “the market and society”.²³⁷ The UK’s Code expresses a simple “‘comply-or-explain’ approach”.²³⁸ However, time and again the status quo of corporate governance has failed to prevent some of the largest financial crises of the 21st century.²³⁹ Thus, the pursuit of corporate sustainability “calls for a fundamental reorientation of governance...”²⁴⁰ In this author’s view, the most organic way to approach the shortcomings of corporate governance today is through New Governance (NG), and more specifically, through the reflexive and experimentalist schools.

4.2.1.2 New Governance

NG is one of the most recent developments in the field, creating a link with sustainability, by introducing a self-regulatory quality to private, corporate actors.²⁴¹ These non-financial dimensions to

²²⁸ Simon Deakin, ‘Reflexive Governance and European Company Law’ (2009) 15 *European Law Journal* 224 p 234

²²⁹ Financial Reporting Council, *The UK Corporate Governance Code* (2018)

²³⁰ Nina K Cankar, Simon Deakin and Marko Simoneti, ‘The Reflexive Properties of Corporate Governance Codes: The Reception of the Comply-or-Explain Approach in Slovenia’ (2010) 37 *Journal of Law and Society* 501 p 506

²³¹ Eric Brosseau, Jean-Michel Glachant, ‘Regulators as Reflexive Governance Platforms’ (2011) 12 *Competition and Regulation in Network Industries* 194 p 203

²³² Arie Rip, ‘A co-evolutionary approach to reflexive governance – and its ironies’ in Jan-Peter Vob, Dierk Bauknecht, Rene Kemp (eds), *Reflexive Governance for Sustainable Development* (Edward Elgar Publishing Limited 2006) p 82

²³³ Brosseau, Glachant (n 231) p 205

²³⁴ Kenneth Armstrong, Claire Kilpatrick, ‘Law, Governance, or New Governance – The Changing Open Method of Coordination’ (2007) 13 *Columbia Journal of European Law* 649 p 798

²³⁵ Armstrong, Kilpatrick (n 232) p 798

²³⁶ Marc van der Meer, Jelle Visser, Ton Wilthagen, ‘Adaptive and Reflexive Governance: The Limits of Organized Decentralization’ (2005) 11(3) *European Journal of Industrial Relations* p 351

²³⁷ Grin (n 224) p 57

²³⁸ Cankar, Deakin, Simoneti (n 230) p 503

²³⁹ Armstrong, Kilpatrick (n 232) p 798

²⁴⁰ Jan-Peter Vob, Dierk Bauknecht, Rene Kemp, ‘Reflexive governance: a view on an emerging path’ in Jan-Peter Vob, Dierk Bauknecht, Rene Kemp (eds), *Reflexive Governance for Sustainable Development* (Edward Elgar Publishing Limited 2006) p 423

²⁴¹ Julia Black, ‘Paradoxes and Failures: ‘New Governance’ Techniques and the Financial Crisis’ (2012) 75(6) *Modern Law Review* 1037 p 1045

the corporation²⁴², introduce NG, as ““meta-regulation”” or ““enforced self-regulation””.²⁴³ It allows regulators to propose the rules but private parties are the ones to determine how they will conform and how to communicate their actions to the wider public and the regulatory authority.²⁴⁴ Consequently, extending the regulatory responsibilities of corporations involves weakening the state’s involvement whilst strengthening communication, “flexibility..., inclusiveness, transparency”, overall resulting in a “more decentralised... approach”.²⁴⁵ The opening of this new channel of communication that is NG, “encourages reflexivity”.²⁴⁶

4.2.1.3 Reflexive and Experimentalist Governance

Like NG, reflexive governance (RG) is a type of ‘meta-regulation’²⁴⁷ which stemmed from further examining sustainable development.²⁴⁸ Its roots lie in the most simple definition of reflexivity, “acting upon oneself”.²⁴⁹ In the context of the corporation, RG encourages private participation through internal governance monitoring, later reviewed by the appropriate authorities.²⁵⁰ By placing most emphasis on the procedural aspect of governance in a way that is anticipatory of problems²⁵¹, it introduces an important “flexibility” in addressing corporate governance issues.²⁵² The “polyarchy” of RG²⁵³ arising from the involvement of private, “diverse” corporate actors²⁵⁴ is its key strength in allowing it to introduce desirable, long-term change, making it “a machine for learning from diversity”.²⁵⁵

Experimentalist governance (EG) is also subject to the same characterisation of a machine,²⁵⁶ although for different reasons. Like RG, it anticipates that no system of monitoring and improvement is perfect,²⁵⁷ seeking to address this issue through the assumption of doubt.²⁵⁸ There is no final solution, simply ongoing reformation “through comparison”; this is what experimentalism meant to John Dewey,²⁵⁹ and the underlying definition adopted for the purpose of this dissertation. It does so through comparison²⁶⁰, as opposed to the introspective nature of RG. At the centre of EG, in the corporate context, lies cooperation and communication between actors found at different levels on

²⁴² Peer Zumbansen, ‘New Governance in European Corporate Law Regulation as Transnational Legal Pluralism’ (2009) 15 *European Law Journal* 246 p 249

²⁴³ Black (n 241) p 1045

²⁴⁴ *ibid* p 1045

²⁴⁵ Neil Gunningham, ‘Regulatory Reform and Reflexive Regulation – Beyond Command and Control’ in Eric Brousseau, Tom Dedeurwaerdere, and Bernd Siebenhüner (eds), *Reflexive Governance for Global Public Goods* (MIT Press Scholarship 2012) p 96

²⁴⁶ *ibid* p 98

²⁴⁷ *ibid* p 90-91

²⁴⁸ *ibid* p 86

²⁴⁹ Peter H. Feindt, Sabine Weiland, ‘Reflexive governance: exploring the concept and assessing its critical potential for sustainable development. Introduction to the special issue’ (2018) 20(6) *Journal of Environmental Policy & Planning* 661 p 664

²⁵⁰ Gunningham (n 245) p 90

²⁵¹ *ibid* p 88

²⁵² Zumbansen (n 242) p 256-257

²⁵³ Deakin (n 228) p 226

²⁵⁴ Sand (n 227) p 289

²⁵⁵ Deakin (n 228) p 226

²⁵⁶ Charles F. Sabel, Jonathan Zeitlin, ‘Experimentalist Governance’ in David Levi-Faur (ed), *The Oxford Handbook of Governance* (Oxford University Press 2012) p 176

²⁵⁷ Grainne De Burca, Robert O. Keohane, Charles Sabel, ‘Global Experimentalist Governance’ (2014) 44 *B.J.Pol.S.* 477 p 484

²⁵⁸ *ibid* p 171

²⁵⁹ *ibid* p 171

²⁶⁰ *ibid* p 170

the corporate stakeholder hierarchy.²⁶¹ What differentiates it from other forms of governance is its pursuit of empowerment of 'lower-level' stakeholders.²⁶² Consequently, EG and RG become alternative vehicles for long-term change in the corporate context, making them vital candidates on better implementing corporate social impact in the UK. Additionally, their focus on stakeholder participation, a key concern of the underlying ideology of SICs, further contributes to the idea that EG and RG are fitting ideologies to discuss in this context, as increased stakeholder involvement is one of the vital arguments in favour of SICs.

4.2.1.4 Reflexive Reform

One way that the SIC is differentiated from the conventional corporate structure is through its unique governance. To this day, this alternative governance has not been institutionalised appropriately. This dissertation supports that a revamping of the current UK Corporate Governance Code to reflect an RG or EG ideology would not only help with corporations seeking to adopt a more dual mission structure, but it could also lead to more extensive change. The latter would arise as a result of the extensive application of the Code over listed companies, as well as smaller companies using the Code as an informal guide.

Currently, the Code theoretically reflects RG.²⁶³ As a document, the Code was reformed to address the intense consequences of the financial crises and scandals that followed; it is looking to "achieve societal ends" by "avoid[ing] repercussions from unintended effects... through... a broad set of alternatives".²⁶⁴ Through its provisions it has arguably created a platform merging "conventional political decision making" and evaluation for social impact.²⁶⁵ For instance, Principle L calls for re-evaluation of the board on a regular basis and the effective cooperation of company members.²⁶⁶ With the revamping of the Code in 2018, the objectives can include sustainability and social contribution.²⁶⁷ Finally, the Code considers the "Quality of problem definitions" through the engagement of more "diverse viewpoints"²⁶⁸, reflected by the emphasis on stakeholder interaction.²⁶⁹ However, in practice this is insufficient, as "the Code is founded on shareholder primacy"²⁷⁰, and some of the provisions make that clear.²⁷¹

As an increasing number of jurisdictions have codified stakeholder involvement, a need for coordinated efforts in changing the corporate governance landscape is observed.²⁷² One of the key premises of RG is "open-ended searching and learning".²⁷³ Currently, the Code's reporting requirements²⁷⁴ are viewed as a formality, with social considerations revolving around "the business case".²⁷⁵ By viewing the reporting requirement as a 'process', similarly to IR, companies could reflect

²⁶¹ Chiara Armeni, 'Global Experimentalist Governance, International Law and Climate Change Technologies' (2015) 64 INT'L & COMP LQ 875 p 876, 879

²⁶² Sabel, Zeitlin (n 256) p 181

²⁶³ Jeroen Veldman, Hugh Willmott, 'The cultural grammar of governance: The UK Code of Corporate Governance, reflexivity and the limits of 'soft' regulation' (2016) 69(3) Human Relations 581 p 584

²⁶⁴ Vob, Bauknecht, Kemp (n 240) p 462

²⁶⁵ *ibid* p 462

²⁶⁶ Financial Reporting Council (n 229) Principle L

²⁶⁷ *ibid* Principle A

²⁶⁸ Vob, Bauknecht, Kemp (n 240) p 462

²⁶⁹ Financial Reporting Council (n 229) Principle D

²⁷⁰ Chiu (n 208) p 327

²⁷¹ Financial Reporting Council (n 229) p 4-5

²⁷² Chiu (n 208) p 298, 301

²⁷³ Vob, Bauknecht, Kemp (n 240) p 424

²⁷⁴ Financial Reporting Council (n 229) provision 1, 2, 4, 5, 10, 14, 15, 20, 21, 23, 25-29, 31, 35, 41

²⁷⁵ Chiu (208) p 325

RG and consequently benefit their operations greatly, using this form as “a diagnosis of ongoing patterns...”²⁷⁶ This refers to a reform in corporate perspective, as opposed to a bureaucratic reform of the Code, however, it is a viable method for improving corporate social impact. This argument can be viewed as an extension of the argument made earlier in this paper, supporting that SICs are practical to implement, further solidifying their position.

Additionally, the Corporate Governance Code should recalibrate the footing of “other key stakeholders”²⁷⁷. Although the reality of stakeholder involvement has improved significantly in the last few years, in practice, under the Code, stakeholders still occupy a relatively weak position, especially regarding decision-making processes.²⁷⁸ The views and concerns of shareholders and stakeholders must be heard “on an equal footing”.²⁷⁹ In the view of this author, the only acceptable solution included in the Code to introduce codetermination is “a formal workforce advisory panel.”²⁸⁰ The mere addition of one director²⁸¹ in a setting where stakeholders are already at a disadvantage would do little to change the status quo. This can be addressed by “empowerment” through the provision of the necessary “resources”.²⁸² It is proposed that more specific procedural guidelines should be introduced regarding stakeholder engagement, as the Code’s “procedural flexibility”²⁸³ could give rise to the same “pre-crisis problems” it has aimed to address.²⁸⁴ This author concludes that the Code should create “institutionalized feedback relations”²⁸⁵, leading to long-term ideological changes.

Examples of reflexive procedures as good corporate governance include the Bribery Act 2010²⁸⁶ and the Criminal Finances Act 2017²⁸⁷, as discussed in earlier literature.²⁸⁸ Following the implementation of these Acts, further principle-based instruction was supplemented in order to aid corporations in “designing tailor-made changes to corporate operations”.²⁸⁹ In a study conducted on the Bribery Act, its operational change was observed.²⁹⁰ The ability of such procedural guidance to impact a corporation’s interaction with other stakeholders, including society²⁹¹, is key in the creation of an effective corporate social impact platform. This type of procedure was seen in practice in the bribery accusations against Rolls Royce, which opted for the appointment of “Lord Gold to monitor its internal procedural reform to *prevent* bribery in the future.”²⁹² Although this is not a case of a dual mission structure, it could lead to a positive social impact and arguably more long-term change as a spill-over effect from a change in corporate culture. As stakeholder involvement here is minimal²⁹³, the adoption of this solution would depend on the emphasis one wishes to place on stakeholders. Overall, true RG could help advance corporate social impact in the UK.

²⁷⁶ Rip (n 232) p 83

²⁷⁷ Financial Reporting Council (n 229) Provision 5

²⁷⁸ Chiu (n 208) p 328

²⁷⁹ Vob, Bauknecht, Kemp (n 240) p 425-426

²⁸⁰ Financial Reporting Council (n 229) Provision 5

²⁸¹ *ibid* Provision 5

²⁸² van der Meer, Visser, Wilthagen (n 236) p 362

²⁸³ Chiu (n 208) p 302

²⁸⁴ *ibid* p 314

²⁸⁵ Rip (n 232) p 86

²⁸⁶ Bribery Act 2010

²⁸⁷ Criminal Finances Act 2017

²⁸⁸ Chiu (n 208)

²⁸⁹ *ibid* p 313-314

²⁹⁰ *ibid* p 314

²⁹¹ *ibid* p 314

²⁹² *ibid* p 315

²⁹³ *ibid* p 315

4.2.1.5 Experimentalist Reform

Reform of UK corporate governance and the Code may also be possible through EG. This type of governance is mostly observed on a transnational level.²⁹⁴ However, important lessons can be drawn from this application and be applied on a national UK level, in order to support corporate social impact. One of the earlier and more important EG applications on an EU level was “the EU Water Framework Directive (WFD) and its Common Implementation Strategy (CIS).”²⁹⁵ Although the CIS did not stem from the Directive, it was created “by national water directors” with the support of the Commission, to aid the implementation by Member States.²⁹⁶ The documents, also known as “living documents”, are constantly evolving alongside the context and the need for which they operate.²⁹⁷ Additionally, these reviews can aid new principles in attracting “binding force”.²⁹⁸

This has significant application for corporate social impact and dual mission companies, as the goal of regulating social impact is for it to become the norm, often requiring legislative support. One element of EG which could address the issue of stakeholder engagement, is that it “starts with a stakeholder consultation”, as was the case with the 2014 Non-Financial Reporting Directive.²⁹⁹ However, given the current structure of the Code, it would be more appropriate and realistic to reform it by making better use of RG than attempt to introduce a new school of thought in an already unpredictable field. Finally, this author would like to note that to analyse what EG and RG reform would need to entail in practice is beyond the scope of this paper. The purpose of this section was to establish that such governance reforms are possible using information from earlier implementations and literature.

4.2.2 Implementing a New Corporate Legal Structure

4.2.2.1 *The US vs the UK Corporate Legal System*

Although a corporate governance reform is often viewed as hard law reform, this dissertation has approached it as a middle-ground solution. This section will examine a harder law approach through the introduction of a new corporate legal structure. This type of reform, codifying the dual mission corporation, can be traced to the US, and more specifically B Lab.³⁰⁰ It is known as the Model Benefit Corporation Legislation (MBCL or Model Legislation).³⁰¹ Currently, 32 States have adopted it, each with its own modifications.³⁰² Due to its American origins, it is important to highlight some of the key distinctions between the US and UK corporate legal systems, specifically in the context of the shareholder primacy norm.

Primarily, “Anglo-American corporate law”, present in the US and the UK, is based on shareholder primacy³⁰³ but expressed as an obligation by directors to act “in the best interests of the

²⁹⁴ Sable, Zeitlin (n 256) p 177

²⁹⁵ *ibid* p 172

²⁹⁶ *ibid* p 172

²⁹⁷ *ibid* p 172

²⁹⁸ *ibid* p 177

²⁹⁹ William De Catelle, ‘European Union Directive 2014/95 on Non-Financial Reporting: A Successful Experimentalist Governance Architecture’ (2018) 9 *The King’s Student Law Review* 53 p 53, 56

³⁰⁰ Loewenstein (n 65) p 383

³⁰¹ ‘Model Benefit Corporation Legislation’ (Version of 17 April 2017) <[https://benefitcorp.net/sites/default/files/Model%20benefit%20corp%20legislation%20 4 17 17.pdf](https://benefitcorp.net/sites/default/files/Model%20benefit%20corp%20legislation%204%2017%2017.pdf)> accessed 20 August 2019

³⁰² Benefit Corporation, ‘Why Pass Benefit Corporation Legislation’ (*Benefit Corporation*) <<https://benefitcorp.net/policymakers/why-pass-benefit-corporation-legislation>> accessed 20 August 2019

³⁰³ Keay (n 43) p 358

corporation".³⁰⁴ In the US, this underlining ideology is reflected both in federal and state law,³⁰⁵ supported further by cases such as "*Dodge and eBay*", with a sharp focus on directorial discretion.³⁰⁶ In the UK, prior to the CA 2006³⁰⁷, shareholder primacy was arguably "sustained by academics and not by the courts".³⁰⁸ Following the holistic company law reform, the CA 2006 appears to be founded on the concept of "Enlightened Shareholder Value" (ESV).³⁰⁹ This approach should not be mistaken with stakeholder value; ESV still aims to primarily advance shareholder interest, however, whilst also minimising the influence of corporate short-termism.³¹⁰ Ultimately, an optimistic reading of section 172 indicates that directorial discretion on stakeholder interests became codified.³¹¹ Earlier literature has argued that directors in American corporations benefit from a similar discretion as they "do not always act only in the interests of shareholders".³¹² What the author hopes to have established in this overview, is that, although the UK and the US may have different legal and judicial structures, the ideology underlying corporate law in both jurisdictions expresses similar concerns, albeit at different degrees of intensity.

4.2.2.2 Current State of Play – The Model Benefit Corporation Legislation

The aim of the MBCL was "the codification... of B Corp Certification."³¹³ A corporation that has adopted the Benefit Corporation status functions, to a great extent, like a conventional corporation.³¹⁴ However, the Benefit Corporation must include its identity in its articles,³¹⁵ officially³¹⁶ embedding the social or environmental purpose in the company's structure.³¹⁷ The Model Legislation provides further guidance on the benefit the corporation is supposed to "create" and the "corporate purposes" by which it does; this comprises of a "General public benefit" and an "Optional specific public benefit purpose".³¹⁸ The adoption of two separate commitments supports a wider gamut of stakeholders and

³⁰⁴ Janis Sarra, 'Convergence versus Divergence, Global Corporate Governance at the Crossroads: Governance Norms, Capital Markets & OECD Principles for Corporate Governance' (2001) 33 OTTAWA L REV 177 p 194

³⁰⁵ Tobias H. Troger, 'Choice of Jurisdiction in European Corporate Law – Perspectives of European Corporate Governance' (2005) 6 European Business Organization Review 3 p 11-12

³⁰⁶ Tu (n 17) p 154; for further information on the American judicial interpretation of directors' duties in the corporate context please see p 157-164

³⁰⁷ Companies Act 2006

³⁰⁸ Jonathan Mukwiri, 'Myth of Shareholder Primacy in English Law' [2013] EBLR 217 p 222

³⁰⁹ *ibid* p 218; see *Hutton v. West Cork Railway Company* (1883) LR 23 Ch D 654, *Gaiman v. National Association for Mental Health* [1971] Ch 317; *Brady v. Brady* (1987) 3 BCC 535 (CA); for discussion see Jonathan Mukwiri, 'Myth of Shareholder Primacy in English Law' [2013] EBLR 217 p 223-226

³¹⁰ Andrew Keay, 'Tackling the Issue of the Corporate Objective: An Analysis of the United Kingdom's Enlightened Shareholder Value Approach' (2007) 29 Sydney Law Review 577 p 589-590

³¹¹ *ibid* p 599

³¹² *ibid* p 599-600

³¹³ Kathryn Acello, 'Having Your Cake and Eating It, Too: Making the Benefit Corporation Work in Massachusetts' (2014) 47 Suffolk University Law Review 91 p 104

³¹⁴ Patagonia Inc., Vermont Law School, the Yale Environmental Law Association, 'A Legislative Guide to Benefit Corporations: Create Jobs, Drive Social Impact, and Promote the Economic Health of Your State' (July 2018) p 2

³¹⁵ Model Benefit Corporation Legislation (n 301) ss 103 "A benefit corporation shall be incorporated in accordance with [cite incorporation provisions of the business corporation law], but its articles of incorporation must also state that it is a benefit corporation."; ss "An existing business corporation may become a benefit corporation under this [chapter] by amending its articles of incorporation so that they contain, in addition to the requirements of [cite section of the business corporation law on the required contents of articles of incorporation], a statement that the corporation is a 322 benefit corporation..."

³¹⁶ Sarah Thornsberry, 'More Burden than Benefit – Analysis of the Benefit Corporation Movement in California' (2013) 7 J. Bus. Entrepreneurship & L. 159 p 164

³¹⁷ Serafeim, Ward, Lawrence (n 158) p 3

³¹⁸ Model Benefit Corporation Legislation (n 301) ss 201; specifically ss 201(a) "General public benefit purpose. – A benefit corporation shall have a purpose of creating general public benefit. This purpose is in addition to its

a more overarching benefit.³¹⁹ Part of the enforcement of these commitments is the “benefit director”³²⁰, who is responsible for outlining, in the benefit report, how the company has complied with its statutory obligations.³²¹ General provisions on the “Standard of conduct of directors” are also available,³²² which allow for “[e]xoneration from personal liability”³²³ and more flexibility to pursue the company’s benefit commitments.³²⁴ Finally, a key distinction between the conventional corporate structure and the Model Legislation is the “Preparation of annual benefit report”³²⁵ which must be done “against a third-party standard”³²⁶. The effects and desirability of these provisions will be discussed below.

4.2.2.3 *The Value of a New Corporate Legal Structure*

A key argument in support of a new corporate legal structure is its use as a filler in the market. The gap in the market arises for two reasons; primarily, the existing structures are lacking support for the pursuit of creating a social impact, and, secondly, there is a lack of a “signalling” and accountability platform for “socially conscious businesses”.³²⁷ With regard to the former, primarily in the US, SICs face “legal uncertainty” on the pertinence of the shareholder value approach.³²⁸ Although not expressly reflected in its case law, the UK jurisdiction also allows for shareholder primacy to prevail. Both jurisdictions reflect a struggle on how to balance shareholder and stakeholder interests in the corporate environment.³²⁹

The Model Legislation has aimed to create a new corporate structure, introducing “legal clarity” for the balance of conflict between social impact and profit generation.³³⁰ This is reflected in the incorporation of the structure through conventional legal instruments with the entrenching of a social mission in the articles of association.³³¹ The legal and “market demand” for a new type of corporate structure in the Anglo-American system can be observed in practice; “As of April 2018, Benefit Corporation legislation has been enacted in 34 states”.³³² Consequently, this author concurs that the Model Legislation can cover relevant demands with regard to a new corporate structure.

A central element in the demands addressed by the Model Legislation, is the creation of a structure for the necessary directorial discretion in considering other constituencies. The Benefit Corporation model explicitly allows directors to take into account a wide gamut of stakeholder interests, including

purpose under [cite section of the business corporation law on the purpose of business corporations].” and 201(b) “Optional specific public benefit purpose. – The articles of incorporation of a benefit corporation may identify one or more specific public benefits that it is the purpose of the benefit corporation to create in addition to its purposes under [cite section of the business corporation law on the purpose of business corporations] and subsection (a). The identification of a specific public benefit under this subsection does not limit the purpose of a benefit corporation to create general public benefit under subsection (a).”

³¹⁹ Thornsberry (n 316) p 168

³²⁰ Model Benefit Corporation Legislation (n 301) ss 302

³²¹ Patagonia Inc., Vermont Law School, the Yale Environmental Law Association (n 314) p 4

³²² Model Benefit Corporation Legislation (n 301) ss 301

³²³ *ibid* ss 301(c)

³²⁴ Brakman Reiser (n 73) p 599

³²⁵ Model Benefit Corporation Legislation (n 301) ss 401

³²⁶ *ibid* ss 401(2)

³²⁷ Tu (n 17) p 153

³²⁸ Thornsberry (n 316) p 176

³²⁹ Patagonia Inc., Vermont Law School, the Yale Environmental Law Association (n 314) p 7

³³⁰ Resor (n 45) p 106

³³¹ *ibid* p 105

³³² Patagonia Inc., Vermont Law School, the Yale Environmental Law Association (n 314) p 7

those of shareholders, however it removes the implied need to place greater emphasis on the latter.³³³ Additionally, it inspires further confidence in directors by removing the “associated risk from potential shareholder lawsuits that exist under the traditional forprofit model.”³³⁴ Although the latter is a questionable provision, the Model Legislation holistically, allows for a more stable structure for stakeholder interests to be accounted for and the creation of a positive social impact. It is important to note that no US case law has arisen to clarify how liability provisions are to be applied in practice, and how they can potentially interact with the prescribed enforcement provisions.³³⁵

On the matter of enforcement and accountability, the Model Legislation also makes important contributions in two ways. Primarily, it introduces the “benefit enforcement proceeding”, specifically targeting failure to appropriately pursue the creation of a benefit, as committed to in the company’s articles³³⁶. Secondly, it promotes accountability through the compilation and publication of an annual benefit report.³³⁷ As established earlier in this chapter, although reporting is a vital aspect of creating corporate social impact, it is also a highly problematic area. Consequently, the Model Legislation outlines the requirements of the “third-party standard” which the corporation chooses for its reporting.³³⁸ One example is B Lab.³³⁹ Making the report available to shareholders as well as the general public, is a requirement for maintaining the Benefit Corporation status.³⁴⁰ Overall, the Model Legislation’s role as a filler, the provision of directorial discretion and increased accountability, provide a justification for considering a new corporate legal structure as an appropriate route for better implementing corporate social impact in the UK.

4.2.2.4 Some Concerns

It is necessary to acknowledge some of the issues with this structure. The provisions that give the Model Legislation its advantage over for-profit structures, have also been extensively criticised. The benefits that the company commits to ‘create’ are often conflicting; almost all corporations create “a negative impact on the environment” or, on occasion, a corporate action that benefits the environment can negatively impact the work force or the community, e.g. the closure of a factory.³⁴¹ The determination of compliance, which befalls on the benefit director, is also a highly complicated matter,³⁴² adding to an already complex process. The benefit director must “presumably, have to review every decision made by the directors” with regard to the creation of a social impact.³⁴³ The feasibility of this requirement seems non-existent. Consequently, the issue of balance between desired, or even mandatory, benefits, and determining whether that balance has been struck correctly³⁴⁴ is a significant drawback of the Model Legislation that should be addressed.

Additionally, the assessment and enforcement proceedings are also lacking in practice. Primarily, the discretion afforded to directors of the Benefit Corporation, although helpful in the pursuit of non-

³³³ Resor (n 45) p 107

³³⁴ Tu (n 17) p 158

³³⁵ Resor (n 45) p 109

³³⁶ Model Legislation ss 102; ““Benefit enforcement proceeding.” A claim, action, or proceeding for: (1) failure of a benefit corporation to pursue or create general public benefit or a specific public benefit purpose set forth in its articles...”

³³⁷ Thornsberry (n 316) p 181

³³⁸ Model Benefit Corporation Legislation (n 301) ss 102 “third-party standard”

³³⁹ Resor (n 45) p 109-110

³⁴⁰ *ibid* p 110-111

³⁴¹ Loewenstein (n 65) p 383-384

³⁴² *ibid* p 390

³⁴³ Loewenstein (n 76) p 1024

³⁴⁴ Loewenstein (n 65) p 390

financial interests, can lead to “unbridled discretion, with which they might pursue... self-serving practices.”³⁴⁵ There is little comprehensive guidance on how the benefit report should be construed to translate this discretion into useful information.³⁴⁶ Frequently, a Benefit Corporation chooses B Lab to fulfil its ‘third-party standard’ obligations.³⁴⁷ However, this could give rise to the tensions identified in the Certification recommendation section. Finally, if issues arise, repercussions are feeble.³⁴⁸ Furthermore, the absence of a monetary incentive in taking legal action against the Benefit Corporation, functions as a disincentive in seeking legal enforcement for a breach of duty.³⁴⁹ Even the stakeholder groups “with the greatest incentive to sue... -the beneficiaries of its specific public benefit-are expressly denied standing”.³⁵⁰ For a Benefit Corporation to voluntarily allow this type of action through its articles, seems almost impossible.³⁵¹ In conclusion, there is no tangible, fearsome consequence for not acting as a Benefit Corporation. It is important to note that the Model Legislation is simply a model. Implementation from jurisdiction to jurisdiction can vary, although the issue remains that no cases exist where derivative action has been brought for a Benefit Corporation.³⁵²

4.2.2.5 *Bringing the Benefit Corporation Structure to the UK*

The introduction of a Benefit Corporation-type structure in the UK was firstly recommended as early as 2016 by the UK government.³⁵³ However, given the drawbacks, significant amendments would have to be made to the Model Legislation for it to achieve its intended purposes in the UK. This dissertation identifies the engagement and ‘empowerment’ of stakeholders at the centre of creating a positive corporate social impact; this is due to the role of accountability in promoting such a commitment from companies. Embedding one’s social mission in one’s articles is meaningless if the appropriate parties do not hold sufficient power to hold them accountable. Significant revision of “stakeholder rights” should be undertaken and introduce them in a statutory manner “that defines duties, rights and remedies.”³⁵⁴

Noticeably, this is not the only necessary amendment for the Benefit Corporation legislation to function as optimally as possible. This author will discuss the relevant elements of the Community Interest Company (CIC), already functioning in the UK. The CIC structure was introduced statutorily in the UK in 2005.³⁵⁵ It “establishes governance techniques addressed to enforcing blended mission”³⁵⁶, differing from the Benefit Corporation through its “community benefit requirement, asset lock, and dividend caps”.³⁵⁷ The latter mechanisms, although effective, significantly hinder funding of such enterprises.³⁵⁸ This is the primary reason why the Model Legislation could help the UK better implement corporate social impact, given its increased funding flexibility.

³⁴⁵ Brakman Reiser (n 73) p 599-600

³⁴⁶ Cho (n 120) p 166

³⁴⁷ Dorff (n 150) p 522

³⁴⁸ Loewenstein (n 76) p 1020

³⁴⁹ Loewenstein (n 65) p 388

³⁵⁰ *ibid* p 388

³⁵¹ *ibid* p 388

³⁵² *ibid* p 388

³⁵³ Serafeim, Ward, Lawrence (n 158) p 25

³⁵⁴ Osuji (n 161) p 282-283

³⁵⁵ Serafeim, Ward, Lawrence (n 158) p 23; Brakman Reiser (n 27) p 112; Companies (Audit, Investigations and Community Enterprise) Act, 2004 Pt 2 s 26-62

³⁵⁶ Brakman Reiser (n 27) p 113

³⁵⁷ *ibid* p 113-114

³⁵⁸ *ibid* p 114

However, there are lessons to be learnt from the CIC, especially regarding regulation and oversight. The CIC is overseen, and its provisions enforced, “by a state regulator”, which can “intervene” if a CIC is deviating from its community commitments.³⁵⁹ A state regulator in the case of the Benefit Corporation could help address the issues of enforcement. Conclusively, if a new corporate legal structure were to be introduced, it could maintain elements of the CIC, whilst preserving its characteristics of the for-profit corporation, as reflected in the Benefit Corporation. The question that should be asked then is, will the resources necessary to introduce a new corporate structure be proportionate to the new benefit expected from such a structure. Having established earlier that there is a place for SICs in today’s corporate world, the author believes that a new corporate structure could give rise to significant benefits, justifying the necessary resources, however, further analysis on this is beyond the scope of this paper.

4.2.3 Changing Corporate Law

4.2.3.1 *The Companies Act 2006*

Perhaps the most radical solution for better implementing corporate social purpose in the UK jurisdiction is to change corporate law. An in-depth discussion of this option would require a thesis of its own, as would each of the key provisions of the CA 2006. This author will briefly offer their thoughts on one of the most heavily debated provisions, section 172 on the “Duty to promote the success of the company”,³⁶⁰ part of a larger corporate legal reform codifying director’s duties in the hope to make them more “accessible”³⁶¹, “guid[ing] directors towards higher standards.”³⁶²

4.2.3.2 *Directors’ Duties and Section 172*

Within the CA, “general duties” of directors are found in Chapter 2, Part 10.³⁶³ Section 172 must be read in light of section 170(1)³⁶⁴; “The general duties... are owed by a director of a company to the company.”³⁶⁵ Section 172 has been chosen as the focus because it is the best reflection of the efforts to introduce ESV into the UK’s corporate legal regime. Although shareholder value is a key directorial objective in section 172, other stakeholder interests must be considered³⁶⁶, especially in the long-term perspective.³⁶⁷ Provided that the previously discussed options for better implementing corporate social impact are also aiming to make the corporate structure more sustainable, this makes section 172 an appropriate, narrower focus in the realm of reforming corporate law. It is also aligned with other relevant soft law mechanisms such as the OECD Principles on Corporate Governance.³⁶⁸ Like

³⁵⁹ Page, Katz (n 16) p 1371

³⁶⁰ Companies Act 2006 section 172

³⁶¹ Joan Loughrey and Andrew Keay and Luca Cerioni, ‘Legal Practitioners, Enlightened Shareholder Value and the Shaping of Corporate Governance’ (2008) 8 *Journal of Corporate Law Studies* 79 p 90

³⁶² Arden Dbe, ‘Regulating the Conduct of Directors’ (2010) 10 *Journal of Corporate Law Studies* 1 p 4

³⁶³ Parker Hood, ‘Directors’ Duties under the Companies Act 2006: Clarity or Confusion’ (2013) 13 *Journal of Corporate Law Studies* 1 p 13; Companies Act 2006 s 171-177

³⁶⁴ *ibid* p 15

³⁶⁵ Companies Act 2006 section 170(1)

³⁶⁶ Companies Act 2006 section 172(1) “A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to— (a)the likely consequences of any decision in the long term, (b)the interests of the company’s employees, (c)the need to foster the company’s business relationships with suppliers, customers and others, (d)the impact of the company’s operations on the community and the environment, (e)the desirability of the company maintaining a reputation for high standards of business conduct, and (f)the need to act fairly as between members of the company.”

³⁶⁷ Sorensen, Neville (n 21) p 283

³⁶⁸ Collins C Ajibo, ‘A Critique of Enlightened Shareholder Value: Revisiting the Shareholder Primacy Theory’ (2014) 2 *Birkbeck Law Review* 37 p 49-50

more soft law mechanisms, the considerations under section 172, “are stated with a high degree of generality and, as such, read very much like a list of exhortations to 'good' conduct by directors rather than specific instructions to undertake”.³⁶⁹ However, further guidance can be found in the common law, such as in *Re Smith and Fawcett Ltd*,³⁷⁰ its principles codified within the CA.³⁷¹

4.2.3.3 Criticisms on Section 172

There is extensive literature on the criticisms on section 172. Within the Act there is a prominent gap with regard to “what would constitute promoting the success of the company for the benefit of its members as a whole.”³⁷² Although, conflicting interests outlined under section 172(1) add to the definitional issues of this provision,³⁷³ the main problem here is the necessary “subjective element” of “promoting the success of the company”.³⁷⁴ This is also in line with issues of extensive directorial discretion allowed by the section. The use of a test of good faith, as recommended in the Guidance on Key Clauses in the Company Law Reform Bill³⁷⁵ is also problematic. Unfortunately, there is a wide margin for abuse, as it does not limit directorial discretion.³⁷⁶ It is unclear how this discretion is equipped by directors in order to compliantly balance the relevant interests.³⁷⁷ Such clarity is mandatory, if social impact or conventional corporations seek to promote non-financial interests.³⁷⁸

Consequently, it appears that non-shareholder stakeholders continue to be at a disadvantaged position regarding their interests. This position can also be attributed to the fact that any power to bring proceedings against directors lie with the shareholders in the form of derivative action.³⁷⁹ Thus, a bleak picture has been painted of the CA’s impact regarding stakeholder interests. The consensus in the literature indicates that minute transformation has been made regarding the 2006 Act in terms of “shareholder-orientation”³⁸⁰, maintaining a “shareholders first interpretation.”³⁸¹ However, this author supports that section 172 has significant potential in promoting corporate social impact in conventional corporations as well as supporting SICs.

4.2.3.4 The Potential of Section 172

Although there is a great issue of unencumbered directorial discretion and subjectivity in complying with section 172, these elements could support corporate social impact. Section 172 has been a first step in acknowledging that directors should have regard to stakeholders and society in their decision-making process.³⁸² Essentially, they have been “give[n] legislative permission... to look at interests other than short-term shareholder interests”.³⁸³ The reformation of the way directors manage the company through their day-to-day decisions can lead to long-term operational change³⁸⁴ and

³⁶⁹ Richard Williams, ‘Enlightened Shareholder Value in UK Company Law’ (2012) 35 University of New South Wales Law Journal 360 p 360

³⁷⁰ *Re Smith and Fawcett Ltd* [1942] Ch 304

³⁷¹ Williams (n 369) p 363

³⁷² Ajibo (n 368) p 44

³⁷³ Hood (n 363) p 18

³⁷⁴ Ajibo (n 368) p 46

³⁷⁵ *ibid* p 46; *Chatterbridge Corp. v Lloyds Bank* [1970] Ch 62

³⁷⁶ *ibid* p 48; *Re Smith and Fawcett Ltd* [1942] Ch 304

³⁷⁷ Keay (n 310) p 597

³⁷⁸ Ajibo (n 368) p 45

³⁷⁹ Rachel C Tate, ‘Section 172 CA 2006: The Ticket to Stakeholder Value of Simply Tokenism’ (2012) 3 Aberdeen Student Law Review 112 p 115; Companies Act 2006 Part 11

³⁸⁰ Williams (n 369) p 365

³⁸¹ Keay (n 310) p 592

³⁸² Ajibo (n 368) p 50

³⁸³ Keay (n 310) p 599

³⁸⁴ Loughrey Keay Cerioni (n 361) p 102

ultimately to companies having a larger, positive social impact, regardless of a dual-mission structure. One recommendation this author views as imperative, also highlighted in the previous section, is that non-shareholder stakeholders must be empowered through rights of enforcement and action against directors. Overall, better application of section 172, coupled with better education on how directors can use their codified discretion, can potentially create positive change.

5. Conclusion

The “Great Debate”³⁸⁵ on shareholder and stakeholder primacy started in 1932 between Professors Berle and Dodd.³⁸⁶ In the following years, academic contributions were made by prominent individuals such as Milton Friedman³⁸⁷ and the Chicago School of economists.³⁸⁸ A standstill was created in favour of shareholder primacy which has prevailed until today, primarily in the US and UK economies.³⁸⁹ However, the difference today is an increasing lack of faith in shareholder primacy,³⁹⁰ along with a proliferation of individuals who are actively trying to change the status quo on whose interests the corporation should be ran. The starting point of the movement has been the US, through initiatives like the B Corp certification and the Model Benefit Corporation Legislation.

Using the available academic literature on the application of social impact in corporations, whether through certification, legislation or the adoption of other initiatives, this paper established that better embedding or introducing corporate social impact in the UK would be desirable. Although concerns regarding practicality, financing, enforcement and greenwashing were acknowledged, introducing corporate social impact in the UK can give rise to important contributions. Corporate social impact can help fill the gap between non-profit and for-profit corporate structures³⁹¹, it can improve a company’s efficiency through branding³⁹² and reporting³⁹³, it can provide financial benefits and, finally, it allows corporations to overtly create a positive social impact as well as become more sustainable.³⁹⁴ Stemming from the benefits that SICs can introduce in today’s corporate world, is the central argument of this paper that there is a well-deserved, and even necessary, place for SICs in today’s corporate world.

Provided the author’s argument on the desirability of corporate social impact, several soft law and hard law reforms were brought forth. The hard law reforms comprised of reforming corporate governance into a truer reflexive governance form, introducing a new legal corporate structure and reforming corporate law, specifically through section 172. Strengths and weaknesses were identified for these three reform proposals, and it is the author’s view that corporate social impact would best be implemented in the UK through soft law reform centred around certification and integrated reporting. Soft law reform can potentially be supplemented and supported by hard law following its implementation, further solidifying the place of SICs today.

Perhaps the most frequent concern raised in the literature was greenwashing; by introducing better certification enforcement and oversight as well as the addition of integrated reporting, there would

³⁸⁵ Stout (n 35) p 2

³⁸⁶ Stout (n 37) p 1189

³⁸⁷ *ibid* p 1190-1191, p 1199

³⁸⁸ Stout (n 35) p 3

³⁸⁹ Keay (n 43) p 358

³⁹⁰ Porter (n 24)

³⁹¹ El Khatib (n 77) p 166

³⁹² Brakman Reiser (n 93) p 643

³⁹³ Stammer (n 97)

³⁹⁴ Cho (n 120) p 155

be little leeway for corporations making a social commitment to stray. Additionally, certification is something that already exists in the UK, as does integrated reporting to some extent, therefore, investing in better infrastructure would arguably be more cost-effective and efficient, as opposed to an attempt to change all corporate law.

What society and corporations should seek here is not rigid rules. The purpose of better implementing corporate social impact in the UK is to create a long-term ideological shift, that creating a positive social impact can harmoniously co-exist with creating profit, especially in the long-term. It is concluded that a functioning social impact certification platform can help address the concerns of the current legal climate surrounding the corporate sector. It can do so by working alongside existing sources of guidance and law, such as the Corporate Governance Code and the Companies Act 2006. In the following years, it is likely that the effect of expanding a corporation's purpose will be more readily perceived and more effortlessly accepted.

Bibliography

Primary Sources:

Table of cases

United Kingdom

Brady v. Brady (1987) 3 BCC 535 (CA)

Gaiman v. National Association for Mental Health [1971] Ch 317

Chatterbridge Corp. v Lloyds Bank [1970] Ch 62

Re Smith and Fawcett Ltd [1942] Ch 304

Hutton v. West Cork Railway Company (1883) LR 23 Ch D 654

United States

Dodge v. Ford Motor Co., 170 N.W. 668 (Mich. 1919)

Table of legislation

Bribery Act 2010

Companies (Audit, Investigations and Community Enterprise) Act 2004

Companies Act 2006

Criminal Finances Act 2017

Secondary Sources:

Books

Boeger N, Villiers C (eds), *Shaping the Corporate Landscape – Towards Reform and Enterprise Diversity* (Hart Publishing 2018)

Sabel C, Zeitlin J, 'Experimentalist Governance' in David Levi-Faur (ed), *The Oxford Handbook of Governance* (Oxford University Press 2012)

Vob J, Bauknecht D, Kemp R (eds), *Reflexive Governance for Sustainable Development* (Edward Elgar Publishing Limited 2006)

Journals

Acello K, 'Having Your Cake and Eating It, Too: Making the Benefit Corporation Work in Massachusetts' (2014) 47 *Suffolk University Law Review* 91

Afsharipour A, 'Redefining Corporate Purpose: An International Perspective' (2017) 40 *Seattle U. L. Rev.* 465

Ajibo C, 'A Critique of Enlightened Shareholder Value: Revisiting the Shareholder Primacy Theory' (2014) 2 Birkbeck Law Review 37

Armeni C, 'Global Experimentalist Governance, International Law and Climate Change Technologies' (2015) 64 INT'L & COMP LQ 875

Armstrong K, Kilpatrick C, 'Law, Governance, or New Governance – The Changing Open Method of Coordination' (2007) 13 Columbia Journal of European Law 649

Black J, 'Paradoxes and Failures: 'New Governance' Techniques and the Financial Crisis' (2012) 75(6) Modern Law Review 1037

Blount J, 'Creating a Stakeholder Democracy under Existing Corporate Law' (2016) 18 U PA J BUS L 365

Boeger N, 'Beyond the Shareholder Corporation: Alternative Business Forms and the Contestation of Markets' (2018) 45(1) Journal of Law and Society 10

Boiral O, 'The Certification of Corporate Conduct: Issues and Prospects' (2003) 142 International Labour Review 317

Brackman Reiser D, 'Benefit Corporations – A Sustainable Form of Organization' (2011) 46 Wake Forest L. Rev. 591

Brackman Reiser D, 'Blended Enterprise and the Dual Mission Dilemma' (2010) 35 Vermont Law Review 105

Brackman Reiser D, 'Governing and Financing Blended Enterprise' (2010) 85 Chi. – Kent L. Rev. 619

Brosseau E, Glachant J, 'Regulators as Reflexive Governance Platforms' (2011) 12 Competition and Regulation in Network Industries 194

Cankar N, Deakin S, Simoneti M, 'The Reflexive Properties of Corporate Governance Codes: The Reception of the Comply-or-Explain Approach in Slovenia' (2010) 37 Journal of Law and Society 501

Chen X, Kelly T, 'B-Corps – A Growing Form of Social Enterprise: Tracing Their Progress and Assessing Their Performance' (2015) 22(1) Journal of Leadership and Organizational Studies 102

Chiu I, 'An Institutional Theory of Corporate Regulation' (2018) (71)(1) Current Legal Problems 279

Cho M, 'Benefit Corporations in the United States and Community Interest Companies in the United Kingdom: Does Social Enterprise Actually Work?' (2017) 37(1) Northwestern Journal of International Law & Business 149

Dbe A, 'Regulating the Conduct of Directors' (2010) 10 Journal of Corporate Law Studies 1

De Burca G, Keohane R, Sabel C, 'Global Experimentalist Governance' (2014) 44 B.J.Pol.S. 477

De Catelle W, 'European Union Directive 2014/95 on Non-Financial Reporting: A Successful Experimentalist Governance Architecture' (2018) 9 The King's Student Law Review 53

Deakin S, 'Reflexive Governance and European Company Law' (2009) 15 European Law Journal 224

Doherty B, Hugh H, Lyon F, 'Social Enterprises as Hybrid Organizations: A Review and Research Agenda' (2014) 16 International Journal of Management Reviews 417

Dorff M, 'Assessing the Assessment: B Lab's Effort to Measure Companies' Benevolence' (2017) 40 Seattle University Law Review 515

El Khatib K, 'The Harms of Benefit Corporation' (2015) 65 Am. U. L. Rev. 151

Eldar O, 'The Role of Social Enterprise and Hybrid Organizations' (2017) 2017 Columbia Business Law Review 92

Engsig Sorensen K, Neville M, 'Social enterprises: how should company law balance flexibility and credibility?' (2014) 15(2) E.B.O.R. 267

Esposito R, 'The Social Enterprise Revolution in Corporate Law: A Primer on Emerging Corporate Entities in Europe and the United States and the Case for the Benefit Corporation' (2013) 4(2) William & Mary Business Law Review 639

Fairfax L, 'The Rhetoric of Corporate Law: The Impact of Stakeholder Rhetoric on Corporate Norms' (2006) 31 J CORP L 675

Feindt P, Weiland S, 'Reflexive governance: exploring the concept and assessing its critical potential for sustainable development. Introduction to the special issue' (2018) 20(6) Journal of Environmental Policy & Planning 661

Grant J, 'When Making Money and Making a Sustainable and Societal Difference Collide: Will 'Benefit Corporations Succeed or Fail' (2013) 46 Indiana Law Review 581

Grieco C, Michelini L, Iasevoli G, 'Measuring Value Creation in Social Enterprises: A Cluster Analysis of Social Impact Assessment Models' (2015) 44 Nonprofit & Voluntary Sector Quarterly 1173

Hamermesh L, Houlahan B, Alexander R, Osusky D, 'A Conversation with B Lab' (2017) 40 Seattle U. L. Rev. 321

Hansmann H, Kraakman R, 'The End of History for Corporate Law' (2001) 89 The Georgetown Law Journal 439

Haskell Murray J, 'The Social Enterprise Law Market' (2016) 75 Maryland Law Review 541

Ho V, 'Enlightened Shareholder Value: Corporate Governance beyond the Shareholder-Stakeholder Divide' (2010) 36 J CORP L 59

Hodge T, 'The Treatment of Employees as Stakeholders in the European Union' (2010) 38 Syracuse J. Int'l L. & Com. 91

Hood P, 'Directors' Duties under the Companies Act 2006: Clarity or Confusion' (2013) 13 Journal of Corporate Law Studies 1

Keay A, 'Ascertaining The Corporate Objective: An Entity Maximisation and Sustainability Model' (2008) 71(5) Modern Law Review 663

Keay A, 'Getting to Grips With the Shareholder Value Theory in Corporate Law' (2010) 39 Common Law World Review 358

Keay A, 'Tackling the Issue of the Corporate Objective: An Analysis of the United Kingdom's Enlightened Shareholder Value Approach' (2007) 29 Sydney Law Review 577

Laine A, 'Integrated Reporting: Fostering Human Rights Accountability for Multinational Corporations' (2015) 47 GEO WASH INT'L L REV 639

Lichner Y, 'Should Shareholders' Interests Be the Mainstay of Corporate Governance?' [2009] EBLR 889

Loewenstein M, 'Benefit Corporation Law' (2017) 85 University of Cincinnati Law Review 381

Loewenstein M, 'Benefit Corporations: A Challenge in Corporate Governance' (2013) 68 The Business Lawyer 1007

Loughrey J, Keay A, Cerioni L, 'Legal Practitioners, Enlightened Shareholder Value and the Shaping of Corporate Governance' (2008) 8 Journal of Corporate Law Studies 79

McDonnell B, 'Benefit Corporations and Public Markets: First Experiments and Next Steps' (2017) 40 Seattle University Law Review 717

Mocsary G, 'Freedom of Corporate Purpose' [2016] Brigham Young University Law Review 1319

Mukwiri J, 'Myth of Shareholder Primacy in English Law' [2013] EBLR 217

Osuji O, 'Corporate social responsibility, juridification and globalisation: 'inventive interventionism' for a 'paradox'' (2015) 11(3) International Journal of Law in Context 265

Page A, Katz R, 'Is Social Enterprise the New Corporate Social Responsibility' (2011) 34 Seattle University Law Review 1351

Resor F, 'Benefit Corporation Legislation' (2012) 12 Wyoming Law Review 91

Rosen-Zvi I, 'Climate Change Governance: Mapping the Terrain' (2011) 2 Carbon and Climate Law Review 234

Sand I, 'Understanding the New Forms of Governance: Mutually Interdependent, Reflexive, Destabilised and Competing Institutions' (1998) 4 European Law Journal 271

Santos F, Pache A, Birkholz C, 'Making Hybrids Work: Aligning Business Models and Organizational Design for Social Enterprises' (2015) 57(3) California Management Review 36

Sarra J, 'Convergence versus Divergence, Global Corporate Governance at the Crossroads: Governance Norms, Capital Markets & OECD Principles for Corporate Governance' (2001) 33 OTTAWA L REV 177

Stout L, 'Bad and Not-so-Bad Arguments for Shareholder Primacy' (2002) 75 Southern California Law Review 1189

Stout L, 'New Thinking on Shareholder Primacy' (2012) 2 ACCOUNT ECON LAW xix

Stubbs W, 'Sustainable Entrepreneurship and B Corps' (2017) 26 Business Strategy and the Environment 331

Sulkowski A, Waddock S, 'Beyond Sustainability Reporting: Integrated Reporting Is Practiced, Required, and More Would Be Better' (2013) 10 University of St. Thomas Law Journal 1060

Tate R, 'Section 172 CA 2006: The Ticket to Stakeholder Value of Simply Tokenism' (2012) 3 Aberdeen Student Law Review 112

Theron C, 'Setting standards for sustainable business' (2012) 24(6) Environmental Law and Management 304

Thornsberry S, 'More Burden than Benefit – Analysis of the Benefit Corporation Movement in California' (2013) 7 J. Bus. Entrepreneurship & L. 159

Troger T, 'Choice of Jurisdiction in European Corporate Law – Perspectives of European Corporate Governance' (2005) 6 European Business Organization Review 3

Tu K, 'Socially Conscious Corporations and Shareholder Profit' (2016) 84 The George Washington Law Review 121

van der Meer M, Visser J, Wilthagen T, 'Adaptive and Reflexive Governance: The Limits of Organized Decentralization' (2005) 11(3) European Journal of Industrial Relations

Veldman J, Willmott H, 'The cultural grammar of governance: The UK Code of Corporate Governance, reflexivity and the limits of 'soft' regulation' (2016) 69(3) Human Relations 581

Williams R, 'Enlightened Shareholder Value in UK Company Law' (2012) 35 University of New South Wales Law Journal 360

Zumbansen P, 'New Governance in European Corporate Law Regulation as Transnational Legal Pluralism' (2009) 15 European Law Journal 246

Online Journals

Honeyman R, 'Has the B Corp Movement Made a Difference?' [2014] Stanford Social Innovation Review < https://ssir.org/articles/entry/has_the_b_corp_movement_made_a_difference> accessed 24 June 2019

Kim S, Karlesky M, Myers C, Schifeling T, 'Why Companies Are Becoming B Corporations' [2016] Harvard Business Review < <https://hbr.org/2016/06/why-companies-are-becoming-b-corporations>> accessed 24 June 2019

Slaper T, Hall T, 'The Triple Bottom Line: What Is It and How Does It Work?' [2011] Indiana Business Review <<https://www.ibrc.indiana.edu/ibr/2011/spring/article2.html>> accessed 24 June 2019

Smith H, 'The Shareholders vs. Stakeholders Debate' [2003] MITSloan Management Review <<https://sloanreview.mit.edu/article/the-shareholders-vs-stakeholders-debate/>> accessed 20 August 2019

Stammer R, 'It Pays to Become a B Corporation' [2016] Harvard Business Review < <https://hbr.org/2016/12/it-pays-to-become-a-b-corporation>> accessed 24 June 2019

Research Papers

Hunter D, Boeger N, 'Mission-led business: CSR re-boot or paradigm shift?' (2018) University of Bristol Law Research Paper Series Paper 1/2018, < https://research-information.bristol.ac.uk/files/140090861/Hunter_Boeger_Mission_Led_Business_v6.pdf> accessed 20 August 2019

Command Papers

Advisory panel to the Mission-led Business Review, *On a Mission in the UK Economy* (Legal & General Assurance Society Limited, 2016) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/574687/Advisory_Panel_Report_-_Mission-led_Business.pdf> accessed 24 June 2019

Department for Business, Energy & Industrial Strategy, *Corporate Governance Reform – The Government response to the green paper consultation* (August 2017)

Websites and Blogs

‘Enron scandal at-a-glance’ (*BBC News*, 22 August 2002) <<http://news.bbc.co.uk/1/hi/business/1780075.stm>> accessed 20 August 2019

Benefit Corporation, ‘Why Pass Benefit Corporation Legislation’ (*Benefit Corporation*) <<https://benefitcorp.net/policymakers/why-pass-benefit-corporation-legislation>> accessed 20 August 2019

ECCHR, ‘Hard Law/Soft Law’ (*European Center for Constitutional and Human Rights*) <<https://www.echr.eu/en/glossary/hard-law-soft-law/>> accessed 20 August 2019

Field A, ‘Boosting Awareness of B Corps By Linking Them to Voting’ (*Forbes*, 27 November 2018) <<https://www.forbes.com/sites/annefield/2018/11/27/boosting-awareness-of-b-corps-by-linking-them-to-voting/#191464426a70>> accessed 20 August 2019

Gilbert J, ‘Are B Corps An Elite Charade For Changing The World?’ (*Forbes*, 30 August 2018) <<https://www.forbes.com/sites/jaycoengilbert/2018/08/30/are-b-corps-an-elite-charade-for-changing-the-world-part-1/#222981607151>> accessed 24 June 2019

Gilbert J, Charmian Love, ‘The €1 bn Body Shop deal shows you can have profit and purpose’ (*WIRED*, 20 September 2017) <<https://www.wired.co.uk/article/b-corps-danone-profit-purpose-unilever-body-shop>> accessed 24 June 2019

IGI Global, ‘What is Mission Drift’ (*IGI Global*) <<https://www.igi-global.com/dictionary/the-fundraising-patterns-and-the-management-professionalization-in-independent-arts-organizations-in-see/55963>> accessed 20 August 2019

Martin M, ‘The crisis of shareholder primacy’ (*University of Cambridge*, 19 March 2012) <<https://www.cam.ac.uk/research/discussion/the-crisis-of-shareholder-primacy>> accessed 20 August 2019

Pilot S, ‘The changing face of UK reporting and the need to focus on long-term value creation’ (*Integrate Reporting*, 18 July 2018) <<https://integratedreporting.org/news/the-changing-face-of-uk-reporting-and-the-need-to-focus-on-long-term-value-creation/>> accessed 20 August 2019

Piper A, Reed P, James E, ‘Charitable organisations in the UK (England and Wales): overview’ (*Practical Law*, 1 November 2018) <[https://uk.practicallaw.thomsonreuters.com/8-633-4989?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1](https://uk.practicallaw.thomsonreuters.com/8-633-4989?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1)> accessed 24 June 2019

PWC, ‘A guide to the UK B Corporation movement’ (*PricewaterhouseCooper*) <<https://www.pwc.co.uk/industries/retail-consumer/insights/b-corp.html>> accessed 20 August 2019

Rhee R, 'A Legal Theory of Shareholder Primacy' (*Harvard Law School Forum on Corporate Governance and Financial Regulation*, 11 April 2017) <<https://corpgov.law.harvard.edu/2017/04/11/a-legal-theory-of-shareholder-primacy/>> accessed 20 August 2019

Newspaper Articles

'Scandals suggest standards have slipped in corporate America' *The Economist* (6 April 2019) <<https://www.economist.com/business/2019/04/06/scandals-suggest-standards-have-slipped-in-corporate-america>> accessed 20 August 2019

Allen K, 'Everyone loses out when corporate governance falls by the wayside' *The Guardian* (11 September 2016) <<https://www.theguardian.com/business/2016/sep/11/corporate-governance-deepwater-horizon-shareholders>> accessed 20 August 2019

Ford J, 'shareholder primacy is central to modern governance woes' *The Financial Times* (4 March 2018) <<https://www.ft.com/content/b12be30e-1fa0-11e8-9efc-0cd3483b8b80>> accessed 20 August 2019

Gunther M, 'B Corps: sustainability will be shaped by the market, not corporate law' *The Guardian* (12 August 2013) <<https://www.theguardian.com/sustainable-business/b-corps-markets-corporate-law>> accessed 24 June 2019

Porter E, 'The Spreading Scourge of Corporate Corruption' *The New York Times* (10 July 2012) <<https://www.nytimes.com/2012/07/11/business/economy/the-spreading-scourge-of-corporate-corruption.html>> accessed 20 August 2019

Sikka P, 'BHS is a victim of shareholder greed' *The Guardian* (25 April 2016) <<https://www.theguardian.com/commentisfree/2016/apr/25/bhs-shareholder-greed-high-street-retailer-divident>> accessed 20 August 2019

Wood Z, 'Takeover Panel to look into Kraft's closure of Cadbury factory' *The Guardian* (8 March 2010) <<https://www.theguardian.com/business/2010/mar/08/kraft-cadbury-closure-takeover-panel>> accessed 20 August 2019

Other Secondary Sources

'Model Benefit Corporation Legislation' (Version of 17 April 2017) <https://benefitcorp.net/sites/default/files/Model%20benefit%20corp%20legislation%20_4_17_17.pdf> accessed 20 August 2019

Bridges Ventures, 'To B or Not To B An Investor's Guide to B Corps' (Bridges Ventures LLP, September 2015)

Deloitte, 'Integrated Reporting – A better view?' (2011)

Financial Reporting Council, *The UK Corporate Governance Code* (2018)

Patagonia Inc., Vermont Law School, the Yale Environmental Law Association, 'A Legislative Guide to Benefit Corporations: Create Jobs, Drive Social Impact, and Promote the Economic Health of Your State' (July 2018)

Serafeim G, Ward B, Lawrence S, 'B Corps & Benefit Corporations – Understanding the implications for companies and investors' (KKS Advisors, April 2017)

Slotta A, Werner M, 'Integrated Reporting – The Future of Corporate Reporting' (PricewaterhouseCoopers AG Wirtschaftsprüfungsgesellschaft, May 2012)

The Association of Chartered Certified Accountants, 'A guide to directors' responsibilities under the Companies Act 2006' (Certified Accountants Educational Trust, July 2007) <
<https://www.accaglobal.com/content/dam/acca/global/PDF-technical/business-law/tech-tp-cdd.pdf>> accessed 24 June 2019