

CORPORATE PURPOSE: MEANINGFUL CHANGE OR MARKETING TOOL?

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Recent times have seen an explosion of interest in, and focus on, the concept of corporate purpose in a number of disciplines partly in response to shifts in societal expectations of companies and their directors. However, as outlined in this article, there are a number of challenges to meaningful outworking of corporate purpose in practical terms.

I INTRODUCTION

The title "Understanding Corporate Purpose" given to this special issue of the Victoria University of Wellington Law Review is very apt given that there is a vast amount that remains to be explored and determined before the concept of corporate purpose can be fully understood and before its potential and limitations are fully mapped and delineated. Particularly pressing issues concern the practical effectiveness of individual companies adopting purposes beyond profit, the accommodation of stakeholder interests, the development of effective accountability and enforcement mechanisms, and the deterrence of "purpose-washing". Additional issues include the financing and measurement of corporate purpose, the link between purpose and ownership, and how to integrate purpose in corporate governance. There are also numerous definitions and conceptualisations of corporate purpose, as further discussed in Part II below. Depending on the context, there is arguably cause to question whether the implementation or revision of corporate purpose can effect meaningful change or whether it is really more of a marketing tool, although there are possibilities between these two extremes.

The structure of this article is as follows. Part II probes the definition of the term "corporate purpose". Part III reprises the paradigm of "purpose-based governance" and its potential role in revitalising corporations law. Part IV outlines recent developments. Part V probes the potential role of purpose-based legal vehicles. Part VI concludes. The analysis in this article focuses on Australia but is relevant more broadly.¹

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¹ Note also that this article refers to only some of the vast literature on corporate purpose.

II DEFINITIONS OF CORPORATE PURPOSE

There is detailed literature on, and analysis of, the meaning of the term "corporate purpose". Indeed, Brosch states that "to date there are almost as many definitions of [corporate] purpose as there are articles about it", also noting that the construct of corporate purpose is still under-conceptualised, suffering from multiple understandings.²

Besharov and Mitzinneck observe that the conceptualisation of purpose varies. They analyse different facets and conceptualisations of purpose, namely: (1) purpose as an organisation's (espoused) reason for being, to be conveyed to employees and other organisational constituents; (2) purpose beyond profit, as an alternative to shareholder primacy, that can help firms deliver on multiple dimensions of value; and (3) purpose as a catalyst of broader systems change, with the potential for having impact well beyond the boundaries of the firm.³

Almandoz describes corporate purpose "as a unifying reason [for a company] to exist that gives meaning to the organisation by providing valued ends to society and/or to the company's stakeholders".⁴ Aguilera writes that a company's purpose is the intersection of four circles, namely: (1) what the world needs; (2) what the company is uniquely good at; (3) how the company can create economic value; and (4) what people and the company are passionate about.⁵ There are, in addition, many other definitions.⁶

Purpose also features in corporate governance codes and associated guidance. For example, the latest consultation version of the Australian Securities Exchange Corporate Governance Principles and Recommendations states:⁷

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- 2 Nikolai Brosch "Corporate purpose: from a 'Tower of Babel' phenomenon towards construct clarity" (2023) 93 *Journal of Business Economics* 567 at 568. See also Ross Grantham "People, planet, and profits: Re-purposing the company" (2021) 38 *C&SLJ* 250; and Edward B Rock "For Whom Is the Corporation Managed in 2020?: The Debate over Corporate Purpose" (2021) 76 *Bus Law* 363.
 - 3 Marya Besharov and Björn Mitzinneck "The Multiple Facets of Corporate Purpose: An Analytical Typology" (2023) 8 *Strategy Science* 233.
 - 4 Juan Almandoz "Inside-out and Outside-in Perspectives on Corporate Purpose" (2023) 8 *Strategy Science* 139 at 139.
 - 5 Ruth V Aguilera "Corporate Purpose in Comparative Perspective: The Role of Governance" (2023) 8 *Strategy Science* 193.
 - 6 See for example David Kershaw and Edmund Schuster "The Purposive Transformation of Corporate Law" (2021) 69 *American Journal of Comparative Law* 478; Mathieu Blanc, Jean-Luc Chenaux and Edgar Philippin "Corporate Purpose: How the Board of Directors Can Achieve an Inclusive Corporate Governance Regime" in Henry Peter, Carlos Vargas Vasserot and Jaime Alcalde Silva (eds) *The International Handbook of Social Enterprise Law: Benefit Corporations and Other Purpose-Driven Companies* (Springer, Cham, 2023) 101; and, in particular, Mathias Siems "'Corporate Purpose' as a False Friend: A Bibliometric Analysis" (2024) 55 VUWLR, in this issue.
 - 7 ASX Corporate Governance Council *Corporate Governance Principles and Recommendations: Consultation Draft, 5th ed* (2024) at 25 (commentary to recommendation 3.1).

Purpose is usually broader than a business model, and may evolve over time. It can assist an entity to define its time horizons when developing strategy. Where purpose also reflects responsible business conduct relevant to the entity's activities, this may more effectively drive ethical, lawful and responsible behaviour.

The guidance to the United Kingdom's Corporate Governance Code states:⁸

A company's purpose is the reason for which it exists. A well-defined purpose will help companies to articulate their business model, and develop their strategy, operating practices and approach to risk.

Both codes also envisage a role for purpose in relation to stakeholders.⁹

Legal scholars such as Lund and Pollman distinguish between two levels of corporate purpose. The first is the "higher" level of the appropriate purpose for corporations generally.¹⁰ This engages with the longstanding dichotomy between shareholder primacy and stakeholderism, as well as with proposals to mandate parameters for corporate purpose. The British Academy proposed a revolutionary transformation of corporate governance and regulation based on purpose.¹¹ In 2019, the Business Roundtable released a new statement on the purpose of corporations, outlining a fundamental commitment to all stakeholders.¹² This was, however, met with scepticism. Indeed, Bebchuk and Tallarita scrutinised the practices of companies that joined the Business Roundtable statement, demonstrating that the statement did not effect meaningful change (and was not seen as requiring such change) and that the statement was "mostly for show".¹³ In the United Kingdom, proponents of the "Better Business Act"¹⁴ propose a rewriting of s 172 of the Companies Act 2006 (UK) to focus on purpose, which in turn raises the perennial question of whether the enlightened shareholder value model in the current version of s 172 is any progress on shareholder primacy.

8 Financial Reporting Council "Corporate Governance Code Guidance" (5 February 2024) <www.frc.org.uk> at [10].

9 The commentary to Recommendation 3.3 of the ASX *Corporate Governance Principles and Recommendations Consultation Draft*, above n 7, at 28 states: "The listed entity should identify and regularly review the entity's key stakeholders, having regard to the entity's purpose (if articulated), values, strategic objectives and risk appetite". See also Financial Reporting Council, above n 8, at [43].

10 Dorothy S Lund and Elizabeth Pollman "Corporate Purpose" in Jeffrey N Gordon and Wolf-Georg Ringe (eds) *Oxford Handbook of Corporate Law and Governance* (2nd ed, Oxford University Press, Oxford) (forthcoming) at 1.

11 The British Academy *Reforming Business for the 21st Century: A Framework for the Future of the Corporation* (November 2018). See also Colin Mayer "What is Wrong with Corporate Law? The Purpose of Law and the Law of Purpose" (2022) 18 *Annu Rev Law Soc Sci* 283; and Beate Sjøfjell and Jukka Mähönen "Corporate Purpose and the Misleading Shareholder v Stakeholder Dichotomy" (2024) 34 *Bond LR* 69.

12 Business Roundtable *Statement on the Purpose of a Corporation* (19 August 2019).

13 Lucian A Bebchuk and Roberto Tallarita "The Illusory Promise of Stakeholder Governance" (2020) 106 *Cornell L Rev* 91 at 98. See also Asaf Raz "A Purpose-based Theory of Corporate Law" (2020) 65 *Vill L Rev* 523 at 528, n 15; Blanc, Chéniaux and Philippin, above n 6, at 112; and Alfred Rappaport and Michael J Mauboussin "How to Settle the Corporate Purpose Debate" (2022) 34(2) *Journal of Applied Corporate Finance* 45 at 47–48.

14 For details see Better Business Act "The Pitch for Better Business" <www.betterbusinessact.org>.

The second, or lower, level of purpose refers to the particular purpose(s) of each individual company.¹⁵ This raises questions such as whether purpose other than profit is permissible for corporations limited by shares, whether such purpose has the potential to make a difference and whether there is a need for bespoke legal structures to enable purpose-based endeavours.

III REVITALISATION OF CORPORATIONS LAW VIA PURPOSE

In previous scholarship, I have shown that, despite the common misconception that corporate law limits the purposes that companies limited by shares can pursue, Australian corporations law could in fact be revitalised by a focus on purpose without the need for legislative reform.¹⁶ Moreover, adopting a model of purpose-based governance more broadly would have a number of benefits.¹⁷ This model is particularly appropriate and important in the charities sphere because charities are required to articulate and stay true to their purposes. However, it is also arguably appropriate in the for-profit sphere – indeed, it has the potential to refocus and reinvigorate governance for a number of reasons.¹⁸

Purpose-based governance places purpose at the centre of governance, with other governance duties emanating from, and supporting, the entity's purpose.¹⁹ Core governance duties are connected to, and therefore are informed and shaped by, the purpose of the entity.²⁰ The practical content and application of core governance duties are closely connected with the entity's purpose, rather than being a series of separate duties aimed at ensuring high standards of conduct.²¹ This is based in a model of purpose-based loyalty or fiduciary loyalty to purposes.²² This purpose-based governance model has the potential to apply across a

15 Lund and Pollman, above n 10, at 1.

16 See Rosemary Teele Langford "Purpose-Based Governance: A New Paradigm" (2020) 43 UNSWLJ 954; and Rosemary Teele Langford "Use of the Corporate Form for Public Benefit – Revitalisation of Australian Corporations Law" (2020) 43 UNSWLJ 977. This scholarship has in turn been built on by Harding and Barker: see Matthew Harding "The Conditions for Purpose-Based Governance" in Rosemary Teele Langford *Governance and Regulation of Charities: International and Comparative Perspectives* (Edward Elgar Publishing, Cheltenham, 2023) 67; and Sue Barker "Designing an Optimal Charities Framework" in Rosemary Teele Langford *Governance and Regulation of Charities: International and Comparative Perspectives* (Edward Elgar Publishing, Cheltenham, 2023) 84. In particular, Harding proposes a remodelling of enforcement of purpose-based entities.

17 Langford "Purpose-Based Governance", above n 16.

18 Langford "Use of the Corporate Form", above n 16.

19 Langford "Purpose-Based Governance", above n 16, at 956.

20 At 956.

21 At 956.

22 At 956. See for example Paul B Miller and Andrew S Gold "Fiduciary Governance" (2015) 57 Wm & Mary L Rev 513 at 561–563; and Evan Fox-Decent "The Fiduciary Nature of State Legal Authority" (2005) 31 Queen's LJ 259 at 261 and 268.

broad range of different forms and categories of entity and presents a new lens through which to approach persistent governance problems.

The best way for purpose to play more of a role in the corporate sphere is for a company's purpose or purposes to be enshrined in the company's constitution. This would determine what a company's interests are for the purposes of directors' duties. Due to the abolition of the doctrine of ultra vires, this would not limit the company's capacity.²³ Despite suggestions in corporate governance codes that it is for the board to set the company's purpose,²⁴ the fundamental doctrine of division of power between the board and the general meeting dictates that it should be the shareholders who determine and approve the company's purpose. Enshrining purpose in the constitution is also helpful where different investors have different expectations of the company and, where a company has multiple purposes, the weight of those different purposes.²⁵

Adopting a model of purpose-based governance in the corporate sphere has a number of advantages, such as helping to solve the conundrum as to the extent to which directors can consider and promote the interests of stakeholders in properly carrying out their duties. It can also be instrumental in determining responses to competing stakeholder demands and can set the foundation for a determination and outworking of an entity's values and culture, as well as providing a means for adopting and legitimising ethical decision-making.²⁶

IV DEVELOPMENTS IN CORPORATE PURPOSE

Since this scholarship was published, debate surrounding corporate purpose continues without any sign of abating. Corporate purpose statements are popular, although many of them are vague and aspirational, with scholars questioning their genuineness. Legitimate concerns arise in relation to "purpose-washing", which refers to the practice of claiming to have a meaningful purpose without backing it up with genuine action. Grantham gives examples of "carefully crafted corporate mission statements that express vague aspirations and which are couched in language that generates a positive emotional response, but which carefully avoid saying anything too specific".²⁷ He gives the examples of Facebook, whose purpose is to "build the future of human connection and the technology that makes it possible"²⁸ and Nestlé, whose purpose is to "[unlock] the

23 Langford "Purpose-Based Governance", above n 16, at 966.

24 See Financial Reporting Council *UK Corporate Governance Code* (January 2024) at 6 (Section 1B); and ASX Corporate Governance Council, above n 7, at 10 (commentary to recommendation 1.1).

25 Langford "Use of the Corporate Form", above n 16, at 995.

26 Langford "Purpose-Based Governance", above n 16, at 1003–1004. See also Ian Murray and Rosemary Teele Langford "The best interests duty and corporate charities: The pursuit of purpose" (2021) 15 J Eq 92.

27 Grantham, above n 2, at 253.

28 Meta "Our mission" <www.meta.com>. See also Grantham, above n 2, at 253.

power of food to enhance quality of life for everyone, today and for generations to come".²⁹ Redmond notes that Rio Tinto's purpose, expressed in its 2022 Strategic Report, is "finding better ways to provide the materials the world needs" and that Qantas declares its purpose is to "take the Spirit of Australia further".³⁰ As commented by Redmond:³¹

Values and purpose, where the latter is disclosed, are usually expressed in such generality as to say little as to the approach by the company to key matters germane to responsibility. In many cases, they appear to be little more than general statements of worthy aspirations.

This also highlights the very difficult practical issue of drafting an effective statement of purpose for a particular company that has real impact – it is easier to have high-level statements of purpose without tangible impact or change. But, as noted by Davies, weak purpose statements can lead to purpose-washing.³² Indeed, Blanc, Chenaux and Philippin describe the detailed analyses and processes with which companies need to engage to identify their purpose.³³

In addition, influential scholars have pushed back on mandatory corporate purpose models.³⁴ Nurgozhayeva and Puchniak have argued that "the extraterritorial effects of companies, and the role of states in mitigating those effects extraterritorially, have almost entirely escaped the classic corporate purpose debate".³⁵ Difficult questions also arise in relation to the rights of stakeholders and beneficiaries in terms of involvement, intervention and enforcement. At the same time, two comprehensive collections on social enterprise models worldwide have recently been published, and there is great demand for business models that incorporate more than the generation of profit, such as shared value and social enterprise models.³⁶

29 Nestlé "About Us" <www.nestle.com.au>, as cited in Grantham, above n 2, at 253. See also Jill E Fisch and Steven Davidoff Solomon "The 'value' of a public benefit corporation" in Elizabeth Pollman and Robert B Thompson (eds) *Research Handbook on Corporate Purpose and Personhood* (Edward Elgar Publishing, Cheltenham, 2021) 68.

30 Rio Tinto *Strategic Report 2022* (22 February 2023) at 10; and Qantas *Working Towards our Vision: An overview of Qantas Group Business Practices* (30 July 2024) at 4. See Paul Redmond "The ASX Corporate Governance Principles and Recommendations and the Idea of Corporate Responsibility" (2023) 40 C&SLJ 116 at 33.

31 At 118.

32 See Paul L Davies "Shareholder Voice and Corporate Purpose: The Purposelessness of Mandatory Corporate Purpose Statements" (ECGI Law Working Paper 666/2022, May 2023) at 10.

33 Blanc, Chenaux and Philippin, above n 6, at 120–124.

34 See for example Jill E Fisch and Steven Davidoff Solomon "Should Corporations Have a Purpose?" (2021) 99 Tex L Rev 1309; Grantham, above n 2; and Davies, above n 32; but see Colin Mayer "The Purpose of Corporate Purpose Statements: A Response to 'Shareholder Voice and Corporate Purpose: The Purposelessness of Mandatory Corporate Purpose Statements' by Paul Davies" (ECGI Law Working Paper 694/2023, March 2023).

35 Roza Nurgozhayeva and Dan Puchniak "Corporate Purpose Beyond Borders: A Key to Saving Our Planet or Colonialism Repackaged?" (ECGI Law Working Paper 744/2023, January 2024) at 11.

36 Henry Peter, Carlos Vargas Vasserot and Jaime Alcalde Silva (eds) *The International Handbook of Social Enterprise Law: Benefit Corporations and Other Purpose-Driven Companies* (Springer, Cham, 2023); and Dana Brakman Reiser,

V PURPOSE-BASED LEGAL VEHICLES

It is in this context that purpose-based legal vehicles might play a key role.³⁷ A number of jurisdictions have introduced purpose-based legal vehicles and some of these have been in place for many years. In the United States, these include public benefit corporations (the characteristics of which vary depending on the state, with Maryland and Delaware being prominent models), social purpose corporations, L3Cs and LLCs.³⁸ The United Kingdom offers community interest companies (CICs) as part of a more purpose-permissive corporate law framework.³⁹ Canadian options include community interest companies and benefit corporations.⁴⁰ France offers the *société à mission* (with the alternative option of incorporating a *raison d'être* in the constitution)⁴¹ and Italy has modified the United States benefit corporation to facilitate the *società*

Steven A Dean and Giedre Lideikyte Huber (eds) *Social Enterprise Law: A Multijurisdictional Comparative Review* (Intersentia, Cambridge, 2023). See also OECD *Policy Guide on Legal Frameworks for the Social and Solidarity Economy* (20 March 2023); Carol Liao, Elsir U Tawfik and Pat Teichreb "The Global Social Enterprise Lawmaking Phenomenon: State Initiatives on Purpose, Capital, and Taxation" (2019) 36 Windsor YB Access Just 84; and Livia Ventura "New trends in legal frameworks for purpose-driven companies—The European way(s)" (2023) 20 European Management Review 725.

- 37 For arguments against the introduction of special purpose legal vehicles, see Carol Liao "B Corporation, Benefit Corporation and Neoliberal Greenwash: The Private American Branding Attempt to Globally Capture the Definition and Regulation of 'Good' Business" in Dana Brakman Reiser, Steven A Dean and Giedre Lideikyte Huber (eds) *Social Enterprise Law: A Multijurisdictional Comparative Review* (Intersentia, Cambridge, 2023) 673; and Henry Peter and Vincent Pfammatter "Social Enterprises and Benefit Corporations in Switzerland" in Henry Peter, Carlos Vargas Vasserot and Jaime Alcalde Silva (eds) *The International Handbook of Social Enterprise Law: Benefit Corporations and Other Purpose-Driven Companies* (Springer, Cham, 2023) 831.
- 38 For outline and evaluation, see for example Dana Brakman Reiser and Steven A Dean "The Social Enterprise Life Cycle" in Benjamin Means and Joseph W Yockey (eds) *The Cambridge Handbook of Social Enterprise Law* (Cambridge University Press, Cambridge, 2022) 223; Michael B Dorff, James Hicks and Steven Davidoff Solomon "The Future or Fancy? An Empirical Study of Public Benefit Corporations" (2021) 11 HBLR 113; Amanda Schwaben "Doing Good or Just Looking Good?: An Analysis of Delaware's Public Benefit Corporation a Decade After Its Creation" (2023) 74 Case W Res L Rev 233; Brett McDonnell "Purpose in business association statutes: much ado about something (but not much)" in Elizabeth Pollman and Robert B Thompson (eds) *Research Handbook on Corporate Purpose and Personhood* (Edward Elgar Publishing, Cheltenham, 2021) 148; and Tanya M Marcum and Eden S Blair "The Value of Values: An Update on the L3C Entity, Its Uses and Possibilities" (2019) 88 UMKC L Rev 927.
- 39 See for example Nina Boeger "Social Enterprises in the United Kingdom" in Dana Brakman Reiser, Steven A Dean and Giedre Lideikyte Huber (eds) *Social Enterprise Law: A Multijurisdictional Comparative Review* (Intersentia, Cambridge, 2023) 577; Richard C Bishop *Law and Regulation of Community Interest Companies* (Bloomsbury Professional, London, 2023); Janelle Kerlin, Meng Ye and Kelly Hall "Do Social Enterprises Fulfil their Social Promise? Quality of Social Care CICs and Other Legal Forms" (2023) Academy of Management Proceedings 15284; and PR Mason "The Community Interest Company" (2020) 10 Social Business 65.
- 40 See for example Cynthia Giagnocavo "B Corps, Benefit Corporations and Socially Oriented Enterprises in Canada" in Henry Peter, Carlos Vargas Vasserot and Jaime Alcalde Silva (eds) *The International Handbook of Social Enterprise Law: Benefit Corporations and Other Purpose-Driven Companies* (Springer, Cham, 2023) 455.
- 41 See for example Blanche Segrestin, Armand Hatchuel and Kevin Levillain "When the Law Distinguishes Between the Enterprise and the Corporation: The Case of the New French Law on Corporate Purpose" (2021) 171 Journal of

benefit.⁴² In South American (and some other) jurisdictions, collective benefit and interest companies are available.⁴³ There are, of course, other examples. There is also the additional possibility of B Corp certification in a number of jurisdictions and extensive literature critically analysing the merits of the certification regime.⁴⁴

These models differ in terms of structure, legislative basis, reporting requirements and enforcement proceedings. Some models, such as United States benefit corporations and United Kingdom CICs, involve a separate type of corporate entity. Others do not. For example, the French *société à mission* is not a specific corporate entity but a designation given to a company that has amended its constitution to:

- (1) stipulate a *raison d'être*;
- (2) detail the *raison d'être* with social and environmental objectives other than profit-making ones; and
- (3) specify the procedure for how it wishes to monitor the execution of the mission.⁴⁵

Similarly, Italian law does not create a new type of company in the *società benefit* but provides a governance model and status that are available to existing corporations.⁴⁶

Business Ethics 1; and Kevin Levillain, Blanche Segrestin and Jérémy Lévêque "Toward 'Generative' Corporate Governance for Responsible Innovation: The Case of a French Mission Committee" (2024) 43 Journal of Innovation Economics Management 131.

42 See for example Livia Ventura "Social Enterprises and Benefit Corporations in Italy" in Henry Peter, Carlos Vargas Vasserot and Jaime Alcalde Silva (eds) *The International Handbook of Social Enterprise Law: Benefit Corporations and Other Purpose-Driven Companies* (Springer, Cham, 2023) 651; Marco Speranzin "Benefit Legal Entities in Italy: An Overview" (2022) 19 ECL 142; Michael Czinkota and others "For-Benefit Company (fBComp): An innovative social-business Model. The Italian case" (2020) 119 Journal of Business Research 377; and Giorgio Mion and Cristian R Loza Adaui "Understanding the purpose of benefit corporations: an empirical study on the Italian case" (2020) 5:4 International Journal of Corporate Social Responsibility. These companies combine "the goal of profit with the purpose of creating a positive impact for society and the environment" and operate "in a transparent, responsible and sustainable way": see Nativa SRL Società Benefit "English Information for Companies Called 'Società Benefit'" (8 April 2024) <www.societabenefit.net>.

43 As to collective benefit and interest companies, see for example Dante Cracogna "Social Enterprises and Benefit Corporations in Argentina" in Henry Peter, Carlos Vargas Vasserot and Jaime Alcalde Silva (eds) *The International Handbook of Social Enterprise Law: Benefit Corporations and Other Purpose-Driven Companies* (Springer, Cham, 2023) 379; and Francisco Reyes Villamizar "Social Enterprises and Benefit Corporations in Colombia" in Henry Peter, Carlos Vargas Vasserot and Jaime Alcalde Silva (eds) *The International Handbook of Social Enterprise Law: Benefit Corporations and Other Purpose-Driven Companies* (Springer, Cham, 2023) 535.

44 See for example Ine Paeleman and others "The Consequences of Financial Leverage: Certified B Corporations' Advantages Compared to Common Commercial Firms" (2023) 189 Journal of Business Ethics 507; Alice Klettner "Corporate Purpose as Committing, Communicating and Contracting: Perspectives from B Corps" (2024) 39 Aust Jnl of Corp Law 344; Liao, above n 37; Maria Cristiana Tudor and others "Behavioral Perspectives on B Corps" in Henry Peter, Carlos Vargas Vasserot and Jaime Alcalde Silva (eds) *The International Handbook of Social Enterprise Law: Benefit Corporations and Other Purpose-Driven Companies* (Springer, Cham, 2023) 233; and Mayer, above n 11.

45 See Code de commerce (French Commercial Code), art L210-10.

46 Ventura, above n 42, at 658.

The French and Italian models incorporate internal and external monitoring mechanisms. For example, *sociétés à mission* are required to set up a mission committee which is responsible for monitoring the execution of the company's mission. An independent third-party body also audits the execution of the mission every two years.⁴⁷ A *società benefit*'s impact and pursuit of the public benefit must be assessed using a third-party standard⁴⁸ and these companies are required to produce and publish an annual benefit report on their website.⁴⁹ Pursuit of the company's purpose is monitored by the Italian Competition Authority, which has the power to impose fines.⁵⁰ Such companies are required to appoint an "Impact Manager" who is tasked with pursuing the common benefit and reporting on the company's activities.⁵¹

A review of the literature in relation to special-purpose legal vehicles demonstrates that there are questions and criticisms directed to issues such as accountability mechanisms (particularly as concerns stakeholders), reporting and third-party certification requirements, beneficiary and stakeholder participation and intervention rights, directors' duties, enforcement regimes and measurement of outcomes. A key issue is the availability and role of reliable impact assessment metrics and sustainability reporting standards.⁵² Indeed, Grantham states:⁵³

47 See Code de commerce (French Commercial Code), art R210-21. Where companies have fewer than 50 employees, the audit takes place every three years. In terms of evaluation, the mission committee aspect has been received positively: see for example Levillain, Segrestin and Lévêque, above n 41. In another publication, two of these authors have stated:

The *société à mission* provides a way, while preserving freedom of enterprise, to get companies to commit themselves to exiting environmental detrimental markets or to invest in a sustained research effort for developing more sustainable solution[s]. ... Once they are established, the commitments are known (as are those they do not take) and become binding. The strength of the *société à mission* lies in the fact that the purpose, as a constitutional commitment, will remain, even through changes in shareholders and in any country in which the company operates.

See Blanche Segrestin and Kevin Levillain "Profit-with-purpose corporations: Why purpose needs law and why it matters for management" (2023) 20 European Management Review 733 at 735. For criticism of the French models, see Davies, above n 32.

48 See Law 208 of 28 December 2015, *Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (Legge di Stabilità 2016)*, annex 5, and art 1 at [382(b)].

49 See Nativia SRL Società Benefit, above n 42.

50 See Nativia SRL Società Benefit, above n 42.

51 See Nativia SRL Società Benefit, above n 42.

52 Ventura, above n 42. See also Brian Cheffins "The Past, Present and Future of Corporate Purpose" (ECGI Law Working Paper 713/2023, September 2023) at 60.

53 Grantham, above n 2, at 270. See also Mayer, above n 11.

If the root cause of the current problems created for society and the planet by big business and the corporate form is the ability and incentive for companies to operate without regard to the costs to society of their actions, then the solution may lie in changes in the way that companies account for and report on their activities.

The underlying legal infrastructure of each jurisdiction is also significant as concerns the operation and success of purpose-based legal vehicles.⁵⁴ Important factors include the nature of the investor landscape and blockholdings, the rights of majority and minority shareholders, the role and legal force of codes, the nature and activeness of regulators and the nature and extent of stakeholder rights and expectations. In this respect, some jurisdictions have a more stakeholder-oriented model of corporate law. The political, social and cultural contexts are also important factors.

VI CONCLUSION

The issue of corporate purpose – and whether companies can pursue purposes in addition to profit – is the focus of intense interest and debate in multiple jurisdictions and disciplines. There is no doubt that the concept of corporate purpose has exciting potential at both the higher and lower levels. However, there is a lot more work to be done to ensure that, when purpose is put into practice, it effects meaningful change.

⁵⁴ As to the importance of context see Aguilera, above n 5; Kershaw and Schuster, above n 6; and Nurgozhayeva and Puchniak, above n 35.