

Gobierno
corporativo sostenible:
regulación *vs.* mercado

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ARANZADI LA LEY, S.A.U.

C/ Collado Mediano, 9
28231 Las Rozas (Madrid)
www.aranzadilaley.es

Atención al cliente: <https://areacliente.aranzadilaley.es/>

Primera edición: Febrero 2025

Depósito Legal: M-4938-2025

ISBN versión impresa: 978-84-1078-953-1

ISBN versión electrónica: 978-84-1078-943-8

Diseño, preimpresión e impresión: ARANZADI LA LEY, S.A.U.

Printed in Spain

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A View from the UK and elsewhere

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I. INTRODUCTION

Has Unilever, as one of its better-known investors, Terry Smith, claimed «lost the plot»?¹ The bastion of purposeful business is apparently turning its back on the concept, which might surprise many. Hein Schumacher, Unilever's CEO, believes that purpose can «be an “unwelcome distraction” for some brands and “irrelevant” for others: “I believe that social and environmental

1. Sarah Vizard, «Unilever must not “lose the plot” and ditch purpose for profit» Opinion, Recounter, 30 Oct 2023 available at: Unilever must not «lose the plot» and ditch purpose for profit - Raconteur (visited 4 January 2024).

purpose is not something we should force fit on every brand”, he added»². We shall return to the case of Unilever at the end³.

Charles Wookey recently reminded us that the German philosopher Arthur Schopenhauer proposed that there are three stages in the reception of an idea: «First, it is greeted with ridicule. Then it is violently opposed. Finally, it is embraced and there is a general consensus that the idea was, in fact, obvious all along»⁴. Wookey argues that the idea of corporate purpose has had just such a reception. He claims that «In the UK over the last decade I have seen “purpose” ridiculed before progressing to the opposition stage and then increasingly gaining credibility and traction. There is still much to be done, however, if the axiom that business must be purpose-led is to become “obvious” – which it must be for the future of humanity and our planet»⁵. This description is spot on. As is the way we still need to travel in order to get there. Christopher Saul, who used to manage one of London’s leading Law firms, Slaughter and May, recently stated that «I do think that in 2023 and in a world, which is worryingly uncertain corporate law firms should articulate a purpose beyond making profit»⁶. Indeed, recent events, most notably the Covid pandemic, its disparate impact on various segments of society, and the focus on inequality and injustice arising in the wake of the death of George Floyd, have all contributed to the acceleration of the conversation on corporate purpose and the debate about stakeholder governance⁷. As Lipton noted, the result has been substantial, constructive reflection about the role that corporations play in creating and distributing economic prosperity⁸.

So, how do we reconcile all these views? What is the current state of affairs? This chapter will attempt to answer these questions. First, in Part 2 we briefly outline why the quest for meaningful purpose is on at the moment. Then in Part 3, we try to strip down the term «Corporate Purpose». We

2. As reported in *Ibid.*

3. Below at Part 6.

4. Charles Wookey, «The Evolution of Corporate Purpose Over The Last Ten Years» *The Beautiful Truth* (19 December 2022), available at: *The Evolution of Corporate Purpose Over The Last Ten Years — The Beautiful Truth* (visited 4 January 2024).

5. *Ibid.*

6. Christopher Saul, «Law firms - in search of “edge”» 3 May 2023 *ESSAYS* | Christopher Saul Associates | Independent Advice on Governance & Strategy (visited 3 January 2024), section 6.

7. M Lipton, «The Friedman Essay and the True Purpose of the Business Corporation» (17 September 2020) p. 3 available at *WLRK.27701.21.pdf* (visited 10 January 2024).

8. *Ibid.*

look at the different ways in which the term is currently used and assess its ramifications. We then turn to outline what a purpose-led business should look like and what it should focus on. Part 4 moves from theory to practice: it focuses on how does one transform a company to become purposeful, and what steps needs to be taken to achieve that. Part 5 clarifies a confusion which arose with the explosion of ESG into the mainstream of discussions, namely that ESG is not synonym with «corporate purpose». Part 6 turns to deal with the risk associated with becoming purposeful, before it highlights four helpful examples of purposeful companies already operating in practice. As we shall see, there is «no one size fits all» approach here, and, indeed, each company does it differently. Finally, Part 7 concludes with some reflections and signposts for future discussions.

II. THE QUEST FOR MEANINGFUL PURPOSE IS ON

Christopher Saul recently observed that even a number of London leading law firms now articulate a purpose⁹. It is clear it is becoming a wide-spread practice in multiple sectors and industries. Freshfields, for example, titles that «**Empowering tomorrow**»¹⁰. That said, as Saul rightly noted “I would argue it is rather general, vague and all-encompassing. In short, it lacks the details and commitments that really matter”¹¹. While Saul calls other firms to push this topic up the agenda¹², what is really needed is less words and more actions and, more important, internal changes. Brands —whether they make clothes, food & drink or homeware— have the power to make real changes in their respective industries. They can set an example by implementing sustainable manufacturing methods, looking out for their employees» mental health or prioritising the use of recycled materials. It is also apparent that some companies are better at this than others.

Saul further notes that «Often, when you land on a firm’s website you will see an array of impressive statistics around global footprint, numbers of lawyers and deals done - but no “*North Star*” statement of “*why we exist and what we are for*”¹³. More and more companies, it appears, are embracing the

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9. Christopher Saul, «Law firms - in search of “edge”» 3 May 2023 ESSAYS | Christopher Saul Associates | Independent Advice on Governance & Strategy (visited 3 January 2024), section 6.
 10. See, Empowering tomorrow | Freshfields Bruckhaus Deringer (visited 4 January 2024).
 11. Saul, note 6 above, section 6.
 12. *Ibid.*
 13. *Ibid.*

value of clarity of purpose in underpinning strategy, motivating the team and driving the *equity story*. Saul provided two such examples. NatWest’s purpose of “*championing the potential of people, families and businesses*”¹⁴ ripples through its Annual Report and Rio Tinto has recently articulated its purpose as “*finding better ways to deliver the materials the world needs*”¹⁵.

Another helpful example is the one provided by the owners of Hawksmoor, a London-based chain of meat restaurants, in a recent message circulated to its loyal clients¹⁶:

OUR PURPOSE IN NUMBERS



Purpose, at Hawksmoor is about creating **something special** for the people who come and eat with us, the communities we live and work in, **our teams**, and **the network of people who make Hawksmoor happen.**

14. See Our purpose | Championing potential | NatWest (visited 4 January 2024), as reported in Saul, *ibid*.

15. See About (riotinto.com) (visited 4th January 2024), as reported in Saul, *ibid*.

16. The email/newsletter was sent on 19 October 2023 to subscribers (available on file).

We are always aspiring to a just-out-of-reach target while delivering strategies to bridge the gap. As we go further and define new targets, we will continue to be **as transparent and open as we can be about how we're getting on.**

So, we thought you might like to hear an update on the work we've been doing since our last **Impact Report** – here's a **quick breakdown of all the great work so far, in numbers:**



In fact, as a **founding member of the Sustainable Restaurant Association** in 2012, it makes us **the ONLY restaurant to have achieved 3* for over a decade.** We are also proud to be **the first British restaurant group to be certified as a B Corp;** which means that we are part of a global movement for an inclusive, equitable, and regenerative economy.

We hope this helps you feel good about coming to our restaurants, knowing that we're doing all we can behind the scenes to keep the important stuff going so you can concentrate on having a great experience in our restaurants and bars.

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However, while the above is laudable, as Hilb acknowledges, defining purpose is far from easy¹⁷. Historically, businesses were issued with a charter or clear parameters for their role in society. They were appointed as the official provider of a defined service, e.g. a royal bakery. However, over time, the role of business has expanded and evolved significantly in response to societal concerns, e.g. around workers» rights or the environment¹⁸:

I believe we have to acknowledge that there are different viewpoints of what business should do in society. This won't be resolved. In fact, the debate about the role of business re-emerges every 10-20 years with a different intensity and different characteristics¹⁹.

III. «CORPORATE PURPOSE» STRIPED DOWN

1. HOW IS «CORPORATE PURPOSE» USED?

Woockey helpfully observed that the term «corporate purpose» is used in three different ways. First, and in the least advanced way, in a «cynical and opposed (“woke capitalism”), wrong-headed and doomed to fail decrying any efforts to move away from the dominant paradigm of profit maximisation»²⁰. Secondly, in a slightly more progressive way, yet problematic nonetheless, in a way «to burnish company's credentials without changing anything except the wallpaper, which generates its own sceptical counter-reaction»²¹. This approach is not without major risks. The list of brands that have put their heads above the parapet in recent times and suffered the consequences includes Costa Coffee, Bud Light, Dr Martens and NatWest²². All were subjected to social media backlash for being taking what were deemed insincere stances on ethical issues that were (supposedly) at odds with what most of their customers believed²³.

17. M Hilb, «Sustainable Corporate Governance» An expert briefing with Professor Michael Hilb (January 2013), Centre for Climate Engagement, available at: Michael-Hilb_final-briefing.pdf (climatehughes.org) p.4 (visited 14 January 2024).

18. *Ibid.*

19. *Ibid.*

20. Charles Woockey, «The Evolution of Corporate Purpose Over The Last Ten Years» The Beautiful Truth (19 December 2022), available at: The Evolution of Corporate Purpose Over The Last Ten Years — The Beautiful Truth (visited 4 January 2024).

21. *Ibid.*

22. As reported in Sarah Vizard, «Unilever must not “lose the plot” and ditch purpose for profit» Opinion, Recounter, 30 Oct 2023 available at: Unilever must not «lose the plot» and ditch purpose for profit - Raconteur (visited 4 January 2024).

23. *Ibid.*

The third, and arguably the most important way in which companies use the term «corporate purpose», is «in a serious way to signal – and provoke – a genuine shift of thinking and practice»²⁴. It is this last way which we want to focus our attention on here as the cursor to where companies should be striving to get to. We turn to what this paradigm entails next.

2. WHAT IS A PURPOSE-LED BUSINESS?

As *Table 1* illustrates, to become a purpose-led business requires a deep and fundamental change in how the company operates and how it sees itself. Crucially, this change involves *not* delivering a financial return on shares to investors as the primary goal (thus moving away from Milton Friedman’s well-known paradigm of profit maximisation), but rather, to perceive profit is one vital outcome, but not in itself the purpose per se. In other words, it is ancillary by product. Instead, a purpose-led business has a «purpose – a reason for being – which lives within the business and guides its strategic direction towards the better world arising from its success»²⁵. Another way of looking at this was offered by Lipton, who argues that in looking beyond the disruption caused by the pandemic, boards and corporate leaders «have an opportunity to rebuild with the clarity and conviction that come from articulating a corporate purpose, anchored in a holistic understanding of the key drivers of their business, the ways in which those drivers shape and are shaped by values, and the interdependencies of multiple stakeholders who are essential to the long-term success of the business»²⁶.

24. Charles Wookey, «The Evolution of Corporate Purpose Over The Last Ten Years» *The Beautiful Truth* (19 December 2022), available at: *The Evolution of Corporate Purpose Over The Last Ten Years — The Beautiful Truth*.

25. *Ibid.*

26. M Lipton, «The Friedman Essay and the True Purpose of the Business Corporation» (17 September 2020) p. 3 available at [WLRK.27701.21.pdf](https://www.wlrk.com/2020/09/17/the-friedman-essay-and-the-true-purpose-of-the-business-corporation/) (visited 4th January 2024).

Table 1. A purpose-led business²⁷

<ul style="list-style-type: none">• A purpose – a reason for being – which lives within the business and guides its strategic direction towards the better world arising from its success.• Such a business sets out to address a problem or meet a need, and offers goods that are truly good and services that truly serve, thereby creating value for society.• Includes delivering a financial return to investors. Profit is one vital outcome, but not itself the purpose.	<ul style="list-style-type: none">• Sees itself as a social organisation that seeks to respect the dignity of people and have a positive impact on the lives of all those it touches, and on the planet.• Accepts that people have an intrinsic value, and are not mere instruments of business success.• This fundamentally changes everything in how it acts, and the broader impact it has.• Sees itself as a social organisation that seeks to respect the dignity of people and have a positive impact on the lives of all those it touches, and on the planet.
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Lipton, accordingly, suggests a re-defined corporate purpose to reflect this shift, as follows²⁸:

The purpose of a corporation is to conduct a lawful, ethical, profitable and sustainable business in order to ensure its success and grow its value over the long term. This requires consideration of all the stakeholders that are critical to its success (shareholders, employees, customers, suppliers and communities), as determined by the corporation and its board of directors using their business judgment and with regular engagement with shareholders, who are essential partners in supporting the corporation's pursuit of its purpose. Fulfilling this purpose in such manner is fully consistent with the fiduciary duties of the board of directors and the stewardship obligations of shareholders.

As Lipton further explains, this statement of corporate purpose is, on the one hand, broad enough to apply to every business entity, but at the same time supplies clear guideposts for action and engagement. In particular, the requirement of lawful and ethical conduct ensures «generally recognized standards of corporate social compliance»²⁹. Secondly, the broader aim of taking into account all corporate stakeholders, including communities «is not limited to local communities, but comprises society and the economy at large and directs boards to exercise their - business judgment within the

27. Source: A Blueprint for Better Business

28. Lipton, note 16 above.

29. *Ibid.*

scope of this broader responsibility»³⁰. Finally, the requirement of regular shareholder engagement acknowledges accountability to investors, but also the shared responsibility of shareholders for responsible long-term corporate stewardship³¹. Essentially, he explains this is «The New Paradigm for corporate governance issued in 2016 by the World Economic Forum»³².

But how does all of this works in practice? Put differently, what practical actions do companies need to take in order to get there? We turn to this next.

IV. BECOMING PURPOSEFUL

So how does one transform a company to become purposeful?

First, and unsurprisingly, there is no «one size fits all» approach here. Instead, it would necessitate different methods for each company, depending on its industry, history, regulatory environment, governance and other related factors³³. This can be achieved through various board committees, focusing on stakeholders, ESG issues and the stewardship obligations of shareholders³⁴.

Secondly, it is a process that requires looking inward and reviewing everything the company does. Practically, it requires moving away from maximising profit as the sole paradigm. As *Table 2* illustrates, the task is no longer to maximise anything, but to take balanced decisions which enable the business to optimise for its purpose³⁵. This would require adopting a more realistic view of people «seeing that our relationships matter and that as human beings we seek meaning, have a deep desire to belong and to care for others as well as ourselves, and seek to grow through our work, achieving mastery and autonomy»³⁶. Indeed, becoming purpose led is an adaptive rather than a

30. *Ibid.*

31. *Ibid.*

32. *Ibid.*, on which see further: It's Time to Adopt the New Paradigm (harvard.edu) (11 February 2019), (visited 4th January 2024).

33. See further, M Lipton, «The Friedman Essay and the True Purpose of the Business Corporation» (17 September 2020) p. 3 available at WLRK.27701.21.pdf (visited 4th January 2024).

34. *Ibid.*

35. Charles Wookey, «The Evolution of Corporate Purpose Over The Last Ten Years» The Beautiful Truth (19 December 2022), available at: The Evolution of Corporate Purpose Over The Last Ten Years — The Beautiful Truth (visited 4th January 2024). It is interesting to compare that with section 172 of the UK Companies Act 2006, which arguably does not go far enough.

36. *Ibid.*

technical challenge. There is no set of tools that can readily be applied to move from one state to the other. It cannot be imposed. Instead, «the crucial change takes place in heads and hearts. It is all about the frame of mind of people in a business, especially its leaders. A growing number of business leaders have stepped beyond this narrow focus on profit and become curious about having a different fundamental aim»³⁷.

If one follows that path, it is submitted, it would have the benefit of delivering better outcomes for business, society and people. It will do so, as *Table 2* shows, by, first, creating a company with shared clarity and commitment, engaged people, stronger alliances as others with overlapping purposes³⁸. In terms of a better society, it would make the company, fundamentally, more pro-social focused through its purpose and how it behaves³⁹. Finally, it will deliver for people, who will be valued and respected and find more fulfilment through their work⁴⁰.

While it may not be easy to achieve all of these at once, over time, and gradually, with the right steps and actions taken, it is achievable. The journey in that direction has already begun in earnest. Indeed, in some respects, the shift has already begun as *Flow-Chart 1* below illustrates. Over the last decade, and in particular post-pandemic, the growing awareness of the necessity for action on both climate change and social inequality and the rise in importance of ESG Ratings/Indicators, it has been given much more urgency and impetus. The process has been accelerated. This is summarised in *Flow-Chart 2* below.

Table 2. Becoming Purposeful⁴¹

	Becoming Purposeful	
What does it mean in practice?	1. Moving away from maximising profit. The task now is <i>not</i> to maximise anything, but to take balanced decisions which enable the business to optimise for its purpose.	2. Becoming purpose-led challenges the dominant view of people as atomised individuals motivated only by money, status and power.

37. *Ibid.*

38. *Ibid.*

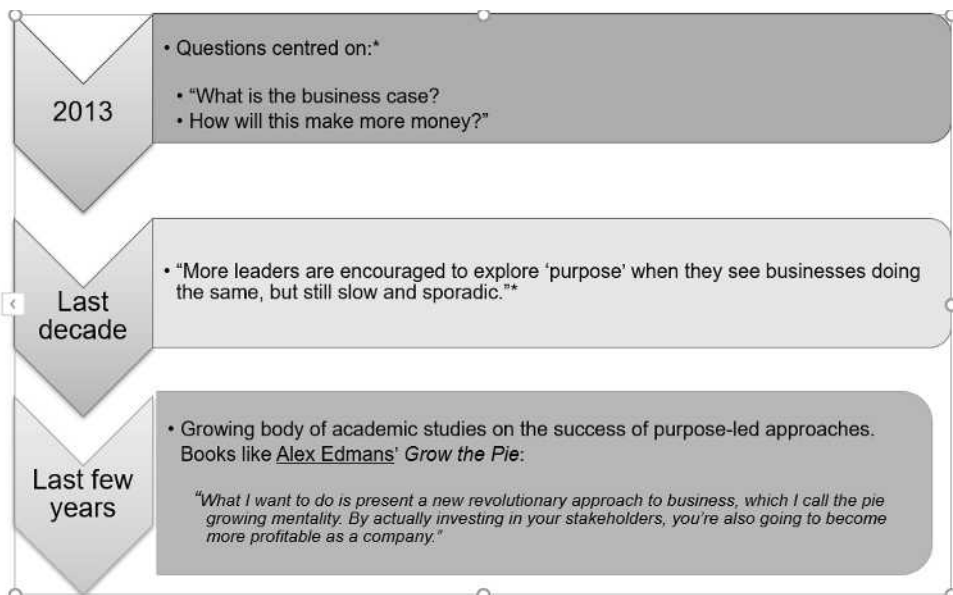
39. *Ibid.*

40. *Ibid.*

41. Adopted from: Charles Wookey, «The Evolution of Corporate Purpose Over The Last Ten Years» *The Beautiful Truth* (19 December 2022), available at: *The Evolution of Corporate Purpose Over The Last Ten Years — The Beautiful Truth*.

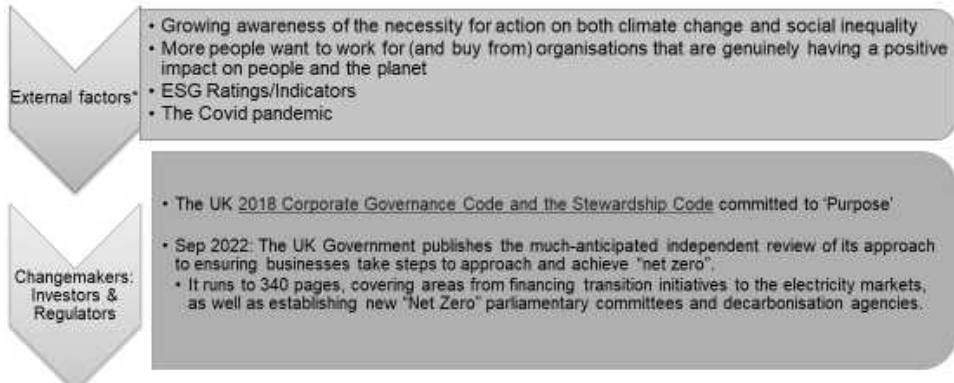
Becoming Purposeful	
What is a thriving social organisation?	One that adopts a more realistic view of people – «seeing that our relationships matter and that as human beings we seek meaning, have a deep desire to belong and to care for others as well as ourselves, and seek to grow through our work, achieving mastery and autonomy».
Why does it follow that a purpose-led organisation delivers for business, society and people?	<ul style="list-style-type: none"> • It creates a better company (shared clarity and commitment, engaged people, stronger alliances as others with overlapping purposes); • A better society (as the business has a fundamentally pro-social focus through its purpose and how it behaves); • Better outcomes for people (who are valued and respected and find more fulfilment through their work).

Flow-chart 1. Becoming Purposeful- change over time⁴²



42. Adopted from: Charles Wookey, «The Evolution of Corporate Purpose Over The Last Ten Years» The Beautiful Truth (19 December 2022), available at: The Evolution of Corporate Purpose Over The Last Ten Years — The Beautiful Truth (visited 4 January 2024).

Flow-chart 2.–What has caused the shift to accelerate?⁴³



V. ESG IS NOT SYNONYM WITH «CORPORATE PURPOSE»

An important point needs to be made now. With the explosion of ESG into the mainstream discourse and discussions, in particular, as investors recognise the alignment of purpose and long-term value creation, a confusion has come to the fore. Wookey explains it as follows: «Many now see ESG as a synonym for or replacement for purpose. It isn't»⁴⁴. He is right. It is vital we understand the distinction between the two: «ESG considerations are useful ways to understand a company's dependence on social and environmental factors and the quality of its governance. But they typically measure the impact of the world on the company – rather than the impact the company has on the world»⁴⁵. Herein lies the distinction. This is important as it also sets clearer expectations about corporate behaviours and actions. Helpfully, others have provided some definitions of these key terms and their meanings⁴⁶:

43. *Ibid.*

44. *Ibid.*

45. *Ibid.*

46. Source: K Sullivan, A Silverstein, and L Galezio Arthur, «ESG and Corporate Purpose in a Disrupted World» (20 August 2021) available at: ESG and Corporate Purpose in a Disrupted World (harvard.edu) (visited 5 January 2022). See also, R Eccles, C Mayer, and J Stroehle, «The Difference Between Purpose and Sustainability (aka ESG)» (20 August 2021) available at: The Difference Between Purpose and Sustainability (aka ESG) (harvard.edu) (visited 5 January 2024).

ESG	«Environment, Social, and Governance». While the meaning of «environment» and «governance» may be obvious, «social» may not be. «Social» refers to a broad swath of matters, ranging from human capital management and workforce issues to human rights to the company’s role in society. In fact, because ESG is such a broad term, some have suggested adding an additional «E» for «employees» or «D» for «diversity».
Sustainability	«Sustainability» is often used to refer solely to environmental matters such as climate change, but the term can also refer to what it takes for an enterprise to achieve long-term existence, profitability, and growth. Thus, sustainability is not synonymous with ESG; rather, it encompasses ESG, because all three elements of ESG contribute to the sustainability of the enterprise.
Corporate purpose	Corporate purpose, or corporate social purpose, refers to a company’s stated role in society, connected to long-term value, and how the company fulfils that role in the communities in which it operates. It is a concept that involves proactive engagement in society on a broad range of social and, in some cases, political initiatives and answers the question «why is the company in business, and how will it stay in business and remain relevant?» As the company’s stakeholders seek to understand more about how the company defines and executes its purpose, it is likely that purpose will be inextricably aligned with the company’s ESG measurement and disclosure strategy.
Stakeholder capitalism	For many years, the interests of the corporation in a capitalist society were deemed identical with those of its stockholders. Under this approach, known as «shareholder capitalism», substantially all corporate decisions were based on whether and the extent to which the decision would benefit stockholders. In August 2019, the Business Roundtable and others have suggested that companies need to consider the interests of all stakeholders—including employees, customers, suppliers, and their communities, as well as stockholders and investors. This approach is generally referred to as «stakeholder capitalism».

It is clear then that ESG is not synonym with «corporate purpose». The two are not the same. A distinction needs to be maintained if corporate purpose is to work. This should be salient in future discussions.

VI. BECOMING PURPOSEFUL: RISKS AND GOOD EXAMPLES

Like any approach it does not come cost-free. What risks are associated with becoming a purposeful company?

Some remain sceptical to the notion that «corporate purpose» can live up to the hype⁴⁷. So much so that they argue⁴⁸:

If we gave in to the temptation of the follow-up question «whence the hype», we might hypothesize that «corporate purpose» is an elaborate decoy orchestrated by CEOs, boards, and their lawyers to relieve pressure from regulators and shareholder activists. But we would have as little evidence for this hypothesis as for the importance of «corporate purpose».

Then there is reputational cost. First, the risks posed by a reputational hit are heightened in a period of economic uncertainty⁴⁹. Businesses worldwide are dealing right now with high inflation and interest rates, supply chain volatility and weak demand. That makes leaders, boards and investors nervous. Such difficult conditions also prompt customers to focus more on price than purpose⁵⁰. Secondly, consumers may lose faith in the whole concept of purposeful business, given the growing number of companies being accused of greenwashing and/or social washing⁵¹. Too many firms extol the virtues of inclusivity while their leadership teams still comprise mostly white men, for instance. Alternatively, they talk about their positive ecological impact while continuing to pollute the Earth with single-use non-biodegradable plastic packaging⁵².

Whatever the case may be, and it is, indeed, the case that there is still those who need to be persuaded, there are some excellent examples of purposeful companies already operating in practice, and, more important, proving the concept works. Four different companies with four different approaches are highlighted next. As we already observed above, there is «no one size fits all» approach here, and, as we shall see, each company does it differently.

First, let us look at John Lewis, a household name in the British industry for generations of consumers. In a survey sent to its loyal clients recently, it

47. H Spamann & J Fisher, «Corporate Purpose: Theoretical and Empirical Foundations/ Confusions» ECGI Working Paper N° 664/2022 (November 2022). Available at <https://ssrn.com/abstract=4269517> (visited 10 January 2024).

48. *Ibid.*, page 24.

49. Sarah Vizard, «Unilever must not “lose the plot” and ditch purpose for profit» Opinion, Recounter, 30 Oct 2023 available at: Unilever must not «lose the plot» and ditch purpose for profit - Raconteur (visited 4th January 2024).

50. *Ibid.*

51. *Ibid.*

52. *Ibid.*

articulated its views while asking for feedback in developing the future direction. This approach is advantageous. While appearing open and transparent, it helps educate consumers as to what the brand does, thus increasing trust in the brand. Likewise, it provides the brand with signposts as to future travel, aligned with its major stakeholders. It is a win-win strategy. The screenshots of the survey are reproduced below⁵³:

PERSPECTIVES

Lots of brands are now starting to talk about 'Purpose'. But do they mean it, or is it just clever marketing?

By 'Purpose' we mean the brand's 'reason for being' and what it stands for above all else (beyond making money). It is often expressed through a series of values and goals.

Which of the following brands do you think are really 'Purpose-led' and 'walking the walk'? And which of them are just 'talking the talk'?

Required
Please complete all statement cards

Nike	H&M	IKEA	Ben & Jerry's	McDonald's	M&S	Amazon	Patagonia
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Next

Purpose is not just about what a company says and believes - it's about what a company does. So, what actions do you think the John Lewis Partnership should take?

You've got 10 points - you can put them all on one idea, or you can share them out across the list. The more you like an idea, the more points you should give.

- Please add a number up to 10 next to the options you like the most.
- If you really like an idea you can score it 10, or you could share the points across the ideas.
- The total must add up to 10.

Required
Use the entire amount

0 points / 10 point

Build new partnerships, products & services, and campaigns to drive positive change	0%	0	points
Set higher ethical standards for all its suppliers	0%	0	points
Give Partners / employees more say in how John Lewis give back to local communities	0%	0	points
Grow the number of fair trade and ethically sourced products it sells	0%	0	points

53. John Lewis, Perspectives Survey, sent by email to customers on 21 July 2023.



The second example touches on a resourceful solution to the cost of sustainable sourcing. This notoriously can often be extremely daunting. Balfour Beatty, a global FTSE 250 company, saved over £1 million by purchasing some 5,700 remanufactured HP laptops for their UK office and site-based employees. These high-specification laptops offered performance similar to the latest generation units but at a significant discount⁵⁴. But that is not all. Balfour Beatty did not simply just save money; they also made a massive impact on their sustainability goals. This way they proved they «walk the walk» when it comes to their purpose, values and behaviours⁵⁵. By choosing to purchase remanufactured laptops, they saved over 1,600 tonnes of CO₂, 6000 tonnes of resources and a million cubic litres of water⁵⁶. Bekir Andrews, Associate Director for Group Sustainability at Balfour Beatty added that: «Circular Computing also offset all of their emissions associated with the remanufacturing process. This amounts to approximately 28,500 trees for Balfour Beatty»⁵⁷.

The third case study is that of probably the most successful company in history: Apple. More specifically, it is about Apple Park, its home. Apple Park has been described as «conspicuously inconspicuous; a monument to a company that purports to be sceptical of monuments. In the Apple way, it's

54. These were supplied by Circular Computing, which describes itself in these terms: «We offer a smart, cost-effective, and environmentally friendly solution - remanufactured, carbon-neutral laptops at up to 40% less cost». See, Circular Computing™ | Carbon Neutral Remanufactured Laptops (visited 5 January 2024).

55. As articulated in their purpose, values and behaviours. See, Our Cultural Framework | Balfour Beatty Plc (visited 8 January 2024).

56. Read the full case study here: <https://circularcomputing.com/case-studies/balfour-beatty/> (visited 5 January 2024).

57. *Ibid.*

designed to be both beautiful and useful and unlike other things – better, even – that people have designed for the same purpose»⁵⁸. Tim Cook, Apple CEO, explained how its working environment works and benefits everyone: «There's very much an underappreciation of the power of the venue that people work in, I think... think at a deeper level to come up with something that promotes collaboration and openness and serenity». How does Apple Park deliver on that? Well, in the following way⁵⁹:

Apple Park is a place that looks like it came out of nowhere that cannot possibly have come out of nowhere. The building itself, four stories of curved glass and three underground levels that stretch for nearly a mile, has the look of a spaceship that was courteous enough to come down to Earth and land without disturbing the landscape. In the middle of the continuous loop, there is a courtyard where in the winter the orchards are skeletal but still: orchards! Vast stands of plum and apple trees. Plus thousands of oaks! Winding paths that change in elevation. California hills visible in the distance. Outside the ring are basketball courts, football pitches, volleyball courts, a fitness centre, little piles of communal bikes. When the weather is nice, you can open certain parts of the walls right up. The campus runs completely on renewable energy, powered by solar panels and biogas fuel cells, cost about £4.2 billion to build, and wears the fingerprints of each of Apple's saints.

The final case study, and the most important one to my mind, is that of Ingka-Ikea, the most trusted company in the planet at the time of writing. This case is useful for two chief reasons. The first is that it is the most advanced manifestation of a purposeful company. The second reason is that it provides another fact-based evidence (if Apple is not good enough) you can become a purposeful company, while at the same time still deliver high profits and provide a great place to work in.

Juvenio Maeztu, Ingka-Ikea's Deputy CEO, explained recently⁶⁰ that the company's overarching purpose is underpinned by four pillars it focuses on⁶¹. These are: 1) better home, which includes a business purpose in it; 2) better planet for all; 3) better life for people, their colleagues, suppliers, and

58. Z. Baron, «Tim Cook on shaping the future of Apple» (3 April 2023), British GQ (gq-magazine.co.uk) available at: Tim Cook on shaping the future of Apple | British GQ (gq-magazine.co.uk) (visited 5 January 2024).

59. *Ibid.*

60. Speech delivered at the ECGI Annual conference on 21 September 2023 in Copenhagen.

61. See also, This is Ingka Group | Ingka Group (visited 5 January 2024).

communities we touch; and 4) better company for the long term – financial resilience for long term⁶². Maeztu emphasised that the toughest part lies in the actions that the company needs to take where you «find contradictions between what you want to do and the costs it creates»⁶³. Exploring trade-offs is, indeed, where it bites⁶⁴. This tested the company in issues such as exiting Russia after the Russian invasion of Ukraine or changes premises they occupied to reduce Co2. Though decisions or choices had to be made. The way the company dealt with such issues is by developing standards to take decisions. Crucially, it includes «a moral compass» and investing in the S- Social in the ESG⁶⁵.

Maeztu brushes off the cynicism about corporate purpose by asserting that the 200k employees of the company should be doing the talking, they are the best spokespersons and advocates of a purposeful company. It is about being authentic⁶⁶. One cannot argue with that.

VII. CONCLUDING REMARKS: WHY YOU CANNOT ESCAPE PURPOSE ANY LONGER

Let us return to where we started: Unilver, once described as the bastion of purposeful business, which is apparently turning its back on the concept.

62. Speech delivered at the ECGI Annual conference on 21 September 2023 in Copenhagen.

63. *Ibid.*

64. M Hilb, «Sustainable Corporate Governance» An expert briefing with Professor Michael Hilb (January 2013), Centre for Climate Engagement, available at: Michael-Hilb_final-briefing.pdf (climatehughes.org) p.4 (visited 14 January 2024), puts this as follows: «Importantly, this means exploring the trade-offs the organisation is prepared to make. For example, is the organisation prepared to walk away from historically profitable areas of business? Or to invest heavily in the short term to achieve its long-term climate ambitions? Taking time to discuss these points will provide a clear mandate and ensure a consistent approach to commercial challenges and opportunities».

65. *Ibid.* Maeztu pointed out, rightly, that the social dimension is unspoken today, and that the company is committed in that part. On 10 January 2024 IKEA Retail (Ingka Group), released its 10th annual Life at Home Report, focusing on a happy home. Over the last 10 years, the IKEA Life at Home Report has become one of the biggest annual studies in the world on how we live and what really makes us happy at home. In this year's report, IKEA has reflected on a decade of data collected from a total of more than 250,000 research participants around the world, to identify the eight essential needs for a better life at home – control, comfort, security, nurturing, belonging, enjoyment, accomplishment, and aspirations. The report finds that those who often feel their emotional needs are met are much more positive about the future. See,

The IKEA Life at Home Report 2023 reveals the secrets to a happier home & a better everyday life | Ingka Group (visited 10 January 2024).

66. Maeztu, note 60 above.

That said, there is more than meets the eye. As Vizard noted, the business and its reputation have been built on a commitment to «making sustainable living commonplace»⁶⁷. Purpose is «baked into how the firm operates – so much so that, when Kraft-Heinz tried to acquire it in 2017, John Sauven, Greenpeace UK's executive director at the time, offered to help repel the hostile bid, according to *The Times*. Unilever's own figures reveals its commitment to sustainable practices such as improving the energy efficiency of its factories helped the business to achieve cost savings exceeding €1bn (£870m) between 2008 and 2020. And in 2021, the firm described its commitment to sustainability as a “real talent magnet”, citing research which found that, in 54 of the 75 markets where it tracked employee engagement, this was the main reason why respondents had chosen to work for Unilever»⁶⁸.

Vizard rightly notes that it would seem, then, that Unilever should not be rowing back on purpose. She concludes⁶⁹:

The concept is too core to the firm's positioning in the market, the way it operates and how it attracts talent, even if it has been taken too far for the liking of certain institutional investors. Schumacher is partly right, in that the firm must focus on building a «performance culture». Yet that needn't come at the expense of its sustainability work. Purpose and profit must be the mantra. Because the world needs more companies working to reduce their environmental impact, not fewer.

So here you go. Another indication on how to balance profit with purpose. As to other companies, Schumacher, Unilever's CEO, is probably right that social and environmental purpose is not something we should force fit on every brand⁷⁰. Indeed, as Eccles and Mavraki recently suggested, not every company, for example, needs a formal and publicly-disclosed climate transition plan (CTP)⁷¹. They argue that the decision on whether or not to have a public

67. See Unilever's website About - Purpose - Our Company | Unilever (visited 5 January 2024).

68. Sarah Vizard, «Unilever must not “lose the plot” and ditch purpose for profit» Opinion, Recounter, 30 Oct 2023 available at: Unilever must not «lose the plot» and ditch purpose for profit - Raconteur (visited 4 January 2024). This resonates to the case of Ingka-Ikea discussed above.

69. *Ibid.*

70. As reported in *Ibid.*

71. R Eccles & Tina Mavraki «Comment: Does every company need a climate transition plan? The simple answer is “no” (responsible-investor.com)» (11 October 2023) (visited 5 January 2024). A Climate transition plan sets out how an organisation will adapt as we move towards a low carbon economy. It is a vital tool to demonstrate to capital markets and stakeholders that an organization is committed to achieving a 1.5-degree pathway,

CTP is a decision that needs to be made by executive management and the board of directors. They explain⁷²:

The company's top priority is to remain a going concern and so its climate strategy must support the overall corporate strategy and protect its vital resources, not detract from them. Any moral obligation that the company has assumed by virtue of its consciously defined purpose... should be placed in the context of the company's long-term going concern considerations.

They, therefore rightly, conclude⁷³:

There is little commercial value, and most likely a fair amount of financial resources, time and executive attention wasted in developing a CTP for the sake of communication optics; neither the company nor its stakeholders will become any wiser from it.

In short, there is a sensible path forward. One that considers profits alongside purpose. A middle way that acknowledges that each business is different. A way that puts the purpose in the context of the company's long-term going concern considerations. Business is constantly evolving. It reflects wider societal changes. While it is clear that adopting a purpose-led approach is an option that cannot be imposed, as Wookey sensibly puts it «is increasingly being taken by businesses wanting a better future for all. It's not inevitable, but I believe it is possible – and we are already on the way there»⁷⁴. At the end of the day, as Hibs notes, several organisations producing similar goods and services in different ways «creates competition among different models. If one model is more successful, other companies might be motivated to refine their purpose and shift models»⁷⁵. So, one way or another we may get there one day.

and that its business model will remain relevant (i.e., profitable) in a net-zero carbon economy. See further: Climate transition plans - KPMG UK (visited 8 January 2024).

72. *Ibid.*

73. *Ibid.*

74. Charles Wookey, above note 4.

75. M Hilb, above note 64.

Capítulo 10

Materia y forma en la sociedad de beneficio e interés común

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SUMARIO: I. INTRODUCCIÓN. 1. *Sobre el sentido del presente trabajo.* 2. *Aproximación a la sociedad de beneficio e interés común desde la perspectiva jurídica: referencia comparada y situación del Derecho español.* II. UNA CUESTIÓN PREVIA: ¿SOCIEDAD DE BENEFICIO E INTERÉS COMÚN O SOCIEDAD CON PROPÓSITO? 1. *Premisa: sobre el significado del propósito.* 2. *El amplio significado del propósito en la práctica.* III. LA MATERIA DE LA SOCIEDAD DE BENEFICIO E INTERÉS COMÚN. 1. *Presentación: la promoción de intereses generales junto con intereses particulares por la sociedad de beneficio e interés común.* 2. *El modo de inserción de los intereses generales en el Derecho de sociedades.* 3. *Sociedad de beneficio e interés común, tipología empresarial y posición en el mercado.* IV. DE LA MATERIA A LA FORMA: LA SBIC COMO SOCIEDAD CERRADA. V. LA FORMA DE LA SOCIEDAD DE BENEFICIO E INTERÉS COMÚN. 1. *Consideraciones generales.* 2. *El punto de partida: la SBIC no reconocida legalmente.* 2.1. *Cuestión previa: ¿una figura societaria carente de forma?* 2.2. *La plena validez de la SBIC desprovista de reconocimiento legal.* 3. *La sociedad de beneficio e interés común reconocida por el Derecho positivo.* 3.1. *El significado del reconocimiento legislativo de la SBIC en Derecho español.* 3.2. *La sociedad de responsabilidad limitada como forma idónea para la SBIC.* VI. CONSIDERACIONES FINALES.

El presente trabajo se integra en el proyecto de investigación «Método, finalidad y contenido en la ordenación normativa del gobierno corporativo» (PID2021-128186NB-I100), concedido por el Ministerio de Ciencia y Tecnología, del que es investigador principal el autor. Se ha deducido, a su vez, de la participación

de quien suscribe en el IV Congreso Internacional de Gobierno Corporativo, celebrado en la Universidad CEU San Pablo, de Madrid, en abril de 2023, y dirigido por el profesor Alfonso Martínez-Echevarría y García de Dueñas, a quien deseo expresar ahora mi agradecimiento por su amable invitación.

I. INTRODUCCIÓN

1. SOBRE EL SENTIDO DEL PRESENTE TRABAJO

La notoria alusión al hilemorfismo aristotélico contenida en el título del presente trabajo no se hace con pretensiones filosóficas ni, del mismo modo, con propósito erudito, intentando remedar la significativa frecuencia con la que la materia y la forma se han traído a colación con ánimo de esclarecer alguna parcela de la realidad social o cultural¹. El objetivo de la presente contribución, ciertamente más modesto, es el de delimitar, de la mejor manera posible, una realidad institucional de nuestro tiempo, como es la sociedad de beneficio e interés común (en adelante, SBIC), desde un planteamiento más integrador que alternativo, con honda tradición en el ámbito jurídico. No es este el momento de recordar las múltiples ocasiones en las que el análisis de diversos institutos jurídicos, así como, con mayor amplitud, la comprensión genérica de la ley, como principal fuente del Derecho, se han llevado a cabo merced a la doble perspectiva que supone tanto su consideración material como la configuración formal de que se dote.

En la presente ocasión, se trata, como decimos, de aproximarse al significado jurídico de la indicada sociedad con una orientación equivalente, que no impide afirmar sus peculiaridades ni, del mismo modo, destacar su frecuente entrecruzamiento. Hablar de la «materia» correspondiente a la SBIC significa, en principio, esbozar su razón de ser y su objeto, ligado, como es sabido, a la satisfacción de intereses generales sin mengua de la consecución de fines de interés particular; la alusión a su «forma» implica situarse, de entrada, en el terreno de su configuración institucional y del correspondiente tratamiento que por tal circunstancia pueda corresponderle. Si, en este último caso, el protagonismo del ordenamiento jurídico parece a priori destacado, aunque no necesariamente imprescindible, en la primera vertiente, sin embargo, sería posible detectar un decisivo relieve de la autonomía de la voluntad como elemento responsable de su misma existencia².

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1. Sirva como supuesto de referencia el volumen *Materia y forma en poesía* (Madrid, Gredos, 1955), debido a la sabiduría filológica y literaria de Amado Alonso.
 2. Existencia meramente fáctica, en principio, pero con más que razonable validez jurídica; al respecto, *cf. infra* V, 1.

El enlace, entonces, entre la efectiva realidad de la figura y la posibilidad de aplicarle, en su caso, un determinado régimen necesita ser acogido, al menos en cierta forma, por el ordenamiento jurídico, si se quiere hacer posible la conversión de tal sociedad en sólida institución jurídica. Sin entrar ahora en mayores honduras, propias de la teoría general del Derecho, parece razonable pensar que esa acogida pueda llevarse a cabo con planteamientos diversos, en función, claro está, de las orientaciones de política jurídica y política legislativa que al respecto sostenga el correspondiente legislador.

2. APROXIMACIÓN A LA SOCIEDAD DE BENEFICIO E INTERÉS COMÚN DESDE LA PERSPECTIVA JURÍDICA: REFERENCIA COMPARADA Y SITUACIÓN DEL DERECHO ESPAÑOL

Entre esos planteamientos se encuentra, sin duda, la expresa delimitación y regulación de la SBIC, al modo llevado a cabo, bajo esta u otra denominación, en distintas jurisdicciones. Por lo común, no suele establecerse en ellas un régimen del todo preciso y completo, en la medida en que tales objetivos sean de posible consecución en el ámbito del Derecho; sí se dispone, con todo, de una suficiente base normativa para que la sociedad que nos ocupa consiga, bien de manera autónoma, bien —más frecuentemente— mediante la integración en el tratamiento de otras normas societarias, una adecuada seguridad institucional, a fin de hacer posible su organización y su efectiva actividad en el mercado.

La referencia al Derecho comparado dentro del presente asunto es de considerable relieve, al hilo de la paulatina, pero continuada, recepción de la figura en numerosos ordenamientos. Es bien conocido su origen en Estados Unidos, con posterior relieve en algunos países europeos, como Italia, sobre todo, sin perjuicio de su significada acogida en distintos Estados del ámbito iberoamericano³. Por regla general, la regulación de la figura en estudio, con

3. De entre la muy amplia bibliografía, véase, entre otros, la completísima aportación contenida en PETER, H./VARGAS VASSEROT, C./ALCALDE SILVA, J. (dirs.), *The International Handbook of Social Enterprise Law. Benefit Corporations and Other Purpose-Driven Companies*, Cham, Springer, 2022, y, dentro de esta obra, el sintético trabajo de HERNANDO CEBRIÁ, L., «Introduction to the Law of Benefit Corporations and Other Public Purpose-Driven Companies», pp. 301-317, así como la extensa bibliografía allí citada. Aunque a propósito de un asunto específico, contiene amplias referencias a la regulación de la SBIC (bajo la denominación de sociedad *benefit*) en Estados Unidos e Italia el libro de BUTTURINI, P., *Società benefit e diritto di recesso*, Torino, Giappichelli, 2022; dentro de la amplísima doctrina italiana sobre la figura, puede consultarse, por su carácter sintético, el trabajo de STELLA RICHTER, M./PASSADOR, M.^a L./SERTOLI, C., «Tendenze e prospettive delle società *benefit*», *Analisi Giuridico dell'Economia*, 1, 2022, pp. 213-237. Respecto de la *société à mission*, trasunto en Francia de la SBIC, si bien con

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Profundo análisis del gobierno corporativo sostenible en el contexto actual de la creciente regulación. Explora la Directiva de diligencia debida en materia de sostenibilidad, los informes de sostenibilidad y las experiencias en otras jurisdicciones. Además, profundiza en el estudio del propósito corporativo como pilar estratégico del gobierno de la compañía y las sociedades de beneficio e interés común. La obra también aborda cómo la resolución eficiente de conflictos promueve la sostenibilidad y la generación de valor social. Una referencia esencial para entender el equilibrio entre regulación, mercado y sostenibilidad empresarial.

ISBN: 978-84-1078-653-1



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