

How lawyers can support the search for social impact of their clients

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Today's social challenges are immense and will not be resolved by the traditional financial and business sectors. New ways of doing business and investing are in demand in addition to a more sophisticated philanthropy. More and more clients want to align money and business with values and social impact goals and use various approaches to do so, be it philanthropy, social entrepreneurship, mission-driven businesses or responsible investment.

A new generation of philanthropists is emerging, who are more educated and strategic in the field of philanthropy, ready to take innovative approaches and keen to push the boundaries in charitable giving. As they seek to deepen and expand their philanthropic footprint over time, they need more support from their advisor to establish the right philanthropic vehicle and a good governance to ensure efficiency and effectiveness.

Philanthropists are more sophisticated and are looking to outcome-oriented philanthropy to enable them to pursue evidence-based strategies; monitoring progress towards outcomes and assessing their success in achieving them. They need help from their advisors to have a good understanding of the operations on the ground and to identify good metrics to measure the impact of their actions.

Social entrepreneurship

Instead of looking only for charitable giving, some clients are also keen to develop more entrepreneurial projects with the goal of addressing pressing social challenges and meeting social needs in an innovative way – all while serving the general interest and common good for the benefit of the community. In doing so, social entrepreneurs target social impact primarily rather than profit maximisation to contribute to inclusive and sustainable growth.

Legal systems are just one of many such complex systems that social entrepreneurs must navigate in order to be successful. The question of determining the appropriate corporate legal structure for socially-oriented businesses is a common issue facing many social entrepreneurs. To advise them properly, their legal advisors need expertise and experience in the field to be able to recommend a vehicle which fits their requirements for impact as investors and/or philanthropists.

Business as a force for good

Alongside the development of social entrepreneurship, there is also an increasing demand from clients for developing businesses with a triple bottom-line approach.

As an example, the B Corp certification by B Lab is expanding in all continents, giving birth to legislation with new legal forms or status – embedding impact into the purpose and organisation of companies. Entrepreneurs willing to apply for that certification commit to higher standards of social and environmental performance, transparency and accountability. The B Corps performance standards measure a company's impact on all its stakeholders (e.g. workers, suppliers, community, customers and the environment). Unlike traditional corporations, certified B Corporations are legally required to consider the impact of their decisions not only on their shareholders, but also on their stakeholders.

Responsible investment

Clients want to use their investment power as a way to pursue investment returns while making an array of social and environmental impacts. There is a large range of choice in the field of sustainable finance through sustainable funds, green bonds, impact investing, micro-finance and credits for sustainable projects.

Meanwhile, social entrepreneurs and non-profit organisations need more public funding, blended finance options and patient capital in general. Philanthropic support and aid are not sufficient to tackle the global current challenges. Blended finance is a new way of seeking to bridge the gap between the efficiency and scale of market-based approaches and the social impact of traditional philanthropy. It has enormous potential to help increase the financing needed by attracting investors who would not have otherwise financed projects. It shifts the risk-return profile of the projects and demonstrates that investments in developing countries are viable.

Role for legal advisors

To support these new approaches, a holistic and coherent approach is needed, bringing together various perspectives such as social impact, access to funding and access to markets.

The legal advisors of social entrepreneurs need to embrace different fields of law, such as corporate and commercial law, non-profit law as well as banking and finance law to be able to improve the support that leads to enterprise scaling.

They should also offer a wider scope of services beyond pure legal advice. Lawyers should transform themselves into a variety of roles – advisor, counsellor and ambassador of the social venture – with a good understanding of access to financing networks, market information, business development services and market infrastructure.

Conclusion

It is only by being agile, open to innovation and creative that lawyers can help their clients reach their full potential. To do so and considering that social entrepreneurship law is still nascent, it is key for legal practitioners to work together throughout the ecosystem, building bridges between organisations and being involved in networks such as GIIN (Global Impact Investing Network), the Impact Investing Legal Working Group, Sistema B or the European Social Enterprise Law Association. And being active personally in the community will enable them to have a better understanding of the various interests at stake for social entrepreneurs as well as sharing information and accelerating change.

Julie Wynne is a partner at the Swiss law firm FRORIEP and the head of its Charities and Social Enterprise practice. She is a highly regarded lawyer in the field of non-profit organisations and mission-driven companies.

Julie advises non-profit organisations, B Corps and social enterprises for their set-up and tax issues and assists them with mergers, reorganisations, joint ventures and other forms of collaborative working, as well as constitutional reviews. In addition, she regularly provides advices on grant-making,

fundraising, intellectual property, corporate philanthropy and governance.

Julie contributes substantial time and expertise pro bono in the non-profit and social entrepreneurship sector. She is a board member of B Lab (Switzerland) and of the European Social Enterprise Law Association. She is also co-chair of STEP Philanthropy Advisors Steering Committee and a member of the Legal Advisory Board of Sustainable Finance Geneva.