

A COMPARATIVE LOOK AT INTERNATIONAL APPROACHES TO SOCIAL ENTERPRISE: PUBLIC POLICY, INVESTMENT STRUCTURE, AND TAX INCENTIVES

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There is no global consensus on the meaning of the term "social enterprise." Recent decades have witnessed an increase in the number of social entrepreneurs, those who seek to fill the social needs left unmet by traditional nonprofit and charitable organizations. The manner in which social entrepreneurs fill this gap varies according to a country's social, political, economic, and cultural experiences. In some countries, the social enterprise label is only available to those entities formed as not-for-profit organizations, while in others, commercial for-profit ventures can be considered social enterprises. More recently, new types of hybrid entities that combine both the desire to aid society and the desire to make a profit have also been brought within the social enterprise umbrella in places such as the United States and the United Kingdom. This article seeks to identify common ground that transcends geographic and cultural boundaries by providing a look at the rise of social enterprise and exploring representative examples of international approaches to this sector in countries such as Brazil, Canada, China, and India. Having concluded that it is only supportive government efforts that will ensure the recognition of social enterprise as an indispensable aspect of a country's landscape, this article provides an overview of government actions that can effectively be utilized to propel this sector into the mainstream.

INTRODUCTION

The work of the Grameen Bank earned the bank and its founder, Muhammad Yunus, the

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Nobel Peace Prize in 2006 “for their efforts to create economic and social development from below.”² In the United States, companies such as Patagonia have registered as Benefit Corporations under state law.³ In Brazil, Leonardo Letelier created SITAWI, Brazil's first social enterprise fund.⁴ Former university professor Zheng Hong established the Dandelion School in Beijing to ensure that migrant children who could not legally attend school because they lacked a city resident permit would receive an education.⁵ Each of these various efforts is unique, yet together they form a part of the international social enterprise landscape.

A cursory glance at social enterprise literature immediately alerts one to the fact that any attempt to neatly craft and package a comprehensive overview of social enterprise will fall woefully short. While no one definition can adequately encapsulate the various meanings attributed to the term “social enterprise,” a useful starting point is to consider social enterprise as the application of private efforts to remedy social ills. Recent decades have witnessed an increase in the number of social entrepreneurs, those who seek to fill the social needs left unmet by both the government and traditional nonprofit and charitable organizations. The manner in which social entrepreneurs fill this gap varies according to a country's social, political, economic, and cultural experiences. In some countries, the social enterprise label is only available to those entities formed as not-for-profit organizations while in others, commercial for-profit ventures can be considered social enterprises. More recently, some governments, such as the United States and the United Kingdom, have adopted new forms of hybrid entities specifically designed for those entities that combine both the desire to aid society and the desire to make a profit.

While the lack of a universal definition of the term makes navigating the social enterprise terrain challenging, it has not impeded efforts by international, regional, and national organizations to keep the social enterprise conversation moving forward. The purpose of this paper is to offer insights into efforts that governments have taken and can take going forward to either establish or further invigorate the social enterprise sector. But, any meaningful discussion of such efforts can only take place within the context of a basic understanding of how social enterprise is perceived and understood on the global level. To achieve this baseline of knowledge, Part I describes the challenge of creating a working definition of social enterprise and the historical and cultural factors that make this especially difficult. Part I endeavors to identify the minimum base upon which a social enterprise discussion can be built. Part II

² Ole Danbolt Mjøs, Chairman, Norwegian Nobel Comm., “Norwegian Nobel Committee Chairpersons Speech,” December 10, 2006, <http://www.muhammadyunus.org/index.php/professor-yunus/nobel-peace-prize>.

³ Mat McDermott, “Patagonia Becomes a California Benefit Corporation,” *Treehugger*, January 3, 2012, <http://www.treehugger.com/corporate-responsibility/patagonia-becomes-california-benefit-corporation.html>.

⁴ Leonardo Letelier, “Journey into Brazil’s Social Sector,” *Stanford Social Innovation Review* (Winter 2012): 15, http://www.ssireview.org/articles/entry/journey_into_brazils_social_sector.

⁵ Andrea Lane, “FYSE 2012 China Social Enterprise Report,” *Business for Social Responsibility*, 10, accessed April 8, 2015. http://www.bsr.org/reports/FYSE_China_Social_Enterprise_Report_2012.PDF.

provides a glimpse into how social enterprise is understood and implemented in various countries. International approaches to social enterprise are explored, with an overview of the approaches to social enterprises in countries such as: Brazil, China, India, Italy, Japan, Russia, the United Kingdom, and the United States. Part III outlines those government efforts that can be used to support the social enterprise sector, and explores the ways in which such efforts have already been used in some jurisdictions. Finally, the article concludes that it is only supportive government efforts that will ensure the recognition of social enterprise as an indispensable aspect of a country's social and economic landscape.

I. THE CHALLENGE OF WORKING WITHOUT A UNIVERSAL DEFINITION OF SOCIAL ENTERPRISE

As described in the Introduction, "social enterprise" is an often-used term with numerous variations in meaning. Conversations on social enterprise can be narrowly or broadly tailored to fit the needs of any given audience. Globally, cultural identity, societal customs, historical experiences, and forms of government shape any given society's embrace and adaptation of the social enterprise movement.

A. CRAFTING A UNIFYING DEFINITION OF SOCIAL ENTERPRISE

Perhaps the most useful starting point to begin to understand the meaning of social enterprise is to consider a description of the term that was agreed to by fifty-five global leaders in the social enterprise movement:

Social enterprise is widely understood to describe businesses that exist to tackle social and environmental issues, whose surpluses are principally reinvested to do so, rather than driven by the need to maximise profit for shareholders and owners.

The social enterprise term has been used for nearly two decades by a worldwide movement for social justice that has support from governments and civil society organisations all over the world. Time, energy and resources have been invested into the social enterprise movement, a thriving and a powerful force providing solutions to some of the world's most pressing problems – poverty, inequality, unemployment, disadvantage, climate change and global warming.⁶

⁶ Muhammad Yunus, et al., letter to Marc Benioff, Chairman and CEO, August 31, 2012, accessed August 22, 2015. http://www.socialenterprise.org.uk/uploads/editor/files/Global_letter_Salesforce_Aug_2012.pdf. Fifty-five global social enterprise leaders were signatories to this letter which asked Marc Benioff, CEO of salesforce.com, to withdraw his pending trademark application for use of the term "social enterprise" in the IT field in the United States, the United Kingdom and Jamaica. For additional information on this dispute and its resolution, see Jim Schorr and Kevin Lynch, "Preserving the Meaning of Social Enterprise," *Stanford Social Innovation Review*

Notice the two-fold focus of this description: (1) mission-base and (2) use of surplus.

1. Mission

While at their core social enterprises exist to provide social value and serve "the interest of the public,"⁷ even within geographical regions there is no one consensus on the mission of social enterprise. Consider the European Union (EU) as an example. Within the EU, countries have not yet agreed on a unifying definition resulting in various overlapping perspectives between member countries. One perspective focuses on innovation to meet social needs and highlights the work of those who engage primarily in business in the nonprofit sector.⁸ Another school of thought reduces emphasis on the nonprofit sector and stresses the social entrepreneurship dynamic developed by firms seeking to advance the social impact of their productive activities.⁹ Yet another approach in the public debate in the EU only uses the term "social enterprise" for entities in the sector with a focus on the fact that "the social impact on the community is not merely a consequence or a side effect of economic activity; it is the motivation itself."¹⁰ This latter approach is consistent with the approach of the EMES, an international research network sponsored by the European Union, which limits its definition of social enterprise to those "not-for-profit organizations providing goods and services directly related to their explicit goal of serving the community" which "place a high value on their independence and economic risk-taking related to ongoing socioeconomic activity."¹¹

This emphasis on primary motivation is an important one. The primary motivation of a social enterprise is social betterment, not profit-seeking. Without recognizing this distinction, one runs the risk of falling into the mistake of using the notion of social enterprise interchangeably with the concept of corporate social responsibility (CSR). As business leaders such as Richard Branson continue to warn corporations that they must contribute more to society,¹² it is likely that CSR efforts will continue to be on the rise for the foreseeable future. Therefore, distinguishing between CSR and social enterprise may become increasingly complex.

(September 14, 2012). http://www.ssireview.org/blog/entry/preserving_the_meaning_of_social_enterprise. See also Jim Schorr and Kevin Lynch, "Salesforce Withdraws 'Social Enterprise' Trademarks and Vows to Stop Using the Term," *Social Enterprise*, accessed August 22, 2015. http://www.ssireview.org/blog/entry/preserving_the_meaning_of_social_enterprise.

⁷ Francielli Martins Borges Ladeira and Hilka Vier Machado, "Social Entrepreneurship: A Reflection for Adopting Public Policies that Support the Third Sector in Brazil," *Journal of Technology Management and Innovation* 8 (2013): 188-89.

⁸ Marthe Nyssens, "Western Europe," in *Social Enterprise: A Global Comparison*, ed. Janelle A. Kerlin, (Hanover: University Press of New England, 2009), 12-13.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*, at 13.

¹² Simon Denny and Fred Seddon, "Evaluating Social Enterprise: An International Perspective," in *Social Enterprise, Accountability and Evaluation Around the World*, eds. Simon Denny and Frederick Seddon, (New York: Routledge, 2013), 3.

While admittedly there are blurred lines between the concepts, the two are distinct.¹³ A social enterprise embeds its social goal(s) into its core mission.¹⁴ A socially responsible business engaged in CSR activities, on the other hand, engages in such behavior with the recognition that CSR will add to the financial value of the business and so a socially responsible behavior may be simply an “add-on” to business as usual or adoption of a cause as a “branding strategy.”¹⁵ The primary purpose of a social enterprise “lies outside the commercial outcomes related to their trading of goods and/or services in the market (beyond the generation of profit or the growth of the enterprise itself).”¹⁶

2. *Surplus*

The second prong of the social enterprise definition focuses on the use of surplus. As per the letter drafted by Muhammad Yunus and other global social enterprise leaders, the expectation is that the surplus of a social enterprise will be “principally reinvested” in the mission.¹⁷ Use of the word *principally* suggests that there is flexibility in this regard, allowing for the ability to return profits to shareholders or other stakeholders. Such flexibility is required in a baseline definition in order to accurately represent the many variations of social enterprises. Italy, for example, limits the social enterprise label to only those entities that reinvest all surpluses in the mission. Other countries, such as the United States, have adopted a more expansive social enterprise definition that includes for-profit businesses and benefit corporations that generate returns to owners. Finland also allows returns to owners. In Finland, the Act on Social Enterprises, passed in 2004, allows all enterprises, regardless of form, to distribute profits as long as the organization meets the law's goals of providing employment to the disabled and the long-term unemployed.¹⁸ The United Kingdom is an example of an approach between these two ends of the spectrum. In the UK, social enterprises organized as Community Interest Companies (CICs), can return surplus to investors but only to the extent of the government-imposed dividend cap and an asset lock ensures that upon dissolution, surplus is not returned to

¹³ See, e.g., Antony Page and Robert A. Katz, “Is Social Enterprise the New Corporate Social Responsibility?” *Seattle University Law Review* 34 (2011): 1377-78, answering the question in the negative. Thomas Kelley, “Law and Choice of Entity on the Social Enterprise Frontier,” *Tulane Law Review* 84 (2009): 350, comparing and contrasting corporate social responsibility and the social enterprise movement.

¹⁴ Anja Cheriakova, “The Emerging Social Enterprise: Framing the Concept of Social Entrepreneurship,” *The Broker*, October 28, 2013, <http://www.thebrokeronline.eu/Articles/The-emerging-social-enterprise>.

¹⁵ *Ibid.*

¹⁶ Denny and Seddon, *supra* note 12, at 29.

¹⁷ Yunus et al., *supra* note 6.

¹⁸ Galera Giulia and Carlo Borzaga, “Social enterprise. An international overview of its conceptual evolution and legal implementation,” *Fundatiapnetru Dezvoltarea Societatii Civile*, accessed August 22, 2015, http://www.fdsc.ro/library/prometeus/Social_enterprise.An_international_overview.pdf.

shareholders but instead is used for a community benefit.¹⁹

B. ORIGINS OF SOCIAL ENTERPRISE

The term "social enterprise" was first used to signify a "worldwide movement for social justice."²⁰ During the decades that have elapsed since the term "social enterprise" was first used in 1978,²¹ social enterprise has gained increasing momentum internationally.²² Certainly, social enterprise-like efforts predate the use of the term. Some take the view that social enterprise efforts date back to the 1600s. British social enterprise scholars Simon Denny and Fred Seddon point to the work of Thomas Firmin who made employment available in London for those out-of-work as a result of the plague of 1665.²³ Between 1676 and the 1690s, Mr. Firmin established a linen manufacturing factory with the objective of employing up to 1,700 of the poor in London.²⁴ Though his businesses did not prove to be financially successful, he is credited as an early social entrepreneur incorporating overt social values as the core business mission.²⁵ In the United States, some point to Goodwill Industries as one of the most well-known social enterprises.²⁶ Rev. Edgar James Helms, who founded the entity in 1902 in Boston, Massachusetts, described Goodwill as an "industrial program as well as a social service enterprise...a provider of employment, training and rehabilitation for people of limited employability, and a source of temporary assistance for individuals whose resources were depleted."²⁷

What is clear is that social enterprises have stepped in and continue to step in to fill an

¹⁹ Department for Business Innovation and Skills, "The Asset Lock," *Office of the Regulator of Community Interest Companies: Information and Guidance Notes*, October, 2014. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/416360/14-1089-community-interest-companies-chapter-6-the-asset-lock.pdf.

²⁰ "Global Figures, Associations, Professors and NGOs Call on Technology Giant to Halt Attempted Take-Over of 'Social Enterprise,'" *Social Enterprise UK*, accessed August 22, 2015, <http://www.socialenterprise.org.uk/news/global-figures-associations-professors-and-ngos-call-technology-giant-halt-attempted-take-over-social-enterprisea>.

²¹ The term "social enterprise" was first used by Freer Spreckley, of Beechwood College in Yorkshire, UK. Louise Carey, "All You Need To Know About: Social Enterprises," *Social Bond Investor*, February 14, 2014, <http://socialbondinvestor.com/all-you-need-to-know-about-social-enterprises/>.

²² Xiaomin Yu, "Social Enterprise in China: Driving Forces, Development Patterns and Legal Framework," *Social Enterprise Journal* 7 (2011): 9.

²³ Denny and Seddon, *supra* note 12.

²⁴ *Ibid.*, at 4.

²⁵ *Ibid.*

²⁶ Matthew F. Doeringer, "Fostering Social Enterprise: A Historical and International Analysis," *Duke Journal of Comparative and International Law* 20 (2010): 293.

²⁷ Arlene McCrehan, "Goodwill's History," accessed August 22, 2015, <http://www.goodwill.org/about-us/goodwills-history/>.

unmet need.²⁸ In some instances these may be needs that were previously met by government, but economic downturn may have prevented government from continuing to offer assistance. Consider, for example, the emergence of social enterprise in the United States and Europe during the 1970s and 1980s.²⁹ In the 1970s, an economic downturn in the United States led to welfare entrenchment and cuts in federal funds flowing to nonprofit organizations.³⁰ Nonprofits engaged in commercial activities (the sale of goods and service not necessarily to further their mission) in order to fill the gap in funding.³¹ The nonprofit sector also began "to set up and operate its own businesses as a way of creating job opportunities for the disadvantaged, the homeless, and other at-risk people."³² Between 1982 and 2002, the portion of income generated by charities from commercial activities increased 20 percent.³³ In Europe, the economic downturn of the 1970s was also a concern, causing long-term unemployment to rise as high as 40 percent.³⁴ Fiscal pressure caused the governments in Europe to cut budgets, thereby reducing unemployment assistance. Because of this, charities began focusing their efforts on the problem of unemployment and established work-integration and job training programs.³⁵ Also, in Europe, the legitimacy and effectiveness of the state welfare programs were under scrutiny, further contributing to the growth of social enterprise.³⁶

²⁸ Michael Blowfield and Alan Murray, *Corporate Responsibility* (New York: Oxford, 2014), 270, "[f]or many, what is special about social entrepreneurship is the primacy attached to the social or environmental mission. This means identifying and addressing an unmet need or value creation opportunity"; Marguerite Mendell, "Social Enterprises in OECD Member Countries: What are the Financial Streams?," in *The Changing Boundaries of Social Enterprises*, ed. (OECD Publishing, 2009), 89, "[a]s social enterprises continue to draw the attention of national governments and local authorities alike in the fight against unemployment and social exclusion, they are also being embraced by civil society as a way of addressing unmet needs in a sustainable manner"; Ministry of Social and Family Development, "Start Your Own Social Enterprise," *Singapore Government*, accessed May 16, 2016, <http://app-stg.msf.gov.sg/SocialEnterprise/Get-Started/Start-your-own-Social-Enterprise>, "social enterprises should have a marketable product or service that can meet a real demand or an unmet need in the market."

²⁹ Jacques Defourny, "Foreword," in *Social Enterprise: A Global Comparison*, ed. Janelle A. Kerlin (New York: Routledge, 2009), xi-xii.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ Doeringer, *supra* note 26 (explaining that commercial activity income was at 48.1% in 1982 and increased to 57.6% in 2002) (citing Janelle Kerlin, "Social Enterprise in the United States and Europe: Understanding and Learning From the Differences," *Voluntas* 17 (2006): 251).

³⁴ *Ibid.*, at 294 (citing Roger Spear, et al. eds., *Tackling Social Exclusion in Europe: The Contribution of the Social Economy* (2001): 5).

³⁵ *Ibid.*

³⁶ Nyssens, *supra* note 8 at 16.

As a result of cuts to government-funded programs and assistance, private enterprise had to begin to step in to fill the needs that government and charity could not meet. Such was the case in India when, forty years ago, six women in India formed the papad (crispy bread) manufacturing cooperative, Shri Mahala Griha Usyog Lijjat Papad, as a way to enable poor and uneducated women to make a living and care for their families.³⁷ Today that cooperative has over 40,000 women owners and brings in revenue of \$65 million annually.³⁸ To allow the cooperative to continue to provide jobs to the poor, minimum technology is used in the production process.³⁹

When one considers that social enterprise develops in response to unmet societal needs, it is not surprising that the manner in which social enterprise is molded and understood may vary between countries, thus accounting for challenge of trying to formulate a universal definition. With this in mind, Part II provides a comparison of how social enterprise is understood and put into practice globally.

II. APPLICATION OF SOCIAL ENTERPRISE THROUGHOUT THE WORLD

As explained in Part I, social enterprise has various meanings internationally. This Part provides an overview of how social enterprise is applied in practice in a variety of countries including: the United Kingdom, the United States, Canada, China, France, Germany, India, Italy, Japan, and Russia. The cultural, legal, and economic environments help form the many models through which social enterprise operates.⁴⁰

A. EUROPE

In Europe, social enterprise emerged from the focus of the third sector on providing public interest services and generating diverse sources of revenue.⁴¹ In the European countries there has been a shift in the relationship between individuals and the government/public sector over the last few decades.⁴² As welfare services are increasingly based on a "public-private network," "citizens play a more active role as the co-producers of some or many of the many services they expect, demand, and even depend upon in order to fulfill some of the most

³⁷ Paul Ostasiewski, "Social Entrepreneurship in an International Context," 3, accessed January 30, 2016, <https://www.wju.edu/academics/bus/iscm/Ostasiewski2.pdf>.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Janelle A. Kerlin, "A Comparison of Social Enterprise Models and Contexts," in *Social Enterprise: A Global Comparison*, ed. Janelle A. Kerlin (Medford: Tufts University Press, 2009): 5.

⁴¹ "The third sector brings together cooperatives, associations, mutual societies, and, increasingly, foundations or, in other words, all not-for-profit organizations (organizations not owned by shareholders) that are labeled the 'social economy' in some European countries." Nyssens, *supra* note 7, at 12.

⁴² Jacques Defourny, et al, "Introduction to the "SE Field," in *Social Enterprise and The Third Sector* (New York: Routledge, 2014): 6.

important roles in their daily lives."⁴³

B. ITALY

Social enterprise found its impetus in Italy with the rise of the cooperative movement.⁴⁴ The term "social enterprise" was first used in Italy as early as the 1980s.⁴⁵ In that context, it referred to the work of volunteer groups providing social services and helping people transition back into the labor market. Initially, these efforts were part of the nonprofit form of business, but when the Act on Social Cooperatives was passed in 1991 much of this work moved to the cooperative form.⁴⁶ The cooperative, in which the members work together for their mutual good, continues to be popular in Italy today. With the cooperative model, "it is still possible to carry out commercial activities vis-a-vis third parties, thus pursuing a profit-making goal alongside the mutual purpose envisaged in the company's by-laws."⁴⁷

In 2006, Italy adopted the Law on Social Enterprises to allow any legal form of organization that met certain criteria to be considered a social enterprise, referred to as a social enterprise *et lege*. The social enterprise requirements for an entity are: (1) the entity must be a private legal entity, (2) the entity must engage in the exchange of goods and services that have a social utility and seek to achieve a public benefit purpose rather than generate a profit, and (3) the entity can make a profit but cannot distribute that profit to members or owners and must either reinvest those profits in public benefit or use them to increase assets.⁴⁸ While "Social Enterprise" status may be granted to nonprofit or for-profit entities, this legal status subjects the entity to various restrictions including the inability to share profits with owners and shareholders.⁴⁹ There is also an asset lock in place meaning that shareholders do not have a claim on company assets and upon dissolution assets must revert to a nonprofit entity.⁵⁰ As compared

⁴³ *Ibid.*, at 7.

⁴⁴ Jacques Defourny, et al., "From Third Sector to Social Enterprise," in *Social Enterprise and The Third Sector* (New York: Routledge, 2014): 17.

⁴⁵ *European Comm'n, A Map of Social Enterprises and their Eco-Systems in Europe, Country Report: Italy* (2014): 1, available at <http://ec.europa.eu/social/BlobServlet?docId=13026&langId=en> [hereinafter *European Comm'n Country Report: Italy*].

⁴⁶ *Ibid.*

⁴⁷ Orrick, Herrington, and Sutcliffe LLP, *Balancing Purpose and Profit: Legal Mechanisms to Lock in Social Mission for "Profit with Purpose" Businesses Across the G8* (2014): 79, available at <http://www.trust.org/contentAsset/raw-data/1d3b4f99-2a65-49f9-9bc0-39585bc52cac/file>.

⁴⁸ *European Comm'n Country Report: Italy*, supra note 45, at 2.

⁴⁹ Orrick, Herrington, and Sutcliffe LLP, supra note 47, at 72-73 (law no. 118 introduced the social enterprise ("impresa sociale") into the Italian legal system).

⁵⁰ *Ibid.*, at 87.

to the social cooperative, social enterprise et lege status has been less successful in part because the social reporting requirements and the minimum capital requirements are more burdensome than those for social cooperatives.⁵¹ There is also a lengthier administrative process required to register a social enterprise.⁵² Further, fiscal benefits made available to social cooperatives are not available for the social enterprise.⁵³

C. FRANCE

The term "social enterprise" is a rather recent addition to the French vocabulary, emerging in the early 2000s, and since that time no clear definition of the term has emerged.⁵⁴ While the laws of France do not provide a special form of business for a social enterprise, social purpose may be integrated into any one of a number of business types including nonprofits, associations, foundations, cooperatives, and any one of France's for-profit corporate forms of business.⁵⁵ Given this fact, the Societe Par Action Simplifiee, a legal form enacted in 1994, may be particularly beneficial for a social enterprise because corporate governance is primarily dictated by an entity's articles of association rather than by French civil law.⁵⁶ Some have suggested that the Societe Cooperative d'Interet Collectif (general interest cooperative or SCIC) form of business adopted in 2002 comes close to reflecting the social enterprise model in France.⁵⁷ The SCIC is a private organization that brings together various members working in partnership, such as employees, volunteers, users, and government authorities.⁵⁸ The restrictions imposed on the SCIC, such as the requirement that 57.5 percent of surpluses be returned to reserves and that upon dissolution, the liquidation surplus must not revert to investors but must instead revert to another similar entity, has made it difficult for the SCIC to attract capital investment.⁵⁹

A widely accepted view in France is that social enterprise is but one aspect of the subset of the 'social and solidarity economy.' In fact, the Social and Solidarity Economy (SSE) law enacted in France in July 2014 has renamed the term social enterprise as "solidarity enterprise

⁵¹ *European Comm'n Country Report: Italy*, supra note 45, at 23.

⁵² *Ibid.*

⁵³ *European Comm'n Country Report: Italy*, supra note 45 at 23. These fiscal benefits are discussed in Part III.

⁵⁴ *European Comm'n, A Map of Social Enterprises and their Eco-Systems in Europe, Country Report: France* (2014): 2-3, available at <http://ec.europa.eu/social/BlobServlet?docId=13024&langId=en> [hereinafter *European Comm'n Country Report: France*].

⁵⁵ Orrick, Herrington, and Sutcliffe, supra note 47, at 39.

⁵⁶ *Ibid.*, at 43.

⁵⁷ Laurence Fraisse, "France," in *EMES: Social Enterprise in Europe: Recent Trends and Developments*, eds. Jacques Defourny & Marthe Nyssens (2008), 20 and Orrick, Herrington, and Sutcliffe, supra note 47, at 40.

⁵⁸ *Ibid.*, at 20.

⁵⁹ Alix Margado, "A New Co-operative Form in France: Societe Cooperative d'Interet Collectif (SCIC)," in *Trends and Challenges for Co-operatives and Social Enterprises in Developed and Transition Countries*, eds. Carlo Borzaga and Roger Spear (Edizioni 31, 2004).

with a social utility."⁶⁰ One of the objectives of the law is to establish the social and solidarity economy as an entrepreneurial model.⁶¹ By modernizing the sector and providing for independent oversight to ensure that cooperatives in the model follow cooperative values and principals, the government hopes to promote the funding and sustainable development of this sector of the economy.⁶² Most significantly, the specific criteria for social innovation provided as part of the new law will help stakeholders to recognize socially innovative projects, making it easier to secure public funding for such efforts.⁶³

D. GERMANY

The term "social enterprise" was first used in Germany in the 1990s, and to date research on social enterprises remains in the early stages of seeking to identify a commonly accepted definition of the term.⁶⁴ Although German law does not define social enterprise, it is generally understood that a social enterprise will seek to solve social or environmental problems.⁶⁵ A study by the Center for Social Investment (CSI) Heidenberg has identified three key attributes of social enterprises: improvement of social or environmental welfare, innovation, and earned income.⁶⁶

Traditionally Germany has had a very strong welfare state and this fact has caused the growth of social enterprise to move a bit more slowly than in other Western European counterparts.⁶⁷ Recent research indicates, however, that an increasing acceptance of the idea of "pro-market ideological notions" in the context of the social environment is working to bring greater legitimacy to the social enterprise approach.⁶⁸ As part of this increase in acceptance,

⁶⁰ *European Comm'n Country Report: France*, supra note 54, 3.

⁶¹ "French National Assembly Passes New Social Economy Law," *International Co-operative Alliance I*, last modified August 20, 2014, <http://monitor.coop/en/media/news/french-national-assembly-passes-new-social-economy-law>.

⁶² *Ibid.*

⁶³ Katalin Kolosy, "The 2014 Law on Social and Solidarity Economy," *European Commission*, last modified December 8, 2014, <https://webgate.ec.europa.eu/socialinnovationeurope/en/directory/france/news/2014-law-social-and-solidarity-economy-%C3%A9conomie-sociale-et-solidaire-%E2%80%93-ess-en>.

⁶⁴ Karl Birkholzer, Nicole Goler Von Ravensburg, Gunnar Glanzel, Christian Lautermann, & Georg Mildenerger, *Social Enterprise in Germany: Understanding Concepts and Context* (ICSEM Working Papers, No. 14, 2015), 4, available at [http://www.iap-socent.be/sites/default/files/Germany%20\(part%20A\)%20-%20Birk%20et%20al.pdf](http://www.iap-socent.be/sites/default/files/Germany%20(part%20A)%20-%20Birk%20et%20al.pdf)

⁶⁵ Miriam Wolf, "The State of Social Entrepreneurship in Germany," *Seforis Country Report* (2014), 3, http://www.seforis.eu/upload/reports/Country_Report_Germany.pdf citing Thomas Scheuerle et al., *Social Entrepreneurship in Deutschland - Potentiale und Wachstumprobleme*, Center for Social Investment (2013).

⁶⁶ *Ibid.*, at 3.

⁶⁷ *Ibid.*, at 5.

⁶⁸ Henning Engelke, Stefanie Mauksch, Inga-Lena Darkow, & Heiko A. von der Gracht, "Opportunities for Social

Germany has had a “*nationale Engagementstrategie*” (national engagement strategy) that has committed to support social innovation and social entrepreneurship.⁶⁹ This is challenging since, compared to other industrialized nations, the entrepreneurial culture in Germany is not very developed.⁷⁰ At present, no unique legal form exists for social enterprise in Germany.⁷¹ Social enterprise efforts generally take one of the following various legal forms: associations, cooperatives, foundations, or as a GmbH.⁷² In 2013, a variation of the GmbH was introduced - the gGmbH, which is a GmbH with a social mission.⁷³ This variation does not represent a separate legal form of business.⁷⁴ A survey of social enterprise experts in Germany⁷⁵ indicated that there is support for the creation of a legal form for social enterprise so that “it would become easier to tackle social problems within an adequate institutional environment, thereby increasing the accessibility of social enterprise opportunities.”⁷⁶ At present, funding for social enterprises varies depending on the nature of the enterprise. Sources of funds include donations, sponsorships, foundation grants, and business income.⁷⁷ In 2013, KfW, a government-owned development bank, initiated a program to finance social enterprises.⁷⁸ In addition, efforts such as the Entrepreneurs' Pledge seek to create an infrastructure for social businesses in Germany.⁷⁹ The Pledge represents the promise of almost 50 entrepreneurs throughout Germany to create social businesses and reinvest half of the profits of those businesses into environmental or social projects.⁸⁰

E. UNITED KINGDOM

The United Kingdom was one of the first countries to pave the way for the rest of the world by creating a separate legal entity designed especially for social enterprise that combines the mission of creating social betterment with generating a profit for investors. This new form of business, the Community Interest Company (CIC), “requires companies to restrict distributions

Enterprise in Germany - Evidence from an Expert Survey,” *Technological Forecasting & Social Change* 90B, (2015): 637.

⁶⁹ Wolf, *supra* note 65, at 5.

⁷⁰ Birkholzer, *supra* note 64, at 11 and 14.

⁷¹ Wolf, *supra* note 65, at 10.

⁷² *Ibid.*, at 10.

⁷³ *Ibid.*, at 10.

⁷⁴ *Ibid.*, at 10.

⁷⁵ These experts represented government agencies, associations and NGOs, academia, social enterprise investors, social enterprise entrepreneurs, and for-profit companies.

⁷⁶ Engelke, *supra* note 68, at 644.

⁷⁷ Wolf, *supra* note 65, at 12.

⁷⁸ *Ibid.*, at 5.

⁷⁹ Naomi Ryland, “Social Business in Germany,” *The Changer*, last modified July 1, 2015, <http://thechanger.org/resources/social-business-germany>.

⁸⁰ Thomas McGath, “Alternative Economy: The Rise of Social Innovation in Berlin,” *The Guardian*, last modified March 30, 2015, <http://www.theguardian.com/sustainable-business/2015/mar/30/social-innovation-business-berlin>.

of profit and capital and take on an ‘asset lock’ guaranteeing that the assets will be used for community benefit in perpetuity.”⁸¹ Created on July 1, 2005, the CIC initially limited the profit distribution per share to “5[percent] above the Bank of England base lending rate of the paid-up value of a share.”⁸² Changes made to the CIC legislation in April 2010 increased this amount to 20 percent.⁸³ The CIC was developed:

to address the legal problems that confront many social enterprises. If they are established as charities, social enterprises are financially constrained, with limited opportunities for growth, entrepreneurship, or access to capital. If incorporated as private companies, they risk losing public trust—not because a private enterprise is intrinsically untrustworthy, but because outsiders do not view profit-seeking companies as fundamentally altruistic.⁸⁴

Instead of choosing “between a charitable public image and an entrepreneurial organizational status,” social enterprises wanted both.⁸⁵

CICs are also “subject to a community interest test.”⁸⁶ This test is conducted by the CIC Regulator and helps to ensure that a CIC is run in the interest of the community.⁸⁷ Annual community interest reports are submitted to illustrate that the actions of the CIC comport with its stated mission.⁸⁸ Since their inception in 2005, the number of CICs has grown exponentially. In the first year the CIC was introduced there were 200 CIC's created; as of July 2014 over 9,500 CICs have been registered.⁸⁹ As will be described in Part III, those CICs that can demonstrate compliance with CIC requirements have recently been granted tax incentives.

⁸¹ “Social Enterprise – From a Tax Perspective,” *Buzzacott*, last modified October 2009, <http://apsocialfinance.com/wp-content/uploads/2013/03/buzzacott-insight-tax-structures.pdf>

⁸² Department for Business Innovation & Skills, “Office of the Regulator of Community Interest Companies: Leaflets Information Pack,” *GOV.uk*, 14, last modified December 2010, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/416350/13-783-community-interest-companies-information-pack.pdf.

⁸³ *Ibid.*

⁸⁴ William Davies, “How to Tame Capitalism,” *New Statesman*, last modified September 13, 2004, <http://www.newstatesman.com/node/148826>.

⁸⁵ *Ibid.*

⁸⁶ Davies; Department for Business Innovation & Skills, 10: (“[t]o become a CIC, an organization would need to satisfy the Regulator that its purposes could be regarded by a reasonable person as being in the community or wider public interest. It will also be asked to confirm that access to the benefits it provides will not be confined to an unduly restricted group”).

⁸⁷ Davies, *supra* note 84.

⁸⁸ *Ibid.*

⁸⁹ European Commission, *A Map of Social Enterprises and their Eco-Systems in Europe, Country Report: United Kingdom*, 2014, 5, <http://ec.europa.eu/social/BlobServlet?docId=13001&langId=> [hereinafter *European Comm’n Country Report: United Kingdom*].

F. UNITED STATES

In the United States, contemporary social enterprise has its early roots in the work of three nonprofits during the 1980s.⁹⁰ Ashoka was started by Bill Drayton to encourage investment in private innovators working in the public sector.⁹¹ That same year Ed Skloot founded the New Ventures consulting firm to help nonprofits find funding “to make them more financially viable.”⁹² In 1985, the Alpha Center for Public and Private Initiatives was founded with the goal of encouraging for-profit business to address social problems.⁹³

1. *Pre-Cursors of Social Enterprise*

Social entrepreneurs began to think about ways in which their companies could serve the common good, and companies such as Ben & Jerry's and Newman's Own led the way, introducing mainstream America to the notion of a socially responsible business.⁹⁴ Corporate social responsibility was moving into the mainstream and took a big leap forward in the United States thanks, in part to the efforts of B-Lab.

In 2006, the nonprofit organization B-Lab was founded with the goal of introducing a "Certified B Corporation."⁹⁵ B-Lab acts as an independent third-party reviewer offering such certification to corporations that meet the social and environmental performance standards set by B-Lab.⁹⁶ But, certification from B-Lab is essentially a "seal of approval" and Certified B Corporation status is not a separate legal form.⁹⁷ Today, companies such as Ben & Jerry's⁹⁸ and King Arthur Flour⁹⁹ proudly display their B Corp certification from B-lab.

2. *Social Enterprise Hybrid Entities*

There are hybrid legal forms available in the United States well suited for social enterprise that allow the for-profit enterprise to embed its social mission into its DNA. The first legal structure designed with the social enterprise in mind was the Low-Profit Limited Liability Company (L3C) which was first adopted in Vermont in April 2008 and now exists in four

⁹⁰ Greg Dees, interview by Katherine Fulton, *The Past, Present, and Future of Social Entrepreneurship, a Conversation with Greg Dees*, Duke Univ. Center for Advancement of Social Entrepreneurship, February 15, 2006, https://centers.fuqua.duke.edu/case/wp-content/uploads/sites/7/2015/02/Interview_Fulton_Deas_ThePastPresentFutureofSocialEntrepreneurship_2006.pdf.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Mystica M. Alexander, “Benefit Corporations-The Latest Development in the Evolution of Social Enterprise: Are They Worthy of a Taxpayer Subsidy,” *Seton Hall Legislative Journal* 38:2, (2014): 232.

⁹⁵ See <https://www.bcorporation.net/what-are-b-corps/the-non-profit-behind-b-corps/our-history>

⁹⁶ Ibid.

⁹⁷ Janine S. Hiller, “The Benefit Corporation and Corporate Social Responsibility,” *Journal of Business Ethics* 118, no. 2 (2013): 290.

⁹⁸ “Ben & Jerry's Joins the B Corp Movement!” *Ben & Jerry's*, <http://www.benjerry.com/about-us/b-corp>.

⁹⁹ “Social Responsibility at King Arthur Flour,” *King Arthur Flour*, <https://www.kingarthurfLOUR.com/about/social-responsibility.html>.

states.¹⁰⁰ Essentially, L3Cs combine social mission with the LLC legal structure.¹⁰¹

Soon after the inception of the L3Cs, Benefit Corporations were introduced in the United States. B-Lab began grassroots efforts to encourage the adoption of Benefit Corporations. The Benefit Corporation embeds social goals into the corporate mission and allows corporate directors to consider achieving this social mission and objective in addition to generating a profit. This combination makes the Benefit Corporation a preferred vehicle for social enterprise. In 2010, Maryland became the first state to enact Benefit Corporation legislation.¹⁰² Since that time, an additional 29 states and the District of Columbia have also passed Benefit Corporation legislation.¹⁰³ Benefit Corporation legislation has also been introduced in seven other states.¹⁰⁴ While model benefit corporation legislation requires that the corporation pursue a "general public benefit purpose," some states such as California and Washington have adopted their own variations on this form of business.¹⁰⁵ California has adopted the Flexible Purpose Corporation (FPC)¹⁰⁶ and Washington has adopted the Social Purpose Statute creating the Social Purpose Corporation (SPC).¹⁰⁷ Both the FPC and SPC allow the corporation to adopt one or more specific purposes for the benefit of a sub-set of stakeholders.¹⁰⁸ While more and more states have adopted benefit corporation legislation, the fact remains that this form of doing business still represents a very small part of business overall. As of late 2014, only approximately 1,100 L3Cs and 1,000 benefit corporations have been formed nationwide.¹⁰⁹

¹⁰⁰ A. Nicole Campbell, "The Possibilities of the L3C," *Proskauer*, (Nov. 10, 2009) <http://nonprofitlaw.proskauer.com/2009/11/10/the-possibilities-of-the-l3c/>

¹⁰¹ Emily Cohen, "Benefit Expenses: How the Benefit Corporation's Social Purpose Changes the Ordinary and Necessary". *WM & Mary Bus. L. Rev.* (2013), 269, 274.

¹⁰² B Lab, "Maryland First State in the Union to Pass Benefit Corporation Legislation". *CSRWire* (Apr. 14, 2010) http://www.csrwire.com/press_releases/29332-Maryland-First-State-in-Union-to-Pass-Benefit-Corporation-Legislation

¹⁰³ These include: Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Louisiana, Massachusetts, Maryland, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia, and West Virginia. See State by State Legislative Status, Benefit Corporation Information Center, <http://benefitcorp.net/policymakers/state-by-state-status>, accessed May 16, 2016.

¹⁰⁴ These include: Alaska, Georgia, Iowa, Kentucky, Michigan, Ohio, and Oklahoma. *Ibid.*

¹⁰⁵ J. Haskell Murray. "State Laboratories and Social Enterprise Law", *Research Handbook on Partnerships, and Alternative Forms of Business* (Robert W. Hillman & Mark J. Lowenstein eds., 2015), 252, 256.

¹⁰⁶ In September, 2014 an amendment to the Corporate Flexibility Act of 2011 was signed into law to change the name of the FPC to "Social Purpose Corporation" as a means of emphasizing the social purpose of such an entity. Steven R. Chiodini. "Goodbye Flexible Purpose Corporation, Hello Social Purpose Corporation", *LawForChange*, <http://www.lawforchange.org/NewsBot.asp?MODE=VIEW&ID=6384> (last visited August 24, 2015).

¹⁰⁷ Murray, *supra* note 105.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid* at 260, citing Kate Cooney, Justin Koushyar, Matthew Lee & Haskell Murray, "Benefit Corporation and

G. CANADA

In Canada, the legal forms of business available for a social enterprise include: (a) For-profit Entity (organized as a sole proprietorship, a partnership, a corporation, or a business trust); (b) Registered Charity; (c) Non-profit Organization; and (d) Co-operative.¹¹⁰ Historically there has been a preference for defining a social enterprise as a business operated by a nonprofit entity, since together the nonprofit and for-profit components reflect both social and financial value.¹¹¹ "The emergence of revenue-generating activities for non-profits has created an operating model where business principles, market characteristics, and values co-exist and work with traditional public sector values like responsiveness to the community and serving the public interest."¹¹²

Federally, the appropriate structure for a social enterprise will vary depending on the social goals and core priorities for the organization and its organizers.¹¹³ Whichever form is chosen, "it is vital that individuals and organizations engaging in social enterprise decide upon a structure based on these considerations, rather than allowing the structure to dictate the path that the enterprise takes."¹¹⁴ Those Canadian businesses that choose a for-profit form can opt to receive certification as a B Corporation from B-Lab.

While Canada has not yet established a distinct hybrid form of business tailored for social enterprise, provincial governments have been encouraged to move in this direction.¹¹⁵ These efforts at the provincial level have paid off. In July 2013, the Community Contribution Company (C3) went into effect in British Columbia.¹¹⁶ This entity, similar to the UK's CIC, has an asset lock in place as well as a 40 percent cap on dividends. Nova Scotia has enacted the Community Interest Company (CIC) model of the UK. Ontario has now begun a period of consultation on adoption of a hybrid form.¹¹⁷

L3C Adoption, A Survey", *Stanford Social Innovation Review*, (2014), http://ssir.org/articles/entry/benefit_corporation_and_l3c_adoption_a_survey.

¹¹⁰ Susan M. Manwaring & Andrew Valentine. "Social Enterprise in Canada: Structural Options" 15 (2011) http://www.marsdd.com/wp-content/uploads/2012/04/MaRSReport-Social-Enterprise_2012.pdf.

¹¹¹ See "Enterprising Non-Profits, The Canadian Social Enterprise Guide: 2nd Edition", <http://www.socialenterprisecanada.ca/en/learn/nav/canadiansocialenterpriseguide.html> (last visited Aug. 22, 2015). At 3.

¹¹² "Social Enterprise Business Models". MaRS (2009), <http://www.marsdd.com/mars-library/social-enterprise-business-models/>.

¹¹³ Manwaring & Valentine, *supra* note 110, at 4.

¹¹⁴ *Ibid.* at 4.

¹¹⁵ *Ibid.* at 8.

¹¹⁶ Brenda Bouw. "B.C.'s New Business Model Makes It Easier to Make Money and Give Back", *The Globe and Mail* (Aug. 9, 2013), <http://www.theglobeandmail.com/report-on-business/small-business/sb-growth/going-global/new-business-model-lets-bc-companies-blend-social-values-into-bottom-line/article13631725/>

¹¹⁷ William Chung Et Al. "Social Entrepreneurship Series: Legislative Innovations" 15 (2011) http://www.marsdd.com/wpcontent/uploads/2011/02/MaRSReport_Legislative_Innovations.pdf.

H. BRAZIL

"In Brazil, as in Latin America in general, the solidarity economy has a long-running history, beginning with pre-Columbian indigenous forms of production and the collective systems adopted by freed slaves."¹¹⁸ In the 1980s the scattered efforts by non-governmental organizations (NGOs) across the rural areas of Brazil, ushered in the more recent uptick in the number of enterprises and the amount of social mobilization that formalized the existence of the solidarity economy in Brazil.¹¹⁹

In Brazil, social enterprises are "moving away from relying on donations and goodwill, and instead are aiming to establish more sustainable commercial models which can offer investors a small profit on their investment."¹²⁰ In turn, this has led to more interest in investing in Brazil's growing number of social businesses. By mid-year 2014, approximately \$200 million had been invested in Brazil social enterprises.¹²¹ This is a dramatic increase in interest in the social enterprise sector when compared with the total investment of \$76 million that was invested between 2001 and 2013.¹²² Despite this interest, "Brazil still lacks an environment that encourages social entrepreneurship."¹²³

I. CHINA

China's adoption of social enterprise is a very recent development.¹²⁴ China's rapid economic advancement in recent decades has been accompanied by many challenges to the quality of education, health care, and the environment.¹²⁵ As the government and private sector seemed unable to meet the growing demand created by this period of growth, NGOs arrived on the scene to attempt to fill the gap.¹²⁶ The current social enterprise movement in China has its origins in the growth of these NGOs in the 1980s.¹²⁷

¹¹⁸ Luiz Inacio Gaier. "Historical Backgrounds and Models of Solidarity Enterprises in Brazil", *5th EMES International Research Conference on Social Enterprise: Building a Scientific Field to Foster the Social Enterprise Eco-System 2* (2015), http://5emesconf.exordo.com/files/papers/90/final_draft/Paper_EMES_Conference_-_LI_Gaier.pdf

¹¹⁹ Ibid.

¹²⁰ Paula Adamo Idoeta. "Brazil's Social Firms Aim to Craft a Brighter Future", *BBC News* (June 26, 2014), <http://www.bbc.com/news/business-27884803>

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ Yu, *supra* note, at 22.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Gil Lan. "U.S. and U.K. Social Enterprise Legislation: Insights for China's Social Entrepreneurship Movement", *8 Int. J. Innovation and Sustainable Dev.* (2014) 146, 154.

The notion of social enterprise was relatively unknown in China until 2004.¹²⁸ At that time, a translated version of an OECD report, "The Social Enterprise" was published in *China Social Work Research*.¹²⁹ In that same year a symposium, "Sino-British Symposium on Social Enterprise and NPO" was held in Beijing with funding from the British Embassy.¹³⁰ Aiding this preliminary effort was the work of Chinese journals such as the *China Economic Herald*, *Comparative Economic and Social Systems*, and the *21st Century Business Review* which promoted the notion of social enterprise and social innovation.¹³¹ It was through these efforts, plus a series of symposia, conferences, and forums, that the idea of social enterprise took hold in China, although a consensus has not yet emerged on how it should be defined.¹³² Zhu Xiaobin, the secretary general of China Social Enterprise and Social Investment Forum, suggests that social enterprises in China should be "understood as enterprises where consumers, producers, and society at large coexist in a sustainable framework."¹³³

While China has not yet adopted a legal form of business specifically for social enterprises, legal forms currently utilized by those in the social enterprise sector include "commercial companies, farmers' specialized cooperatives, social welfare enterprises, civilian-run educational institutions, and civilian-run non-enterprise units."¹³⁴ When social enterprise training programs were established in China in 2009, "most of the participants . . . were from traditional NGOs and grassroots charity organisations. In the last couple of years, however, [there have been] . . . more participants from the business sector."¹³⁵ "Compared with the traditional, more passive model of receiving donations, social enterprises take the initiative and actively create opportunities for revenue."¹³⁶ The scale of these social enterprise organizations and the level of business experience that founders bring the sector has also increased. It has been estimated that by the end of 2012 there were approximately 2,000 social enterprises in China, and by 2018 that number is expected to increase to more than 5,000.¹³⁷

J. INDIA

Social enterprises in India have been defined as "organizations that have triple bottom

¹²⁸ Yu, *supra* note 22, at 10.

¹²⁹ Jacques Defourny and Shin-Yang Kim. "Emerging Models of Social Enterprise in Eastern Asia: A Cross-Country Analysis", Open Repository and Bibliography 9, <http://orbi.ulg.ac.be/bitstream/2268/91190/1/Defourny%20Kim%20final%20SEJ.pdf> (last visited Aug. 22, 2015).

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² Yu, *supra* note 22, at 10.

¹³³ Philanthropy in Motion. "An Emerging Trend of Social Enterprises in China" (July 3, 2015), <http://pimchina.org/jul-3/>

¹³⁴ Yu, *supra* note 22, at 10.

¹³⁵ Nathan Hubbard-Miles. "The Shape of Social Enterprise in China", *The Guardian* (May 7, 2015), <http://www.theguardian.com/british-council-partner-zone/2015/may/07/the-shape-of-social-enterprise-in-china>.

¹³⁶ Philanthropy in Motion, *supra* note 133.

¹³⁷ *Ibid.*

line returns: namely they address social and environmental needs such as affordable health services and energy, and have a financially sustainable revenue model (or plan to become sustainable in the near future).”¹³⁸ While there is no distinct legal form for a social enterprise, a social enterprise may be organized as a cooperative, a private company (sole proprietorship, partnership, limited liability partnership) a nonprofit, a trust, or other type of legal entity.¹³⁹ There is also a hybrid model which begins with a nonprofit or for-profit entity, and later adds an opposite twin.¹⁴⁰ The nonprofit arm can be used to attract donations and grants, while the for-profit arm helps to ensure access to social venture funding.¹⁴¹

As in China, the social enterprise sector is very new to India. A 2010 survey indicated that at that time, approximately 68 percent of social enterprises had been in operation for five years or less.¹⁴² “A growing trend observed in the Indian [social enterprise] space is the transformation of many not-for-profit models into for-profit models, as these are in a better position to secure financing and scale over time.”¹⁴³ Due to the ability of a Private Limited Company to raise capital more easily than a partnership or proprietorship, this has been the predominant legal form chosen by social enterprises.¹⁴⁴

There are signs of increasing government support of social enterprise in India. As will be explained in Part III, such government backing is essential for success of the social enterprise movement. “There is increasing recognition within India’s central and state governments about the usefulness of engaging or facilitating the private sector to address some of the country’s pressing developmental issues, although the specific nomenclature of ‘social enterprises’ is often not used.”¹⁴⁵

Keeping in mind that the growth of social enterprise in any given country can only come about within the context of that country’s legal, social, and cultural environment, we see existing regulatory constraints in India that impact the social enterprise space. In the area of education,

¹³⁸ Asian Development Bank, *India Social Enterprise Landscape Report 1* (2012), <http://www.adb.org/publications/india-social-enterprise-landscape-report>.

¹³⁹ *Ibid.*

¹⁴⁰ Nelson Vinod Moses. “Wondering Which Legal Structure to Choose for Your Social Enterprise? Read on...”, *Soc. Story* (Feb. 22, 2014 11:58 PM), <http://social.yourstory.com/2014/02/egal-structure-choose-social-enterprise/>.

¹⁴¹ *Ibid.*

¹⁴² Asian Development Bank, *supra* note 138.

¹⁴³ *Ibid.* at 6.

¹⁴⁴ Sarah Allen et al. “On the Path to Sustainability and Scale: A Study of India’s Social Enterprise Landscape”, *Intellectap* 14 (Apr. 2012), http://intellectap.com/sites/default/files/publications/intellectap_landscape_report_web.pdf (a survey of over 100 for-profit social enterprises revealed that 80 percent of these were doing business as private limited companies, only 10 percent were partnerships or proprietorships, and 1 percent were producer companies).

¹⁴⁵ Asian Development Bank, *supra* note 138, at 8.

for example, Indian law mandates that all formal educational institutions be not-for-profit.¹⁴⁶ This restriction on investment impedes the growth of social enterprise in this sector.¹⁴⁷ Social entrepreneurs in India have identified the need for a legal structure with governance mechanisms in place that will instill greater confidence for investors, thus making it easier for social enterprises to attract capital.¹⁴⁸

K. JAPAN

The Japanese have a "government-centric system" meaning that society tends to rely on the government to solve the social ills.¹⁴⁹ Although there has been a movement away from this view, the idea of private enterprise filling an unmet need left by government is a relatively new one. Natural disasters appear to have been the impetus behind the origins of social enterprise activity in Japan. According to Nana Watanabe, founder of Ashoka's foundation in Japan, "it was the Great Hanshin (Kobe) earthquake in 1995 that really mobilised civil society in Japan."¹⁵⁰ The event seemingly instilled an awareness of the need for solidarity and mutual assistance.¹⁵¹ The social enterprise sector is developing out of cooperatives in Japan and is working in various areas such as the promotion of fair trade, care for the elderly, and improvements in urban areas.¹⁵²

In 2009, the government began a series of discussions called "New Public Commons" with the goal of enhancing the presence of nonprofits in the social service sector.¹⁵³ As part of this effort, \$210 million was provided to fund 800 social entrepreneurs for a two-year period.¹⁵⁴ This further increased the awareness of social enterprise in Japan.

At present, Japan does not have a specialized legal form of business for social enterprise. Social enterprises can choose to be formed as a nonprofit, a cooperative, or a for-profit company.¹⁵⁵ While, there is no clear data on the breakdown of social enterprises by type, the

¹⁴⁶ Allen, *supra* note 144, at 60.

¹⁴⁷ *Ibid.*

¹⁴⁸ Anirudh Gaurang and Barkha Jain. "Understanding the Financial Challenges Faced by Indian Social Enterprises" (2014) 16, http://www.nse-india.com/research/content/RP_17Oct2014.pdf

¹⁴⁹ U.S.-Japan Research Institute, "Remarks on Social Innovation: U.S. - Japan Comparison Studies in this New Emerging Trend in Innovation" (Feb. 24, 2013), http://www.us-jpri.org/en/reports/seminar/summary_20140224_03.pdf

¹⁵⁰ Claudia Cahalane, "Japanese Social Enterprise: Triumph in the Face of Adversity," *The Guardian* (Sept. 18, 2012), <http://www.theguardian.com/social-enterprise-network/2012/sep/18/japanese-social-enterprise-triumph-adversity>.

¹⁵¹ *Ibid.*

¹⁵² Jacques Defourny & Shin-Yang Kim, *supra* note 129 at 17.

¹⁵³ Japan National Advisory Board, "The Social Investment Landscape in Japan" 11, (July, 2014)

¹⁵⁴ *Ibid.*

¹⁵⁵ Masanari Sakurai and Satoru Hashimoto, "Exploring the Distinctive Feature of Social Enterprise in Japan," draft paper prepared for the Joint Research Project Of East Asian Researchers And The EMES European Research Network 8 (2009), *available at* http://www.euricse.eu/sites/default/files/db_uploads/documents/1254841022_n192.pdf

most common forms of social enterprises in Japan are believed to be the nonprofit and the for-profit company.¹⁵⁶

L. RUSSIA

In the Russian federation we find two main categories of business entity: nonprofit entities and commercial enterprises. As typical in most systems, nonprofits may engage in commercial activities but there can be no distribution of profits. The nonprofit sector in Russia is not well-developed and in general, the sector "lacks business skills and private sources of funding are very limited."¹⁵⁷ Any one of a number of for-profit forms could serve as a social enterprise include the limited liability company, a joint-stock company, a limited partnership, or an economic partnership. While the main purpose of the commercial entity in Russia is the generation of profits, Russian law permits an entity to specify a social purpose in its organizing documents, although no mechanism exists for determining whether in fact that purpose is carried out.¹⁵⁸

Compared to other countries the level of social entrepreneurship in Russia is very low.¹⁵⁹ In fact, only approximately 1.2 percent of the population is engaged in such efforts.¹⁶⁰ However, a growing awareness of social entrepreneurship seems to be emerging.¹⁶¹ There are discussions in Russia regarding possible new legislation that would not only define social entrepreneurship, but would also provide either for existing business forms to qualify as a profit-with-a-purpose business or create a new form of business specifically suited to this dual purpose.¹⁶²

III. GOVERNMENT'S ROLE IN ESTABLISHING SOCIAL ENTERPRISE

While social enterprise is gaining in popularity, it still remains a misunderstood sector, and the lack of the legal framework in most countries further contributes to the inability of bankers and accountants to fully grasp the notion of social enterprise.¹⁶³ A recent OECD report

¹⁵⁶ Ichiro Tsukamoto and Mariko Nishimura, *Japan*, in *SOCIAL ENTERPRISE: A GLOBAL COMPARISON* 163, 172 (Janelle A. Kerlin ed., 2009).

¹⁵⁷ Orrick, Herrington & Sutcliffe LLP, *supra* note 47 at 103.

¹⁵⁸ *Ibid.*

¹⁵⁹ Julia Khaleeva, *The State of Social Entrepreneurship in Russia*, SEFORIS 1 (Apr. 2014), http://www.seforis.eu/upload/reports/Country_Report_Russia.pdf.

¹⁶⁰ SEFORIS, "First Impressions: How Social Entrepreneurship Differs in 8 EU Countries, China and Russia," October 16, 2014, <http://www.seforis.eu/en/news/detail/first-impressions-how-social-entrepreneurship-differs-in-8-eu-countries-china-and-russia>.

¹⁶¹ *Ibid.*

¹⁶² Orrick, Herrington & Sutcliffe LLP, *supra* note 47, 105.

¹⁶³ Gideon Burrows, "Social Enterprise - In Whose Interest?," *NEW STATESMAN*, February 9, 2004, <http://www.newstatesman.com/node/147227>.

identified five barriers that impede the growth of social enterprise in Europe: "1) legal and regulatory frameworks, 2) financial resources, 3) access to markets, 4) business support and development structures, 5) and training."¹⁶⁴ This Part will focus on government efforts that can address the first three of these concerns.

As shown in Part II, some governments have helped propel social enterprise by creating special hybrid entities specifically for this purpose, such as the CICs in the UK and the Benefit Corporations in the United States. But, short of this, there are many actions governments have taken and can continue to take in order to foster social enterprise. For purposes of this paper these efforts will be divided into three distinct categories: (1) public policy that creates an awareness of social enterprise and supports government grant-making to such organizations, (2) making available investment vehicles that facilitate funding for social enterprises, and (3) the development of tax incentives.

A. POLICY

Without a doubt, "the development of social enterprise models is profoundly shaped by the regulatory environment and policy frameworks that define the contribution social enterprises can make to national policy goals."¹⁶⁵ Public policies that are constructed holistically through collaborative efforts of government and private actors are critical to success.¹⁶⁶

Before social enterprise efforts can effectively be supported and advanced, however, the concept of social enterprise must first be put onto a nation's radar screen. Initially, this can be done through educational efforts supported by the government as well as more collaborative research efforts involving both the government and private sector. Through the use of various policy instruments, government can achieve goals that are in the best interest of society.¹⁶⁷ Acting in union with stakeholders from civil society in a "public-private partnership or 'collaboration' between government and civil society... 'utilizes assets from a number of different economic sectors and therefore has the potential to be more efficient for each partner.'"¹⁶⁸ In addition to using education as a means of disseminating information about the value of social

¹⁶⁴ Social Entrepreneurs Ireland and the Munk School of Global Affairs, "Social Entrepreneurship – Considerations for Policymakers and Practitioners," Social Entrepreneurs Ireland (Dublin, June 2014), *accessed* <http://socialentrepreneurs.ie/assets/2014/07/Social-Entrepreneurship-Considerations-for-Policy-Makers-and-Practitioners.pdf>, 12.

¹⁶⁵ Paola Babos et al., "Experience in the Social Enterprise Sector" (report prepared for the OECD LEED Centre for Local Development International Seminar, Trento, Italy, 15-18 November 2006), *accessed* <http://www.oecd.org/cfe/leed/38299281.pdf>, 5.

¹⁶⁶ Charlotte Seager, "Best Bits: What Will Social Enterprise Look Like Across Europe in 2020?," *The Guardian*, January 7, 2014, <http://www.theguardian.com/social-enterprise-network/2014/jan/07/live-discussion-social-enterprise-europe-2020>.

¹⁶⁷ Crystal Tremblay, "Public Policy Trends and Instruments Supporting the Social Economy: International Experiences," http://aloe.socioeco.org/IMG/pdf/International_Policy_Trends_for_the_SE_Feb_2010.pdf, 9.

¹⁶⁸ *Ibid*, 10.

enterprise, government can further lend its support to this sector through structural commitments within government dedicated to furtherance of social enterprise efforts. Lastly, the availability of government funding via grants for social enterprise efforts can help propel such efforts forward. “For example, the UK government has been a global leader in capitalizing the social finance market investing over £1 billion of public money in the sector from 2001 to 2011.”¹⁶⁹

1. Education

Nelson Mandela once said, "Education is the most powerful weapon which you can use to change the world."¹⁷⁰ Regional, national, and international government-sponsored and private sector collaborative educational efforts to raise awareness of social enterprise have helped accelerate its acceptance. At the national level, consider, for example, efforts by the government of Ireland. To promote social enterprise as a vibrant part of the Irish economy, the Social Enterprise and Entrepreneurship Task Force (SEETF) was established in 2009.¹⁷¹ One of its achievements has been securing the following government commitment that was included in the Fine Gael-Labour Programme for Government: "...promote the development of a vibrant and effective social enterprise sector. We will instruct agencies to view social enterprises as important stakeholders in rejuvenating local economies."¹⁷² In India, "the Government's Twelfth Five Year Plan has not only emphasized the important role of social enterprise and innovation," but has also prioritized these items in the national agenda.¹⁷³ In China, the China Social Entrepreneur Foundation and the NGO Research Centre at Tsinghua University have been created to encourage dialogue and disseminate information on social enterprise.

Regional conferences, such as "Social Enterprise: Helping Young People into Work" brought together representatives from the OECD and the European Commission, along with representatives from civil society and government and social entrepreneurs.¹⁷⁴ This conference was held in November, 2014, in Lisbon, Portugal to discuss innovative ways to create jobs for

¹⁶⁹ Alex Nicholls, "Filling the Capital Gap: Institutionalizing Social Finance," in *Social Enterprise, Accountability and Evaluation Around the World*, eds. Simon Denny and Fred Seddon (New York: Routledge, 2013), 165.

¹⁷⁰ Valerie Strauss, "Nelson Mandela on the Power of Education", Washington Post, December 5, 2013, <http://www.washingtonpost.com/blogs/answer-sheet/wp/2013/12/05/nelson-mandelas-famous-quote-on-education/>.

¹⁷¹ Social Enterprise and Entrepreneurship Task Force, *Unlocking the Potential of Social Enterprise & Entrepreneurship*, (July 2012),

http://www.socialenterprise.ie/gfx/uploads/textbox/SEETF_Submission_to_Forfas.pdf

¹⁷² Social Enterprise and Entrepreneurship Task Force, accessed April 8, 2015,

<http://www.socialenterprise.ie/default.aspx?m=1&mi=41>.

¹⁷³ Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH, *Enablers for Change: A Market Landscape of the Indian Social Enterprise Ecosystem*, (New Delhi, September 2012), accessed

<http://www.giz.de/en/downloads/giz2012-enablers-for-change-india-en.pdf>, 9.

¹⁷⁴ EEA and Norway Grants, "Social Entrepreneurship: Helping Young People into Work," November 11, 2014, <http://eeagrants.org/News/2014/Social-entrepreneurship-helping-young-people-into-work>.

young people. Social enterprise was hailed as one way to address this concern. Consider also the annual meeting of the Skoll World Forum on Social Entrepreneurship which in April 2015, brought together approximately 1,000 of the world's most influential thought leaders and social entrepreneurs from 60 countries to provide a "platform for advancing entrepreneurial approaches and solutions to the world's most pressing problems."¹⁷⁵ The nature and specifics of these "pressing problems" will change and evolve over time. Accordingly, social enterprises will need the flexibility to adapt to changing social climates.

Government educational efforts are essential to not only creating awareness at the national level, but to building a global consensus on social enterprise. Government efforts that send a unified and clear message can help to bring together competing voices.

2. Structural Modifications

Another way in which governments can show support for development of the social enterprise sector is through the creation of governmental bodies dedicated to advancement of this sector. In Canada, for example, social enterprise garnered support from the creation of the Social Economy Initiative and the establishment of the Federal Parliamentary Secretary to the Minister of Social Development with a focus on the social economy.¹⁷⁶ In the United States, the White House Office of Social Innovation was created in 2009 to increase awareness of, and encourage investment in, social enterprise.¹⁷⁷ The Brazilian government established the National Secretariat for Solidarity Economy as a Department of the Ministry of Labor and tasked it to develop a policy program for the solidarity economy sector, including measures in the areas of commercialization, technical assistance, skills development, and community-based finance.¹⁷⁸ In Ecuador the country's commitment to efforts involving social enterprise was made clear in the 2008 adoption of a new constitution that "establishes the importance of the Solidarity Economy development model, and recognizes the plurality of the economy based on public, social, and private enterprise."¹⁷⁹ In the United Kingdom, a Social Enterprise Unit has been established within the Cabinet Office.¹⁸⁰ This Social Enterprise Unit has been instrumental in establishing a number of initiatives in the UK to advance social enterprise including the 2012 Public Services (Social Value) Act, which, effective in 2013, "requires all public bodies in England and some Welsh bodies to consider how the services they commission and procure might improve the

¹⁷⁵ Skoll World Forum, accessed May 30, 2015, <http://skollworldforum.org/forum-2015/overview/>.

¹⁷⁶ Tremblay, *supra* note 167, 13. Although the Social Economy Initiative was later dismantled, the funding this initiative provided has been a significant part of the research component.

¹⁷⁷ Steven Haymore, "Publicly Oriented Companies: B Corporations and the Delaware Stakeholder Provision Dilemma," *Vanderbilt Law Review* 64 (2011): 1319.

¹⁷⁸ Ana Margardia Esteves, "Decolonizing Livelihoods, Decolonizing the Will: Solidarity Economy as a Social Justice Paradigm in Latin America," in *The Routledge International Handbook of Social Justice*, ed. Michael Reisch (New York: Routledge, 2014), 85.

¹⁷⁹ Tremblay, *supra* note 167, 16.

¹⁸⁰ "Policy: Social Enterprise," <https://www.gov.uk/government/policies/making-it-easier-to-set-up-and-run-a-charity-social-enterprise-or-voluntary-organisation>.

economic, social, and environmental well-being of the area."¹⁸¹ In 2012, France created the Deputy Minister of the Social and Solidarity Economy.¹⁸² That position has been replaced with that of "Secretary of the State for Trade, Crafts, Consumer Affairs, and the Social and Solidarity Economy at the Ministry of Economy."¹⁸³ One milestone of these social enterprise efforts in France has been the passage of the Law on Social and Solidarity Economy, passed in July 2014, which marks the first time that "the concept of a social and solidarity economy has been granted a legal definition."¹⁸⁴

Structural changes by governments that dedicate resources to an office to study and address the difficulties inhibiting the growth of social enterprise are a necessary step in the growth of this sector. But, identification of issues is only one of the necessary first steps. Making funding available to support reform efforts is equally significant.

3. *Availability of Funding*

In Canada, a government infusion of \$132 million in funding over a five year period was proposed to support the growth of Canada's social economy.¹⁸⁵ Much of this went unspent, but \$15 million of these funds were used to help create that country's Social Economy Hub which includes six regional research centers to address public policy issues through research programs.¹⁸⁶ To promote social innovation, India has established a National Innovation Council and has created an India Inclusive Innovation Fund to provide financial support for start-up ventures.¹⁸⁷ Poland allows citizens the option of designating one percent of their tax to be applied to socially useful causes and the government has set up public funds to help support social enterprises and the third sector.¹⁸⁸ In France, the Banque Publique d'Investissement was established in 2013 to invest €500 million in social enterprises.¹⁸⁹ "The ability of social enterprises to get government grants is inversely related to their ability to generate income, i.e.: social enterprises that get income by selling products/services, or through donations are less likely to get government help."¹⁹⁰ An analogy to the trajectory of the microfinance industry is

¹⁸¹ *European Comm'n Country Report: United Kingdom*, supra note 89, 4.

¹⁸² "Ministry for the Social and Solidarity Economy Created in France," Reliess.org, May 31, 2012, <http://reliess.org/ministry-for-the-social-and-solidarity-economy-created-in-france/?lang=en>.

¹⁸³ *European Comm'n Country Report: France*, supra note 54.

¹⁸⁴ *Ibid*, 6.

¹⁸⁵ Yves Vaillancourt, "Third Sector and the Co-Construction of Canadian Public Policy," in *New Public Governance, The Third Sector and Co-Production*, eds. Victor Prestoff et al. (New York: Routledge, 2012), 86.

¹⁸⁶ Tremblay, supra note 167, 13.

¹⁸⁷ Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH, supra note 173, 9.

¹⁸⁸ Babos et al., supra note 165, 10.

¹⁸⁹ Karen E. Wilson, "Social Investment: New Approaches for Addressing Social and Economic Challenges," (Paris: OECD Publishing, 2014), accessed http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2501247, 26.

¹⁹⁰ Ladeira & Machado, supra note 7, 191.

helpful. Before the microfinance industry became a stable and self-sustaining sector, it relied on significant government support that was provided through both loans and grants.¹⁹¹

While government funding is one avenue through which social enterprise can receive financial support, in the long-term, having the private sector significantly supplement government funding will allow the social enterprise sector to experience more significant periods of growth. One way to aid this transition is for the government to encourage the formation and growth of various investment vehicles geared toward private enterprise.

B. ENCOURAGING INVESTMENT IN SOCIAL ENTERPRISE

Governments seeking more effective ways to address increasing economic challenges have started to recognize that private sector models of investing may help them do just that.¹⁹² It is both philanthropy and public support that helps to develop the social enterprise market.¹⁹³

Over the past twenty years, a range of new organizations and financial instruments has emerged that reflects a set of significant institutional changes around the social contexts and objectives of finance. Partly, this has been driven by the needs of social organizations that cannot easily access commercial finance to start-up and grow due to their projected financial returns failing to match their perceived level of riskiness. But another driver has been a growing body of owners' capital seeking to allocate their resources to generate social value as well (or, sometimes instead of) seeking financial returns.¹⁹⁴

Government support for both impact investment and social impact bonds can help ensure a flow of capital to the social enterprise efforts.

1. Impact Investing

Over the past decade, social investment has evolved as investors seek to address social issues at all levels of society.¹⁹⁵ Social investment is now more commonly referred to as “impact investing,” a phrase first used in 2007 at an initiative coordinated by the United States and the Rockefeller Foundation.¹⁹⁶ New initiatives sponsored by governments, foundations, and other stakeholders, particularly in the G8 countries, have been engaged in creating new social investment to accelerate the market.¹⁹⁷

The Global Impact Investing Network (GIIN), defines impact investments as “investments made into companies, organizations, and funds with the intention to generate social and environmental impact alongside a financial return . . . GIIN further specifies that impact

¹⁹¹ OECD, *Social Impact Investment: Building the Evidence Base* (Paris: OECD Publishing, 2015), accessed <http://www.oecd.org/sti/ind/social-impact-investment.pdf>, 18.

¹⁹² Wilson, *supra* note 189, 4.

¹⁹³ *Ibid.*

¹⁹⁴ Nicholls, *supra* note 169, 162.

¹⁹⁵ Wilson, *supra* note 189, 4.

¹⁹⁶ *Ibid.*, 6.

¹⁹⁷ *Ibid.*, 4.

investments should have the following four core characteristics: i) intentionality; ii) investment with return expectations, iii) range of return expectations and asset classes; and iv) impact measurement."¹⁹⁸ Government efforts can often serve as the impetus for an impact investing fund. In Hong Kong, for example, the Community Investment and Inclusion Fund was created by the government in 2002 and “focuses on mobilizing and consolidating social capital and uses these resources to sustain initiatives.”¹⁹⁹ In the UK, independent financial institutions, known as Community Development Finance Institutions are funded by the government, banks, individuals, and foundations, and make capital available, for example, to community development venture capital and micro-finance funds.²⁰⁰ In India, the government is seeking to create a regulatory environment more conducive to social enterprise. As an example, the country’s financial regulator, the Securities and Exchange Board of India (SEBI), issued a policy paper that indicated a need to “separately recognize and regulate Social Venture Funds” and described these funds as “for investors seeking ‘muted’ returns in their investments in return for social gains.”²⁰¹ Although investments in social enterprises are just starting to offer proof in the strength of the concept, challenges remain in India due to high transaction costs and limited data available to help investors understand the new sector.²⁰²

Government action in this regard is crucial, especially in those countries where social enterprise remains a relatively untested commodity. Consider for example, a country such as India where there is a lack of venture capital for the emerging markets.²⁰³ Social enterprises have certain distinct disadvantages in India in terms of getting the attention of investors. The capital needs of a social enterprise tend to be low and a small deal is not as attractive to investors, especially when comparatively speaking transaction costs remain high.²⁰⁴ In addition, “[t]he lack of impact measurement of investments, the difficulty in measuring impact, and an absence in the standardization of impact measurement and third-party assurance of reporting are all industry challenges. The lack of consistent measurement makes it difficult for investors to compare social, economic, and environmental returns of different investments . . . Furthermore, there is a lack of disclosure of market information among the sector, for example statistics regarding investment deals.”²⁰⁵

As indicated in a World Economic Forum Report on the financial sector development of

¹⁹⁸ Ibid, 6-7.

¹⁹⁹ Tremblay, *supra* note 167, 18.

²⁰⁰ Ibid, 27-28.

²⁰¹ Asian Development Bank, *supra* note 138, at 8.

²⁰² Ibid, 6.

²⁰³ Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH, *supra* note 173, 51.

²⁰⁴ Ibid.

²⁰⁵ Ibid, 55.

the G7 countries and Australia, the greater the degree of financial sector development in a country, the greater the likelihood of having an active social impact investment market.²⁰⁶ Recognizing the crucial role of government in encouraging investment, in 2012, the UK established the first social investment institution of its kind, Big Society Capital, an independent financial organization with the goal of supporting the growth of social investment in the UK.²⁰⁷ In addition to investing in intermediaries in support of the social enterprise sector, Big Society Capital [BSC] has also “commissioned a number of research reports on the social impact investment market and created guides and standards for investors and social enterprise.”²⁰⁸

Creation of social stock exchanges can also help further social enterprise efforts. Some countries have led the way in this regard, including South Africa with the creation of the Nexii exchange, and Singapore which established the Impact Investment Exchange (IIX) Asia.²⁰⁹ Singapore's Impact Exchange was created in June 2013. In order to reach investors in both Asia and Africa it was created as a joint effort with the Stock Exchange of Mauritius, and integrated with Nexii.²¹⁰ Its issuers include not only social enterprises but also nonprofits that can issue bonds.²¹¹ In the UK, the Social Stock Exchange, which opened in July 2013, helps connect companies that have passed a social impact test with investors looking for social impact opportunities.²¹² An Admissions Panel made up of ten financial and social sector experts reviews a company's application and Impact Report to determine whether a company is a true social impact business eligible for admission. Once admitted to the Exchange, companies are required to submit an impact report to the panel each year.²¹³ Canada's Social Venture Connexion which opened in September 2013 is intended to connect institutional investors to social impact businesses which it has evaluated using the B Corporation standard for measuring both social and environmental impact.²¹⁴

Such exchanges, “target smaller high growth enterprises in sectors such as health, education, environment, social and affordable housing, sustainable forestry and organic agriculture and other ‘base of the pyramid’ interventions.”²¹⁵ These exchanges offer a platform that can attract capital from a broad array of investors, including individuals, foundations, and institutions.²¹⁶

²⁰⁶ OECD, *supra* note 191, 19.

²⁰⁷ *European Comm'n Country Report: United Kingdom*, *supra* note 89, 7.

²⁰⁸ OECD, “Social Impact Investment: Building the Evidence Base,” 18 (2015): 31.

²⁰⁹ Karen E. Wilson, “Social Investment: New Investment Approaches For Addressing Social and Economic Challenges,” 26 (2014): 20.

²¹⁰ Ashoka, “Stock Exchanges for Social Enterprises? Here’s Where You Can Find Them,” *Forbes* (2014): 2.

²¹¹ *Ibid.*

²¹² Bandini Chhichhia, “The Rise of Social Stock Exchanges,” *Stanford Social Innovation Review* (2015): 1.

²¹³ SSX, “Social Stock Exchange Appoints John Elkington to Chair Admissions Panel,” (2015): 1.

²¹⁴ Chhichhia, *supra* note 212 at 1-2.

²¹⁵ OECD, *supra* note 208, at 30.

²¹⁶ *Ibid.*

2. *Social Impact Bonds*

Social Impact Bonds (SIBs) are one of the newest financial innovations that can be utilized to support social enterprise. Through these bonds private investors invest capital and manage projects that are usually designed to (1) improve outcomes for at-risk individuals and (2) reduce government spending.²¹⁷ Some governments use this tool to fund social programs aimed at prevention.²¹⁸ The common characteristics of social impact bonds are (1) they are governed by an outcome-based contract (investors get repaid if desired social outcomes are achieved),²¹⁹ (2) they are geared at preventative intervention which results in a reduction in government spending, and (3) the risk of an unsuccessful program is transferred away from the government and on to investors.²²⁰

The first Social Impact Bond was initiated in the UK in 2010 when £5 million was invested by both private individuals and charities to fund an intervention program for those who served short prison sentences at the HMP Peterborough prison in England.²²¹ The success of the program in reducing the recidivism rate propelled the use of SIBs in the UK, and eventually SIB programs were initiated in the US, Canada, Belgium, the Netherlands, Germany, and Australia.²²² Within the UK, three more successful SIBs have just repaid investor capital ahead of schedule. Each of these SIBs met their various program objectives that included: improving school attendance and behavior, securing gainful employment for participants, reducing the number of teenage pregnancies, and reducing the percentage of youth joining a gang.²²³ In the United States, the first social impact bond was a \$9.6 million investment in 2012 in a program to reduce recidivism at New York's Riker's Island prison.²²⁴ The SIB was used to fund a cognitive behavioral therapy program for youth detained at Riker's.²²⁵ To be considered a success and guarantee repayment to investors, the SIB had to achieve an 8.5 percent reduction in the rate of recidivism.²²⁶ The SIB failed to do so.²²⁷ In 2014, Massachusetts announced the biggest SIB in

²¹⁷ Jon Hartley, "Social Impact Bonds Are Going Mainstream," *Forbes* (2014): 1.

²¹⁸ Social Entrepreneurs Ireland, "Social Entrepreneurship – Considerations for Policy Makers and Practitioners," 12 (2014): 26.

²¹⁹ *Ibid.*, at 37.

²²⁰ *Ibid.*, at 36.

²²¹ Hartley, *supra* note 217, at 4.

²²² *Ibid.*

²²³ Ellie Ward, "Triple Triumph: Three UK SIBs Return Investor Capital," *Pioneer Post* (2015): 2.

²²⁴ John Olson & Andrea Phillips, "Rikers Island: The First Social Impact Bond in the United States," *Investment Review Federal Reserve Bank of San Francisco*: 97.

²²⁵ Donald Cohen & Jennifer Zelnick, "What We Learned from the Failure of the Rikers Island Social Impact Bond," *Nonprofit Quarterly* (2015): 2.

²²⁶ *Ibid.*

²²⁷ *Ibid.*

the United States to date - a \$27 million SIB intended to reduce the prison recidivism rate over a seven-year period.²²⁸ The SIB model is gaining interest globally, resulting in the creation of Development Impact Bonds (DIBs) in developing countries.²²⁹ In a DIB program, "a donor such as the Department for International Development writes a contract with a service provider in which it agrees to pay the provider only for the successful outcomes of its programme."²³⁰ The provider then seeks funding from socially motivated investors.²³¹

The success of the impact bond approach depends, of course, on the social and economic climate of any given country. The creation of an impact bond is a complex, lengthy, and labor-intensive process that may not be feasible for some governments.²³² Once a social problem is identified, the government has to define the interventions that will be utilized and how success will be measured.²³³ Even after the program has been designed, the government then has the task of convincing investors of its value.²³⁴ Success at this juncture depends in part on the nation's historical patterns of philanthropy and charitable giving. Ireland, for example, has recognized that its current climate will likely make SIBs less appealing than they have been in other countries such as the United States:

[T]he 2008 financial crisis has created a climate of public opinion that is not favorable to investors in general. This climate may act as a deterrent to some high net worth individuals that would consider investing in an SIB. In general, an ethos of public skepticism towards large scale public philanthropy has reduced the willingness of philanthropists to make high-profile donations or investments, a development that is partly responsible for the phenomenon that Ireland is donating below capacity.²³⁵

SIBs are used for a very narrow purpose, serving those interventions "which are preventative and which can be quantifiably shown to generate future savings for government through reduced demand for government services."²³⁶ Although SIBs are useful tools in advancing social enterprise, "they are not panaceas for cash-strapped governments in times of austerity."²³⁷

3. *The Need for Collaboration*

Governments should take concrete steps to encourage investment in social enterprise by

²²⁸ Anne Field, "Biggest 'Social Impact Bond' in the U.S. Targets Recidivism," *Forbes* (2014): 1.

²²⁹ Wilson, *supra* note 209, at 5.

²³⁰ Michael Belinksy, "Development Impact Bonds: Success Depends on a Supportive Network," *The Guardian* (2014): 1.

²³¹ *Ibid.*

²³² Social Entrepreneurs Ireland, "Social Entrepreneurship – Considerations For Policy Makers And Practitioners," 12 (2014): 27.

²³³ *Ibid.*

²³⁴ *Ibid.*

²³⁵ Social Entrepreneurs Ireland, *supra* note 232, at 37.

²³⁶ *Ibid.*, at 35.

²³⁷ *Ibid.*, at 35.

providing clear regulatory guidance for the social enterprise market and creating an environment conducive to investment. The ability of any given government, however, to do so is not without its challenges. Generally speaking, there are currently no commonly accepted standards for measuring social investment, and a noticeable dearth of information with regard to investment terms and government policy.²³⁸ High transaction costs resulting from “fragmented supply and demand curves,” along with a limited number of intermediaries (brokers, advisors, exchanges) are additional impediments to growth.²³⁹

Aiding in this effort are current collaborations on developing a common global standard for measuring the impact of investments.²⁴⁰ Considering how difficult it has been to formulate a universal definition of the term “social enterprise,” it remains to be seen whether a global standard will arise. In 2013, UK Prime Minister David Cameron hosted a G8 Social Impact Investment Forum in London. In attendance were ministers and businesses, members of civil society, and other political leaders from the G8 countries. The purpose of the forum was to launch processes and initiatives and to help the development of an investment market on a global scale.²⁴¹ The forum asked that the OECD produce a Global Social Impact Investment Report to identify key components of social investing globally and help create common ground.²⁴² This OECD report, *Social Impact Investment, Building the Evidence Base*, was released in February 2015, and will likely prove instrumental in moving the cross-country social enterprise dialogue forward. Significantly, the report indicates that while there is “gathering momentum around social impact investment globally, there is a current lack of communication between different countries, with perceptions of and the actual shape of the market being very different depending on its location.”²⁴³ The OECD report points out that, “for the market to progress globally, it will be important for definitions to be clarified to make sure there is a common language and understanding of what is considered social impact - and what is not.”²⁴⁴

C. TAX INCENTIVES

Tax policies can serve as effective agents of social change, and tax incentives can serve as the necessary carrot to ensure a steady flow of investment capital to further the growth of the social enterprise sector. Recognizing the significant impact tax policies can have on social

²³⁸ Wilson, *supra* note 209, at 5.

²³⁹ *Ibid.*

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*, at 6.

²⁴² *Ibid.*, at 6.

²⁴³ Ellie Ward, “OECD Report Marks ‘Important Milestone’ for Impact Investing, Says Cohen,” *Pioneer Post* (2015): 3.

²⁴⁴ OECD., “Social Impact Investment: Building the Evidence Base,” 18 (2015): 43.

impact investment and the growth of social enterprise, some countries have provided support to social enterprises and investors through tax credits or subsidies.²⁴⁵

1. Existing Tax Incentives

Relatively few tax incentives for social enterprise efforts exist globally, and in this regard the UK has once again blazed the trail. Social Investment Tax Relief (SITR), passed in 2014, applies to investments in social enterprise made after April 6 2014.²⁴⁶ The legislation is specifically designed for CICs, in addition to charities and community benefit societies. Among other criteria, qualifying organizations must carry on a qualifying trade, have fewer than 500 employees, and have gross assets of no more than £15 million.²⁴⁷ Qualifying investors will be permitted a reduction in their tax liability by an amount equal to 30 percent of the amount invested.²⁴⁸ In addition, the investor can defer capital gains by investing in qualifying shares.²⁴⁹ Taxpayers will avoid all tax upon disposition of qualifying investment if such stock is held for at least three years.²⁵⁰ Prior to the adoption of SITR, the tax relief that was commonly associated with social enterprise was the Community Investment Tax Relief (CITR), which allowed investors to obtain tax relief by investing in intermediary organizations, Community Development Finance Institutions, which invested directly in a qualifying social enterprise.²⁵¹

As discussed in Part II, Italy has divided its social enterprise sector primarily between the social cooperative and the social enterprise *et lege*. There are various tax benefits made available to the cooperative in Italy that are not available to the social enterprise *et lege*. For example, social cooperatives may be either exempt from the corporate income tax or taxed at a reduced rate.²⁵² They are also eligible for a reduced value-added tax for health, social, and educational services, as compared to the standard 21 percent VAT rate.²⁵³

In the United States nonprofit organizations meeting certain legal requirements qualify for significant tax relief and incentives.²⁵⁴ Tax incentives are not available to the for-profit Benefit Corporation, but there are some who hope for that to change. For example, Andy Kassoy, one of the founders of B-Lab has shared his ideal, "[I]n the dream scenario when you have companies obligated to create public benefit you can measure the externalities those companies are internalizing and say they should be taxed at a lower rate than a C

²⁴⁵ *Ibid.*, at 35.

²⁴⁶ Ainsley MacLaren, and Duncan Osler, "UK: Finally A Tax Relief to Encourage Investment in Social Enterprise," *Mondaq* (2014).

²⁴⁷ UK Government, "Social Investment Tax Relief," (2015): 2.

²⁴⁸ *Ibid.*, at 1.

²⁴⁹ *Ibid.*

²⁵⁰ *Ibid.*

²⁵¹ *Buzzacott*, *supra* note 81, at 4.

²⁵² *European Comm'n Country Report: Italy*, *supra* note 45, at 4.

²⁵³ *Ibid.*

²⁵⁴ IRS, "Exemption Requirements – 501(c)(3) Organizations," *I.R.C.*

Corporation."²⁵⁵ Progress has not been made toward this goal, although the city of Philadelphia has provided limited tax relief in the form of a \$4,000 tax credit to eligible Certified B Corporations for the years 2012 through 2017.²⁵⁶

2. *Can Tax Incentives Make a Difference?*

The City of London Corporation and Big Society Capital commissioned a report to consider the effects of introducing tax relief for social investment. To further develop and progress, the social investment market must move away from dependency on grants received from governments, foundations, and trusts.²⁵⁷ The report focuses on the extent to which tax relief might be instrumental in moving this sector toward private funding.²⁵⁸ To determine this, a survey of wealthy individuals, who had greater than £100,000 in investable wealth, was conducted. The study showed that "[f]or those HNWIs [high net worth individuals] more 'actively interested' in social investment, a tax incentive was found to be influential in encouraging these investors to make a commitment to social investment, though it was not a primary motivation."²⁵⁹ Those who had only a passive interest in social investments indicated that a primary motivation for them to invest in social enterprise would be the creation of tax incentives.²⁶⁰ Accordingly, the report concludes that,

The lack of tax incentive is therefore a barrier to those wishing to make social investments, given that there are tax incentives for venture capital and charitable giving. This suggests that a tax relief would be effective in encouraging social investment amongst different categories of wealthy individuals.²⁶¹

A recent study of social enterprise in India likewise concluded that "social investors...are looking at something tangible in financial and taxation terms when it comes to their social investments, even if they were meant to support a social cause."²⁶² In the United States, numerous scholars have expressed the need for tax incentives for for-profit social purpose/hybrid entities in order to promote the growth of the social enterprise sector.²⁶³

²⁵⁵ "The B Corporation: A Business Model for the New Economy," *Capital Institute* (2010): 5.

²⁵⁶ Philadelphia, PA Code § 19-2604(10)(c)(i).

²⁵⁷ Worthstone, "The Role of Tax Incentives In Encouraging Social Investment," *City of London* (2013): iv.

²⁵⁸ *Ibid.*, at iii.

²⁵⁹ *Ibid.*, at vii.

²⁶⁰ *Ibid.*, at vii.

²⁶¹ *Ibid.*, at vii.

²⁶² Anirudh Gaurang, and Barkha Jai, "Understanding the Financial Challenges Faced By Indian Social Enterprises," *NSE India* (2014): 10.

²⁶³ Anup Malani, and Eric A. Posner, "The Case for For-Profit Charities," *Virginia Law Review* 93, no.8 (2007): 2064-2065.; Hadley Rose, "The Social Business: The Viability of a New Business Entity Type," *Willamette Law Review* (2007-2008): 158-159.; Ross Kelley, "The Emerging Need for Hybrid Entities: Why California Should Become the Delaware of 'Social Enterprise Law,'" *Loyola Law Review* 619 (2013-2014): 654.

CONCLUSION

The social enterprise landscape is quite broad and is in various stages of development internationally. While historically there has not been a global consensus on the meaning of social enterprise, through education and continued dialogue, great strides have been made in identifying areas of common ground. Specifically, the common thread of the social enterprise definition is a focus on the primary motivation of social betterment, coupled with the belief that surplus should principally be reinvested in the mission. The overview of selected countries provides a glance at how this sector has been understood and utilized internationally. Especially in the early stages of growth, educational outreach efforts and government grants are vital. Once social enterprise has been introduced in society, private capital then becomes integral to the sustainability of the sector. It is the role of government to create a regulatory climate conducive to such an investment market. Government tax incentives for social enterprise investments have the potential to significantly increase the number of private investors willing to invest in this growing segment of the market. One constant remains true across cultures and customs: government remains the single greatest actor with the power to give social enterprise the necessary impetus.