

accountability

## **INDEX**

decision-making powers for, 101-102,

public benefit corporation, 64-66 105-109 reporting, impact measurement and directors' appointments by advisory certification mechanisms, 94-123 panel of, 111-112 of social enterprise societies, 35-37 directors' duties concerning, 94-95 Asian common law jurisdictions. See disruption and inefficiency also Singapore; specific states, attributed to, 105-107 e.g. India enforcement rights in breach Asian company laws and, 50-59 of duty, 98-99 cooperative societies and, 40-44 engagement with, 11-14 corporate purpose, object, and in Indian social enterprise law, interest distinctions in, 48-50 56 - 59derivative actions failure opportunism by, 107-108 in common law jurisdictions outcome and impact assessments of, 98-99 involving, 128-133 directors' duties in, 81-87, 100 in partnership and limited expansion of social enterprises in, 2 partnership structure, 37-40 judicial and regulatory regime public benefit corporations and, 64-66 quality in, 5–7 legal reforms for social enterprises as shareholders, 113-114 in Singapore and Malaysia common in, 164-168 reporting practices in, 124 law jurisdiction, 53 shareholders' powers in, 102-103n3 sufficient particularity of corporate social enterprises and, 5-7, 14-44 purpose and, 72-73 tax benefits for sustainable best interest duty of directors enterprises in, 162 in common law Asia, 81-87 asset distribution, 148-149, 151-153 governance rights of shareholders and, 86-87 public benefit corporations, 87-89 base of the pyramid model for social enterprises, 11-12 of solvent companies, 82–86 B Corp certification (B Lab), 144–147 standard of review for, 96 tax benefits and, 160-161 breach of corporate constitution, beneficiaries of social enterprises corporate purpose enforcement and, 74-75 advisory panel composed of, 109-111 British Academy, 7-8 breach of corporate constitution Business Income and Receipts Tax

Liability (BIRT), 159-162

concerning, 74-75



INDEX 187

business judgment rules directors' duties and, 85 public benefit corporations, 64-66, business models for social enterprises, 11 - 14but for causation test directors' duties and, 97n56 misrepresentation actions and, 73-74 California Corporation Code, 66-69, 72-73, 80-81, 90-91, 94-95 certification mechanisms in Hong Kong, 141-143 in Malaysia, 143-144 overview of, 94-123, 141-147 private certification bodies, 144-147 in Singapore, 144-147 charitable status for social enterprises challenges related to, 34 society framework and, 35-37 Charterbridge test, 96 Code of Corporate Governance (Malaysia), 83-84 Code of Corporate Governance (Singapore), 82 co-determination board of directors model, 105-107 Community Interest Company (CIC) Regulations 2005 (United Kingdom), 20-21, 59-63, 76, 91-94, 99-100 asset distribution and, 151-153 dividend distribution restrictions, 149-151 regulatory powers in, 114-117 reporting requirements for, 94–127 tax benefits for, 154-156 community interest object (CIO),

59-63, 91-94

59-63, 76, 94

Section 135(5), 56, 58-59

Section 166(2), 57–58, 84–85

community interest statement (CIS)

(UK), 59-63, 91-94, 124-127

Companies Act (India), 32-33, 160-161

community interest test (CIT) (UK),

Companies (Audit, Investigations and Community Enterprise) Act 2004 (United Kingdom), 51-53, 91-94 company limited by guarantee, in Asian social enterprises, 32-34, 164-168 company limited by shares, in Asian social enterprises, 26-32, 164-168 conflicts of interest Community Interest Company requirements concerning, 91-94 company limited by guarantee structure for social enterprises in, 32-34 company limited by share format for social enterprises and, 26-32 cooperative society framework, 40 - 44crowdfunding platforms vs. social entrepreneurs, 25-26 partnerships/limited liability partnerships and, 37-40 pro-social investors/members vs. for-profit investors/members, 24-25, 30-31 public benefit corporations, 64-66 in social enterprises, 3-5, 22-26 social entrepreneurs vs. consumers/ clients/intermediaries, 25-26, social entrepreneurs vs. investors, 23, 30 societies and trusts as social enterprises and, 35-37 sole proprietorships as social enterprises, 35 summary of, 43-44 consumers/clients/intermediaries impact assessment and, 136-137 misrepresentation actions by, 73–74 social entrepreneurs vs., 25–26, 31–32, 34, 35, 37–40 contingency fees, absence in Asian common law provisions, 100n68

contract law, social enterprise

structure and, 37-40, 167-168



188 INDEX

cooperative society model of social enterprise, 12-14, 40-44, 105-107, 164-168 corporate constitution breach of, 74-75 Community Interest Company, company limited by guarantee, 32 - 34consumers/clients/intermediaries examination of, 31-32 corporate purpose and, 79-80 director's duties in, 79-80 entrenchment positions in, 26-32 in Hong Kong company laws, 51-53 misrepresentation of, 73-74 qua member rule, 28 Corporate Governance Code (United Kingdom), 46-50, 109-111 corporate interest defined, 48-50 directors' duties in common law Asia concerning, 81-87 long-term value and validity and, 85-86 in solvent company, 82-86 corporate object, defined, 48-50 corporate purpose best interest duty of directors and, Community Interest Company, decision-making rights and, 105-109 defined, 48-50 directors' duty to act in good faith and, 81-87, 94-95 enforceability of, 73-76 Hong Kong company laws, 51-53 Indian Companies Act Section 166(2), 57-58Malaysian company laws, 53 new priorities and specificity for social enterprises in, 69–73 overview of, 46-50 prioritisation of social purpose in, proper purpose rule for directors' duties and, 97

public benefit corporation, 64-66 Singapore company laws, 53 social purpose corporation, 66-69 sufficient particularity in, 72–73 corporate social responsibility (CSR) development of social enterprises and, 160-161 Indian directors' duties concerning, 84 - 85Covid-19 pandemic development drivers for social enterprises and, 17-20 poverty increase and, 11-12 crowdfunding platforms, social entrepreneurs vs., 25-26 Davos Manifesto 2020: The Universal Purpose of a Company in the Fourth Industrial Revolution, 7–8 decision-making in social enterprises beneficiaries as shareholders, 113-114 beneficiaries' rights concerning, 105 - 109beneficiary advisory panel for, 109-111 independent non-executive director designation and, 112-113 investors powers, 102-103 mechanisms for, 109-119 regulatory appointment and powers, 114-117 shareholders' powers, 86-87, 101-105 Delaware law public benefit corporations and, 64-66, 80-81, 87-89, 94-95 social enterprise reporting requirements, 124-127 Deloitte Global Human Capital Trends survey, 1, 8-9 Derivative actions absence in Asian common law provisions, 100n68 by beneficiaries, 98-99 by pro-social directors, 29, 33–34 Development Bank of Singapore,

160-161



INDEX 189

directors, duties of appointment of directors by beneficiary advisory panel, 111-112 in Asian common law, 5-7, 50-59, beneficiaries' enforcement rights in breach, 98-99 beneficiary advisory panel and, 109-111 Community Interest Company (United Kingdom), 91-94 conflicts of interest and, 22-26 corporate purpose and, 9-11, 48-50, 94-95 decision-making powers, 101-102 dismissal for breach of, 29-31 enforcement in breaches of, 98-100 good faith, duty to act in, 81-96 in Hong Kong law, 51-53, 81-85 Hong Kong regulation of, 117-118 independent non-executive director designation, 112-113 in India, 56-59, 81-85 legal framework for, 79-80 in Malaysia, 81-85 proper purposes, duty to exercise for, 97 in public benefit corporations, 64-66, 87-89 reporting requirements, 124-127 shareholders' governance rights and, 86-87 in Singapore, 81-85 social benefit prioritisation by, 69-72 in social enterprises, 3-5 social purpose corporation, 66-69, standard of review of, 96 summary of, 43-44 in UK Community Interest Corporation, 59-63 disclosures of social enterprises, impact measurements and, 128-133 dividend distribution Community Interest Company reporting requirements for, 93

education, Asian social enterprises in, 16-17 enforceability of corporate purpose beneficiaries' enforcement rights, 98-99 breach of directors' duties and, 98-100 in Hong Kong, 51–53 in Indian Companies Act, 56-59 limits on, 48-50 in Malaysia and Singapore, 53 partnerships and limited partnerships, 37-40 private enforcement, 73-75 proposed mechanisms for, 73-76 public enforcement, 76, 99-100, 117-119 regulatory appointment and powers and, 114-117 ESG (environment, social, and governance) compliance B Corp certification and, 144-147 beneficiary advisory panels and, 109-111 business models for social enterprises and, 11-14 corporate purpose and, 46-50 profit-driven companies and, 164-168 social purpose corporations, 66-69 European Union (EU), social enterprises in, 1 expenditure test, 25n106 prioritisation of social benefit determination, 69-72

Fair Trade business, social enterprise engagement with, 12–14 financial viability, social benefit prioritisation *vs.*, 69–72 Florida Business Corporation Act, 124–127 for-profit investors/members, pro-social investors/members *vs.*, 24–25, 30–31, 32–34, 37–40, 40–44

barriers to social enterprises for, 22

overview, 148-149, 151



190

funding (cont.)
companies limited by guarantee
challenges, 34
dividend regulation and, 151
government as source for, 25
impact assessment tied to, 136–137,
139–140
reporting, impact measurement
and certification mechanisms
and, 121–122
for sole proprietorships, 35
tax benefits for social enterprises

Global Impact Investment Rating System (GIIRS), 121–122, 135–136, 138, 139 good faith, directors' duties to act in, 81–96

in common law Asia, 81–87 governance rights

and, 154-156

of beneficiaries, 101–102, 105–107 beneficiaries as shareholders,

113–114

of shareholders, 86–87 shareholders monitoring incentive and ability and, 108–109

government policies

development of social enterprises and, 17–18

funding of societies by, 35–37 social entrepreneurs vs., 25

Grameen Bank, 11-12, 167

HM Revenue and Customs (HMRC) (UK), 156–159

Hong Kong

best interests of solvent company in law of, 82–86

certification of social enterprises in, 141–143

company laws in, 51-53

company limited by share format for

social enterprises in, 26–32 development drivers for social

enterprises in, 17–20 government funding of social

enterprises in, 25

INDEX

independent non-executive director designation in, 112–113 outcome and impact assessment of social enterprises in, 132–133

partnerships/limited liability partnerships in, 37–40

public enforcement mechanism in, 117–118

shareholder primacy approach in, 84–85

Social Enterprise Business Centre in, 21–22

social enterprises in, 15–16 societies and trusts as social

enterprises in, 35–37 Hong Kong Companies Ordinance, 32–33

Hong Kong General Chamber of Social Enterprises, 141–143

impact measurement mechanisms, 127–141

barriers to data disclosure by social enterprises, 134–137

Hong Kong social enterprises, 132–133

incentivization for social enterprises use of, 137–138

Indian social enterprises, 132 Malaysian social enterprises, 133

overview of, 94–123

problematic disclosures, 128–133 proposed framework for, 139–140 tools for, 128, 135–136

Impact Reporting and Investment Standards, 135–136

impact test, social benefit prioritisation assessment, 69–72

inclusive business model of social enterprise, 12–14

Inclusive Innovation Fund (India), 14–19

Independent Committee of Social Enterprise Endorsement Scheme, 141–143

independent non-executive director, designation in social enterprises of, 112–113



INDEX 191

India barriers to growth of social enterprises in, 20 company laws in, 56-59 company limited by share format for social enterprises in, 26-32 development of social enterprises in, 18-19 educational social enterprises in, 16-17 government-social enterprise collaboration in, 25 operating domains of social enterprises in, 14-17 outcome and impact assessments of social enterprises in, 132 public enforcement mechanism in, 117-119 societies and trusts as social enterprises in, 35-37 sole proprietorships as social enterprises in, 35 stakeholder value in solvent companies of, 84-85 insolvency standard, social benefit prioritisation and, 69-72 intermediaries, social enterprises as, 12-14 investors companies limited by guarantee company limited by shares legal structure and, 26-32 decision-making powers of, 102-103 impact assessment and, 139-140 public benefit corporations, 64-66 reporting, impact measurement and certification mechanisms for, 121-122 social entrepreneurs vs., 22-23 tax benefits for social enterprises and, 154-159

judicial standard of review, directors' duties, 96

legal framework for social enterprises. See also specific acts in Asian common law jurisdictions, 5–7, 164–168

Asian company laws, 50-59 in Asian jurisdictions, 2-3 asset distribution, 151-153 certification, 141-147 Community Interest Company (CIC) (UK), 59-63, 164-168 company law vs. contract law and, 167-168 company limited by guarantee structure, 32-34 company limited by share format, 26 - 32cooperative society structure, 40-44 corporate purpose and, 47-50, 69 - 73,97criteria for, 3-5 directors' duties, 79-96, 97 dividend distribution, 148-149, 151 governance rights and powers and, 101-102 Hong Kong company laws, 51-53 impact assessment tools, 127-141 Indian company laws, 56-59 in Malaysia, 21-22 Malaysian company laws, 53 object and interest distinctions in corporate purpose, 48-50 partnership/limited liability partnership, 37-40 public benefit corporation (PBC) (US), 64-66, 164-168 in Singapore, 21-22 Singapore company laws, 53 social purpose corporation (SPC) (US), 66-69, 164-168 societies and trusts, 35-37 sole proprietorships, 35 tax benefits, 153-162 in United Kingdom, 20-21 liability issues, partnerships, 37-40 limited liability partnerships (LLPs), social enterprises as, 37–40, 164-168 long-term value and viability, corporate interest and, 85–86

Malavsia

best interests of solvent company in law of, 82–86



192

Malaysia (cont.) certification of social enterprises in, 143-144 company laws in, 53 company limited by guarantee structure for social enterprises in, 32-34 company limited by share format for social enterprises in, 26–32 development of social enterprises in, 18-19 government-social enterprise collaboration in, 25 lack of awareness of social enterprises in, 20 legal framework for social enterprise in, 21-22 outcome and impact assessment of social enterprises in, 133 social enterprises in, 16-17 societies and trusts as social enterprises in, 35-37 sole proprietorships as social enterprises in, 35 stakeholder value in solvent companies in, 83-84 tax deductions for social enterprises in, 34 Malaysia Global Innovation and Creativity Center (MaGIC) Social Entrepreneurship (SE), 18-19 management discussion and analysis (MD&A) requirement, social purpose corporation, 66-69 material and adverse effect, social benefit prioritisation and, 69-72 Minnesota Statutes, 64-66, 89, 94-95

National Company Law Tribunal (India), 117–119 New Zealand, social enterprise

certification in, 144-147

enforcement of corporate purpose

misrepresentation actions,

and, 73-74

objective test, of directors' duties, 96 "on the whole" requirement in social purpose, 69–72

INDEX

operating domains of social enterprises, 14–17 oppression/unfair actions by prosocial shareholders, 30 outcome assessments, impact measurements and, 123, 128–133

partnerships, social enterprises as, 37-40, 164-168 Philadelphia Business Corporation Law, 162n45 Philadelphia Sustainable Business Tax Credit (SBTC), 159-162 poverty rate, post-Covid-19 pandemic increase in, 11-12 prejudice claims, in Hong Kong company laws, 52n21 Priority Sector Lending program (Reserve Bank of India), 18-19 private enforcement of corporate purpose, 73-75 profit generation Community Interest Company and, 59-63 cooperative society framework, 40 - 44corporate purpose and, 47-48 Hong Kong company laws and, 51–53 in Indian Companies Act, 56 Indian Companies Act Section 166(2), 57-58 partnerships/limited liability partnerships, 37-40 public benefit corporations, 64-66 shareholder value and, 82 Singapore and Malaysian company laws, 53 social benefit prioritisation vs., 22, 69-72, 164-165 social entrepreneurs vs. investors and, 22-23 by societies, 35–37 society framework for social enterprises and, 35-37 proper purpose rule, directors' duties and, 97 pro-social investors/members, vs. for-profit investors/members, 24-25, 30-34, 37-40, 40-44



INDEX 193

public awareness of social enterprises, lack in Asia of, 20–22
public benefit corporation (PBC) (US), 64–66, 76, 80–81
beneficiaries rights in, 105–107
directors' duties in, 87–89, 94–95
impact measurement in, 94–123
reporting requirements in, 124–127
tax benefits for, 153–156
public enforcement of corporate purpose, 76, 99–100, 117–119

qua member rule, corporate
constitution
company limited by guarantee
structure, 33–34
company limited by shares
structure, 28
in Hong Kong company laws, 51–53

## regulators

appointment and powers of, 114–117 in Hong Kong, 117–118 public enforcement of corporate purpose and, 76 reporting mechanisms for social enterprises common law Asia practices, 124 overview of, 94–123 in PBC, SPC and CIC structures, 124–127 Reserve Bank of India, 18–19

Securities Futures Commission (SFC)
(Hong Kong), 117–118
SEE Mark certification (Hong Kong), 141–143
shareholders
asset distribution and, 151–153
beneficiaries as, 113–114
Community Interest Company requirements concerning, 91–94
companies limited by guarantee, 34
company limited by shares legal structure and role of, 26–32
conflicts of interest in Asian jurisdictions and, 23

consumers/clients/intermediaries and, 31-32 corporate purpose enforcement and, 74-75 decision-making powers for, 86-87, 101-105 derivative action in breach of directors' duties, 98-99 dismissal of directors by, 111-112 in Hong Kong company laws, primacy of, 51-53 impact assessment and, 136-137 in Indian company laws, 56–59 majority/minority status of prosocial shareholders, 28-29 Malaysia company laws, 53 misrepresentation actions by, 73-74 monitoring incentive and ability of, 108-109 opportunism of, 102-103 public benefit corporations, 64-66, 94 - 95Singapore company laws, 53 social purpose corporation, 66-69 value of, in PBC, 87-89 value of, in solvent company, 82 share price, shareholder value and, 82 Singapore barriers to growth of social enterprises in, 20 best interests of solvent company in law of, 82-86 B Market Builder certification in, 144-147 company laws in, 53 company limited by guarantee structure for social enterprises in, 32-34 company limited by share format for social enterprises in, 26-32 definition of social enterprise in, 21 - 22development drivers for social enterprises in, 17–20 educational social enterprises in, partnerships/limited liability partnerships in, 37–40



194 INDEX

Singapore (cont.) societies and trusts as social enterprises in, 35-37 sole proprietorships as social enterprises in, 35 stakeholder value in solvent companies in, 82 Singapore Centre for Social Enterprise (raiSE), 21-22, 23n104 Singapore Companies Act, 32-33, Social Audit and Accounting (SAA) system, 121-122, 135-136 social benefits Community Interest Company provision of, 59-63 as corporate purpose, 47-48 ESG compliance and, 164-168 as primary object of social enterprises, 22 prioritisation in corporate purpose of, 69-72 public benefit corporations, 64-66, social purpose corporation, 66-69 sufficient particularity in nature and scope of, 72-73 Social Enterprise Accreditation (SE.A) (Malaysia), 143-144 Social Enterprise Business Centre (Hong Kong), 21-22 social enterprises Asian common law company laws and, 50-59 in Asian common law jurisdictions, business models for, 11-14 certification mechanisms for, 94-123, 141-147 challenges facing, 20-22 company limited by guarantee structure, 32-34 company limited by shares legal structure and, 26-32 conflicts of interest, 22-26 cooperative society framework, 40 - 44

corporate purpose and, 46-50, 69 - 73development drivers for, 17-20 expansion and impact of, 1-5 funding barriers for, 22 goods and services provided by, 6-7 impact measurement mechanisms, 127-141 impact measurement mechanisms for, 94-123 inadequate public awareness of, 20 - 22inclusive business model for, 12-14 legal framework for, 2-3 long-term value creation and, 7-14 operating domains, 14-17 overview in Asia of, 14-44 as partnerships/limited liability partnerships, 37-40 pro-social investors/members vs. for-profit investors/members in, 24 - 25purpose of, 9-11 reporting mechanisms for, 94-123 social entrepreneurs vs. investors in, 22 - 23societies as, 35-37 sole proprietorships as, 35 sufficient particularity in purpose of, 72-73 tax benefits for, 153-156 Social Enterprise United Kingdom, 149-151 social entrepreneurs company limited by shares legal structure and, 26-32 consumers/clients/intermediaries vs., 25-26, 31-32, 34, 35, 37-40 crowdfunding platforms vs., 25-26 investors vs., 22-23, 30 Social Innovation and Entrepreneurship Development Fund (Hong Kong), 160–161 Social Investment Tax Relief (StIR) plan, 156-159 Social Public-Private Partnership (Malaysia), 18-19



INDEX 195

social purpose corporation (SPC) (US), 66-69, 72-73, 76, 80-81, 90-91, 94 - 95beneficiaries rights in, 105-107 reporting requirements, 94-123 reporting requirements in, 124-127 Social Return on Investment (SROI) measurement, 121-122, 135-136, 139 societies as social enterprises, 35–37, 164-168 socio-economic problems, development of social enterprises in response to, 18-19 sole proprietorships, social enterprises as, 35, 164-168 solvent company corporate best interests of, 82-86 shareholder value in, 82 stakeholder value in, 82-85 stakeholders. See also shareholders corporate purpose and, 46-50 emergence of, 7-8 impact assessment and, 136-137, 139-140 lack of governance rights for, 101-102 public benefit corporations, 87-89, reporting, impact measurement and certification mechanisms for, 94-123 value in solvent company, 82–85 subjective test, of directors' duties, 96 substantial purpose test, of directors' duties, 97 sufficient particularity in corporate purpose, 72-73

tax benefits for social enterprises examples of, 159–162 incentivization through, 153–156, 159–162 investors' benefits, 156–159 investors' tax benefits, 156–159 limits in Asia on, 34 overview, 148–149, 153–162 structure for, 156–162 third parties
certification by, 144–147
social entrepreneurs vs., 25–26,
31–32, 34, 35, 37–40
transaction costs
company limited by shares legal
structure and, 26–32
pro-social investors/members vs.
for-profit investors/members
and, 30–31

United Kingdom. See also Community Interest Company (CIC) (United Kingdom) Asian common law jurisdictions compared with, 5-7 Corporate Governance Code, 46 - 50investors' tax benefits in, 156-159 legal framework for social enterprises in, 20-21 regulatory appointment and powers in social enterprises in, 114-117 **United States** Asian common law jurisdictions compared with, 5-7 B Lab B Corp certification from, 144-147 public benefit and social purpose corporations in, 63-69 tax benefits for social enterprises

US Business Roundtable, 7–8, 46–50 value maximisation, as corporate purpose, 46–50

in, 153-156

Washington Social Purpose
Corporation, 124–127
women, employment in social
enterprises, 16–17
work integration social enterprises
(WISE)
barriers to data disclosure
by, 134–137
beneficiaries as employees
in, 108–109



196 INDEX

work integration (cont.)
beneficiaries as shareholders in,
113–114
beneficiary advisory panel, 109–111
employees decision-making rights
in, 103–105
as inclusive business model, 12–14

outcome and impact assessments and, 128–133 prevalence in Asia of, 17–18 World Economic Forum, 7–8, 46–50

Yanus, Mohammed, 11–12