

Building a social entrepreneurship practice in a law firm

Norman K Clark
Carmen Pombo

Synopsis

Since 2015, there has been a substantial increase in the number of law firms which are considering ways of expanding their traditional practice areas and specialties into a new area: social entrepreneurship. This will become increasingly important in global economic development between now and 2030. By being an early entrant into this new practice space, even relatively small law firms can establish substantial market positions which could produce solid returns on their investment over the next 15 years.

A social entrepreneurship practice is not a traditional pro bono legal service. Instead, it is a fee-generating practice area that can produce a solid foundation for cross-marketing of mid-value and even some high-value legal services to clients in the social entrepreneurship sector. This distinguishes a social entrepreneurship practice from other charitable or pro bono programmes that a law firm might operate. It is the nature of the clients that it serves, rather than a law firm's services, which is the defining characteristic.

In short, a law firm can both do good and do well.

This chapter presents an analytical process by which a law firm can determine whether there is a persuasive business case to launch a formal social entrepreneurship practice and, if the business case appears to be sound, the factors that will probably be most important to its long-term success.

What is the business case for a social entrepreneurship practice?

A social entrepreneurship practice could be a dramatic innovation for traditional law firms, with characteristics that can be subtly different – and in some instances, not so subtly different – from the assumptions that have governed a law firm's strategies and operations. At the same time, the business case for a social entrepreneurship practice rests on familiar intellectual foundations and infrastructure, but the factors that drive a successful social entrepreneurship practice can be subtly different from the experiences and assumptions that have governed the delivery of legal services by traditional law firms.

When first confronted with the concept of a social entrepreneurship practice, some law firms might confuse it with activities that the firm already conducts, such as charitable funding, corporate social responsibility and pro bono services. Although there are conceptual and operational connections between a social entrepreneurship practice and these other

traditional initiatives, a social entrepreneurship practice in a law firm is defined by several important characteristics that, to some extent, describe almost any other practice group or area of specialisation. By definition, a social entrepreneurship practice in a law firm:

- is a revenue-producing activity;
- often includes both profit-generating and ‘low bono’¹ services;
- is an organised formal practice group or practice team;
- is multidisciplinary, drawing from a wide range of practice specialties (eg, tax, employment law, administrative law, corporate/commercial and investment funds, as does any other client-sector practice group); and
- is somewhat different from a ‘mere’ entrepreneurship or start up practice.

Additionally, a social entrepreneurship practice group might include organised teams focusing on one or more subsectors of social entrepreneurs, such as micro finance or agricultural cooperatives. Social entrepreneurship practices can often be incubators for legal innovation, new approaches for access to justice and law reform.

A social entrepreneurship practice can be a powerful expression of the professional values of the firm, supporting sustainability and positive social impact in its practice. This can lead to a differentiating competitive advantage. While many law firms talk about support for community development and charitable causes, a social entrepreneurship practice goes beyond the marketing slogans and demonstrates it.²

Doing well by doing good

Social entrepreneurs are businesspeople, not charities. Even with fees that might be less than what other clients pay, a well-managed social entrepreneurship practice can deliver: reasonable levels of sustainable profitability; a platform for the business development of an ongoing client relationship with a social entrepreneur into other more profitable matters; and professional development opportunities for associates, especially in the application of existing substantive law to the frequently new and different issues encountered by many social entrepreneurs.

A social entrepreneurship practice also can produce clear long-term benefits. All of them can be converted into measurable direct and indirect contributions to a law firm’s bottom line. For example, a credible, structured social entrepreneurship can be newsworthy and can help a small law firm differentiate itself from its better-known competitors. Because of the complex and frequently new, needs of social entrepreneurs, a social entrepreneurship practice can give a firm valuable experience in assembling multidisciplinary legal services into a package that precisely meets the needs and promotes the objectives of any client.

1 A ‘low bono’ service is one that is delivered at a sub-standard profit margin or at cost, as distinguished from pro bono services, to which no fee is charged and the firm contributes the value of the fee-earner time and other operating costs incurred in the delivery of the pro bono service.

2 See Norman Clark and Carmen Pombo, ‘Social Entrepreneurship: A Strategic Growth Area for Law Firms in the 2020s’ (January 2020) *Modern Legal Practice* 30.

Unlike traditional pro bono services,³ the investment in a social entrepreneurship practice can produce a positive return, measured by the fees paid by social entrepreneurs themselves and the additional related business that a robust social entrepreneurship practice can stimulate for other practice areas.

A new tactic in the competition to retain legal talent

One of these positive returns can be the retention of talented, energetic younger lawyers. The authors have observed that as the younger generation is becoming more socially active, they are making a wide variety of choices, including career choices, based on an organisation's contribution to important social issues. Focus groups of law firm associates with two to six years' post-qualification experience have confirmed that salary is a relatively minor consideration in the decision to remain at one's current law firm, provided, of course, that the compensation is reasonably competitive.⁴ Working in and, whenever possible, having significant responsibilities for a social entrepreneurship practice can be immensely satisfying, both professionally and personally. This, in turn, supports high employee morale and leads to high productivity and good business results. Having a significant role in a practice area that visibly supports the eradication of poverty, social development in disadvantaged communities or similar activities can reinforce that even the newest lawyer in a firm can do very important work with long-term benefits to clients and the community.

A social entrepreneurship practice can provide an opportunity for all lawyers, but particularly younger ones, to perform a meaningful role in the development of social entrepreneurship in many developing markets where the regulations have not yet been drafted. It is an opportunity for the entire firm to be more active in thought leadership and law reform for the entire legal profession, contributing to social change that can also be a catalyst for economic development (and, consequently, more fee-paying work for lawyers). The emergence of social entrepreneurship as part of the regular service specialties of legal practice also compels an examination by law school faculties of the extent to which they can incorporate these issues into their curricula, as well as a consideration by providers of continuing legal education programmes of how to help practising lawyers move into this new

3 This is not intended to suggest or imply that a social entrepreneurship practice should replace pro bono services, which are appropriately considered to be an ethical obligation of the legal profession.

4 Since 2002, Walker Clark has conducted focus groups with more than 1,300 associates from law firms in Europe and the Americas. When asked to identify the most important factors in their decisions to remain at their current law firms, three responses have been cited as the most important reasons, consistently and without exception among the participating law firms (although not always in the same order):

- expertise – the opportunity to develop one's legal knowledge;
- mentoring – the opportunity to work with a partner who is considered an expert in their field; and
- client contact – the opportunity to have significant contact with clients with respect to important matters.

Salary is more important as a disincentive than as a decisive factor. Barring overwhelming personal considerations unrelated to one's employment in a law firm, a salary that is perceived as being 'competitive', ie, at least in the third quintile of salaries paid in that job market for lawyers with similar qualifications, it will be, at most, a 'tie-breaker' between opportunities that are perceived as delivering the level of satisfaction with respect to the key three factors, above. However, if the salary should drop below the third quintile, even a high degree of satisfaction with three key factors, above, will not usually be enough to retain an otherwise highly qualified associate.

areas of practice. Law firms have a vital interest, therefore, in advocating for and supporting by the contribution of their intellectual capital and practical experiences, not only the acquisition of legal knowledge in this area in law schools and continuing legal education, but also practical clinical experience in delivering the services that social entrepreneurs require.

The innovation imperative

The needs and expectations of clients in all business sectors are changing, not only for legal services but also with respect to the interface between public policy and the public, both individuals and corporations. Furthermore, such changes appear across societies with different governmental systems and legal structures, from democratic ones to authoritarian ones. Like any other client group, social entrepreneurs have been affected and in some instances, perhaps more intensely than more traditional business organisations.

This has had profound implications for the legal services sector and, at the same time, can affect whether a traditional law firm is capable of making the strategic, operational and cultural changes necessary to move into the world of its potential clients who are social entrepreneurs. Whereas in the past, a lawyer might cautiously just stick to the ‘black letter law’, organisations now frequently require more than ‘good, sound legal advice’. Basic legal advice is just table stakes: the cost of admission to the competition for high-value legal work. To stand out in today’s rapidly changing legal services market, a fully holistic approach to legal advice has become an effective way to show differentiating competitive advantages that deliver important benefits to the client.

Whether a law firm realises it or not, considerations of social impact have become an important part of understanding a client’s business objectives, as well as the new winds blowing through a client’s business risk environment. Reputations can be quickly broken through an unfavourable news report on a social issue. The trend of regulatory or national authorities requiring firms and companies to consider the social impacts of their operations has driven the legal profession to become familiar with these new, somewhat non-traditional issues.⁵ These trends are colliding and integrating to create perfect storm for those lawyers who want to cling onto the old methods of ‘If it isn’t law, I don’t advise!’⁶

Real legal challenges have arisen in this field: using legal skills to help to create vehicles through which social entrepreneurship can be delivered, such as the legal viability of social impact bonds, venture philanthropic operations and creative new legal structures. Law firms that have demonstrated their ability to design and manage change are already well equipped

5 Directive 2014/95/EU of the European Parliament and of the Council as regards to disclosure of non-financial and diversity information requires Member States to transpose its requirements into national law. This directive requires transparency of the social and environmental information provided by undertakings in all sectors. All Member States have implemented national law provisions.

6 See Ben W Heineman, Jr, William F Lee and David B Wilkins, *Lawyers as Professionals and Citizens: Key Roles and Responsibilities in the 21st Century* (Harv Law Sch Ctr on the Legal Profession 2014); and David B Wilkins and Maria J Esteban Ferrer, ‘Taking the “Alternative”, out of Alternative Legal Service Providers: Remapping the Corporate Legal Ecosystem in the Age of Integrated Solutions’ in Michele Destefano and Guenther Dobrauz-Saldapenna (eds), *New Suits: Appetite for Disruption in the Legal World* (Stämpfli Verlag, 2019),.

to meet these challenges. By contrast, law firms which have difficulty identifying the need for change and implementing innovative responses to it, are unlikely to succeed and, in some cases, for reasons unrelated to the social entrepreneurship opportunity, to survive.

Becoming part of the client's future

The social entrepreneurship sector is here to stay and continues to grow. Nairobi, Santiago, Hong Kong and Berlin are hot spots for social entrepreneurs, but so are other parts of the world, such as Indonesia, Australia, Northern Europe, Canada and Singapore.⁷ Moreover, social entrepreneurs frequently operate in countries or regions that most traditional law firms have shunned. Although most businesses still exist to make money, the ones which will survive their ever-changing and increasingly competitive markets are those that are becoming socially aware and are prioritising long-term sustainability over the next fiscal quarter's profits. Law firms have much to learn from them. Consequently, bar associations and other regulatory bodies in the legal profession must be willing to understand the market evolutions that are happening – often without reference to canons and codes of professional ethics – and become more receptive in permitting innovative business structures for delivering legal services.

Some of the most powerful changes that have, to some extent, opened the door for social entrepreneurs are not the results of legislation or regulations. One such example is the increasing demand for socially responsible investments, for example, from pension funds investing more strategically in social impact projects and businesses. This is a driving force behind major changes in business operations. The funders set the rules, making social impact highly relevant to the raising of capital. Billions of dollars are under management in social investment funds around the world. Access to capital for socially aware enterprises is becoming more and more available as customers increasingly choose to buy from these organisations. Another example is how insurers are becoming focused on a new range of risks related to socially impactful initiatives and operations, including human rights risks and business responses to abuses. Finally, consumers tend increasingly to choose responsible and/or sustainable products.

Evaluating the opportunity for a social entrepreneurship practice

As with almost every possible practice specialty or client-sector focus, a social entrepreneurship practice might not be a solid business proposition for many firms. The phrase 'solid business proposition' is important because, notwithstanding the sincere desire of most lawyers to make a positive contribution to the communities they serve, a social entrepreneurship practice is a business venture, not charity work.

⁷ *The best place to be a social entrepreneur*, Thompson Reuters Foundation Poll (2019) <http://poll2019.trust.org> accessed 4 January 2020.

Step one: understand the market for legal services for social entrepreneurs

The first and most important point is that your market for legal services to social entrepreneurship probably will be much broader than what you have traditionally considered to be your firm's sphere of competition. It probably will include individuals and organisations that you previously would never have considered as fitting your firm's ideal client profile. In this respect, coordination with a foundation, university or other institution that is active in social development is essential. Without such a source of market intelligence, you probably will never perceive most of the opportunities.

Although social entrepreneurship is not a new activity and many law firms claim to offer services that are related to corporate social responsibility or social development, social entrepreneurs still are under served by the current legal market. Their needs frequently are too sophisticated to be within the reasonable scope of traditional pro bono programmes. Some law firms, have defined social entrepreneurship practice groups or industry focus teams,⁸ while others try to meet client needs through traditional practice management structures, including pro bono, which often can be inefficient and are obviously not-for-profit for the firm.

Social entrepreneurs are not looking for free legal services, but they are attracted to law firms that, like themselves, are willing to divert at least a reasonable portion of their revenue into long-term social development.

Because social entrepreneurship enterprises often are local or regional in their current geographic scope, the decision to create a structured, ongoing social entrepreneurship practice should be based on thorough research and a practical understanding of the needs of social entrepreneurs in the legal markets in which a law firm already competes.

This can be a particularly attractive and high-yield professional development activity for associates in your firm. It gets them out into the market and talking to prospective clients in the social entrepreneurship sector, which is usually well-networked and can lead to other conventional client origination opportunities. It also allows them to develop practice area and industry sector expertise that is highly relevant to your firm's overall business development objectives.

WHO ARE THE SOCIAL ENTREPRENEURS?

As with all trends or new developments, 'social entrepreneurship' is a label, a convenient way to encapsulate a broader and more complex concept. It has also become a common topic of discussion in academic circles, although there is still room for further research and impact studies. Perhaps the strongest indicator that an innovation is gaining traction outside academia is when it starts to appear on the lips of politicians and begins to form part of the strategy of prominent organisations, as has happened in the cases of Ashoka,⁹ the Schwab

⁸ Appendix II at the end of this book lists links to examples of law firms' websites with social entrepreneurship or closely related practices. As this is by no means a complete list, it will be periodically updated.

⁹ Ashoka, see www.ashoka.org/en accessed 4 January 2021.

Foundation for Social Entrepreneurship¹⁰ and the Skoll Foundation.¹¹

It has long been observed and accepted that even entrepreneurs who are driven by a strong social ethic focus first on building a successful commercial organisation to advance their larger goals. Only once they had achieved commercial success do they turn their minds to philanthropy, whether through the vehicle of their enterprise or privately. For example, the great American industrialist Andrew Carnegie, who accumulated one of the largest fortunes in the US at the time, died in 1919, with only \$100,000 in his estate, having given more than \$76bn (more than \$350bn in today's money) to charitable, educational and other philanthropic causes.¹²

The increasing awareness of young entrepreneurs about social issues and their increasing drive to be active in social issues have combined to fuel a new trend. This has been assisted by the development of new business models, new corporate vehicles and, occasionally, by government policies, such as tax incentives. There also are more opportunities for entrepreneurs not to focus purely on a private profit model, but also to combine business and social goals to create what we describe as 'social enterprises'.¹³ It is now possible to combine a social cause with the complementary aim of generating profit for shareholders. This is also supported, in increasing numbers, by impact investing and a conscious consumer base consisting of individuals and companies who are making ethical buying decisions.

The term 'social enterprise' therefore has many possible definitions and variations. Some of these different definitions arise out of the enabling legislation in the various countries around the world. However, the European Commission's Social Business Initiative is probably one of the most widely referenced and convenient definitions of a social enterprise, based in the context of three areas: entrepreneurial, social and governance.

The starting point for defining social entrepreneurship is that it is not charity. A short and perhaps incomplete, definition is that it is an attempt to use successful business strategies and techniques to find solutions to social problems that are economically sustainable. It is very important to emphasise that social entrepreneurship is not just philanthropy or charity. In the context of the legal profession, it is not traditional pro bono work.

In addition to not-for-profit organisations and foundations, social entrepreneurship also embraces profit-making enterprises that either divert a significant portion of their revenue to social development, such as education, health care, human rights and the eradication of poverty, or whose business objectives include the solution of a social or environmental problem.

Social entrepreneurs therefore represent a new way of conducting business with a clear double focus.

10 Schwab Foundation www.schwabfound.org accessed 4 January 2021.

11 Skoll Foundation <https://skoll.org> accessed 4 January 2021.

12 'Andrew Carnegie', Wikipedia, (2020) https://en.wikipedia.org/wiki/Andrew_Carnegie accessed 4 January 2021. See also 'Andrew Carnegie: Pioneer. Visionary. Innovator', Carnegie Corporation of New York, (2020) www.carnegie.org/interactives/foundersstory/#!/#giving-legacy accessed 4 January 2021

13 Roger L Martin and Sally Osberg, 'Social Entrepreneurship: The Case for Definition' (Spring 2007) *Stanford Social Innovation Review*, https://ssir.org/articles/entry/social_entrepreneurship_the_case_for_definition accessed 4 January 2021.

The first focal point is to use business structures and operations to generate a positive social impact. Too frequently business interests and their lawyers have been perceived, often correctly, as inert obstacles to social development or, in worst-case scenarios, as forces that actively support and perpetuate the economic or social repression of disadvantaged people and communities or damage the environment.

The second aim is to help people to move themselves and their communities out of poverty by helping them establish and operate sustainable businesses. In this way, social entrepreneurs benefit society by developing innovative products or service solutions that can be applied directly to social or environmental problems and can promote sustainable social and economic development. Environmental entrepreneurs are often included within the broader social entrepreneur term. Climate change and climate justice impact society directly and therefore generate social issues which need solving.

Social entrepreneurs therefore require a special blend of sophisticated legal services and support, delivered as cost-effectively as possible. Innovation is often key to the success of the social entrepreneur and therefore for the practice of lawyers advising them, often requires the delivery of legal services in non-conventional ways, with outside-of-the-box solutions and schemes that can help the sector to expand.

Like all kinds of entrepreneurs, social entrepreneurs also look to their legal advisers to build lasting legal empowerment. The efforts of the legal profession can be a significant force for improving the political, economic and social environments for businesses and individuals who previously had been largely excluded from access to legal services, either because they did not need them or could not afford them. Furthermore, some social enterprises, especially relatively new ones, tend to operate on tight budgets, with usually only a small in-house legal department or none at all.

On a larger scale, social entrepreneurship will be a critical component of efforts to achieve the United Nations Sustainable Development Goals (SDGs) by 2030.¹⁴ In an era in which some major governments are abandoning any significant direct role in long-range social development, even in their own countries, social entrepreneurship will be one of the most important factors in improving economic opportunity and living standards worldwide, conditions in which the legal profession and clients who are not social entrepreneurs also can thrive.

The business structure and operating models for social entrepreneurial enterprise can take a variety of forms, using both not-for-profit and for-profit structures. The common characteristic is the diversion of some or all of the net income of the enterprise to support social development. There are several profiles of social entrepreneurs, depending on where they operate and the objectives they have. The most frequent are regular entrepreneurs who undertake their business with a precise social or environmental purpose. However, also many non-governmental organisations (NGOs) and other non-profit entities have developed

14 The 17 SDGs adopted by the UN General Assembly in 2016 are a blueprint to achieving a better and more sustainable future for all people by 2030. They are outlined in Appendix I. See also UN 'About the Sustainable Development Goals', www.un.org/sustainabledevelopment/sustainable-development-goals accessed 4 January 2021.

social entrepreneurial activities to diversify their fund-raising methods to contribute to their economical sustainability, while also pursuing their mission. These are for-profit activities within non-profit entities. In addition, big corporations are increasingly focusing on social business. Often with a for-profit or venture approach, or both, multinationals are now creating business specifically orientated towards solving environmental or social problems. Finally, there are social mini-enterprises, which number in the thousands worldwide, run by disadvantaged persons or for their benefit. They create sustainable profitable small business projects, having the highly beneficial multiplying effect of improving their living standards.

Researching examples in the legal sector to find interesting social entrepreneurial endeavours is never an easy task. There are interesting legal enterprises; some are even specialising in advice to social entrepreneurs. There are many lawyers providing legal assistance to vulnerable groups or providing legal advice to support the promotion of social change by non-profit organisations. However, the mere provision of legal advice for social purposes, without using new corporate vehicles or some other new structural approach, is not really social entrepreneurship in the legal profession as such. In other words, many clearinghouses, foundations and other not-for-profit organisations have social and environmental purposes: however, they do not seek a profit nor are they run in a business-like way or organised in an entrepreneurial sense. Although many of these entities provide, or facilitate the provision of, legal advice in an innovative way, since they are not for profit, we cannot include them in this group.

It may be that, to some extent, law firm structures are limited to what is permissible under the ownership rules of a specific jurisdiction. In any event, a model to reinvest legal advice profits back into the firm, or into some beneficial social purpose connected with the firm, or some other type of innovative business model along those lines, is a structure that we have not found. As with any business, the legal profession's involvement in social entrepreneurship is critical to success. Unlike most traditional businesses, however, social entrepreneurs especially need and value legal expertise to empower social entrepreneurs and social investors to achieve their goals, which often cut across traditional practice-area boundaries in most law firms. This also frequently requires the unique creativity that lawyers can bring to define new legal frameworks to meet the challenges that social entrepreneurs face in legal and regulatory environments, which often do not contemplate these new forms of business.

With that caveat, here are some inspiring examples.

La Bolsa Social

La Bolsa Social was the first equity crowdfunding platform authorised by the Spanish securities regulator. La Bolsa Social promotes the participative financing of investors and companies with a positive social and environmental impact. They promote ethical finance by boosting the financing of companies with growth potential that will have a positive impact on society and the environment. La Bolsa Social was established to connect social impact investors and

enterprises to promote the achievement of the UN SDGs. Since its establishment in 2014, they have attracted more than 1,000 investors, raising up to €5m, which funded 24 social impact companies.¹⁵

Innuba

Innuba provides consultancy, development and other advisory services to social innovation projects for companies and individuals, including the creation of new business units within companies. Innuba donates 30 per cent of its revenues to the Uno Entre Cien Mil Foundation for children's leukaemia research. Innuba was conceived as a strategic social innovation partner to help and guide companies to design and create new products or services that matter to everyone. Leroy Merlin, Coca-Cola, Viceroy and Accenture are among its clients. In 2018, it launched the platform I think, therefore I act for Yoigo (a telephone operator), a service to connect users with social entrepreneurs in order to obtain funds and collaboration for their projects. This campaign was a massive success and enabled Innuba to consolidate its team of 14 staff members and dozens of collaborators.¹⁶

Workit Health

Workit Health is working to reinvent substance abuse and addiction treatment. It seeks to curate effective, accessible and affordable solutions for people struggling with addiction. Through both virtual and in-person mental health support programmes, the team continues to tackle the nearly \$35bn addiction recovery market and put the focus back on accessibility for those who need it most. Workit Health's virtual substance abuse treatment programmes provide holistic, evidence-based care to patients through trained clinicians, technology and unwavering commitment to continuity of care. Its evidence-based programme offers online and offline treatment for all three addiction stages: prevention, treatment and detox. With the spike in telehealth needs during Covid 19, Workit Health has also seen overwhelming growth. The company recently reported a 400 per cent growth in revenue since 2019 and announced a \$12m Series B round of financing, bringing the company's total funding to \$20m since its inception in 2015.¹⁷

M-Pesa

M-Pesa is a mobile money service in Kenya which is critical to understanding social intrapreneurship's value because it proves the power of this internal approach. Two middle managers from Vodafone and Safaricom launched the mobile payment product from within their established companies in 2007. You can withdraw, send money and pay from M-Pesa, through a phone device, with no need to carry physical money. M-Pesa has grown to over 30 million customers, many of whom previously did not have bank accounts, in ten countries.¹⁸

15 La Bolsa Social <https://bolsasocial.com> accessed 8 February 2021.

16 INNUBA, Innovación Social Trascendente <https://innuba.com> accessed 8 February 2021.

17 Workit Health, www.workithealth.com accessed 8 February 2021.

18 M-Pesa, www.vodafone.com/what-we-do/services/m-pesa accessed 8 February 2021.

TOMS

Blake Mycoskie is the founder and chief shoe giver of TOMS and the person behind the idea of One for One®, a business model that helps a person in need with every product purchased. This simple idea has grown into a global movement. TOMS Shoes has provided over 86 million pairs of shoes to children since 2006; TOMS Eyewear has restored sight to over 600,000 people since 2011; and TOMS Roasting Company has helped provide over 600,000 weeks' supply of safe water since launching in 2014. In 2015, TOMS Bag Collection was founded with the mission to help provide training for skilled birth attendants and distribute birth kits containing items that help a woman safely deliver her baby. As of 2016, TOMS has supported safe birth services for over 25,000 mothers.¹⁹

Grameen Bank

Against the advice of banks and government, Muhammad Yunus carried on giving out 'micro-loans' and in 1983 formed the Grameen Bank, meaning 'village bank', which was founded on principles of trust and solidarity. By 2015, Grameen had 2,568 branches in Bangladesh, with 21,751 staff serving 8.81 million borrowers in 81,392 villages. On any working day Grameen collects an average of \$1.5m in weekly instalments. Of the borrowers, 97 per cent are women and over 97 per cent of the loans are paid back, a recovery rate higher than any other banking system. Grameen methods are applied in projects in 58 countries, including the US, Canada, France, the Netherlands and Norway.²⁰

Diaspo4Africa

This an Ivory Coast based funding platform which provides innovative companies and entrepreneurs with investment and funding from abroad. Diaspo4Africa's vision is to connect African diaspora investors with local companies and start-ups looking for funding, contributing to the development of African economies and diversification of African enterprises. More than 1,500 entrepreneurs in 11 African countries have been funded.²¹

All of these are impressive enterprises that have made impressive – and, many cases, life-saving – contributions. Despite their vision, values, strategies and results, they are businesses, not charities. Like any other business, they need legal services, guidance and support and they expect to pay reasonable fees for them.

THE RESPONSE OF THE LEGAL SERVICES SECTOR

In many respects, the legal needs of social enterprises are the same as those of any other growing business. Social entrepreneurs sometimes suggest that their social businesses are venturing into legal and regulatory issues that are somewhat new to them and which are likely to expand in scope and complexity.

These are generalisations, of course, about an emerging expanding and richly textured

sphere of economic activity. However, they point to a promising specialty market for law firms, in which, as in other areas of legal services, an early entrant with an intensely client-focused and well-managed practice could establish a significant and durable competitive advantage. This creates a market opening for small and medium-sized firms with well-balanced transactional experience. Such firms have the opportunity to assemble the legal expertise and skills they need to be highly effective and profitable practice groups or teams focusing on social entrepreneurs. In this field, size is not necessarily an advantage; small and medium-sized firms may have the flexibility for first mover advantage.

The most common issues where legal assistance is required, specific to social entrepreneurs, relate to:

- defining their legal structure;
- tax;
- fundraising and access to capital, including impact investment and venture philanthropy;
- reporting impact, governance and compliance; and
- social security and employment.

They also need legal advice on other topics that any entrepreneur would require, such as:

- alternative dispute resolution;
- commercial and business law; and
- intellectual property and data protection.

Such firms increasingly require a fully holistic approach from the legal profession, whereby legal advice can enable and even promote, the merging of two now complementary worlds: the world of the commerce and that of the social entrepreneur.

Remember that this is not traditional pro bono work. Although some legal support to social development, either directly or through social entrepreneurs, might continue to be contributed 'low-bono' (ie, using low-margin fees set only slightly above cost), the best emerging opportunity is for sophisticated legal advice for which a social entrepreneur expects to pay a reasonable fee and which can be profitable, even at somewhat lower rates, for a well-managed law firm. Generally, the pro bono work would be in connection with the development or promotion of law reform or legal initiatives that would benefit the whole social entrepreneurial sector, including the design of new legal vehicles or structures.

In this context, different types of legal practices have emerged, such as the growth of the 'B-Corp' standard for companies that have a predominantly social purpose. A B-Corporation certification is issued to non-profit private organisations by B Lab, a global non-profit organisation with offices in the US, Europe, Canada, Australia, New Zealand and through a partnership in Latin America with Sistema B. To be granted and to maintain certification, companies must receive a minimum score on an online assessment for 'social and environmental performance', satisfy the requirement that the company integrate B Lab commitments to stakeholders into company governing documents and pay an annual fee ranging from \$500 to \$50,000, depending on annual sales. Companies must re-certify every

three years to retain their B Corporation status.²²

As of July 2020, there are over 3,400 certified B Corporations across 150 industries in 71 countries.²³

A private organisation issues certificates under its own standards to give the ‘B-Corp’ or ‘Sistema B’ status. Because of the expansion of this trend, a generation of ‘B Lawyers’ has emerged, specialising in the specific social aspects of these corporations. For the avoidance of doubt, while a ‘B-Corp’ company has a predominantly social purpose, the certification has no specific legal authority or standing. ‘B-Corp’ certification (‘Sistema B’ in many Latin American countries) is a mark of approval issued by a private organisation that issues certificates under its own standards. However, as discussed elsewhere, such corporations can have legal status in their respective jurisdictions as social entrepreneur-type companies and are known by different names around the world.

International organisations and networks are generating relevant documents that support the incorporation of sustainability into lawyering. For instance, in 2019 the UN Global Compact produced the ‘Guide for General Counsel on Corporate Sustainability Version 2.0’,²⁴ which includes issues such as: Corporate Sustainability and Business Integrity; Human Rights and Supply Chain Due Diligence; Corporate Sustainability and Grievance Mechanisms; and Challenges to Corporate Sustainability – Managing a Crisis.

In addition, the International Bar Association (IBA) has produced guides for business lawyers and practical handbooks on M&A and corporate restructuring, as well as commercial transactions. These resources bring together a diverse collection of educational resources relating to the roles and responsibilities of legal practitioners with respect to business and human rights, including background contexts and explanations, case scenarios, discussion exercises, frequently asked questions (FAQs), sample checklists and further reading and resources.²⁵

Finally, ESELA,²⁶ the legal network for social impact, is an interesting initiative in this field. It is an international network of lawyers, advisers, academics and entrepreneurs aiming to reshape legal systems and practice for good. In practice, this includes impact investing, social entrepreneurship, business and human rights, the response of business to the climate emergency, ‘profit with purpose’ and related disciplines. Therefore, a new generation of lawyers is specialising in the new way of doing business, which often is the same method used by social entrepreneurs. As has always been true in the legal profession, lawyers can learn from their clients.

22 See B Corporation (certification), Wikipedia [https://en.wikipedia.org/wiki/B_Corporation_\(certification\)](https://en.wikipedia.org/wiki/B_Corporation_(certification)) (2020). For further information about the certification process, see also <https://bcorporation.net/about-b-lab> accessed 26 March 2021

23 See <https://bcorporation.net> accessed 4 January 2021. These include well-known companies such as Ben & Jerry’s, Cascade Engineering, Danone North America, Eileen Fisher and Patagonia Works.

24 ‘UN Global Compact produces guides to help General Counsel drive the corporate sustainability agenda’, *UN Global Compact News*, (7 November 2019) www.unglobalcompact.org/news/4497-11-07-2019 accessed 4 January 2021.

25 IBA *Handbook for Lawyers on Business and Human Rights* www.ibanet.org/Handbook-for-lawyers/Contents.aspx 2019 accessed 4 January 2021.

26 ‘About ESELA: the legal network for social impact’, *ESELA* (2020) <https://esela.eu/about-esela> accessed 4 January 2021.

In the past, some members of the legal profession believe that, unless ‘black letter law’ didn’t cover the matter, it was not relevant to the provision of legal advice and attempting to advise on these ‘unknown’ areas might be risky to the extent of bordering on malpractice. As explained elsewhere in this chapter, that view is clearly becoming outdated and increasingly rare. However, there have been some significant developments in ‘black letter law’ which is compelling the legal sector to develop new applications of legal expertise and take a more holistic approach to legal advice, such as is suggested here. In some countries, the law has recognised this trend and created new legal structures for the purpose of social entrepreneurship. Some examples include the UK, France, Italy, Colombia, South Korea and some states in the US. In India, for instance, the law requires companies with over a certain level of revenue to devote a percentage of profits to social causes. Other countries have also followed this model.²⁷

THE CHALLENGE OF FINDING SPECIALISED LEGAL SERVICES FOR SOCIAL ENTREPRENEURS

Notwithstanding the conceptual and intellectual framework for legal services for social entrepreneurs, as described above, law firms have been slow to respond. Today, very few law firms have a designed, focused social entrepreneurship practice. The structures that law firms use to deliver legal services to social entrepreneurs vary significantly and they usually are defined by the nature of the services (ie, fee producing, pro bono or low-margin) and the general industry characteristics of the social entrepreneur client. For example, a social entrepreneur who provides micro lending facilities to small businesses and individuals in poor communities would be more likely to be directed to the banking and finance practice group of a traditional law firm than to a practice team built for and focused specifically on social entrepreneurship.

Law firms that do appear to have functioning social entrepreneurship practices often describe them in several different ways, such as social responsibility or sustainability practices, or by similar titles. Some practice areas appear to be much more targeted in areas such as sustainable or impact investment. How law firms tend to organise their practice structures also reflect, we believe, two similar, but nonetheless distinct, conceptualisations of a social entrepreneurship practice. Some firms throw social entrepreneurship into a more general category of social responsibility. Others target specific business activities that might include social entrepreneurs, such as sustainable investment and education.

A significant number of law firms now have social entrepreneurship legal services, ranging from big multinational law firms to medium-sized, law firms and boutique law firms.²⁸ It is a new area of practice, but it is not generalised nor present in most of the jurisdictions of the world. The fact that the practice is expanding proves that there is a demand for these services and that there is a business case for it.

The example in France is quite remarkable, where many boutique firms specialise in

27 ‘Legal forms of social enterprises’, *SEFORIS Cross-Country Report 2016* (2016) 20-22 https://issuu.com/kwinbxi/docs/cross-country_report_6 accessed 4 January 2021.

28 See Appendix II.

social entrepreneurship, impact investing and non-charitable foundations law. There is a context explanation for this, such as pro bono not being well developed there. Also, as mentioned above, France has a specific legal structure for social enterprises (ie, ‘hard law’ in a civil law country). Other regions of the world do not have special legal requirements for social enterprises and are governed by normal entrepreneurship rules. But there is an expanding wave of legislative initiatives across the globe, reflecting a quiet corporate law evolution, which is generating legal market opportunities.²⁹

This suggests that, for larger law firms, social entrepreneurship is something of a sideline, if it is even perceived at all to be a viable practice specialty or client sector. For example, a survey in conducted in 2014 by the University of Birmingham (UK), of the 100 largest English law firms found that 88 of the 100 firms advertised a corporate social responsibility practice, but only 21 of these 88 firms explained why they believed that it was an important activity for them as a firm. On some firms’ websites, the corporate responsibility or social responsibility practice was very difficult to find.³⁰ The authors’ survey of a sample of medium-sized and large US law firms in 2020, undertaken as part of the research for this chapter, produced similar conclusions.

None of this is surprising because, for most large law firms, social entrepreneurship and social responsibility produce little revenue compared to other practice areas and client sectors. Without diminishing the sincerity and good will driving these efforts, they often are little more than marketing campaigns or a contribution to their corporate social responsibility activities.³¹

This creates, we believe, a substantial opportunity for smaller law firms to gain a significant share of the social entrepreneurship market with a sharply focused client-centred practice team have the capabilities and the will to carry out two actions. These are: to persuasively demonstrate a deep practical understanding of the business objectives of social entrepreneurs and their legal implications, specific to their respective types of business activities in support of social development; and marshal the wide-ranging experience and intellectual capital of their entire firm to deliver precisely tailored services to this client sector.

So, one of the first tasks for a law firm considering anything more than a token involvement in legal services to social entrepreneurs should be a candid assessment of whether it can achieve these two actions credibly and consistently.

29 See *Briefer on Cutting Edge Trends in Social Enterprise Regulation*, *European Center for Not for Profit Law* <https://ecn1.org/sites/default/files/files/Briefer-on-social-enterprise-regulation.pdf> accessed 26 March 2021.

30 Stephen Vaughan, Linden Thomas and Alistair Young, ‘Symbolism Over Substance? Large Law Firms and Corporate Social Responsibility’, (2015) 18 *Legal Ethics* 138 (University of Birmingham 2015) www.tandfonline.com/doi/full/10.1080/1460728x.2015.1119530?journalCode=rlet20 accessed 4 January 2021.

31 This observation is not intended to discount the marketing and business development value of a social entrepreneurship practice, which is noted later in this chapter. For the purposes of this chapter, we are not focusing on corporate social responsibility practices in law firms, but rather on the legal advice provided to clients on social responsibility matters, in the context and organisational structure of which some law firms include legal services for social entrepreneurs.

THE FACILITATING ROLE OF FOUNDATIONS

Foundations and similar institutions with connections to the legal services sector perform a critically important role in the identification and coordination of legal support to social entrepreneurship projects. Legal foundations raise awareness as experts in the field, both in legal and social impact matters. They also can act as clearinghouses, serving as a contact provider to the law firms. With their ‘learning while doing’ methods, legal clinics have also been very active in supporting social entrepreneurs,

Some clearinghouses, legal clinics and legal foundations coordinate and support the provision of legal services to social entrepreneurs and social development initiatives. They often act as a first legal contact and then revert to law firms for further support, mainly pro bono.

There are many aspects that these not-for-profit entities consider – for which they need to spend time and effort – that are vital to the cycle of growth of social entrepreneurship. We have cited the UN SDGs as directly linked to this topic and it is obvious that charities often channel support to and are directly connected with, the beneficiaries of the SDGs.

Law reform is also a key interest for this sector, especially when it is necessary to promote new legislation or adapt existing regulations to support social entrepreneurship. We have mentioned, above, several examples of hot spots for social entrepreneurship around the globe. Most of these opportunities arise in jurisdictions where there are new legal initiatives either for entrepreneurs generally or specifically for social entrepreneurs. Many legal foundations have worked pro bono in the conceptualisation and design of and the advocacy for, these legislative initiatives. Research, legislation and advocacy each have been specifically necessary in the fields of impact investment, venture philanthropy and new financing vehicles or legal incentives for social investors.

Foundations perform a major role in the engaging the legal profession in support of legal and regulatory environments that support and sustain social enterprises. Probably the most obvious role is that of lawyers, both individually and collectively, in advancing the rule of law. The rule of law links directly and forcefully to social and economic prosperity and lawyers are surely best positioned to advocate for the rule of law, not only in legislative and regulatory fora, but also through their day-to-day legal advice and support to social entrepreneurs.

There also is an important role for lawyers in tearing down the traditional legal obstacles to the growth of social enterprises. In this context, foundations assist in the identification of clients (pro bono who might ultimately become regular fee-paying ones if they can escalate their businesses successfully), acting mainly as clearinghouses. They identify the clients and filter the requests for legal assistance, orientated towards social impact.³²

Foundations have been very creative in collaborating with law schools in bringing legal aspects of social entrepreneurship to their curricula. As a new market area, new legal needs

³² The *Estándares Pro bono México* is a good example of how pro bono advice is given to social entrepreneurs in Mexico and to what extent, <https://estandaresprobono.mx> accessed 26 March 2021.

have arisen and new legal research has become necessary. Law students can now learn about them at university and law faculties have emerged as leaders in advancing the awareness, expertise and skills of legal practitioners.

Many foundations have carried out significant work in the field and it would be impossible to name them all. Two examples of pioneering and inspirational pro bono entities for social entrepreneurs are the Lex Mundi Pro Bono Foundation and TrustLaw.

The Lex Mundi Pro Bono Foundation states: ‘Our mission is clear: social entrepreneurs will be more successful at tackling the world’s biggest challenges if they have access to quality pro bono legal advice from lawyers in the Lex Mundi global network.’³³

TrustLaw, the Thomson Reuters Foundation’s global pro bono legal programme, ‘connects high-impact NGOs and social enterprises working to create social and environmental change with the best law firms and corporate legal teams to provide them with free legal assistance. We produce ground-breaking legal research and offer innovative training courses worldwide.’³⁴

The key point to remember about pro bono work is that even if legal support to social entrepreneurs is initially delivered pro bono, those services are, in effect, an investment by the service provider, which, in the case of a law firm, can develop into a paying client relationship as the social enterprise begins to succeed. Moreover, the quality of those legal services delivered, often pro bono, at the beginning of the life of the social enterprise will have a clear, demonstrable impact on that success.

Another prominent example and a useful case study for the purposes of this chapter, is the Fernando Pombo Foundation (the ‘Foundation’), based in Madrid, Spain.³⁵ This is an organisation of lawyers which seeks social change through legal innovation with the motto: ‘Changing the world is a lawyer’s business too’. The Foundation, dedicated to the most vulnerable people, understands the need to support and give legal advice to social entrepreneurs. This includes several areas of activity.

The Foundation provides pro bono legal support to social entrepreneurship projects. This is targeted strategic pro bono legal advice at key moments in the entrepreneurial development and is different from blanket free services for all the social entrepreneur’s legal needs. The Foundation focuses on innovative social entrepreneurship projects such as: La Bolsa Social,³⁶ which innovated the first equity crowdfunding platform to be authorised by the Spanish securities regulator; and Innuba,³⁷ a strategic social innovation partner that helps and guides companies to design and create new products or services that transcend societal differences and matter to everyone.

³³ Lex Mundi Pro Bono Foundation www.lexmundiprobono.org/lexmundiprobono/default.asp accessed 4 January 2021.

³⁴ TrustLaw, the Thomson Reuters Foundation’s global pro bono legal programme www.trust.org/trustlaw accessed 4 January 2021.

³⁵ Fernando Pombo Foundation see www.fundacionpombo.org accessed 4 January 2021. One of the authors, Carmen Pombo, is the founder and Chief Executive Officer of the Fernando Pombo Foundation.

³⁶ La Bolsa Social www.bolsasocial.com accessed 4 January 2021. At the time of writing this chapter, La Bolsa Social had more than 6,900 investors.

³⁷ Innuba, <https://innuba.com> accessed 4 January 2021.

The Foundation also produces analysis and research of innovative legal methods and tools for the sustainability of NGOs and social entrepreneurs, especially in the development of social impact bonds. This cutting-edge concept, a new model for sustainable businesses, is already being studied by future lawyers in their clinical legal education experiences and is supported by well-reputed experience lawyers, often on a pro bono basis. Other models are directly related to venture philanthropy and impact investors.

These initiatives and efforts raise awareness among lawyers in the national and international arenas, specifically in forums on social entrepreneurship, social investment and legal innovation. They connect the experience and specific expertise of lawyers with pro bono activities to enable the development of new models of sustainable social entrepreneurship activities. These activities also provide opportunities for clearinghouses and law firms to promote the rule of law by building appropriate legal ecosystems for social entrepreneurship with international and multinational goals.

Such collaboration among foundations, law schools and law firms is vital for the development of social enterprises. No single component of the legal services sector can do it alone.

Step two: inventory the expertise already in your law firm

Most medium-sized law firms, as well as many small ones, already have the breadth of legal knowledge necessary to serve a full range of legal issues. Taxation, regulatory law and investment funds expertise and are especially important and alternative dispute resolution services could be an additional competitive advantage.³⁸

The hard issue, however, is whether your firm has the practical business insights required to support a credible claim that you can be trusted, reliable advisers to social enterprises, many of which are start ups led by highly motivated, but relatively inexperienced, younger entrepreneurs. Good technical legal work will not be enough; conventional reputation in the market, as evidence by good rankings in law firm directories, might be helpful but usually not decisive for this group of potential clients. Sharply focused, relevant experience is usually more persuasive. Even if your firm has never had a social entrepreneur as a client, experience with start up businesses could be a convertible competitive asset.

As a practical matter, frequent experience in assembling multidisciplinary teams to deliver highly integrated expertise in relatively new business situations is essential. Law firms that operate most of the time in rigidly practice-defined or partner-owned silos might find that, although they might have abundant relevant legal expertise, they cannot put it together to meet the needs and service expectations of a social entrepreneur.

The most efficient way to inventory your firm's existing expertise and experience is to start with some potential clients. Contact social entrepreneurs and ask them about the issues on which law firms have delivered advice and services that they found to be the most

³⁸ For more information on the most common issues where legal assistance is needed, see the section about *the response by the legal services sector* section earlier in this chapter.

valuable and influential in achieving their goals. You do not have to guess at this; the answers are already available from your firm's potential clients.

The best way to test your firm's expertise against the needs of your potential social entrepreneur clients is to invest in the time necessary to list specific experience and knowledge that your firm can demonstrate in detail. Although it is always dangerous to generalise about any group of clients or potential clients, most social entrepreneurs are not easily persuaded by marketing slogans or vague assurances. Most of them operate on very tight financial tolerances and erroneous legal advice or poor service can have a larger relative impact on members of this client sector than on most others. Your law firm will probably only get one chance to get it right.

The other reason why this inventory is so important is that legal issues presented by social entrepreneurs often carry a greater urgency, in terms of the need for legal advice that is promptly delivered, responsive to the specific needs and expectations of the client and correct the first time. Social entrepreneurs and often all kinds of entrepreneurs, run on low budgets and are single person or tightly team-run ventures, hence the frequent urgency of their legal demands. Because many of these matters also require a multidisciplinary, holistic approach, a law firm will usually only have the luxury of being able to assemble an efficient team of multidisciplinary experts after the need arises.

Step three: understand the factors that drive the profitability of a social entrepreneurship practice

The profitability of any practice area or line of service in a law firm is principally the result of the interaction of six factors, which can be described as the six classic drivers of law firm profitability.³⁹ These drivers are pricing, productivity, realisation, cost management, staff compensation and leverage.

PRICING

Over the past decade in particular, law firms worldwide have faced strong price resistance even from client sectors and services which had previously been relatively price insensitive. Predatory pricing⁴⁰ by non-traditional competitors, such as foreign law firms, entering a traditional legal market have added to this downward price pressure. Even new clients now expect discounts that were formerly reserved for the firm's best clients.

PRODUCTIVITY

How much billable work can each fee earner produce in a standard unit of time, typically

³⁹ See generally, Norman K Clark and Lisa M Walker Johnson, *Sustainable Profitability in a Disrupted Legal Market*, (Globe Law and Business 2019).

⁴⁰ Predatory pricing is the practice of offering relatively sophisticated legal work, such as in M&A or anti-trust matters, at prices that are far below the prevailing range of fee quotations in the market, in the hope of winning market share from better-known, established competitors. *Ibid*, at 14. See also *ibid*, at 21-32.

the hour? As advanced technology enables lawyers to produce high-quality, accurate legal work faster, the greater work capacity of most law firm associates will eventually outstrip the demand for their services. An associate will soon be able to produce three or four times the amount of work in a day than that was once possible. As the demand for legal services is unlikely to keep pace with improvements in law practice technology, many law firms will find they have too many associates. This has implications for the staffing of a social entrepreneurship practice, in that some law firms might already have excess work capacity among their associates, which could be applied to a social entrepreneurship practice without any increase in the largest component of a firm's operating costs, which is associate and staff compensation.⁴¹

REALISATION

Of all the billable work that your fee-earners do, how much of it results in a collected fee? Realisation rates are among the most powerful diagnostic indicators that law firms have. A significant, unexplained change in a realisation rate usually can be traced back to a weakness in the how the work is performed, almost always linked to a defect – or, in some law firms, complete non-existence – in the firm's quality assurance procedures. In some firms, preventable rework, especially in document drafting and production, can account for as much as 70 per cent of the write-offs or write-downs of billed work.⁴² In large law firms and practice groups whose legal work is relatively price-insensitive, poor quality assurance can cut deeply into profitability; in price-sensitive practice groups, such as many social entrepreneurship practices, it can destroy it.⁴³

COST MANAGEMENT

The traditional preference of most law firm partners, who sometimes seem to feel the pain of every penny of operating costs being extracted from their pockets, tended to support better profitability in the past: produce the highest-priced legal service as the lowest possible cost. Occasionally, risk-adverse partners would turn down good opportunities, but the firm remained on solid financial ground. Today, however, law firms that are reluctant to make the frequently substantial financial investments in better technology, communications and professional development risk disqualifying themselves of opportunities to protect and sustain future profitability. By saving costs now, they will almost certainly suffer greater opportunity costs later.⁴⁴

41 See n 40 above, at 15-16 and 33-47.

42 This figure is based on observations and research by Walker Clark concerning realisation rates in the practice groups of small and medium-sized law firms during 2002-2019.

43 Clark and Walker Johnson, see n 40 above, at 47-56.

44 *Ibid.*, at 57-68.

STAFF COMPENSATION

Staffing is one of the most financially significant decisions when considering a new practice area or practice group. How many people will the new group need? What are the expectations for their productivity? Overstaffing a new practice area – ‘If we build it, they will come’ – usually results in poor profitability, or none at all, with disappointing results that persuade the owners of a law firm to cut their losses and abandon the project. Understaffing it can result in serious quality assurance and client service problems.⁴⁵

LEVERAGE

Traditional concepts of staffing leverage, with their pyramid-shaped assumptions about the most profitable ratio of associates to partners, are becoming increasingly irrelevant, especially in highly specialised practice areas. As technology enables associates to perform many of their traditional functions, such as research and drafting, many times faster and with exponentially greater accuracy and analytical quality, a staffing ratio of four associates to one partner, for example, instead of being reasonably profitable as has been the assumption in the past, could become quite unprofitable.⁴⁶

With the usual caveats about the risks of generalising an entire client sector based on what appear to be its dominance traits, social entrepreneurs can be quite price-sensitive, even with respect to services that would be relatively price-insensitive in traditional commercial legal services. This makes pricing, productivity and leverage important considerations in the evaluation of the potential profitability of a new social entrepreneurship practice group. Social entrepreneurs also tend to have a very low tolerance for poor service quality, which can drive realisation rates below minimum profitability levels. Whether paying on an hourly basis or by fixed fee, almost no clients today – whether social entrepreneurs or others – are willing to pay extra to fix a law firm’s mistakes.

Consider also how a law firm’s marketing and sponsorship structures and practices can be an overlay to the six profitability drivers listed above. Sometimes the possibility for a law firm to participate in a matter as a sponsoring partner, rather than a fee-earning service provider can be worth considering, especially when the operation could generate significant visibility for the firm. Very often, providing pro bono tend to be low-profile activities, or hardly ever used in a law firm’s marketing communications. However, their potential long-term return on investment should not be overlooked.

Therefore, it is essential that any consideration of a social entrepreneurship practice should include a realistic – even somewhat sceptical – evaluation of the profitability of your firm’s internal processes for preparing and delivering legal services to clients. Inefficiencies and error that already exist in your firm usually will produce a disproportionate negative impact on profitability because the profitability tolerances, especially with respect to pricing, will be tighter than in many of the firm’s other practice areas and lines of service. The

⁴⁵ *Ibid*, at 69–76.

⁴⁶ *Ibid*, at 77–82.

most serious threats to operational profitability, in most law firms, lurk in inadequate or non-existent quality assurance policies and procedures. They show up in the otherwise unnecessary losses that a firm suffers by having to correct mistakes that should have been avoided in the first place. This is even a greater threat to a social entrepreneurship practice.

If your firm already has difficulty in making a profit from its low-margin services, you should not expect that your social entrepreneurship practice will be any different. A law firm cannot lose one dollar per billable hour and hope to make a profit from volume.

Finally, a key matter for firms venturing into this practice is to be very clear internally and externally of what can be considered pro bono, what should be 'low bono' and under which circumstances the client should become a fee-paying client. Major injection of funds from business angels, flotation, benefits over a certain amount and so on, are milestones that law firms can use as indicators of opportunities to change the fee ranges.⁴⁷

Step four: write a conservative client-sector business plan

As with any business plan, reasonable goals and reliable performance measurements are essential. The importance of these two features is even greater when starting a new practice group, especially one that is defined by a business sector that is as diverse as social entrepreneurship. This diversity reinforces the critical importance of thoroughly researching and understanding the social enterprises that would be the most promising candidates for your firm's services, as discussed in Step one, above.

A matching of the client-focused research that you did in Step one with the inventory, in Step two, of your firm's existing capabilities, lead to clear and specific descriptions of the identity, responsibilities and expected contribution of the members of your social entrepreneurship practice. This will allow your firm to focus the most relevant expertise and service delivery capabilities on your potential clients, but will also facilitate the flexibility needed to respond to their unanticipated needs and expectations, as well as future changes in the social entrepreneurship sector. This level of planning takes time, but many of the most important needs of your prospective clients in this sector are too complicated for you to try to improvise only after they arise.

Adopt the same mind set as your prospective clients in the social entrepreneurship sector. The guiding principle behind your financial performance expectations should be to develop a sustainable practice, not just to take advantage of a fad. This is farming, not big-game hunting.

Two areas demand special, well-informed consideration in the business plan. First, how can your firm leverage your technological capabilities, particularly in knowledge management and client communications, to improve productivity and reduce operating costs? This will

⁴⁷ It is worth mentioning that many social entrepreneurs never actually reach these milestones. Although there is a significant opportunity for pro bono and 'low bono' fees to evolve eventually into more profitable fee arrangements, the probability of such a result is substantially lower than with a new client who first instructs a firm in a relatively simple matter for a modest fee, but also already has more substantial legal work available, depending on the client's satisfaction with the firm's performance in the first matters.

be an essential part of your firm's availability to sustain a satisfactory level of profitability. Second, consider how you will support the ongoing development of knowledge and understanding within your firm about social entrepreneurship and, to the extent that they are relevant in your market, the SDGs. So much of the long-term return on the investment in a social entrepreneurship practice comes from cross-selling your firm's services. Unless at least all the partners in the firm – and ideally all the other lawyers, as well – can speak reasonably intelligently about social entrepreneurship, your firm could inadvertently lose some significant opportunities.

The business plan should also define the potential ethical issues that might arise from support to social entrepreneurship, such as *de facto* commercial or philosophical conflicts that do not rise to the level of *de jure* conflicts of interest. To put it bluntly, which, if any, of your firm's current clients might object to your firm indirectly supporting, through your legal services to social entrepreneurs, the achievement of social or economic goals that they might oppose for political reasons?

The business plan also should identify and prescribe a set of simple, reliable performance measurements by which to monitor the progress of the practice group towards the achievement of its business goals, as well as to identify emerging performance or profitability issues before they can deteriorate into a crisis. Five measurements, each of which is well within the capabilities of even the smallest, least sophisticated law firm, are especially useful:

- realisation rate of all the 'billable'⁴⁸ work that we perform, how much of it directly results in a paid fee?
- fully loaded cost⁴⁹ per lawyer billable hour
How much does it cost our firm to produce one hour of legal work?
- fee yield per lawyer hour
What is the average paid fee per lawyer hour worked?⁵⁰
- profits per lawyer hour⁵¹
This is a simple calculation – fee income minus fully loaded cost divided by total hours worked – but it usually is reliable enough for monitoring a practice group's progress in delivering its business plan.
- lawyer utilisation rate
What percentage of the total hours worked by lawyers in the practice group are 'billable' hours?

48 For purposes of the measurement of financial performance of a practice group, the term 'billable hour' refers to work by lawyers that could be billed directly to the client if the client were paying an hourly fee.

49 For purposes of this measurement, the term fully loaded cost includes all operating costs of the firm, including staff and non-partner compensation, but excluding capitalised expenditures and costs funded by external sources.

50 This includes all hours that a lawyer works at or for the practice group, not only billable hours. We recommend tracking all hours, because a significant portion of the time of the members of a new practice group will be involved in practice-building activities, such as research and business development.

51 This includes all hours that a lawyer works at or for the practice group, not only billable hours, for the same reason stated in n 50, above.

Step five: develop the practice group marketing plan

This step often is a ‘showstopper’ for many small and medium-sized law firms. ‘We don’t even have a marketing plan for our firm’, they exclaim.

The absence of a well-informed, well thought-out marketing plan at the firm level will greatly impede the efforts to establish a productive new practice group, especially in a diverse and dynamic sector such as social entrepreneurship. The unpleasant truth is that, without a marketing plan, the members of the new practice group probably will be wasting their time, as opportunity costs arising from other initiatives that do not get done surpass the disappointing results from the new practice.

Nevertheless, even without strategic guidance built into a structured firm-wide marketing plan, the design and execution of a practice group marketing plan will not be impossible. To have a reasonable chance of success, the marketing plan for a social entrepreneurship practice group should at least answer these questions clearly:

- How will you make your social entrepreneurship practice visible to social entrepreneurs, especially those with for-profit enterprises? Visibility will be the key.
- How will you differentiate your firm’s social entrepreneurship practice from firms that do not have such a specialty or even from those who have only ordinary start up or entrepreneurship practices?

Sector-specific or regulatory specific expertise that is plainly relevant to social enterprises could make a difference in establishing a clear competitive advantage for your practice group.

- What clear advantages can your firm deliver better than other firms the claim to serve social entrepreneurs? How, specifically, do you demonstrate these advantages in the services that you deliver to them?

This is the difference between a genuine competitive advantage and a marketing slogan.

- Are there opportunities to encourage your existing clients to move into social entrepreneurship activities?
- How can your social entrepreneurship practice create better visibility for your firm among industry sectors and prospective clients that are not engaged in social development initiatives and enterprises?

Of course, these issues could apply to almost any industry-sector practice group. As a practical matter, however, some law firms have observed that the development of a successful marketing plan for a social entrepreneurship practice requires much more in-depth, intensive conversations with clients and potential clients in the sector.

While it might be relatively easy to establish visibility in the still relatively small social entrepreneurship legal market, establishing credibility is an entirely different matter. Traditional law firms, with experience primarily only with traditional commercial clients, often have difficulty establishing credibility among social entrepreneurs.

Questions for the future

There are no short cuts in the five steps outlined above. Each one builds on previous ones. Each step is also a potential exit point from the consideration of a social entrepreneurship practice. If you cannot produce clear responses – not just educated guesses – to the intellectual challenges at any step, that usually is a strong sign that it is not worth going forward to the next one.

If you make it up the five steps, however, you will be able to make a well-informed decision about whether this promising new opportunity is right for your firm. Nonetheless, there are several difficult and broader questions that the legal profession and the social entrepreneurship sector will need to resolve. They serve as a useful intellectual checklist as you review your law firm's social entrepreneurship business case and business plan and consider whether it is not only viable now, but sustainable in the future:

- Does your firm have a common definition and working understanding of the term 'social entrepreneurship' as it applies to your firm's current and potential client base and legal market? When considering a potential client sector as broad and diverse as social entrepreneurs, it is easy to be distracted from your primary focus.
- Is law reform necessary to promote social entrepreneurship? This could mean, for example, that the focus of your firm's pro bono activities might require expansion to include advocacy and lobbying for statutory, tax and regulatory changes.
- What is the best role for a foundation, such as Fundación Fernando Pombo, in promoting and coordinating the active engagement of the legal profession with social entrepreneurs?
- How should your social entrepreneurship practice group support and contribute to innovations in legal education, such as the introduction of social entrepreneurship law in the curricula of law schools, legal clinic programmes in law schools and in continuing professional education programmes?
- What are the ethical risks of a social entrepreneurship practice? As of the writing of this chapter, the ethical implications and risks of a social entrepreneurship practice, as well as the direct participation of law firms in social enterprises of their own, have not been thoroughly examined. As noted above, some of these risks might arise from perceived conflicts with the business interests of the law firm's other clients.
- How can the legal profession enlist the active participation of social entrepreneurs, in the promotion of human rights and the rule of law?
- What will be the most cost-effective way to integrate traditional pro bono services and 'low bono' services into new legal models of sustainable entrepreneurship activities to alleviate poverty?
- Can the legal profession really innovate and embrace social entrepreneurship? Can the legal profession (and the governing associations or regulatory authorities as applicable) facilitate legal social entrepreneurs, beyond merely giving conventional legal advice to social enterprises?

Perhaps this chapter has raised more questions than it has answered. Social entrepreneurship is a rapidly emerging, dynamic sector of local and national economies, with global impacts that will almost certainly continue to manifest themselves. There are currently no clear answers to some of these issues; they will emerge as social entrepreneurship becomes a more prominent part of the legal services sector and in the communities that we and our social entrepreneur clients serve together.

About the authors

Norman K Clark is a lawyer and a co-founder of Walker Clark, an international legal management consulting firm, based in the US, which, among its other services, advises law firms on the creation and management of social entrepreneurship practice groups. He has advised law firms on strategic and management issues since the mid-1990s and is a Past Chair of the IBA Law Firm Management Committee and the American Bar Association Cross-Border Practice Management Committee. Clark has been active in the IBA's anti-poverty and social development work and has served as Chair and in other officer positions of the IBA Poverty and Social Development Committee and its predecessors since 2013.

Carmen Pombo is a lawyer and the founder of Fundación Fernando Pombo, based in Madrid, Spain, which she has led since its inception. An expert in international public interest advocacy, she is an international pioneer in the promotion of social responsibility in the legal profession, the development of pro bono law, legal clinics and the role of lawyers in the implementation of the Guiding Principles on Business and Human Rights. Among her many leadership responsibilities in the IBA, she has served as Co-Chair of the IBA Rule of Law Forum and as Vice-Chair of the IBA Poverty and Social Development Committee. She is currently a member of the board of the LexisNexis Rule of Law Foundation.