



LEGAL STRUCTURES & POLICY WORKING SESSION NOTES

September 29, 2017

The Good Capital Project (GCP) Design Lab hosted the working group of the Legal Structures & Policy Grand Challenge on September 29th at our offices in New York City. We were pleased to welcome an exceptional group of partners from top legal institutions, law firms, media and academia.

Discussion Topics

- Catalogue best practices in blended finance approaches with current corporate and nonprofit structures.
- Create a global cross-country matrix of regulatory policies, tax incentives, and best practices.

DISCUSSION NOTES

The meeting began with an update on Good Capital Project (GCP) activities. The role of this particular Grand Challenge working group is to further dialogue on legal structures and explore the best ways to accelerate legal expertise to the growing impact investing market.

Deborah Burand (NYU Law School) started the discussion by stating that lawyering in this sector is not being provided as efficiently or effectively as it could be. We need to help practitioners grow and learn. In addition, we need to build this community of legal practice and use bar associations across the country to do this, not just on the coasts where the majority of this work is being done. We can also work on community building with academic groups. They have a role to create useful training modules and mechanisms that can be helpful in this sector.

Another group of people that need to be addressed are the transitioning lawyers. Those lawyers moving outside of traditional practice who want more purpose in their life or perhaps becoming social entrepreneurs themselves. How can we help with that transition?

Participants

Aaron Bourke Associate,
Reed Smith Corporate &
Transactional Advisory
Group

Deborah Burand
Associate Professor of
Clinical Law and Co-
Director, NYU's Grunin
Center on Law and
Social Enterprise

Lynn Carpenter
Epoch Pi

Alejandra Cicero
Legal Fellow, ISLP

Kyle Coulam
Project Manager,
Clinton Foundation

**Carolina Henriquez-
Schmitz**
Regional Lead and
Legal Manager,
Thomson Reuters
Foundation

Benjamin Overton
Program Officer,
Thomson Reuters
Foundation

Dana Brakman Reiser
Professor of Law,
Brooklyn Law School

Alexander Shermansong
CEO, Civic Consulting
USA

Perry Teicher
Impact Finance
Attorney, Orrick



LEGAL STRUCTURES & POLICY WORKING SESSION NOTES

Carolina Henriquez-Schmitz (Thomson Reuters Foundation) Thomson Reuters Foundation collaborates with lawyers to advance the social capital markets sector. One way they achieve this is through supporting innovation at the pro bono level around the world. Carolina stated that in addition to providing legal support, institutions like Thomson Reuters and academics need to focus on capacity building in the sector by developing resources, identify gaps in market, developing best practices and keeping abreast of new developments. There are many roles for lawyers in this sector.

Alejandra Cicero (ISLP) spoke about ISLP (International Senior Lawyers Project). ISLP leverages on its network of highly experienced lawyers to provide pro bono legal assistance to governments and civil society organizations in developing countries to enable just, accountable and of inclusive development. Under its impact investing program, ISLP provides direct pro bono support to early stage social enterprises and engages in other initiatives that contribute to the growth of the impact investing field. For instance, the organization is currently working on a training that will introduce interested lawyers to the nuances of impact investing deals. The training will be piloted in Nairobi, Kenya and will potentially be rolled out to other jurisdictions. ISLP generally deploys the expertise of either retired lawyers with expertise on the subject matter, a law firm team, or another combination of lawyers and skill sets.

Deborah commended ISLP for capturing the sector of retirees who want to give back. ISLP is doing a great job using them as mentors especially in jurisdictions where there are not enough well equipped lawyers.

Perry Teicher (Orrick) agreed that a multi-generational approach is key. For example, the younger generation wants sophisticated deals and training in this field but legal counsel in many areas is not available or affordable.

Deborah described a great new initiative at NYU's Grunin Center for Law and Social Entrepreneurship – the Grunin Prize. The prize is a way celebrate those lawyers who are moving the needle around the world. The storytelling coming out of nominations needs to be shared with others interested in law and social entrepreneurship.

Carolina and **Deborah** suggested that SOCAP and the Good Capital Project play a role here with messaging because the storytelling is an important piece to educating the community. We need to figure out how we communicate this broadly on a global scale and what are our goals.

Dana Brakman (Brooklyn Law School) described the importance of trust in social capital markets. Entrepreneurs and lawyers need to trust each other to get this work done. Brooklyn Law School runs a clinic for entrepreneurs to access legal advice.

Participants

GCP Design Lab

Chris Danner

Sharadiya Dasgupta

Robert Haynie

John Morris

Holly Schade

In addition, **Dana** explained the importance of matching the entrepreneurs with the right impact investors. The law is the right way for investors to find the right match. By coming up with the structure to use for the investment, you will know if you have the right match because it will reveal the preferences on both sides. Entrepreneurs will realize that matching with the right lawyer is something they will want to do not just something they are required to do.

Deborah pointed out that there is a lot of lawyering that needs to happen not just along the origination and supply chain, but also after the deal documentation is executed. The products and structures you want to create will be influenced by what you want your exit to be.

Aaron Bourke (Reed Smith) added that the value of Grunin prize and his impact lawyer group is the storytelling that takes place during this process. It is important to communicate that lawyers add value to this process. The convening power of SOCAP can play a role in communicating these stories.

Perry Teicher pointed out that many types of social entrepreneurs think they need to form a specific type of corporation. We need to move conversations with early stage entrepreneurs away from what they think they need to become to one where they focus on what they are trying to accomplish.

Deborah and **Dana** added that social entrepreneurs often don't have appropriate legal representation because they cannot afford legal advice and therefore the deals often don't perform well. This ends up hurting the entire sector. We need to build access to deal documents to aid social entrepreneurs. **Dana** suggested one way to do this is to energize accelerators and incubators focused on social entrepreneurs who don't know how to advocate for themselves but need access to the right legal representation. Perhaps mapping or cataloguing the accelerators and see when and where they are in need of legal assistance.

Carolina reiterated that entrepreneurs need help at all stages. The two key junctures where lawyers are critical: the outset (structuring the business) and the investment stage (structuring the deals).

Ben Overton (Thomson Reuters) mentioned a key role intermediaries play is moving the relationship between entrepreneur and lawyer from reactive to proactive. They should take a more holistic approach to help the entrepreneur early on think about what type of legal advice they need to become investment ready.

Dana added the existing hybrid structures are often insufficient to solve the legal problems faced by social entrepreneurs and impact investors. The advocacy around the new forms has been helpful in surfacing the important issues and bringing salience to the sector, but other legal tools can often perform better to align incentives and bring in capital. It is also important for lawyers to help entrepreneurs broaden the product question by not immediately locking into one structure. The conversation and legal advice around this should be fluid.

Deborah noted that it is important to look at what happened and learn from it - not just the business side, but the legal side. She suggested the legal practitioners could benefit from a journal that provides case studies.



LEGAL STRUCTURES & POLICY WORKING SESSION NOTES

Aaron returned to one of the initial questions concerning how and where social entrepreneurs access legal counsel. **Carolina** explained that it not only depends on the jurisdiction, but can also be a cultural issue in places where pro bono isn't possible. In the United States, this concept is socialized. But many entities just sign the required documents and only review when something bad happens. We need to be more proactive than reactive.

Deborah continued the discussion about accessing legal counsel by stating the “elephant in room” is that the cost of legal advice often overwhelms the deal size and the organizations trying to put the deal together. The answer to lowering transactional costs may not be to standardize documents especially as experimentation in this space is still happening, however, the cost of experimentation in this space is being paid by individual deals. We should look at how to spread the cost of experimentation across the sector.

The publication, “Innovation in Financing Structures for Impact Enterprises,” is one example that can help highlight structures of deals and which ones worked. **Dana** agreed this information is helpful but we also need information on what didn't work.

The discussion moved to the role of financial advisors as the influencers of the investor and what knowledge the legal community would like the advisor to have and what is the best way to influence the advisors.

Carolina agreed the access to information on different deals is critical – both successful and unsuccessful deals. Investors are amenable to advice from their advisor but the cost of experimentation and unknown risk is not available therefore they often choose a more traditional investment.

Perry pointed out that many clients choose an attorney they are comfortable with but often they are risk averse and not familiar with impact space.

Dana suggested we speak to investment advisors in a language they understand and encourage impact as part of a wise portfolio. **Deborah** believes the advisors need to know when they are getting conservative advice and show evidence of deals that have been successful.

The Good Capital Project brand can be used to hold events focused on advisors and investors. An outcome of the GCP could be to develop the modules that need to go into that training that will highlight the value of these initiatives and promote the need for good lawyering. This could include identifying the trouble issues of fiduciary responsibilities and sales practices that advisors should be thinking about as well as defining investment vehicles and different corporate structures.

Lawyers can help boil down and define what that content should be and make sure content from lawyers stimulates the right discussions so advisors know where to go.

Carolina explained that the current training is focused on the lawyers but we need to socialize the training with entrepreneurs and investors. This could potentially lead to a curriculum. It may be useful to find a partner who is willing to drive this and execute more effectively through capacity building. This is especially important in less developed markets.



LEGAL STRUCTURES & POLICY WORKING SESSION NOTES

Perry reiterated that this training needs to occur in all jurisdictions, not just the coasts.

A number of the Good Capital Project Grand Challenges are intertwined. Many of the discussions with organizations including the UN and USAID have suggested bringing these conversations to regional events where we can provide training and facilitate public/private partnerships by bringing in experts on these issues. What are the modules we want to use to make this happen?

Deborah suggested we attach sidecar conferences for lawyers directly following general impact conferences that focus on specific legal training. We need to be intentional about this especially in emerging markets.

The last hour of the conversation focused on how the Good Capital Project can could further these conversations and move towards real outcomes over the next 18-20 months. Participants wanted GCP to use its convening and networking expertise to shed light on some of the most pressing need gaps of the ecosystem. In some cases, team members had a wish list of initiatives that they want GCP to support through building partnerships and driving collaboration.

KEY RECOMMENDATIONS

- Survey and map how accelerators are using legal resource and where the gaps are.
- Put together case studies of both successful and failed deals.
- Aggregate legal needs and identify pools of capital to subsidize legal cost of these deals.
- Map the legal needs of financial advisors and build in training for lawyers advising advisors and for the advisors themselves.
- Aggregate legal needs and identify pools of capital to subsidize legal cost of these deals and develop an economic model to pay attorneys to do this work at different price points. Understand where pro bono or deferred fees are best suited versus being able to pay for legal advice as the enterprise grows.
- Create a community of transactional clinics at law schools which can be useful partners for information gathering and dissemination.
- Look at investment opportunities with smaller scopes and activate those communities. Highlight these organizations at SOCAP and facilitate connections.
- Interact between the Grand Challenge working groups to discuss how information can be shared.
- Create a legal portal for entrepreneurs to access a directory of counsel and resources for different initiatives.



LEGAL STRUCTURES & POLICY WORKING SESSION NOTES

- Create a common lexicon/glossary for the social capital markets community and determine what terms would be helpful to standardize, especially accounting terms.
- Look at the intersection of the impact space and post-disasters.
- Build a template of training tools that could be a module used for training.

CURRENT INITIATIVES

- Impact Investment Legal Working Group
- Professor Dana Brakman Reiser's new book: Social Enterprise Law: Trust, Public Benefit and Capital Markets
- Grunin Prize at NYU's Gunin Center for Law and Social Enterprise
- Impact Terms Project - impactterms.org

NEXT STEPS

Many interesting ideas and likely solutions emerged from the working session's robust conversation. The GCP Design Lab is thrilled to take these ideas forward to SOCAP in October and continue gathering input from the community. At SOCAP, the working group will reconvene to further discuss these proposed ideas and narrow down priorities that the GCP Design Lab will then, in partnership with other stakeholders, advance to the prototype and testing stages.

Please send your thoughts and suggestions on how we can create partnerships around ongoing initiatives. In addition, if you have research papers, discussion papers, reports, or initiatives that you would like highlighted on our website, please write to the Good Capital Project team **GCP@socap.group**. If you believe there are other stakeholders who should be involved in the Good Capital Project conversations, please let us know.

ABOUT THE GOOD CAPITAL PROJECT

The Good Capital Project is a reflection of the community of SOCAP and the people in this sector working to accelerate change in the capital markets for social positive outcomes. Our goal is to leverage the convening capabilities of SOCAP to connect people to partners and accelerate capital for the human needs of tomorrow. By being aggressively inclusive, we can partner with thought leaders, associations and communities and use GCP's design thinking process to develop goals and prototypes over the next two years to scale and test in this new shared economy.



LEGAL STRUCTURES & POLICY WORKING SESSION NOTES

THANK YOU

Thank you to our attendees and project participants for your knowledge, insight, and time. These meetings are a testament to this community's shared goals and ideals. Thank you also, as always, to our sponsors who enable us to continue this work. **If your organization is interested in discussing sponsorship or partnership opportunities**, please contact Sharadiya Dasgupta at sdasgupta@socap.group.

