

Benefit Corporations: A New Breed of Business

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A new breed of corporation is coming into broader view. Various referred to as "benefit corporations" or "social purpose corporations," these new entity forms seek to provide a vehicle for for-profit enterprises to also promote nonfinancial social goals. Corporate law in nearly all states defines an enterprise as either a for-profit or a nonprofit company. The key distinction here is that the directors of a for-profit corporation are generally liable to its shareholders for managing the enterprise in a way that maximizes the value of their shares. The directors do not, of course, guarantee the value of the shares, but the directors must not sacrifice financial value for nonfinancial purposes. Alternatively, while directors of nonprofits may still have duties to members (as in a homeowners' association) to manage in a cost-effective manner, such duties are subject to the duty to promote the corporation's adopted mission or purpose.

Benefit form protects for-profit directors

The benefit corporate form permits directors of a for-profit corporation to promote social goals without liability to shareholders for not maximizing profits or value. For example, the statute recently passed in the state of Washington (expected to be signed by the governor) provides that a corporation may adopt the goals of benefitting the corporation's employees, suppliers, or customers, the local, regional or world community or the environment. These goals must be specified in the articles of incorporation, a public document. The statute expressly provides that a director would not be liable to shareholders for subpar financial performance if the director's decisions furthered one or more of these social purposes.

Oregon statute addresses issue, broader legislation introduced

In Oregon, the for-profit corporation statute already permits a company to "conduct the business . . . in a manner that is environmentally and socially responsible," if such a provision has been included in its articles of incorporation. A bill to enact a broader benefit corporate statute similar to Washington's was introduced in the state legislature this year. To date, at least six other states (California, Maryland, Vermont, New Jersey, Virginia and Hawaii) have adopted "benefit corporation" statutes. To further complicate the situation, a for-profit corporation, whether a benefit corporation or not, may apply to become a "Certified B Corporation," a certification bestowed by B Labs. B Labs is a private nonprofit that rates and certifies companies for financial transparency, paying above-market wages, and prioritizing community and the environment – akin to the U.S. Green Building Council (also a private nonprofit) certifying the LEED status of buildings. B Labs and its founders are among the leading proponents of benefit corporation legislation.

Benefit corporations best suited to companies not likely to profit

It has long been generally accepted that some measure of corporate social responsibility activities (e.g., charitable donations and sponsorships) promotes profitability by increasing a company's goodwill and reputation. Benefit corporations, on the other hand, seem to be best suited for companies that seek to promote social purposes to an extent that will likely not prove to be profitable. Indeed most existing benefit corporations and B Corporations appear to be closely-held entities whose shareholders share a commitment to certain social goals. For the rest, it would seem that the adoption of specific social goals would be a warning to prospective shareholders to expect to sacrifice profits in the pursuit of corporate social goals. But how much profit may be sacrificed? It seems entirely possible that a director of a benefit corporation may be liable to socially committed shareholders for not sacrificing enough profit. And how will a reputation for sacrificing profit affect a benefit corporation's ability to raise capital? Proceed with caution. Any such risk can be minimized by careful drafting of the language in the articles of incorporation that discusses the corporation's social purposes.