
Public Benefits, Corporate Burdens: Is A Benefit Corporation Right For You?

Description

By [Brian Reilly](#)

Thirty-three states, including Rhode Island, allow a for-profit entity to form as a benefit corporation in lieu of a traditional corporation. The downside is officers and directors of benefit corporations face burdens and costs that leaders of traditional corporations do not.

Because benefit corporations are for-profit entities, officers and directors must consider shareholders' investment interests when making financial, operational and strategic decisions. Benefit corporations differ from traditional corporations in that they exist to achieve socially focused goals. As such, the board has a duty to create value for its shareholders and to achieve the company's stated public purpose. This entails considering the effects of any action or inaction on the company's employees, customers and communities, as well as those of its subsidiaries and suppliers.

Because the board of a benefit corporation must strive to further a public purpose, the board must comply with statutory requirements that are absent in the context of traditional corporations. In Massachusetts, for example, the board of a benefit corporation must appoint an independent benefit director who will inform the board about the company's social and environmental impact. This requirement is problematic for founders who intend to be the company's sole shareholder and director.

Most states also require benefit corporations to file benefit reports. A benefit report analyzes whether and how the benefit corporation created general public benefits during a particular period.

An additional difficulty associated with benefit corporations is that some states require benefit directors to use a third-party standard to evaluate the corporation's social and environmental impact. There is little guidance as to what constitutes an acceptable standard. Generally, the statutes require the standard be "recognized" and developed by an entity other than the benefit corporation.

In situations where an internal stakeholder believes the benefit corporation is not meeting its social objectives, the stakeholder can initiate a benefit enforcement proceeding against the corporation. Benefit corporation statutes generally do not indicate where the benefit enforcement proceeding must be initiated, by whom it will be adjudicated, or what outcomes may follow. As such, boards of benefit corporations should be wary of the consequences that may follow inadequate efforts toward achieving a public purpose.

Though state benefit corporation statutes are replete with requirements that burden a benefit corporation's board, this corporate form has some advantages that can be preferable to a traditional corporation. The benefit corporation form is relevant to certifying as a B-Corp through B-Lab, a nonprofit organization that assesses, certifies and markets benefit corporations. Marketing is another advantage of forming as a benefit corporation. Now, more than ever, consumers decide where to spend their money with sustainability and social responsibility in mind. Therefore ... there are public-image benefits to structuring a for-profit company as a benefit corporation. Finally, the founder of a benefit corporation can bake the public purpose into the company's DNA, helping to ensure the company will continue to support its public purpose even after the founder is no longer involved.

A benefit corporation may suit a founder's objectives in the right circumstances. Oftentimes, however, the traditional corporate form is sufficiently flexible to meet the founder's objectives without exposing the corporation to the additional time and cost of compliance with the applicable benefit corporation statute.

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