

Pennsylvania Benefit Corporations: A New Way of Doing Business

by John P. Leemhuis, Jr.

On January 22, 2013, Pennsylvania became the 12th state to implement benefit corporation legislation. What is a benefit corporation? It is a business corporation, with three important distinctions. This new class of corporation differs from a standard business corporation since it is required to

- 1) create a material positive impact on society and the environment;
- 2) meet higher standards of accountability; and
- 3) be transparent by reporting on its overall social and environmental performance using recognized third party standards.

Presently, and historically, a business corporation's focus has been to enhance shareholder value to the exclusion of other considerations. Straying from this narrow focus could subject directors to an action for breach of their fiduciary duty to the corporation. However, this singular focus is often inadequate for businesses that are mission driven. A growing number of entrepreneurs and investors seek a form of business that allows them to pursue an expanded mission that embraces societal good along with profits. The benefit corporation is designed to do just that.

Creating Societal Good

In addition to its general business purpose, a benefit corporation must have a purpose of creating general public benefit. It also has the option

of identifying one or more specific public purposes. For example, a specific public benefit could include improving human health, promoting economic opportunity for individuals or communities beyond the creation of jobs in the ordinary course of business, or promoting the arts, sciences or advancement of knowledge.

It may seem that this new type of entity is something of a hybrid between a for-profit and a not-for-profit corporation, but that is not the case. A benefit corporation is a type of business corporation with a broadened purpose to create societal good.

Care and Loyalty

Corporate officers and directors are fiduciaries. They have a duty of care

and a duty of loyalty to the corporation. Since enhancing shareholder value is the underlying corporate goal of a business corporation, directors' actions need to advance that goal to properly exercise those duties. Conversely, directors and officers of a benefit corporation, in considering its best interest, *shall* consider the effects of any action not only upon the shareholders, but also upon the company's employees, its customers, the community, the local and global environment, the short-term and long-term interest of the benefit corporation, and the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose.

This broader viewpoint may certainly allow a mission-driven organization to pursue its goals, but how does this enhanced standard of

conduct affect the board of directors? It is important to note that the Pennsylvania Benefit Corporation Act limits actions against the corporation, its officers and its directors for failure to pursue specific or general public benefit or for violation of a duty or standard of conduct found under the Act to those parties with standing. That list is limited to the benefit corporation itself, and, derivatively, to shareholders and directors of the benefit corporation. Actions for monetary damages are not allowed under the Act and a plaintiff's remedy is limited to injunctive relief.

Transparency and Regular Assessment

At the end of each fiscal year, a benefit corporation is required to deliver an annual benefit report to each company shareholder, post it on its website so it is available to the public, and file the report with the

Pennsylvania Department of State. The report must contain information about the company including an enumerated list of specific information about its efforts to create public benefit.

The assessment of the overall social and environmental performance of the benefit corporation must be measured against a third-party standard consistently applied.

Extending your Mission

Pennsylvania now has a vehicle for social entrepreneurs and business owners that may very well appeal to those whose mission extends beyond solely enhancing shareholder value to include considerations of society as a whole.

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