

17.10: Benefit Corporations

Learning Objectives

- Explain the purpose and requirements of a benefit corporation (B corp)
- Discuss the advantages and disadvantages of corporations

Over the past few decades, the boundaries between the public (government), private (business), and social (nonprofit) sectors have become blurred as many pioneering organizations merge social and environmental aims with business approaches. There are many expressions of this trend, including corporate social responsibility, microfinance, venture philanthropy, sustainable businesses, social enterprise, privatization, community development, and others. There are also new forms of corporate entities. One of the most widely established is the **benefit corporation (B corp)**. In the U.S., a benefit corporation is a type of for-profit corporate entity, authorized by thirty U.S. states and the District of Columbia, that includes positive impact on society, workers, the community, and the environment—in addition to profit—as its legally defined goals. *Benefit corporations differ from traditional C corporations in purpose, accountability, and transparency, but not in taxation.*

In April 2010, Maryland became the first U.S. state to pass benefit corporation legislation.



The purpose of a benefit corporation is to create **general public benefit**, which is defined as a material positive impact on society and the environment. A benefit corporation's directors and officers operate the business with the same authority as in a traditional corporation, but they are required to consider the impact of their decisions not only on shareholders but on society and the environment, too. In a traditional corporation, shareholders judge the company's financial performance; with a benefit corporation, shareholders judge performance based on the company's social, environmental, and financial performance. Transparency provisions require benefit corporations to publish annual benefit reports of their social and environmental performance using a comprehensive, credible, independent, and transparent third-party standard.

Some well-known examples of benefit corporations are Kickstarter, Patagonia, and King Arthur Flour.

Forming a Benefit Corporation

New companies can incorporate as a benefit corporation in any state where benefit corporation legislation has been passed. (Instead of recognizing benefit corporations, Washington created social purpose corporations in 2012 with a similar focus and intent.) The process varies by state, but many states require benefit corporations to do the following:

- declare a commitment to creating general public benefit
- adopt a third-party standard
- prepare an annual benefit report
- distribute the annual benefit report to the owners and post it on the company's Web site

B Corp Certification

Businesses that want to take their social and environmental commitment even further can become a Certified B Corporation. This involves a rigorous assessment process by B Lab, which uses a survey to rate a company's environmental practices, employee treatment, activism within its community, and other factors. Businesses that surpass a certain score are certified by B Lab, which then audits them from time to time to ensure that they are living up to the movement's standards.

[B Lab certification] is like a Good Housekeeping seal of approval," said David Murphy, former CEO of Better World Books, in a 2011 Business News Daily interview. "If your company is a Certified B Corporation, that really says something. You're there to

serve all those stakeholders, and you're willing to prove it.^[1]

Benefit Corporation Taxes

Benefit corporations are treated like all other corporations for tax purposes. B corps elect to be taxed either as a C or S corp.

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Advantages of a Benefit Corporation

- **Protection of Mission.** Becoming a benefit corporation gives companies more options and protections if they decide to sell the business to someone else or take it public, because other factors besides price (e.g., the public benefit mission) must also be taken into account.
- **Reputation.** Incorporating as a benefit corporation allows companies to stand out as businesses that have a social conscience and aspire to a standard they consider higher than maximizing profit for shareholders. For investors and consumers who are committed to social and environmental responsibility, benefit corporations provide additional choices.
- **Creation of Value.** Because it's committed to considering other stakeholders' interests, a benefit corporation may create value via employee engagement and customer loyalty, thereby improving results for all stakeholders—including the owners/shareholders. As well, certain profit-making opportunities may not be available without an assured commitment to other stakeholders.^[2]

Disadvantages of a Benefit Corporation

- **Transparency and Reporting Requirements.** Benefit corporations must provide an annual benefit report according to a third-party standard (such as B Lab) and make the report available on their company Web sites. The purpose of this is to assess the company's performance with regard to its public purpose(s).
- **Annual Fees to Retain Certified B Corp Status.** If a B corp elects to receive certification from a third party, such as B Lab, fees for "certified" B-corp status are based on annual sales, with a minimum of \$500. To keep certification, the company must pay a renewal fee each year and recertify every two years.
- **Compliance and Governance Obligations.** Most states require publicly traded companies with a B corp designation to have a "benefit director" who is responsible for ensuring that the corporation meets its stated public purpose.

? Practice Question

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1. Fallon, Nicole. "Becoming a Benefit Corporation: Is it Right for Your Business?" Business News Daily. January 22, 2016. <http://www.businessnewsdaily.com/8734-benefit-corporation.html>↵
2. "Benefit Corporations: Frequently Asked Questions." B Lab. http://benefitcorp.net/sites/default/files/FAQs%20Directors%20and%20Officers_6_17.pdf↵

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