

Benefit Corporations: Thoughts to Consider When Advising Clients

Kelsey Jae, JD/MPP

Fellow, Sustainable Economies Law Center

www.lawforconsciousleadership.com

kelsey@kelseyjaenunez.com

Overview:

Advising Your Social Entrepreneur Client

- What are the pros and cons of forming as a benefit corporation? Why might it be a good idea? And what are the drawbacks?
- And if it is the right choice, are there special bylaw provisions or other implications that should be considered upon formation?
- On an ongoing basis, what does a benefit corp need to do that's special (annual reporting/certification, etc.)

Quick Refresher

- For more complete overviews and discussion, see:
 - [*Entity Selection for Social Entrepreneurs*](#) - Idaho Advocate, October 2019.
 - [*Enforcing the "Benefit" Part of a Benefit Corporation*](#) - Idaho Advocate, August 2019
 - [*New Corporate Form Provides More Options for Social Enterprises*](#) - Idaho Advocate, Summer 2017.
- Social entrepreneurs, in general, desire to use the for-profit business model to create benefits for the environment, workers, communities, and society as a whole while creating long-term, sustainable value for the company.
- "B Corp" & "Benefit Corporations" are related but not synonymous. A company can be one, both, or neither.
- The Benefit Corporation entity form is governed by The Business Corporation Act AND the Benefit Corporation Act.

Pros & Cons / Goods Reasons & Drawbacks

- **General cost/benefit analysis in entity selection applies**
 - Corporation v. LLC or partnership, or 501(c)(3) v. for-profit
 - Client must engage in the standard analysis weighing pros/cons relating to ease of formation, flexibility in management, limitation of owner liability, transferability of ownership, characterization, and allocation of profits and losses, ability to fundraise, and tax considerations.

Pros & Cons / Goods Reasons & Drawbacks

- **Specific:** can be good or bad depending on your views & needs & intentions. It's important to know your client and help them decide what's best for them.
 - Opting into extra statutory duties re: purpose, decision-making, third party standards, reporting, enforcement proceedings
 - Not aligned with decades of fiduciary duty / standard of conduct rules and practices
 - Creating public benefit as purpose of business - shareholders, directors, workers know what they are getting into.
 - Long-term mission guides actions through capital raises, leadership transitions, sale, merger, etc.
 - Third party standards & reporting provide accountability and transparency, which leads to credibility and marketing & recruitment opportunities

If you chose a benefit corporation: bylaws

- **Capture specific public benefit if choosing one**
 - low-income or underserved individuals/communities; economic opportunity beyond jobs; protecting or restoring environment; improving human health; promoting arts, sciences or advancement of knowledge; increasing flow of capital to other benefit entities
- **Clearly state duties of directors and officers to consider the impacts on:**
 - shareholders, employees, subsidiaries & suppliers, customers as beneficiaries of purpose, community & social factors in each community it operates in, local & global environment, short & long term interests, ability to accomplish its general public benefit purpose; and any other desired factors
- **Appoint Benefit Officer if Desired**
 - In charge of mandatory benefit report and pursuits

Ongoing Special Duties

- **Record keeping for litigation prevention & reporting**
 - Document important decisions to show required factors were considered in case someone brings a benefit enforcement proceeding
 - Keep track of efforts, collect data, take pictures, etc. to use in Annual Benefit Report
- **Compliance with chosen 3rd party standard**
 - Certified B-Corp is not easy to achieve, requires recertification every two years
- **Publish Annual Benefit Report**
 - Describe efforts toward purpose; what went well and not so well; where money went; status of third party standard compliance; etc.
 - Great marketing opportunity!

Some local benefit corporations & Certified B Corps I've worked with . . .



**Feel free to reach out if I can help you
navigate these choices with your clients!**

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And come see me at

