Good money

B CORP CERTIFICATION AND BENEFIT CORPORATION LEGISLATION ARE EMPHASISING BUSINESS AS A FORCE FOR GOOD, EXPLAIN **GINA M PEREIRA** AND **JULIE WYNNE**

CHIPPING AWAY AT the outdated concept that 'doing well' (financially) and 'doing good' are mutually exclusive, businesses are rethinking their *modi operandi*. Alongside the actions of the state and third-sector charities to meet growing social needs, and in recognition of the new requirements of transparency facilitated by technology and social media, there is increasing pressure on corporations not only to mitigate harm, but also to have a positive impact on the communities in which they (and their supply-chain providers) operate. Ultimately, they will be held accountable for the implications of corporate conduct on all stakeholders, not just shareholders.

The growth of social enterprises, and other values-based, for-profit ventures, evidences an increasing convergence between the for-profit and not-for-profit worlds. Leading this movement are Certified B Corps and the benefit corporation legislation models, which offer companies both a platform to develop trust with stakeholders, and the flexibility to pursue social and environmental objectives alongside revenue generation. Certified B Corps and benefit corporations have the potential to gain considerable market influence as global leaders in a growing movement towards long-term sustainability, blurring the lines between philanthropy and investing.

KEY POINTS

WHAT IS THE ISSUE?
Increasingly, companies are expected to have a positive impact on society and the environment, and are held accountable for the effect of corporate conduct on all stakeholders, not just shareholders.

WHAT DOES IT MEAN FOR ME?
Advisors should support clients in considering sustainability issues and stakeholder perspectives in their business decision-making.

WHAT CAN I TAKE AWAY?
B Corp certification and the new benefit corporation legislation are two interesting tools to embed social and environmental impact into a business.

B CORPS

B Corp certification is a third-party standard granted to companies that meet rigorous standards of overall social and environmental performance, public transparency, and legal accountability. The community of Certified B Corps has grown exponentially in recent months and currently comprises more than 2,300 Certified B Corps from 50 countries across 130 industries, working together towards one unifying goal: to redefine success in business. Notable B Corps include Ben & Jerry's, Patagonia, Kickstarter and Natura.

This private certification was launched in 2007 by B Lab, a US non-profit organisation whose vision is that, one day, all companies will compete to be not only the best in the world, but also the best for the world – and that, as a result, society will enjoy a shared and more durable prosperity.

To start the certification process, a company must meet certain performance requirements. It must first complete the free B Impact assessment, which assesses the overall impact of the company on its stakeholders. The assessment covers the company's entire operation and measures the positive impact of the company in the areas of governance, workers, community and the environment, as well as the product or service the company provides. Companies that earn a minimum score of 80 out of 200 points are then subject to an assessment review process by B Lab. Companies are required to provide supporting documentation before they are certified.

The company must also have, or adopt, governing documents that include a commitment to a 'triple bottom line' approach to business. In practice, for a typical business, this is likely to mean having an objects clause that states that it exists to promote the success of the business for the benefit of its shareholders, but also to have a positive material impact on society and the environment. The governing documents of B Corps will also need to state that the board members of the company must consider a range of 'stakeholder interests' – including shareholders, employees, suppliers, society and the environment – when making decisions; and, critically, that shareholder value is not the supreme consideration, but one factor among the many stakeholder interests that board members must take into account when running the business.

Once all these steps have been taken, the company can be granted its B Corp certification.

BENEFIT CORPORATIONS

As a complement to its B Corp certification, B Lab has supported the development of a new corporate form designed for mission-driven businesses in US states.

Indeed, an ongoing challenge facing directors of values-based companies is that, in many developed nations, legislation and jurisprudence have not been updated to support a triple-bottom-line approach. Nor do most jurisdictions' laws reflect evolving public expectations of the private sector's responsibility to proactively address societal ills, including consideration of the impact of corporate conduct on all stakeholders' interests. The law as it exists in many jurisdictions may be at odds with corporations that implement sustainable longer-term strategies if it has adopted the 'shareholder primacy doctrine'.

This doctrine mandates that shareholder interests should be assigned priority relative to all other corporate stakeholders. It requires corporate directors to act exclusively for the ultimate purpose of maximising financial returns to shareholders, resulting in corporate decision-making justified solely in terms of creating shareholder value. It gives shareholders power to intercede directly and frequently in corporate decision-making, which can come at the expense of employees, consumers, suppliers, local communities and the environment. Though corporations may engage in legal activities that are socially responsible, decision-making must be exclusively or at least primarily justified in terms of creating shareholder value.

This inflexible legal framework constrains mission-driven and socially conscious businesses, and may prevent companies from adopting longer-term sustainability business models, compromising companies' prospects beyond the near-term future. Benefit corporation legislation may be the only binding way to incorporate mission and values into a corporate form without risking liability.

First introduced in the US in 2010, benefit corporation legislation has been enacted in 33 US states,[1] with six more states currently in the process of doing so, and in Italy. In the first five years in the US, over 3,000 companies registered as benefit corporations. In other jurisdictions – including Argentina, Australia, Canada, Chile, Colombia, France, Portugal and the UK – the legislation is at various stages of discussion, development and presentation/introduction to legislators.

A benefit corporation is a type of for-profit corporate entity that includes public benefit and a positive impact on society, employees, the community and the environment – in addition to profit – as its legally defined goals. Benefit corporations possess an expanded purpose beyond maximising shareholder value, including general and specific public benefit. Directors of benefit corporations are required to consider and balance the impact of their decisions on not only shareholders, but also other stakeholders. Benefit corporation legislation exonerates directors from personal liability for actions taken in the public benefit, while simultaneously protecting directors from liability to non-shareholder stakeholders. Being a benefit corporation does not affect a company's tax status.

> 'Benefit corporation legislation may be the only binding way to incorporate mission and values into a corporate form without risking liability'

Some well-known examples of benefit corporations include Patagonia, Laureate Education (a publicly traded corporation), Method and Klean Kanteen. Benefit corporations may choose to be certified as a B Corp, but there is no requirement to do so. Not-for-profits cannot be benefit corporations (or certified as B Corps), though charities may choose to incorporate as benefit corporations.

In addition to facilitating the balance of financial and non-financial interests when making decisions, benefit corporations give profit- and values-driven entrepreneurs and investors assurance that they will be able to hold a company accountable to its mission, helping such organisations to attract investment capital from a growing pool of sustainability-driven investors.

Benefit corporations attract greater employee talent among millennials, who, according to the *2014 Deloitte Millennial Survey*, will grow to 75 per cent of the workforce by 2025. The majority of millennials cite corporate purpose as part of their motivation to join a company.

Benefit corporations protect their mission through capital raises and leadership changes, and offer greater flexibility when evaluating potential sale and liquidity options. Finally, benefit corporations prepare businesses to lead a mission-driven life post-initial public offering.

CONCLUSION

Both the B Corp certification and benefit corporation legislation are helping to redefine success in business and support the development of the market and an economy with a positive impact on society and the environment. Held to higher standards of accountability and transparency than traditional for-profit businesses, both align with values of sustainability that are increasingly held by consumers, investors and sought-after employees, making it easier for these businesses to earn stakeholder trust and enjoy the benefits of being at the forefront of a growing movement. Certified B Corps and benefit corporations reflect the future Fortune 500. A new paradigm in business is taking place.

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1 See bit.ly/2Bst61V