How beneficial are benefit corporations?

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Benefit corporations are a new, fast-growing legal form of for-profit incorporation. They are under no legal obligation to maximise shareholder value. Instead, they are legally bound to pursue social benefit. At present, Benefit corporations (or some variant thereof) exist in the UK, Italy, and 31 of the 50 states in the US. Legislation is advancing in Australia, Argentina, Chile, Colombia and Canada.

Given the hype around these corporations, it is fair to ask: How beneficial are they likely to be? Since they are new, there have been few empirical studies of their social performance to date. What we can say is that there are reasons to hope for good performance but also grounds to doubt whether some of the promised benefits will materialise.

On the plus side: Entrepreneurs are using this form of incorporation to signal that they are serious about doing business in a different, more responsible way. So the legal form is definitely being used as a kind of social branding. Anecdotal evidence suggests that younger employees are drawn to profit-making firms with social purpose. Employee turnover is also significantly lower at some *benefit corporations*. Employee enthusiasm, energy, and retention may translate into corporate success.

In addition, *benefit corporation* status means that directors can confidently pursue a variety of stakeholder interests without having to fear that the company may be sued; in the US, the status grants directors protection from individual monetary liability. Since managers and directors do not have to worry (from the legal point of view) about delivering short-term profits, they can take a longer term view, which may result in more sustainable growth in the long-term. In the event that another firm attempts a takeover, directors of *benefit corporations* are legally free to reject bids that they deem not to be in the interest of those stakeholders whom the company is committed to serving. In the case of successful takeovers, the mission that defines the *benefit corporation* can continue for as long as the firm is viable.

That's the good news. But there are theoretical and pragmatic clouds on the horizon. Some consumers may construe incorporating as a *benefit corporation* as a form of "greenwashing". Consumers say they favour socially responsible firms, but companies still need to offer attractive goods and services at a competitive price to win over buyers. Consumers are not going to purchase from a company based upon its articles of incorporation.

Benefit corporations need capital just like any other for-profit firm. Investors may not demand a maximal return on capital, but they will desire a sustainable, fair return. Most *benefit corporations* are small enterprises with thin margins. Their expenses are not inconsiderable. By law, they are required to file a benefit report (typically annually) documenting what they have done to pursue their professed purpose.

Benefit corporation statutes also mandate that companies be reviewed periodically by a third party certifier (e.g., B Labs) to measure how well they are achieving their goals. Certifiers evaluate social performance using an array of environmental, social and economic metrics. The corporations being assessed are legally required to track, measure and report on their activities and policies. Producing the annual report and getting certified by third parties can be relatively expensive. Certifier standards are becoming ever more stringent, which can result in higher monitoring costs for the companies seeking a solid certification score.

Corporations often have many stakeholders with competing understandings of what qualifies as a social benefit. So, accountability can be a concern and navigating these various stakeholder expectations can prove challenging. U.S. law does not provide any clear recourse for unhappy stakeholders. There is no government regulator for *benefit corporations*. Even if there were one, their corporate charters allow management a lot of wiggle-room when it comes to deciding what counts as good performance. Firms are to pursue benefits. But what qualifies as a pursuit—a half-hearted single initiative? An incompetent, all out effort? A b*enefit corporation's* pledge to consider the interests of stakeholders but summarily rejecting some of these interests would still be a form of consideration.

Those seeking accountability face another difficulty. The firms are legally bound to file benefit reports, but some apparently are not doing so. Non-shareholders of U.S. *benefit corporations* legally cannot compel these firms to produce a report. In theory, firms that fail to generate reports can be de-chartered, but I know of no case where that has happened. Defenders of *benefit corporations* stress the good intentions of the entrepreneurs founding them. I do not doubt that many are of good character and have noble aspirations. Yet, history teaches us that it is naive to rely upon managerial good will alone. It is easy to disguise self-interest as a public benefit. We need to trust and verify. That is why the benefit reports must be produced and need to be widely available and easily accessed.

If *benefit corporations* are to succeed, their founders and the whole movement need to address these concerns. I hope they can do so, for the idea behind this type of incorporation is a good one. Indeed, early U.K and U.S. companies were granted charters only when the founders stated exactly what public benefits they hoped their new corporations to provide. In that sense, *benefit corporations* are a return to the original idea and justification of the business firm. If they succeed, they can serve society by producing goods that are really good and services that really serve.

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Notes:

- *This blog post is based on the author's paper Why the New Benefit Corporations May Not Prove to Be Truly Socially Beneficial, in Business and Professional Ethics Journal, Volume 35, Issue 1, Spring 2016, Pages 17-50, Special Issue on Benefit Corporations*
- *The post gives the views of its author, not the position of LSE Business Review or the London School of Economics.*
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