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Information about the research project being conducted on incorporation of social purpose organizations

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Information on survey on incorporation of social purpose organizations

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The research team posted a survey titled "survey on incorporation of social purpose organizations." The survey was intended to capture, among other things, broad awareness of benefit corporations as an incorporation option among accounting and law practitioners and educators in Illinois (classroom teaching/practice & opinions on the form's usefulness). In the sections below is some information related to benefit corporations. Additional information about the study will be posted when the results are available in a published format.

Information Related to Benefit Corporations

Historically, there has been little protection for U.S. corporate leaders who choose to place social purpose activity and broader stakeholder needs at the forefront of their decision making, especially when it might impact profitability. In the U.S., a benefit corporation is a type of for-profit entity which focuses on having a positive impact on society, workers, the community, and society at large, which provides organizations with legal protection when seeking to balance financial and non-financial interests in decision-making. In 2010, Maryland was the first state to pass benefit corporation legislation (Frederick, 2016). There are currently 36 benefit corporation laws passed among states and jurisdictions, with more continuing their work with similar legislation (B Lab, 2019a).

A research study by Berrey identified over 7,700 benefit corporations formed in the time period of October 2010 through December 2017. Based on publicly available online activity, about 35% of them were considered operational (Berrey, 2018, p. 49). However, caution is to be taken in interpreting the association of an entity as "operational" attributable to existence of online activity (their own or third-party websites), but the research from this gathering of data is helpful to understanding the present status of benefit corporations. This study also identified Oregon as the state with the highest proportion of benefit corporations (26%), respectively followed by New York, Nevada, Delaware, Colorado, California, and Maryland (2%), with "other states" comprising 9% (Berrey, 2018, p. 52). The study also showed that various industries utilize the benefit corporate form of incorporation.

It is important to clarify that since benefit corporations are a form of for–profit entity, they are taxed in the same way that corporations are taxed, while non-profits are tax exempt and subject to earning restrictions, lest the tax-exempt status of the non-profit become in jeopardy. Benefit corporations goals are to remain profitable, while "doing good"; i.e., there are dual desires of such entrepreneurs to earn money with their innovations and ideas, while not being restrained by sole focus to the bottom line, per se. In other words, the fiduciary responsibility of the corporation oriented solely to shareholders is lessened in the benefit corporation environment, which instead embraces the idea of being responsible to all stakeholders from consumers, employees, and suppliers to shareholders and directors.

Some key advantages associated with motivations to form a benefit corporation include unlimited earning potential, and freedom to act with a sense of social responsibility, without concerns of shareholder revolt (lawsuits) related to the shareholder interests not being the sole criteria of consideration. This includes not only daily decision-making, but offers legal protections that serve the company mission, in cases of subsequent merger or acquisition.

Certainly the desire for socially responsible business practices and attention to matters of sustainability have driven continued growth in the number of benefit corporations. Part of the momentum is due to the efforts of B-Lab, which has provided model benefit corporate legislation (MBCL) for use by states, and informational resources to companies (B-Lab, 2019b). States following the B Lab model legislation typically require the company to have a public benefit purpose, that directors be held to consider various stakeholders, that a benefit report be filed, and that to change the company's mission requires at least 2/3 vote of shareholders (Weber & Pippin, 2016).

Delaware benefit corporation law, while influenced by the MBCL, was designed to be a more attractive benefit corporation option for companies raising external capital (Alexander, 2018). It departs to varying degrees from the MBCL in, for example, the areas of specification of public benefits, evaluation against third-party standards, the requirements of directors, and legal claims (Alexander, 2018). A few states have chosen to align more closely with the Delaware laws. Alexander (2018) offers a helpful primer explaining the major forms of benefit corporation law.

While the B-Lab and related B Corp certification have facilitated awareness of benefit corporations, there is also confusion pertaining to terminology in use, as individuals may assume that all businesses with B Corp certification are benefit corporations, which is not the case. Benefit corporation is essentially the reference to the incorporation format – i.e. a benefit corporation; certified B-Corp status is an independent assessment rendered by B Lab. B Corp certification however does requires that a company that is B Corp certified become a benefit corporation within a specified period of time when the certified company is incorporated in a state that offers the benefit corporation option. So while some organizations are both, there can be either one without the other.

Some key differences in the state requirements of the benefit reports include frequency with which reports are to be prepared, the stakeholders to whom they must be distributed, required contents of the reports, and the standards used to measure. Requirements associated with the choice of which state to incorporate will have impact on subsequent reporting and organization founders need to be aware of this.

To date, three benefit reporting models have been recognized for key characteristics (Ball, 2016), as follows:

> Model B corporations or MBCLs are considered to have "accountability focused reporting requirements." Such accountability actions relate to time period of report delivery, posting

publicly or providing it free of charge, and requirements to file with Secretary of State. Since third party standards vary, much latitude in what is reported. Also there are no explicit enforcement mechanisms for failure to file, which is a criticism of the model.

Delaware Public Benefit Corp (PBC) model is considered to have "board- centered reporting requirements." The Board determines objectives, the standards to be adopted, the factual information that show the standards being adhered to, and assessment of success in meeting objectives. The Board determines if the report is made public, and the frequency. The Delaware standards are more relaxed than Model B.

California Social Purpose Corporation (SPC) model is considered to have "governance-focused reporting requirements." While California enacted a law using the Model B-corp listed above, it also offers an SPC, previously named as a flexible purpose corporation. Here social purposes set forth in the articles of incorporation are considered, and reports (similar to benefit reports) are to be filed along with Management Discussion and Analysis, without specifics of what is to be included.

Overall, benefit corporations offer organizations a relatively new legal structure to help align long term missions with value creation, and enables firms to have more flexibility when seeking to attract capital investment.

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