Becoming a Pennsylvania Benefit Corporation to Set Your Business Apart

by Brian P. Slough, Esquire

In today's modern marketplace, good business is not only about profits and losses. In addition to furthering the goals of shareholders, many businesses now have the additional focus of providing benefits to the public. Operating in a manner that emphasizes good corporate citizenship is now a fundamental component of many businesses' operating philosophies, and such philosophies have power to correspondingly increase a business's competitiveness. If your business operates with this philosophy, then perhaps a Benefit Corporation may be the right corporate structure for your company.

Companies that support public interests as part of their normal operations are able to set themselves apart from competitors by registering as Benefit Corporations. Benefit Corporations are Pennsylvania business corporations organized for profit. Benefit Corporations are very similar to typical corporations; however, beyond pursuing typical business interests, a Benefit Corporation has the additional corporate focus of creating and/or supporting general public benefits. Designating your corporation as a Benefit Corporation may attract customers, investors, or other stakeholders who are interested in supporting, building, or investing in businesses that operate in a socially and environmentally responsible manner.

A Benefit Corporation may be formed at the time of the filing of articles of incorporation or by amending existing articles. However, a business should not take the step of becoming a Benefit Corporation lightly, nor should a business which is not interested in providing general public benefits attempt to use this designation as a public relations ploy. A Benefit Corporation must provide a "general public benefit." A general public benefit means that the business's operations provide a material positive impact on society or the environment. The specific public benefits a Benefit Corporations may provide include:

- providing low-income or underserved individuals or communities with beneficial products or services;
- promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;
- preserving the environment;
- improving human health;
- promoting the arts, sciences or advancement of knowledge;
- promoting economic development through support of initiatives that increase access to capital for emerging and growing technology enterprises, facilitate the transfer and commercial adoption of new technologies, provide technical and business support to emerging and growing technology enterprises or form support partnerships that support those objectives;
- increasing the flow of capital to entities with a public benefit purpose; or
- accomplishing any other particular benefit for society or the environment.

Directors of a Benefit Corporation must consider certain public interests when determining if an action is in the best interest of the corporation, including:

- the interests of customers as beneficiaries of the general or specific public benefit purposes of the Benefit Corporation;
- community and societal considerations, including those of any community in which offices or facilities of the Benefit Corporation or its subsidiaries or suppliers are located; or
- the local and global environment.

While considering the public interest is required in decision making, no particular public interest trumps other typical business concerns unless the importance of that particular public interest is designated in the corporation's governing documents as trumping other concerns.

There are some requirements applicable to Benefit Corporations that do not apply to other corporations. For instance, each year a Benefit Corporation must prepare and distribute to its shareholders an annual benefit report that describes its efforts to foster public benefits during the preceding year. The report must be filed with the Pennsylvania Department of State, thus making it a matter of public record. The report must also be posted on any public website maintained by the corporation. The report must provide certain details regarding the corporation's efforts to serve the public.

Your business may already pursue some of the above goals and interests as part of your corporate philosophy. If your business has already committed to these goals, then taking advantage of this new designation may be an excellent methodology to boost your public image as a socially responsible corporation. If you are considering a start-up business and believe that creating public benefits should be an important part of your corporate philosophy, then this designation may be right for you. Registering as a Benefit Corporation can help ensure your business receives the recognition it deserves for operating in a socially responsible manner.

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