In pursuit of a triple bottom line

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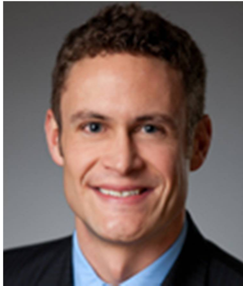
BY: Duncan Delano



Duncan Delano

Next year, Oregon will offer a new type of business – the “benefit company.” It’s a for-profit company that must also provide a benefit to the public, defined as a material positive impact on society and the environment.

Oregon becomes the 18th state to adopt such legislation. Most states refer to this new entity as a “benefit corporation” or “B Corp” – not to be confused with the sustainable business certification standard, “B Corporation.” But both the certification and new business form strive for the same thing: a business that pursues a triple bottom line of profit, environmentalism and social equity.

Whereas directors and officers of a traditional company have a fiduciary duty to run the business in the best financial interests of the shareholders, directors and officers of a benefit company have an expanded duty to consider impacts of the business on society and the environment.

But beyond this expanded (and somewhat amorphous) legal duty, what are the practical implications of this alternative business form? That depends on one’s perspective.

To the business founder, the benefit company offers the ability to incorporate the founder’s ideals and commitment to sustainability into the business operations. The founder can ensure that the pursuit of profit runs parallel with social and environmental values, because any director or officer brought in must operate the business in a sustainable way. And with that comes marketing potential. A benefit company can establish itself as a leader in sustainability, which becomes even more advantageous as consumers increasingly demand sustainable practices.

A benefit company’s founder may also find additional funding or networking sources available. A number of angel investment groups focus on companies within the sustainability field, and some venture capital firms with an interest in socially or environmentally responsible companies. The benefit company tag may become a standard for sustainability-driven investing.

A note of caution for the would-be Oregon benefit company owner, however: Ceasing to be a benefit company requires only a majority vote of the shareholders, unless that margin is increased in the organizational documents. So, it may be harder for a business owner to keep the benefit mission intact following outside investment or acquisition.

For a director or officer of a benefit company, the principal implication is the expanded duty mentioned earlier. Under the new law, a director or officer must consider the following interests when making business decisions: the shareholders or members; the employees of the company, its subsidiaries and suppliers; the company’s customers; the local community of the company, its subsidiaries and suppliers; the local and global environment; the short- and long-term interests of the company; and the ability of the company to fulfill its benefit purpose. Thus, there is a much broader group of stakeholders.

A director or officer is not subject to personal monetary liability for failing in the benefit duty, but shareholders or members can sue the company or its directors and officers to compel them to comply with the benefit purpose.

Administratively, a benefit company must annually issue a "benefit report," which chronicles the company's actions toward achieving its benefit purpose, including a self-assessment (not a third-party audit) of its sustainable practices measured against a third-party standard.

Any investor looking at a benefit company would likely have an interest in sustainability, and the benefit purpose requirement built into the company's charter can provide an investor with more certainty that such practices are followed. The investors receive the benefit report each year and may sue to enforce compliance with the benefit purpose (to my knowledge, no such suits have been commenced).

Of course, it may be difficult to determine exactly when a benefit company has failed to live up to its benefit purpose, and a court would likely defer to the directors in that regard. A benefit company is also only beneficial if it succeeds financially, and it may be difficult for investors to hold the company financially accountable when it is forced to consider so many other interests.

From the community perspective, a benefit company raises the specter of greenwashing, especially because there is no third-party audit, and community citizens cannot sue to enforce benefit company requirements. Nevertheless, public availability of benefit reports could let community members act as watchdogs – bad publicity and boycotting, especially in this age of social media, can be a powerful enforcement tool.

Benefit companies are an emerging trend (even Delaware is moving forward on legislation). Will it be a meaningful trend … even revolutionary? That remains to be seen. At its core, it's simple: a business is part of the community, so shouldn't it consider its impacts on the community? Pursuing the triple bottom line may become the norm one day, and there may be numerous ways to get us there. Even if the benefit company isn't perfect, it's the best idea yet.

Duncan Delano is a member of the corporate, real estate, and environmental and natural resources practice groups at Tonkon Torp. Contact him at 503-802-5760 or at duncan.delano@tonkon.com.