

New York Authorizes Benefit Corporations

On December 12, 2011, Gov. Andrew Cuomo signed legislation permitting a new type of New York corporation known as a benefit corporation (or "B Corp"), making New York the fifth state to permit business corporations to elect in their certificates of incorporation to pursue public purposes.

Benefit corporations have been big news lately. However, existing not-for-profits have nothing to fear from the new entities: the B Corp legislation does nothing to change the law regarding not-for-profits and does not affect their exempt status.

The new law presents an exciting opportunity for for-profit enterprises to pursue the public good alongside their business activities.

All benefit corporations must pledge to have a material positive impact on society and the environment taken as a whole, assessed against a third-party standard. In addition, a benefit corporation can, in its certificate of incorporation, identify one or more specific public benefits that it is the purpose of the benefit corporation to create. The statute sets forth a number of examples, including providing low-income or underserved individuals with beneficial products or services, promoting economic opportunity, preserving the environment, improving human health, and promoting the arts or sciences. Directors are required to consider the public benefit obligations of a B Corp in carrying out their duties.

Existing business corporations can elect to become benefit corporations by vote of three quarters of their stockholders. New corporations can elect to be benefit corporations in their certificate of incorporation.

If you would like to discuss the impact of the B Corp legislation on your organization, or any other not-for-profit matters, contact your HSE not-for-profit attorney. ■

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