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Business Law

The New Illinois Benefit Corporation Act

By Stephen Proctor

The new Illinois Benefit Corporation Act encourages creation of corporations that advance worthy public purposes. It also requires public accountability and disclosure.

As of January 1, 2013, there is a new form of business in Illinois, the benefit corporation. Benefit Corporation Act, Public Act 097-0885 (2012) ("Act"). A benefit corporation, as the name implies, must be used for purposes other than maximizing value for shareholders. Instead, it must also be used for a "public benefit."

The existing Illinois Business Corporation Act of 1983 (BCA) already applies to benefit corporations, except as provided in the Benefit Corporation Act. Section 1.05(c). But there are some unique features of a benefit corporation under the new Act to which corporate attorneys are not accustomed, notably the disclosure of owners and public accountability.

A benefit corporation is formed simply by including in the articles of incorporation a statement that it is a benefit corporation under the Act. Sections 2.01 and 2.05. A benefit corporation must also include "creating general public benefit" as a purpose, with the option of including a specific public benefit. Section 3.01. An existing corporation can become a benefit corporation by amending its

articles of incorporation to comply with the Act. Section 2.05. Therefore, whether a particular corporation is a benefit corporation can be determined from the articles of incorporation, which is a public record.

But what is a "specific public benefit?" The Act lists seven activities, including providing benefits to underserved or low-income individuals or communities, promoting economic opportunity, preserving the environment, improving health, promoting arts and sciences, increasing capital to other benefit corporations, or accomplishing other benefits for society or the environment. Section 1.10. While the list is comprehensive, it is apparently exclusive, since it does not contain non-limiting language, such as "not limited to" or "includes."

Protections - and requirements - for officers and directors

But there is much more to running a benefit corporation than simply putting the magic words in the articles of incorporation. One portion of the Act is devoted to accountability, another to transparency. There are specific standards for directors and officers, requiring them to consider the effects of their actions not only on shareholders, but also employees, customers, communities, the environment, and the ability of the corporation to accomplish its general and specific public benefit purposes. Sections 4.01 and 4.10.

But the Act also protects directors and officers from personal liability for their actions on behalf of a benefit corporation and provides that they have no duty to the corporation's potential beneficiaries. Sections 4.01 and 4.10. A benefit corporation must have a "benefit director" and a "benefit officer," who can be the same person. Sections 4.05 and 4.15.

The Act requires a benefit corporation to publicly report on its activities. Section 5.01. It must prepare an annual benefit report describing the ways it pursued its general and specific public benefit purposes and any circumstances that hindered it from doing so.

The report must also use a "third party standard" to enable the public to evaluate its performance. The "third party standard" is a comprehensive assessment of the business and its operations as they relate to the non-shareholder beneficiaries of the benefit corporation. It must be developed by an independent entity, not controlled by a specific industry, that publicly discloses its evaluation criteria and source of financial support. Section 1.10.

The annual benefit report must also include information such as a) the names of the benefit director and benefit officer, b) the compensation paid to each director, and c) the names of each person owning 5 percent or more of the benefit corporation. The report must be made publicly available by sending a copy to each shareholder, posting on the corporation's website, and, if it has no website, providing a copy without charge to anyone who requests a copy.

Ideally, the new Illinois Benefit Corporation Act will encourage the creation of entities that advance worthy public purposes. But it also creates some requirements, such as public accountability and disclosure of owners, to insure that benefit corporations meet the purposes for which they were created.

Stephen Proctor is a member of the Institute of Illinois Business Law (<http://ilibl.org>) and a principal at Masuda, Funai, Eifert & Mitchell, Ltd. in Chicago and Schaumburg.