



# Accountability and the public benefit corporation

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## KEYWORDS

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Third-party certification;  
Corporate accountability;  
Social enterprise;  
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**Abstract** Can benefit corporations be held accountable for delivering requisite public goods? An oft-cited criticism is that they cannot, but little empirical research exists to support that claim. Based on an in-depth case study of the oldest corporation to amend its governing documents as a public benefit corporation (PBC) under Delaware law, this article suggests that a company can be held accountable for delivering requisite public goods when external mechanisms are accompanied by an organization's internal commitment to self-awareness, learning, and measurement. In the case in question, the company established a three-pillar structure focused on professional engagement, community support, and charitable giving built on a 6-year-old sustainability initiative, accompanied by an adaptive learning culture, and driven by top-down and bottom-up efforts. Current challenges include measuring impact and branding the PBC to grow the company's business.

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## 1. Benefit corporations: Focus on stakeholders, not just shareholders

A benefit corporation is a new legal form that requires for-profit companies to focus on stakeholders in addition to shareholders when making decisions. Benefit corporations were created and launched by B Lab with the first legislation that passed in Maryland in 2010; 31 states now have

approved benefit corporation-related legislation ([Benefit Corporation, 2017](#)). Nearly 5,000 companies are incorporated as some version of a benefit corporation (F. Alexander, personal communication, March 3, 2017) and it is the most widely adopted social enterprise statute ([Murray, 2014](#)).

While interest in benefit corporations has increased in law journals ([Cummings, 2012](#)) and the popular press ([Bend & King, 2014](#)), there have been no in-depth, firm-level examinations of how companies have implemented any non-legal changes to accommodate this new legal status and, in particular, of how established firms have changed from a more

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conventional legal structure to a benefit corporation. The present article begins to fill this gap. It examines an environmental consulting firm's journey through several structural iterations in its 43-year life before its most recent incarnation as a 100% employee stock ownership plan (ESOP)-owned public benefit corporation (PBC) under the Delaware statute ([State of Delaware, 2016](#)). It is the oldest company to date to incorporate as a PBC in Delaware, as most companies become benefit corporations when they first incorporate rather than converting years after their founding. Therefore, focusing on this company's journey provides insight into how and why an established midsize company might transition to benefit corporation status, along with recognition of key challenges for companies, in general, that incorporate as such.

## 2. Are benefit corporations held accountable for public benefits?

The ostensible benefits of becoming a benefit corporation include building a distinctive brand; providing clear legal guidance to and protection of a board of directors that wishes to pursue social benefits; protecting a board of directors from an unwanted takeover bid; and avoiding problems associated with other new forms of social enterprises, such as the diminished profit incentive with the low-profit limited liability company ([Koehn, 2016](#)). However, these benefits may not materialize because the form relies on managers tending to other-regarding concerns while still retaining corporate incentive structures ([Fischer, Goerg, & Hamman, 2015](#)). That is, while companies should be held legally accountable for meeting their multistakeholder public benefits, only shareholders can exercise this accountability. A key challenge in the benefit corporation movement, therefore, is ensuring that managers and directors are held accountable to stakeholders other than shareholders ([André, 2015; Reiser, 2011](#)).

Typically, scholars approach this challenge from at least two directions. First, they ask: To what extent will the benefit corporate form enable companies to realize public benefits? The answer to this question relies on, presumably, the interpretation of 'public benefit' and whether the new corporate form increases incentives to expand focus to multiple stakeholders (or decreases incentive to restrict focus on shareholders). Second, scholars ask: To what degree are benefit corporations actually held accountable for realization of these public benefits? I address each question below.

To begin, some experts question the degree to which the benefit corporation really leads to public

benefits ([Koehn, 2016](#)). Whose benefits should the benefit corporation pursue? A bit of background is necessary here. B Lab introduced a model statute, which the majority of adopting states have used ([Murray, 2014](#)). One notable departure is the state of Delaware, which distinguishes its benefit corporate form as a public benefit corporation (PBC). There are three primary distinctions between the two legislations ([Murray, 2014; Plerhoples, 2014](#)):

1. The Model requires a third-party audit<sup>1</sup>; the PBC does not.
2. The Model requires annual reporting to the public; the PBC requires biennial reporting and only to shareholders.
3. The Model requires the company to consider at least seven different stakeholder types in decisions, but provides little clarification as to the hierarchy of these considerations ([Reiser, 2011](#)). The PBC statute is more precise in that it requires that the PBC "identify within its statement of business or purpose pursuant . . . 1 or more specific public benefits to be promoted by the corporation" ([State of Delaware, 2016, §362](#)). These benefits include, but are not limited to, "effects of artistic, charitable, cultural, economic, education, environmental, literary, medical, religious, or scientific or technological nature" ([State of Delaware, 2016, §362](#)).

In short, the question of whose benefit to pursue is subject to wide interpretation in the Model legislation, while the PBC requires that the benefit be specified in the corporate charter.

While some scholars doubt the ability of the form to result in public benefits, others question the degree to which the benefit corporation is actually held accountable. One obvious assumption here is that the benefit corporation will not realize public benefits unless it is properly held accountable, a point to which I return later. Benefit corporations ensure accountability using three main mechanisms: the

<sup>1</sup> "It might be confusing to refer to the requirement under the Model as an 'audit.' While use of a third party standard is required, there is no verification or assurance requirement; the company can apply the standard itself" (F. Alexander, personal communication, October 9, 2016).

<sup>2</sup> "While the Delaware statute does require a specific benefit, it also requires consideration of impact on anyone materially affected by its conduct, and this matches up to the general public benefit requirement in the Model" (F. Alexander, personal communication, October 9, 2016).

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