B Corps & Benefit Corporations

Understanding the implications for companies and investors

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Executive Summary

In recent years, we have seen the advance of a business movement towards greater transparency and commitment to pursuing social and environmental objectives in addition to profits. A number of listed companies, and many more unlisted ones, have chosen to become certified B Corporations, or 'B Corps'. This is essentially an explicit recognition of the need to create a positive impact for all stakeholders of a business, not just shareholders, and to verify this impact by meeting certain standards of performance. New corporate forms have also emerged, for example with the passing of Benefit Corporation legislation. This allows a company to incorporate as a for-profit entity which is legally required to identify and pursue one or more social and environmental objectives.

These developments – a company-wide certification and new corporate forms - mark a fundamental change to the traditional business model. With the number and visibility of B Corps rising around the world, and as more countries pass Benefit Corporation legislation, there is a need for investors to understand the opportunities and challenges presented by the changing business and legal landscape.

Key Findings

- Companies decide to become B Corporations and Benefit Corporations primarily due to the motivation to pursue a corporate purpose beyond profits, based on an expanded definition of success that includes social and environmental objectives. They are also driven by a desire to promote corporate transparency and establish authenticity, factors which could help build trust with stakeholders. Often the decision is further motivated by a company already being largely aligned with these factors.
- The core benefits of the B Certification include enhancing corporate transparency, establishing greater authenticity of a company's social commitments, and providing a solid framework to improve performance over time. At the same time, there are costs to be considered, namely the additional resources required and weaknesses in the metrics and standards which have been developed. The Benefit Corporation legal form could provide even stronger recognition of a company's broader purpose and increase the credibility of its commitments, however it may also carry greater uncertainties and bear heightened risks for companies which adopt a new legal entity. Businesses considering the certification or corporate form should weigh up the benefits and costs, and how these could impact overall strategic goals and the ability to access capital for growth.
- There are several practical, institutional, and systemic barriers that currently act as impediments to more publicly listed companies being certified B Corporations or Benefit Corporations. Solutions to overcome these barriers must involve multiple actors. The ongoing work of an advisory council with participation from several publicly listed companies is notable, and signals that more developments can be expected over the coming years. In addition, our examination of the first IPO of a Benefit Corporation suggests that analysts have not viewed the corporate form unfavourably.
- Legislation currently exists in the UK, Canada, Italy and Puerto Rico that enables companies to incorporate with a legal purpose rooted in social and environmental goals. Further legislation is being developed around the world, with several new corporate forms likely to emerge in the future, especially in Chile and Colombia where development of the legislation has gone furthest. As is the case across US states, the global legislation varies significantly depending on the jurisdiction. The national context is also crucial. Any company deciding whether to incorporate under the new forms should take into account the interplay between the profit motive and corporate purpose, as well as any additional obligations that are created. Management should establish a clear dialogue with providers of capital to ensure that they are on board with any decision.

Report Roadmap

Introduction

What is a B Corp?

A certified B Corporation, or 'B Corp' is a company which has been accredited for "meeting rigorous standards of social and environmental performance, accountability, and transparency" by the non-profit organisation B Lab. [1] B Lab promotes a global movement towards using 'business as a force for good', with the vision that businesses will compete to improve the world and create enduring prosperity. There are currently over 2,000 B Corps worldwide, across 54 countries. [2] Examples include high-profile companies such as Ben & Jerry's (a subsidiary of Unilever), Patagonia, and Etsy. The key requirements for certification are:

Performance Requirements

The performance requirement for certification is determined by taking the *B Impact Assessment*. [3] This measures a company's impact across the following four thematic areas -workers, governance, community, and the environment, which combine to produce an overall score. B Lab establishes the minimum score which must be achieved for a company to become certified. Points are awarded for every positive answer to the assessment questions, with no negative scoring. Any score above zero is considered to be good as it reflects a company's positive impacts on society and the environment. [4]

Transparency Requirements

B Corps must make their *B Impact Assessment* Report publicly available. This presents a summary of the scores achieved in the four assessment areas identified above. [5]

Legal Requirements

The company must also meet the legal requirement of the certification by requiring company directors to consider the interests of all stakeholders, not just shareholders. This can be achieved by amending the company's articles of association, or by adopting a corporate form such as the Benefit Corporation, which automatically fulfils this criterion. Governing corporate documents may be amended to state that in discharging their duties, directors "shall consider the effects of any action or inaction" on a list including - employees, suppliers, customers, the environment, short and long-term interests of the company, and the creation of a material positive impact on society as a whole. [6]

What is a Benefit Corporation?

A 'Benefit Corporation' describes a for-profit corporate entity that legally incorporates using the relevant legislation in a state or country where it has been passed. At its core, the Benefit Corporation serves to answer the fundamental question - *for what purpose does a corporation exist?* – by expanding on traditional profit motives to also include the objective of creating a public benefit. The legal entity reinforces the role of business in society by not only permitting, but formally requiring a company's management and board of directors to consider the impacts of business decisions on a broader set of stakeholders beyond shareholders (e.g. customers and the wider environment).

The 'Benefit Corporation' entity first emerged in the US, and to date 30 states and the District of Columbia have passed legislation. [7] Internationally, Italy and Puerto Rico have created Benefit Corporations, and several more countries are considering the legislation. [8] Although the terminology 'Benefit Corporation' is broadly used across many jurisdictions, it is worth noting that there are substantial differences between the legislations passed in different places. For example, the US state Maryland, which was first to pass legislation in 2010, adopted the model version that was proposed by B Lab. Although some places have followed suit, others have created their own version – a notable variant is the 'Public Benefit Corporation' passed in the state of Delaware, which has long been the favoured state of incorporation for US companies. In addition, there are alternatives which serve a similar function, such as the California Social Purpose Corporation. A common feature is that none receive special tax advantages.

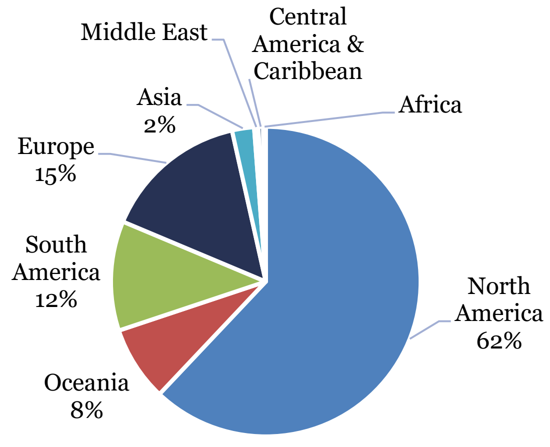
Key similarities and differences

B Corporations and Benefit Corporations may possess similar names, but they should not be confused. In the table to the right, the key similarities and differences are highlighted.

Characteristics	Certified B Corporation (B Corp)	Benefit Corporation
Directors required to consider a broader range of stakeholders?	✓	✓
New corporate form created?	✗	✓
B Lab advocates for it?	✓	✓
B Lab has an oversight role?	✓	✗

Where are B Corps located?

Although the B Corp movement began in the US, it is increasingly a global movement. B Corps are spread across 54 countries, with significant percentages being located in the regions of Europe (15%, led by the United Kingdom), South America (12%, led by Chile), and Oceania (8%, led by Australia). [9]



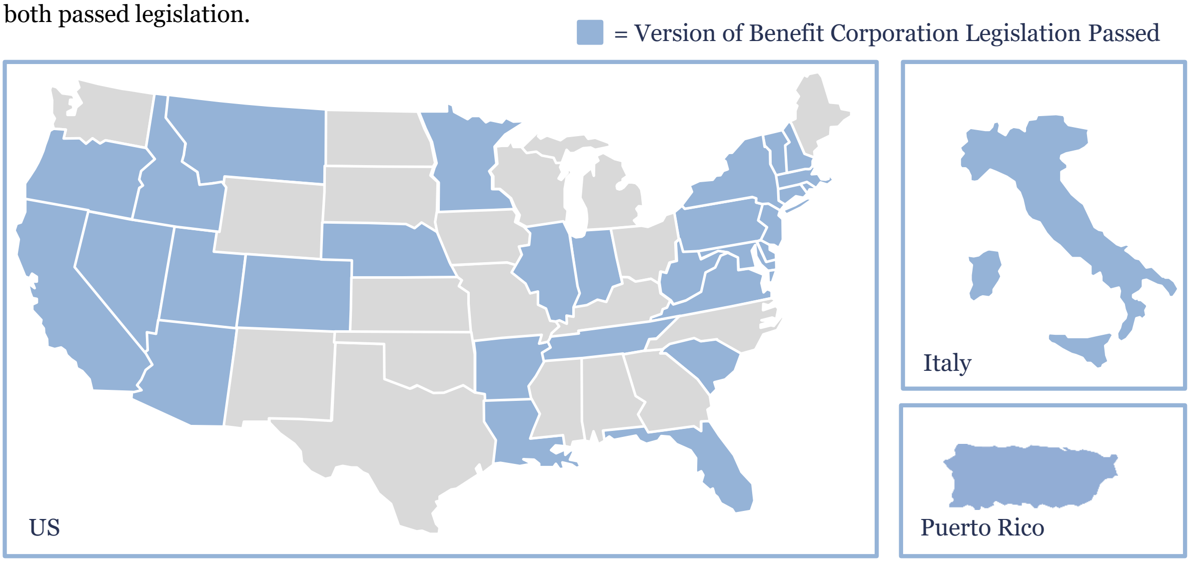
Are there publicly traded B Corps?

Yes, there are a handful of B Corps which are publicly traded. These are Natura (NATU3:BVMF), Etsy (ETSY: NASDAQ), Australian Ethical (AEF:ASX), Snakk Media (NZAX: SNK), New Resource Bank (NWBN: OTC), Silver Chef (SIV:ASX).

In 2013, Rally Software became the first B Corp to go public (RALY:NYSE). It has since been acquired by CA Technologies and appears to have dropped the certification. Additionally, a number of publicly listed companies have subsidiaries which are B Corps, such as Unilever (Ben & Jerry's, Seventh Generation) and Campbell Soup Company (Plum Organics).

Where is Benefit Corporation legislation available?

In the US, legislation is available in 30 states plus the District of Columbia. Internationally, Italy and Puerto Rico have both passed legislation.



Are there publicly listed Benefit Corporations?

Yes, 2017 saw the landmark occasion of the first Benefit Corporation going public. Laureate Education began trading on the Nasdaq Global Select Market on 1st February 2017, as a Public Benefit Corporation (PBC) domiciled in the US state of Delaware. In its initial offering, it raised net proceeds of around $465.5 million. [10] Laureate Education is also a certified B Corporation.

Part One

Motivations, Benefits & Costs

Motivations, Benefits & Costs

Motivations

The rising number of certified B Corporations around the world coupled with the emergence of Benefit Corporation legislation in multiple countries invites us to ask the question, what motivates a company to pursue these options? In the following pages, we investigate the motivations of B Corporations and Benefit Corporations. Focused on the perspectives of management executives, our research suggests that companies are motivated by the following factors:

- **Pursuing a purpose beyond profits-** by expanding on the definition of business success to include social and environmental objectives. The business is managed and operates in a way that considers the long-term value created for all stakeholders.
- **Upholding transparency –** by adopting a common framework that builds trust with stakeholders and allows for comparisons to be made between companies.
- **Demonstrating authenticity –** with credible commitments to pursue a purpose beyond profits, supported by tangible evidence of the company's performance on social and environmental objectives.
- **Gaining recognition for what's already there**– which makes certification or incorporation effortless because the core business values are already aligned with the requirements.

Certainly, the concept behind the movement - '*business as a force for good*' – resonates within and beyond the growing community of B Corps and Benefit Corporations, and reflects an increasing recognition that business can, and indeed should, play a positive role in society, in a way that seeks to benefit a broad range of stakeholders beyond shareholders, including employees, suppliers, customers, and local communities.

Benefits & Costs

As the B Corp certification and Benefit Corporation legislation gain momentum, it is likely that many more companies will begin to consider these two options. It is therefore crucial to have a clear understanding of what the practical implications of the decision are, and whether there are significant benefits or costs involved. For this reason, we next turn our focus to answering the question - what do companies stand to gain and lose?

The findings which are presented in the following pages suggest that the B Corp certification poses several benefits, but also carries a number of risks that should be considered. A core benefit is that it provides a framework for what is often considered a challenging task - quantifying a company's social and environmental performance. This framework can strengthen management practices and inform decision-making that could help a company improve its performance over time. Additionally, the certification may enhance transparency by requiring certain company information to be published, and may reinforce management accountability by clarifying the social and environmental obligations of managers. Together, these benefits could establish greater authenticity of a company's commitments to pursue goals beyond making profits, which could potentially enhance trust in the business.

Yet certification is not necessary for a company to perform on social and environmental commitments. Many companies have built their success on pursuing social and environmental goals in addition to profits without ever having certified. This poses the question– why cover the costs? Moreover, there are notable risks involved, such as that the scoring system designed by B Lab might not accurately reflect a company's real performance, and that a lack of oversight means that some B Corps are probably being accepted without meeting the necessary standards.

We also find that the Benefit Corporation status could provide even stronger recognition of a company's broader purpose and increase the credibility of its commitments, however it may also carry greater uncertainties and bear heightened risks for companies which adopt a new legal entity. In particular, two aspects are cause for significant concern. These are primarily the legal uncertainties inherent in new corporate forms which have not been tested in court, and the lack of knowledge from investors that could potentially affect the ability of Benefit Corporations to access mainstream capital.

Every business is different, and there is no 'right' answer to the question of whether a company should make the transition. This depends on the company's short and long term goals, management's aims and objectives, and the relationship with investors. Before becoming a B Corporation or Benefit Corporation, management should carefully evaluate the pros and cons that might affect the business, especially legal and investor considerations, as well as additional requirements created.

B Corps & Benefit Corporations: What were their motivations?

Pursuing a purpose beyond profits

Company: Natura	***B Corp?***	Yes	***Benefit Corporation?***	No

Natura became certified in 2014, making it the first publicly traded B Corp in Latin America. [11] Natura commented "more than contributing to society with the adoption of sustainable practices, we wish to promote a growing movement of awareness and search for solutions to a more balanced and fair future with a **social, economic, and environmental perspective**. Being part of the B Corp movement strengthens our belief that we indeed must seek profit, which is the basis of our operation, but this should **not be the sole purpose of our existence**." [12] According to a member of Natura's Executive Committee, the certification "underscores our need to focus on short-term strategy, but without losing sight of the **long-term**, the company's future. Our objective in becoming a B Corporation is to maximize **value for society** as a whole." [13]

Company: Etsy	***B Corp?***	Yes	***Benefit Corporation?***	No

Etsy became a B Corp in 2012 and subsequently became a publicly traded company in 2015. Why did Etsy undergo certification? "We believe that business has a **higher social purpose beyond simply profit**. The B Corp assessment gives us a framework to measure Etsy's success against rigorous values and responsible practices as we scale". [14] A long-time Etsy investor and advisor explained "We believe that the best long-term stewards of Internet-based networks and marketplaces will focus on **value creation for all participants** instead of solely on shareholders." [15] CEO Chad Dickerson states, "I think becoming a Certified B Corporation is one of the most important things Etsy has ever done. It helps us keep an eye on the 'mindful, transparent, and humane' values we aspire to, and also keeps us focused on our intention to 'plan and build for the **long term**,' not just when it comes to Etsy but for the world at large." [16]

Company: New Resource Bank	***B Corp?***	Yes	***Benefit Corporation?***	No

When New Resource Bank achieved certification in 2010, this "underscored its commitment to **serving people and planet as well as profit".** [17] CEO Vince Siciliano commented "It's a community of sustainability-minded businesses that we want to be a part of and commit to extending…being part of the community is expanding our **thinking about sustainability.** In turn, we can share those insights with our customers as we work with them to help them become more sustainable." He added "It's easy for us to feel good about what we're doing, but we need to be grounded—we can't just set our own standards. This takes us outside of ourselves."

Demonstrating authenticity

Company name remains anonymous	***B Corp?***	Yes	***Benefit Corporation?***	Yes

The company has been certified since 2013 and has raised a venture round as a Benefit Corporation. The CEO commented that the status "helps guarantee the chain of custody", applying a legal term which refers to the preservation and documentation of **evidence** from the moment it is collected until the time it is presented in court. He adds "there is value in purpose, **authenticity**, and trust". The company became a B Corp as soon as possible, seeing the certification as a "validator" for the business. The CEO explained that the company's financial value is derived from its social mission, stating "we make decisions that are a **core part of the business**, not a bolt-on. It's simple- you lose your company value if you lose your mission." The need to preserve this value creation explains the company's pursuit of the B Corp certification and its decision to become a Benefit Corporation. The latter was motivated by a need for formal reassurance that the company's core commitments would be honoured even if the company was sold, as the CEO explained "I want to know that the legal value is there – if an investor is buying the business it's *because* we are mission-driven, and it says so *here*."

Company: Patagonia	***B Corp?***	Yes	***Benefit Corporation?***	Yes

Patagonia became a B Corp in 2011, to formalize its efforts to preserve natural resources and maintain transparency on the impacts caused by its operations, as well as to legally **preserve Patagonia's values**. [18] CEO Rose Marcario stated "becoming a B Corp ensured that we could codify into our corporate charter the values we hold dear".[19] More generally, Marcario highlights "the B Corp movement is one of the most important of our lifetime, built on the simple fact that business impacts and serves more than just shareholders—it has an equal **responsibility to the community and to the planet**". [20] Additionally, in 2012 Patagonia became the first California company to sign up to become a Benefit Corporation. Founder Yvon Chouinard commented "Patagonia is trying to build a company that could last 100 years… Benefit corporation legislation creates the legal framework to enable mission-driven companies like Patagonia to stay mission-driven through succession, capital raises, and even changes in ownership, by **institutionalizing** the values, culture, processes, and high standards put in place by founding entrepreneurs". [21]

B Corps & Benefit Corporations: What were their motivations?

Upholding transparency

Company: Ben & Jerry's	***B Corp?***	Yes	***Benefit Corporation?***	No

Ben & Jerry's became the first wholly owned subsidiary to achieve certification in 2012. CEO Jostein Solheim explained that undergoing the certification process, "where every facet of our **business is scrutinised** to ensure that we're walking the talk, is rigorous but rewarding. It allows an experienced, holistic, values-led third party entity that B Lab is the chance to affirm that we **remain true to our mission** and look to accelerate our social impact". [22] Rob Michalak, Director of Social Mission at Ben & Jerry's explains "Certified B Corporations codify what being a progressive, socially conscious business is all about. By becoming a Certified B Corp we are supporting the movement for business to play a leading role in providing social as well as economic benefits to society". [23] Michalak adds that the B Corp model "is a great one to provide the rigor and standards to **ensure that we are living up to our own mission** and that we push further" and "can ensure companies provide benefits to society in a way that's **transparent**, is balanced, and people can believe in". Moreover, "B Corp standards provide a very comprehensive framework for us to review our progress against our own goals and to establish new ones. The B Corp standards are shared by other organizations, so we can be part of and use a more universal baseline to measure our progress". [24]

Company: Seventh Generation	***B Corp?***	Yes	***Benefit Corporation?***	No

Seventh Generation is a founding B Corporation, having been certified since 2007. The company's decision to become a B Corp was motivated by a drive for **transparency**, and knowing who's behind products. According to management, certification helps to ensure authenticity as "it keeps us grounded in our purpose, ensuring that our continual efforts are bearing fruit". [25] The company sees the importance of disclosure, especially because revealing more information helps to differentiate the business from its competitors. They constantly look for more environmentally friendly alternatives to the industry norms, and it's valuable for the business to communicate this. There was also a desire to drive change in the industry, and in particular to transform cost structures on the more expensive bio based ingredients that the company uses as inputs.

Gaining recognition for what's already there

Company: Australian Ethical	***B Corp?***	Yes	***Benefit Corporation?***	No

In 2014, Australian Ethical became the first publicly listed company in Australia to achieve B Corp certification. [26] They stated "the value of a business should not only be determined by profit and assets, but by its relationships with communities and staff, caring for the environment, and a culture of supporting the needs of customers. The B Corp movement **represents all that Australian Ethical values**". [27] Through its investments, Australian Ethical aims to help build capacity for ethical businesses and by becoming a certified B Corporation wished to support and grow a community promoting better business for a better world. [28]

Company name remains anonymous	***B Corp?***	Yes	***Benefit Corporation?***	Yes

According to the CEO, "**it was easy** to become a B Corp". After management discovered the certification online, they underwent the assessment and found out that the business **already met the criteria**. There was no need to do anything further. Another factor that motivated the company to make the transition was trust. As the CEO explained, "in the information age, people know very little about products. The challenge is to educate, so that people know more and buy based on that knowledge of something better. We do the work internally, so that externally, the more you know, the better we compare". Moreover, he stated, "It's about having control structurally over our values and mission. This is not marketing or greenwashing, it's structural integrity for the business".

B Corp Certification: What are the main benefits?

Strengthen Management Practices

The certification provides a useful framework to quantify a company's performance on social and environmental aspects, which can help strengthen management practices. Internally, performance metrics allow the company to gather data to assess current practices and identify strengths and weaknesses. One B Corp told us that scores "identify where we can make improvements and push the business further". Another B Corp believes that quantifying performance has helped inform decision making and refocus goal setting, noting that before certification "there were a lot of company-wide things we were doing…but we had never actually measured any of those efforts." [29] Externally, performance measures allow for industry comparisons and benchmarking against competitors.

Enhance Transparency

The certification's emphasis on transparency is considered to be a key advantage for companies. For example, a B Corp CEO related the decision to certify to the fact that "we pride ourselves on transparency" while another commented that they 'embrace' transparency. Transparency is a hallmark of the business model of many B Corps, and helps to differentiate them from competitors. They relish the opportunity to provide real evidence of the positive social and environmental impacts of the company and to showcase authentic business practices which are rooted in the company's values.

Reinforce Accountability

The certification reinforces the idea that businesses have a responsibility to uphold the interests of stakeholders beyond shareholders, pushing a company to continually prove its social and environmental performance. As one B Corp manager noted, the framework serves "to hold ourselves accountable". A failure to perform could mean the company's scores publicly dropping or inability to re-certify. Furthermore, by amending their governing documents, a B Corp officially documents and clarifies the duties owed by directors to key stakeholders. The same obligations exist for all directors, thus making social and environmental concerns a legitimate part of evaluating management's performance over time and fostering continuity when there is a change in personnel.

Build Trust

The B Corp certification helps a company to build trust with stakeholders. Why? Information about the company's performance is perceived to be reliable and accurate because certification is accredited and overseen by an independent third party. Certification also signals a genuine commitment from management that is backed up by transparent evidence. As the Director of a Brazilian B Corp highlighted, "It is much better to have a concrete number than a feeling or a story. This process also helped others, especially customers and other buyers, have more trust in our company." [30]

Customer Loyalty

B Corp certification helps boost customer loyalty. B Corp CEOs commented "customers love it", "we are seeing a lot of interest in business practices from customers", and "the more we open the door, the more loyal customers are". According to the Chief Marketing Officer of one B Corp, internal marketing analysis shows that customers who understand the business are twice as loyal, and that advocacy has a higher return on investment than traditional marketing. According to Ben & Jerry's, "There's no question that people place a high value on companies that manifest a social purpose alongside economic and environmental missions. We can easily argue—and find studies that show—that people are more loyal to and will switch to supporting companies with a social purpose." [31]

Network and scale

The growing B Corp community offers a large network that promotes the business movement, and provides opportunities to inspire, collaborate, and learn from other like-minded companies. The CEO of New Resource Bank explained that the community "is continually evolving in its thinking and practices, and B Corp represents some of the best thinking on how to integrate the triple bottom line—managing for people, planet and prosperity—into a company." [32] B Corps may benefit from doing business with one another - for example, choosing another B Corp as a supplier could help ensure consistency through the supply chain. Additionally, B Corps receive a range of product and service discounts from selected partners. The network also helps to scale the movement. For instance, the Latin American arm of B Lab, 'Sistema B', has partnered with organisations such as the Ford Foundation, the Development Bank of Latin America, and the Government of Chile to strengthen and scale the B Corp model across the region. [33]

Media Attention

B Corps have attracted significant attention in the press and mainstream media outlets. In 2016, headlines included "*Why B Corps hold the future promise of business*" and "*Can B Corp be the next Fair Trade for socially-minded corporations*?". [34] A key strength of accrediting body B Lab is its ability to market the B Corp cause, ensuring that certified companies gain visibility and receive recognition for their status.

B Corp Certification: What are the main costs?

Certification Fee

A direct cost for all B Corps is the annual certification fee, which ranges from $500 to $50,000 or more, depending on the revenues and structure of the company. [35] Do the benefits of the certification exceed this cost? The CEO of a company with around 500 employees admitted that the cost was deemed to outweigh the benefits. After an initial period of having the certification, management decided to drop the designation, as they deemed that the company could continue delivering on its strong environmental and social commitments without it. He stated "It comes down to leadership. We are proof that you don't need to be a B Corp. The question is whether it helps to be one". Although certification may help a company embed and deliver on social and environmental commitments, it is not the only way to do so. Determining the value of certification to the company depends on the nature of the firm and its industry. For a company operating in an industry plagued by social and environmental issues such as the apparel sector, certification could be a highly valuable signal of excellence to stakeholders. On the other hand, a renewable energy company may not need to provide extra reassurance.

Additional Resources

Another cost is the additional resources that may be needed to initially achieve certification and subsequently manage performance on scores over time. How long does certification take? It depends on size, but "the most relevant variable is how much a company has been paying attention to its impacts and measuring them. A company can take 10 days, or take 10 months or longer". [36] Significant work may be needed if the company doesn't already meet the minimum criteria. Once certified, the company may decide to allocate additional resources to enhance its performance and build upon its commitments as a B Corp. For example, the company might seek to improve its score on the 'workers' dimension by training all employees on the company's social and environmental objectives.

Measurement Risks

The design of the scoring system used to evaluate B Corps could disadvantage companies by not accurately reflecting the true value of their social and environmental performance. Although B Lab make regular updates and improvements to the scoring metrics, there are deficiencies. Indeed, a frequently asked question on the B Impact Assessment website is– "My B Impact Score only increased by a few points, but our impact has increased dramatically. What happened?" [37] This reflects the many challenges faced by B Lab in designing accurate metrics. One such challenge is the aggregation of scores across the four dimensions of performance – one company might score badly in one dimension and achieve certification, while another might perform consistently across all areas. Another challenge is that the metrics focus on positive impacts, and do not sufficiently value the reduction or elimination of negative impacts. This means that those industries which face the greatest social and environmental challenges (e.g. mining), may not be able to attain certification. A robust set of metrics is critical to ensuring that companies can be assessed and compared against others in a meaningful way.

Oversight Risks

Oversight of the certification process is critical to maintaining the quality and credibility of the B Corp stamp, and thus its value for companies. The accrediting body B Lab does attempt to verify the accuracy of information supplied by companies during the certification process, however this process lacks the necessary rigour. In-depth reviews are conducted on a small sample of 10% of all B Corps each year. [38] This means that the majority of B Corps are certified without having their claims scrutinised. Thus, there are concerns that not all B Corps actually attain the high standards which define the B Corporation.

No legal status

B Corporation certification is not a legal status. Although companies are required to amend their articles of association, this does not amount to the creation of a new corporate form. Certified companies are not legally required to advance social and environmental objectives. Likewise, a company has no obligation to re-certify and can decide to drop the certification at any time. Certification is a decision for management, and provides no guarantee to investors or other stakeholders that a company will maintain the commitment in the long-term.

Reputational Risks

Achieving certification allows companies to enjoy many positive reputational benefits, for example through association with high profile B Corps such as Ben & Jerry's. The counter side is that there may be disproportionate reputational implications for a B Corp if the integrity of another is put into question. A public scandal could be extremely damaging to a community of businesses which aims to be better for the world. B Corporations must be seen to be authentic. As more companies achieve certification, it is essential that the reputational value of the statement 'we are a B Corp' remains high. Going forward, how accessible should B Corp certification be? The CEO of one B Corp explained his belief that the certification should be for only those companies with a core business model that derives value from a core social or environmental mission, stating "If your company value doesn't depend on your mission, then you shouldn't be a B Corp".

Benefit Corporation: What are the main benefits?

Additional Transparency
Becoming a Benefit Corporation signifies the pursuit of the highest levels of transparency possible, by using a corporate form that unambiguously defines the broader purpose of the company and clarifies the obligations therein. A Benefit Corporation CEO described adopting the corporate form as "one more level of questioning", as it pushed management to scrutinise their business practices and open up the business to outside stakeholders. For example, a key transparency requirement for Benefit Corporations is to make available to the public an annual benefit report that assesses the overall social and environmental performance against a third party standard [39] (An exception is Delaware, where there is no requirement for the report to be publicly available or to use a third party standard as an assessment tool). [40]

Accountability without Liability
The Benefit Corporation aims to ensure accountability for a company's social purpose by legally obliging directors to consider the effects of business decisions on a broad range of stakeholders, society, and the environment. [41] At the same time, it seeks to limit the risk of director liability by creating legal protection, or 'safe harbor' for decisions which take into account broader considerations [42]. This positively reinforces the idea that company directors must consider not only the financial dimension of any decision, but also the effects on society and the environment, without fear of being sued for such decision-making. As a representative of the Colorado Bar Association commented, "A benefit corporation gives the (company) directors the ability to pursue public benefits without looking over their shoulders and wondering if they're going to get sued by shareholders." [43]

Safeguarding Purpose
The Benefit Corporation structure helps to protect the purpose of the company in the long term. For instance, there is a requirement for a two-thirds vote from shareholders if a company is to become a Benefit Corporation or cease to be one. [44] The legal safeguards around the company's purpose generate additional credibility and may inspire stakeholder trust in the business. It also ensures that there is broad support behind any changes made, helping to align the actions of management with the expectations of investors.

Benefit Corporation: What are the main costs?

Legal Uncertainty
Due to the recent emergence of the Benefit Corporation, the legislation has not been comprehensively tested in courts. A lack of court rulings and legal precedent for this innovative corporate structure leads to uncertainty over how the Benefit Corporation will be interpreted in court. Moreover, as legislation varies significantly according to the state or country in which it was passed, different courts may have very different rulings on the matter. One corporate lawyer argues that the model legislation adopted in a number of states "is fraught with conceptual and practical hazards". [45] Legal uncertainties include questions over how existing duties towards shareholders may conflict with new requirements to consider other stakeholder interests, and in particular how social and environmental responsibilities may be be upheld if a company enters financial difficulties and is forced to make difficult choices to ensure survival- such as laying off employees or buying cheaper but less environmentally friendly inputs. Scholars have argued that "any decision management makes will injure one of the stakeholders, and if one of these stakeholder interests does not dominate over the others, then management has no real standard to follow". [46]

Investor Uncertainty
The Benefit Corporation may prove an attractive corporate form for certain types of investor, such as impact investors who seek financial returns alongside a measurable social or environmental impact. However, it could deter mainstream investors, who exhibit uncertainty over what a Benefit Corporation is and where it diverges from a traditional for-profit entity. The CEO of a renewable energy company explained how his company was forced to abandon the corporate form by a confused financial institution. The questioned was - if the business can operate in a similar way, but structured in a more familiar business entity rather than a Benefit Corporation, why not do so? All in all, the new corporate form may be perceived as higher risk for mainstream investors.

Resources Required
The direct cost of US state filing fees to incorporate as a Benefit Corporation are minimal, ranging from $70-$200. [47] Another direct cost is the extra resources needed to meet the transparency requirement of preparing an additional annual benefit report, which was not previously a business necessity. In contrast with B Corp certification (which assesses performance through a standardised scoring system), the Benefit Corporation requires self-reporting, with the added implication that the company may need to develop expertise and research best practices, especially if reporting is to go beyond a compliance activity.

Part Two

Barriers & Solutions for Publicly Listed Companies

Barriers for Publicly Listed Companies

> "Many public companies find themselves facing a dilemma. On the one hand, they see the benefits of longer-term sustainable strategies that take account of the material environmental, social, and governance factors that matter to key stakeholders and, increasingly, their shareholders. On the other hand, they face short-term pressures from shareholders, sometimes amplified by the board of directors. One cause of this is the prevailing ideology that directors have a fiduciary duty to put shareholders' interests first. In fact, the duty of the board is to the corporation itself. The result can be a disconnect between a company's sustainability programs and the core of its strategy, leading to scepticism all around. By becoming a **certified B Corp**, a company sends a strong signal that they recognize the importance of other stakeholders, sending a powerful message. By taking the next step of becoming a **Benefit Corp**, the company ensures that is has a corporate governance structure in place to focus on long-term value creation. While this can only be done with traditional C Corps (in U.S. parlance), becoming a Benefit Corporation is an effective way to share the shareholder primacy myth."

Professor Robert Eccles
Mission Alignment Working Group of the
Multinationals and Public Markets Advisory Council to B Lab

Despite the significant and growing number of certified B Corporations around the world, currently the vast majority are small and privately owned, with only a handful being publicly listed. Even fewer Benefit Corporations are publicly listed, with Laureate Education becoming the first and only when it started trading on the Nasdaq Global Select Market in February 2017. In light of these considerations of company size, the critical question is - why are there not more publicly listed companies which have become certified as a B Corporation or incorporated as a Benefit Corporation? In this section, we analyse the key practical, institutional, and systemic barriers to more publicly listed companies joining this business movement, and discuss solutions that would enable greater participation from those entities that would allow the wider businesses community to address social and environmental issues at the largest scale. To date, the interest shown by publicly listed companies such as Danone and Unilever in the B Corp certification suggests that this is only the beginning for more being publicly listed. It is less certain whether the recent IPO of Laureate Education will cause a domino effect of Benefit Corporations entering mainstream financial markets, or whether this represents a unique case.

Publicly listed B Corps: | Publicly listed Benefit Corporation:

Etsy	Natura	Australian Ethical	Snakk Media	Silver Chef	New Resource Bank	Laureate Education
(ETSY: NASDAQ)	(NATU3: BVMF)	(AEF:ASX)	(NZAX: SNK)	(SIV:ASX)	(NWBN: OTC)	(LAUR: NASDAQ)

Practical Barriers

There are a number of significant practical barriers that make it difficult for publicly listed companies to operate as certified B Corporations or Benefit Corporations. Many of these barriers stem from the sheer size and complexity of publicly listed companies, that makes implementing change a more challenging and convoluted process. Certain costs such as investor and legal uncertainties, that were identified in the previous section of this report, also act as significant barriers for publicly listed companies.

To begin with, the size and complexity of a publicly listed company may completely remove the B certification as an option, as the following characteristics currently have to be satisfied in order to become certified: [1]

<$5 billion in revenues / <50 subsidiaries / <5 industries / <10 countries of operation

To put the above criteria in context, none of the Fortune 500's largest companies (by revenue) would currently qualify for the certification (<$5 billion in revenue starts from the 509th largest; Alleghany). [2] If suitable for certification, B Lab estimates that the process will take 12-18 months to complete, which is largely dependent on the company's size and complexity, as well as the existing infrastructure and practices it has in place for measuring its social and environmental impact. [3] While the direct cost of the certification fee or incorporation filing fee for Benefit Corporations are unlikely to be a large barrier for public companies, the preparatory work and additional resources required to effectuate the necessary changes may be substantial. When multiple subsidiaries across a range of locations are involved, certification is likely to be a multi-step, multi-year process. Once approved, managing the certification process is likely to be a large undertaking. Currently, many of the larger B Corps have dedicated staff in roles such as "B Corp Manager" or "B Impact Officer", whose responsibilities often include overseeing and reviewing performance, fulfilling reporting requirements, and educating the company's stakeholders on the B Certification. It's worth noting that publicly listed B Corporations are required to fulfil further requirements that add to the resources needed. Public companies must have their performance validated by B Lab during each two-year certification term, and a verification fee must be paid for each entity that belongs to a parent company undergoing certification. [4]

The most significant practical barriers for more publicly listed companies becoming Benefit Corporations relate to investor and legal uncertainties that surround the decision. These uncertainties are more acute than for the B certification due to the additional step of operating under a new corporate entity, rather than simply amending the company's governing documents to gain the certification stamp. Corporate lawyers advising publicly listed companies on the new corporate forms are likely to highlight two key areas that might be affected by the decision – liability and access to capital. Management will have to weigh up these considerations before making any decision. They will also have to choose the type of Benefit Corporation that is most suitable, as the law in each jurisdiction of incorporation varies significantly.

Once the decision has been made, similar practical barriers exist for Benefit Corporations as there are for B Corporations. The change constitutes a large undertaking that requires substantial resources to handle, both initially and on an ongoing basis. Alignment is likely to involve years of preparatory work involving dedicated staff and payments for expert advice on structuring the business under the new corporate entity.

Institutional barriers

In addition to practical barriers, publicly listed companies face several institutional barriers that affect them as large organisations. The founders of the B Lab movement recognise that a key barrier faced is the need for credible standards that accurately reflect an institution's social, environmental and economic performance and allow for these aspects to be integrated into business decision-making. [5] A lack of robust performance metrics and action frameworks for publicly listed companies to become certified or incorporated makes it challenging for publicly listed companies to be part of the movement.

Despite the continual improvement of the standards, it is extremely challenging for large, publicly listed companies to apply them in their current form. Public companies are required to meet the same legal and performance requirements as all other B Corps, with no difference in the metrics used for small companies. This poses great difficulties. For example, how can publicly listed companies apply social and environmental standards to suppliers when there are multiple and diverse subsidiaries involved and complex supply chains? Until the appropriate tools are developed, these challenges will remain. Furthermore, with respect to both B Corporations and Benefit Corporations, what are the implications when large institutions fail to meet higher expectations of social and environmental performance? The potential reputational damage could act as a further deterrent to more publicly listed companies joining the business movement.

In many countries, the notion of 'shareholder primacy' is firmly anchored in law and business culture

Systemic barriers

The capitalist system is currently characterised by an over-emphasis on short term financial results, and remains dominated by the ideology of 'shareholder primacy'– the notion that shareholder profits must be placed above all else. Both the legal landscape and the predominant business culture often reinforce the pressures that managers face to produce short-term profits, even when this could be detrimental to a company's long-term profitability. Yet there is a growing body of academic literature that supports the link between higher social and environmental performance and long-term financial performance. [6]

Going against the established status quo is challenging. For some companies, the fear is that they will have to sacrifice their social impact if they go public, while for others it is that a different business mentality will simply not be understood in mainstream capital markets. The former sentiment is exemplified by Kickstarter's CEO who stated "we don't ever want to sell or go public…that would push the company to make choices that we don't think are in the best interest of the company." [7]

Solutions for Publicly Listed Companies

Our research has revealed significant practical, institutional, and systemic barriers to more publicly listed companies being certified B Corporations or incorporating as Benefit Corporations. Yet it is critical that more publicly listed companies may be enabled to drive large scale solutions to today's social and environmental issues through their business activities. In this section, we identify a number of solutions that could enable greater participation from publicly listed companies in this business movement, including:

- **A multi-stakeholder advisory body** - the Multinationals and Public Markets Advisory Council (MPMAC)
- **Enhanced management tools** to measure social and environmental performance and impact,
- The option to **start with subsidiaries** to implement change,
- **Alternatives** that may be developed in-house by publicly listed companies, and
- A focus on **education and effective communication**

The solutions outlined in this section highlight that there are multiple ways for publicly listed companies to demonstrate their commitment to a wider set of stakeholders and enhance their transparency, with participation as a B Corporation certification and/or Benefit corporation being one such option. These solutions also demonstrate B Lab's commitment to finding ways for publicly listed companies to participate fully.

Multi-stakeholder Advisory Body

A multi-stakeholder advisory body (Multinationals & Public Markets Advisory Council, MPMAC) has been set-up to provide recommendations to B Lab on how to enable multinational and public companies to participate in and accelerate the business movement. [8] The advisory body is comprised of representatives from public companies such as Danone, Natura, and Campbell's Soup, as well as investors, academics, lawyers, corporate governance experts and thought leaders. Their task is to advise on the applicability of legal and performance requirements to companies of greater size and complexity. This advisory body has two working groups which aim to provide solutions around two key challenging areas - (1) mission alignment and (2) performance standards for public companies:

1. The Mission Alignment Working Group - that is evaluating how to meet the B Corp legal requirement globally and in the public market context. The group is engaging with the investment community, regulatory bodies (e.g. exchanges) and intermediaries to identify and remove impediments to adoption

2. The Performance Standards Working Group - that is looking at ways to improve performance metrics to ensure they are manageable and meaningful for multinational and public companies. They aim to refine the certification process and enhance the verification process.

The advisory body is expected to make publicly available recommendations by the end of Q4 2017 on (a) Performance Standards in the B Impact Assessment and their applicability for multinationals and public companies (MPCs); (b) The Certification Process for MPCs and its manageability (3) The Verification Process for MPCs; and (4) The path for expanding fiduciary duty for MPCs.

Case Study: Danone

Danone are contributors to the Multinationals & Public Markets Advisory Council and have been exploring how the B Corporation certification could be achieved within their business context. In 2015, Danone signed a partnership agreement with B Lab, explaining that "Now the challenge is to expand the program to include multinationals". [9] The partnership is based on an open source philosophy to develop a more collaborative model of governance that includes a broad range of stakeholders. They will share insights and findings from their own social impact measurement program, 'The Danone Way', and will compare their efforts to those of outside partners. Danone's approach is to break up the transition into manageable steps, starting with a series of subsidiaries acting as pilot companies for the certification.

In a 2017 investor conference, whilst discussing the upcoming merger of Danone's North American Dairy business with WhiteWave (now combined as DanoneWave – a Public Benefit Corporation), Danone's CEO commented "I'm committed to continue this adventure of this unique cultural pattern of the dual economic and social project of Danone. The B-Corp B-Lab movement is the modern expression of that… We're doing this because our employees are looking for this, and they're joining companies like ours because of that. We're doing this because consumers are increasingly requesting evidences that companies behave properly, not only do they pretend that for their brands. So it's an investment in the future" [10]

Enhanced Management Tools

A portfolio of tools have been developed by B Lab to support companies of all sizes in measuring their social and environmental impacts. These tools, branded under the initiative '*Measure What Matters*', are freely available and have been used by over 40,000 companies globally, including larger companies such as Bancolombia, Unilever and Danone. [11] The tools are based on the certification framework but are not limited to use only by certified B Corporations or Benefit Corporations, they could offer a useful entry point for publicly listed companies. They aim to provide a management framework that could be used to help measure performance and impact, including that of subsidiaries, suppliers, customers and investees. Beyond the work of B Lab, other organisations have developed tools that may also prove useful (e.g. GIIRS, SASB, etc.) that could help align the company with the goals of the certification /new corporate form.

Case Study: Bancolombia

In May 2016, Bancolombia announced a Measure What Matters partnership with Sistema B (B Lab's South American Partner). Bancolombia is the largest bank in Colombia and 3rd largest in South America, with assets of over $55 billion. [12] The partnership is designed to help Bancolombia use the B Impact Assessment to measure and manage the positive impact of 150 of their top suppliers as a pilot, with plans to extend the program to the remaining 13,000 suppliers in the future. According to B Lab, such partnerships enable public companies to create deeper values-based relationships with key business partners, manage risk by having increased visibility into their key partners operations, and demonstrate leadership. [13]

Start with subsidiaries

Another solution is for publicly listed companies to implement change by supporting subsidiaries that are certified B Corporations or Benefit Corporations. This strategy is already being pursued by a number of publicly listed companies, such as Campbell's Soup (Plum Organics), Unilever (Ben & Jerry's, Seventh Generation) and Procter & Gamble (New Chapter). Danone is also in the process of a "mission-led" acquisition of the US organic food company Whitewave and has ambitions to create a public benefit corporation from a combination of WhiteWave with the US business. [14] This approach can enable management to initially explore the opportunity on a smaller scale, and to learn about how the process works before potentially scaling up the commitments in the future. It also allows for the parent company to respond to any feedback or issues raised by stakeholders including investors, legal counsel before moving any further. Starting with B certified or Benefit Corporation subsidiaries also offers a solution to the challenge of creating a corporate culture that drives performance on broader social and environmental objectives in addition to pursuing financial and operational targets.

Case Study: Unilever

Unilever CEO Paul Polman has been a strong advocate of the B Corporation movement, launching the work of the Multinationals and Public Markets Advisory Council mentioned earlier in this report. Building upon the company's interest in the B Certification and aims to demonstrate leadership in sustainability, Unilever's approach thus far has been focused on strategic acquisitions of companies that are socially or environmentally-focused.

As part of the acquisition of its first B Corp subsidiary, Ben & Jerry's, a unique governance agreement was established with Unilever. [15] This included an independent board of Directors being put in place that would have jurisdiction over the Ben & Jerry's mission statement and brand equity. This board has the right to challenge Unilever if they feel the company's values of transparency and social impact are being compromised. In 2016, Unilever acquired another certified B Corp - Seventh Generation, a maker of environmentally friendly household products. [16] Similar to Ben & Jerry's, the company has stressed that it will retain its social and environmentally-focused mission post acquisition, stating "To ensure that the integrity of our mission is preserved, a Social Mission Board has been created to guide our vision and aspirations…our co-founder Jeffrey Hollender has agreed to join the Social Mission Board serving alongside leaders at Seventh Generation and Unilever as well as additional corporate social responsibility visionaries." [17]

Develop In-house alternatives

Certifying as a B Corporation or incorporating as a Benefit Corporation is not the only way for publicly listed companies to demonstrate a commitment to transparency and social impact. Given the significant resources possessed by publicly listed companies, an alternative option is to build the capabilities in-house, for example by developing tailored management and measurement tools for social and environmental impact. This option offers the core advantage of ensuring that the company's performance is captured and reported accurately, and can be managed in a way that is aligned with broader strategic goals. On the other hand, it could prove extremely challenging to develop new tools, skills, or capabilities that may not have existed before which have not been integrated in decision-making before.

One example of a company that has managed to develop its own social and environmental metrics is global luxury group Kering, as described in the box below. The example demonstrates that there are many ways for publicly listed company's to commit to transparency and demonstrate leadership in integrating a broader set of impacts and stakeholders into their business. The case signals that by integrating such concerns into their strategy and operations, publicly listed companies may achieve similar goals as the B Corporation and Benefit Corporation.

Case Study: Kering

Kering has developed an innovative tool, the 'Environmental Profit & Loss' (EP&L). The EP&L "values the environmental impacts of a business, across its entire supply chain. Expressing the scale of impacts in monetary terms enables us to consider environmental impacts alongside conventional business costs and place sustainability at the core of our business decisions". [18] It has helped Kering to measure and understand their impacts on natural capital across their supply chain from the raw materials used, to the delivery of products to customers. It has also allowed them to develop a better understanding of their risks and opportunities and enables the implementation of targeted projects. In 2010, the work reached a milestone when Kering subsidiary PUMA published the first version of their EP&L results. Kering's methodology remains open-source, highlighting the opportunities and challenges for the business model, and allowing other companies to follow their approach. According to François-Henri Pinault, Chairman and CEO, "Kering is sharing our EP&L work as transparency and collaboration are needed to scale solutions which will help solve problems of scale, like the depletion of natural capital. [19]

Education and Communication

A focus on education and communication could help to address the barriers presented by a financial system that overemphasises short-term profits to the detriment of long-term performance and social value. B Lab and other actors could accelerate change by focusing on educating a wide range of stakeholders to foster greater understanding on what the certification and corporate form are, and what they mean for each group. It is also important to maintain clarity of any communications by using accessible terminology to explain new concepts and ensuring that audiences understand the difference between B Corporations and Benefit Corporations.

To overcome the knowledge gap in the investor community and capitalise on the rising interest in environmental, social and governance factors, B Lab has already engaged with institutional investors such as BlackRock, CalPERS and Morgan Stanley. According to B Lab, the view of many large institutional investors is that the Benefit Corporation "would not pose as a barrier to investment". [20] What they do need to understand more clearly is how this relates to management and good governance.

Regarding legal considerations, there is also more that could be done to educate widely about how corporate law and shareholder primacy ideology may influence business conduct. Moreover, the UK B Lab team explained to us that there is a lack of understanding about the legal implications of the certification amongst some legal professionals. For both the B Corporation and the Benefit Corporation, there needs to be further education around how the fiduciary duty of directors is reinforced and how any new requirements may align with existing duties.

Ultimately, a broader understanding of the B Corporation and Benefit Corporation could also spark greater interest from governments and public bodies, which could play a significant role in introducing new legislation, making additional transparency requirements mandatory, and driving corporate governance reforms.

Going public as a Benefit Corporation - Case Study

Background

Laureate Education became the first Benefit Corporation to become publicly listed in February 2017 with an initial public offering that raised $456.5 millions. [21] As the first IPO of a Benefit corporation, it was heralded as a momentous shift in the history of public markets. So, has the Benefit corporation been accepted by Wall Street?

Shares were issued to the public at a price of $14.00 per share and it is currently trading at $14.24. [22] A number of firms have recently (late February and early March) modified their ratings and price targets of Laureate Education shares. Analysts have given the stock "outperform/overweight" ratings, including those at Credit Suisse Group, Morgan Stanley and Macquarie. [23] Laureate Education's stock price has been generally increasing during this period, which is uncommon as stock values tend to decrease following an IPO. Laureate Education's price to book ratio has been at an average of 2.92 since the IPO. [24] It can be observed from the data that no obvious discount has been applied, implying that investors are not viewing the different corporate form unfavourably, if it is a factor that is even being considered. All in all, the initial analysis of Laureate's performance suggests that neither the company's Benefit corporation legal form nor its B Corp certification are acting as a barrier to investment.

An interview with Laureate Education

Laureate Education's newly appointed Chief Benefit Officer, Esther Benjamin, described to us how becoming a Benefit corporation and subsequently going public was a *"natural progression for the organisation"* that has had a long tradition of social impact. Esther described *"As a Higher Education provider we were already accountable to multiple stakeholders and transparency was of utmost importance to us, with extensive regional data already in the public domain. Incorporating as a Benefit Corporation and then certifying as a B Corp were both steps that felt natural for us"*. Going public has allowed Laureate to expand access to higher education through unparalleled scale, and central to this journey has been a focus on effectively communicating their commitments, by explaining what the certification and legal form are, why they use them, and what it means for investors and other stakeholders. This positioning aligns with their core mission of being "Here for Good" and represents an important stream of ongoing work for the company. Laureate are continuing to collaborate with B Lab to share their experiences and shape the evolving business landscape.

LAUREATE INTERNATIONAL UNIVERSITIES®

"We operate differently than other companies. For us the transition was natural. It's aligned to what we do"

Overcoming barriers

How did Laureate manage to overcome the barriers and become the first publicly listed Benefit Corporation? A key factor was that their organisational purpose was already aligned to the broader stakeholder form of value creation. For company directors, the fiduciary duty to consider broader stakeholder groups beyond shareholders was represented in their S-1 SEC filing pre-IPO. [25] Reference to their Certified B Corporation status was present in their filing under 'Risks Relating to Investing in Our Class A Common Stock'. This laid out their commitment to balancing the interests of "those stakeholders materially affected by our conduct" and gave a caution to investors that "being a public benefit corporation and complying with our related obligations could negatively impact our ability to provide the highest possible return to our stockholders" It remains to be what level of returns Laureate Education will deliver over the long-term and how this will compare to its peers.

Practical barriers were also minimised as employees within the Laureate network were already well versed at pursuing and measuring social and environmental impact, and had been producing regular global impact reports. Staff had already developed capabilities around the reporting and data requirements of the B Impact Assessment, meaning that the first certification process in 2015 took only 3 months to complete. This is notable given that they had 55 B Impact Assessments to complete covering a network of 70+ institutions in 25 different countries. Laureate Education is currently in the process of re-certifying and it remains to be seen how the IPO will affect this process, and whether there will be more pressure and scrutiny placed on them by their investors on the scoring they receive.

Is Laureate Education a unique case?

As a Higher Education service provider, Laureate Education were already delivering a public good with a social impact and have a mission that aligns closely to the B Corp and Benefit corporation goal to use ‘business as a force for good’. For companies that have not had such a focus on social or environmental impact, the journey could be much more challenging and require considerably more time and resources to overcome the practical, institutional, and systemic barriers outlined earlier in this report. Whether more publicly listed Benefit Corporations emerge in the coming years will depend on their ability to align decision-making processes with a different way of doing business, and also on Laureate’s performance over time. How will shareholders hold the company accountable for the broader fiduciary duty of its Directors, and how will the legal form stand up in such situations? If the pending uncertainties are settled with time, the company’s successful integration in mainstream financial markets could signal a new era for business.

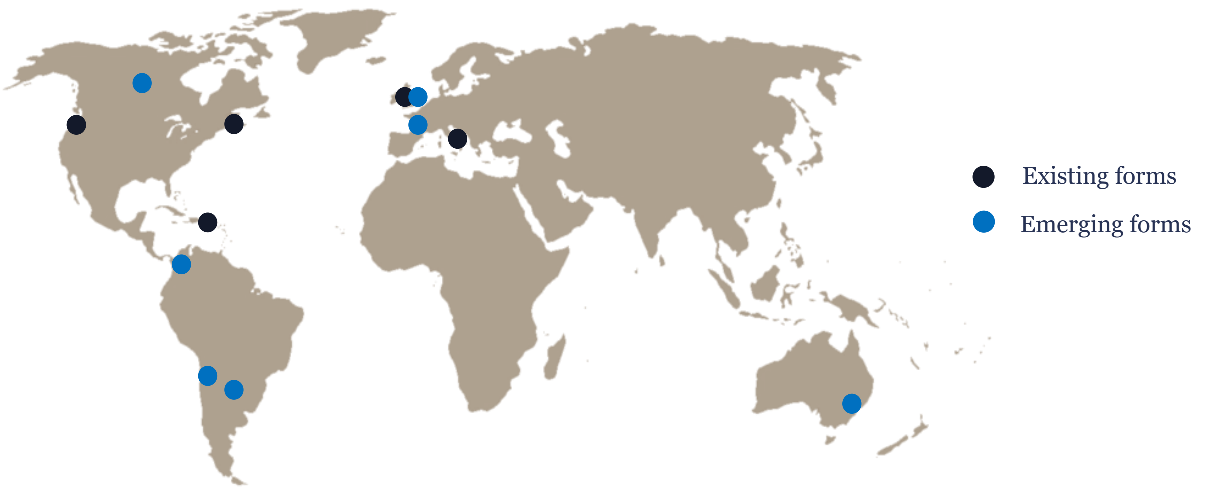
Part Three

Non-US forms of incorporation

Non-US forms of incorporation

The notion of the Benefit Corporation first emerged in the US in 2010. It has since expanded across the country, with versions of the legislation now passed in the majority of US states. Yet the concept of a corporate form for businesses with a purpose beyond profits is not limited to only the US market, despite the idea having gone the furthest there. Around the world, there are legal entities – both existing and emerging - that can be seen to mirror the form and function of the Benefit Corporation. Diverse economies require diverse legal structures to enable people to organise their activities in different ways. [1]

Where do alternative corporate forms exist and where are they emerging?



Our research reveals that there are several options currently available around the world, with even more likely to emerge in the coming years. All the legal forms identified provide a way to incorporate social and environmental concerns into a business that generates profits, with common features including additional annual reporting requirements, the reinforcement of the fiduciary duty of director's to take into account social and environmental purposes, and the lack of special tax status. However, as is the case with the Benefit Corporation concept in the US, the non-US alternatives differ depending on the legal jurisdiction. Some existing entities, such as Community Interest Companies in the UK, blend features of traditional corporate forms with characteristics of charitable organisations, offering a more restrictive entity that prioritizes community purposes and places restrictions on profits. Other models place no such restrictions on profits, and appear more closely aligned to leading US forms. It is also worth noting that the majority of corporate forms we identify are still under construction, meaning that they may evolve depending on the national context and based on the input of lawyers, politicians, business leaders and other stakeholders that participate in developing the legislation. Indeed, the national context is critical to the need for and emergence of alternatives. Some countries have legal systems that more strictly adhere to the ideology of shareholder primacy, and cultural factors also play an important role in establishing norms of behaviour. There are commentators that question whether there is even a need for new legislation outside the US, given that the Benefit Corporation concept was designed to respond to the US context of shareholder primacy ideology. Other countries could make progress through Corporate Governance reforms or raising awareness on how managers can bring social and environmental considerations into decision-making processes.

The decision as to whether a particular legal form is suitable for a particular company's needs must be left for each company to decide. The decision should take into account any additional obligations (e.g. annual reporting) and restrictions (e.g. an asset lock). Directors must understand from the beginning what the purpose of the company is under law, and how it is their duty to pursue it. Finally, it is crucial that management weigh up how the decision might affect the company's ability to obtain financing. Management should establish a clear dialogue with providers of capital to ensure that they are on board with the decision.

Existing forms

United Kingdom – *Community Interest Company (CIC)*

First established in the UK in 2005, the CIC is a legal entity for companies that operate primarily to benefit the community. By 2016, there were almost 12,000 CICs on public record, with the number expected to grow to around 30,000 by 2026. [2] Going forward, it is envisioned that CICs will become established as a type of company that is recognised and trusted by the public. Although CICs can, and do, deliver returns to investors, they must be balanced and reasonable. [3] Assets, incomes, and profits are intended to be used for the benefit of the community that the company is formed to serve. Key features of the CIC include an "asset lock" that ensures that assets are retained within the company to support its activities or used to benefit the community. To foster transparency, CICs must produce an annual report detailing how they have benefited the community. An independent regulator has also been established to provide oversight and ensure that CICs remain accountable under CIC regulations.

Canada (British Columbia)– *Community Contribution Company (C3)*

Introduced in 2013, C3s were created in response to the demand for socially focused investment options. [4] C3s are companies that have a legal obligation to conduct business for social purposes and not purely for private gain. [5] The C3 entity allows businesses to generate profits, but the bulk of profits must go towards the company's community purposes. Community purpose is defined as a purpose beneficial to society at large or a segment of society that is broader than the group of persons who are related to the C3. [6] This is helped by an "asset lock" – a strict cap on the dividends that can be paid out to shareholders (set at 40% of annual profits), as well as a limit on assets that shareholders are entitled to receive upon dissolution of the company. There is also a requirement for C3s to have three company directors, instead of just one, to ensure that the company delivers on its community purposes. C3s are required to publish an annual "community contribution" report describing their activities.

Canada (Nova Scotia)– *Community Interest Company (CIC)*

Introduced in Nova Scotia in 2016, CICs are companies with a community purpose. [7] John MacDonell, Nova Scotia and Municipal Relations Minister, commented that CICs seek to "respond to 21st century opportunities and trends… we are making it easier for Nova Scotians to start businesses that can benefit the economy and create employment, while contributing to social good". [8] Key features include the requirement for the memorandum of association to state the company's community purpose, and a restriction on the ability to pay dividends and to distribute assets on dissolution or otherwise.

Italy - *Società Benefit*

In December 2015, the Italian 'Società Benefit' became the first European 'Benefit Corporation' and the first created in a civil law legal system. The purpose of the Società Benefit is to distribute profits, but, at the same time, pursue one or more 'common benefit' purposes in favour of other stakeholders of the business including people, communities, and the environment. [9] The Italian legal form is intended to promote a new model of conducting business, which seeks to pursue an economic and social purpose. It differs from the US legal forms in that less emphasis is placed on protecting directors from getting sued by shareholders as a result of considering non-financial dimensions. This difference can be partly explained by the legal and social context of many civil law countries, where the concept of a shareholder primacy doctrine is weaker than in the United States. In practice, if a 'Società Benefit' were to fail to pursue its common benefit purposes, the company would be subject to the same penalties as companies that engage in misleading advertisement.

Puerto Rico - *Corporación de Beneficio Social*

In 2015, Puerto Rico introduced a new legal form for companies: the 'Corporación de Beneficio Social' (Social Benefit Corporation). An important difference between this legal form and the US Benefit Corporation is that the main objective of this entity is the creation of a social benefit, and not profit. [10] However, if a profit is generated, it may be distributed among the owners. Each 'Social Benefit Corporation' must publish an annual report on its impact on social benefit and its board must elect a 'Social Benefit Director'. The 'Social Benefit Director' is in charge of defining the internal policy on how to improve social benefit.

Snapshot of existing legislation

Corporate Form Available	Date in Effect	Purpose	Directors' Duties	Transparency Requirements
United Kingdom Community Interest Company (CIC)	2005	The purpose of CIC is primarily one of community benefit rather than private profit. Whilst returns to investors are permitted, these must be balanced and reasonable.	Directors have the same rights and duties as any other directors under UK Company Law. There is a stronger obligation to consider the community the company serves and include a wider set of stakeholders in decion-making processes.	Requirement to produce an annual 'CIC Report' detailing how the company has benefited the community and consulted stakeholders.
British Columbia, Canada Community Contribution Company (C3)	2013	C3s are intended to conduct business for socially beneficial purposes and not purely for private gain. The bulk of C3 profits must go towards the company's community purposes.	Directors must "act with a view to the community purposes set out in its articles". Requirement for C3s to have three company directors, instead of just one.	Requirement to produce an annual "Community Contribution" report describing the activities during the year that benefited society.
Nova Scotia, Canada Community Interest Company (CIC)	2016	To use business practices to advance social, community or environmental goals.	Directors must exercise their powers and functions in accordance with the community purpose set out in the companies legal documents.	Requirement to produce an annual "Community Interest" Report, describing the activities during the year that benefited society or advanced the community purpose.
Italy Società Benefit	2016	The purpose of the 'Società Benefit' is to distribute profits, but, at the same time, pursue one or more common benefit goals in favour of other stakeholders in the business, including people, communities, and the environment.	The Articles of association of a "Società Benefit" should identify the person or persons responsible to be entrusted with functions and tasks aimed at the pursuit of the statutory goal and identify how directors will balance interests of shareholders and stakeholders and common benefit goals.	The 'Societa Benefit' must list the specific benefit purposes of the company, it must act in the best interest of stakeholderss and must publish an annual benefit report.
Puerto Rico Corporación de Beneficio Social	2015	The main objective of such an entity is the creation of a social benefit, and not profit. However, if a profit is generated, it may be distributed among the owners.	Directors have the same rights and duties as any other directors under Puerto Rican Company Law. There is a stronger obligation to consider the community the company serves and include stakeholders in decision-making processes. Each Board must elect a 'Social benefit Director' in charge of defining the internal policy on how to improve social benefit.	The 'Corporación de Beneficio Social' must publish an annual report on its impact on social benefit.

Emerging forms

United Kingdom

In December 2016, an independent advisory panel to the UK government's "mission-led business review" put forward a recommendation for the UK to explore the introduction of a "benefit company" status in English law. [11] The panel also made recommendations to raise awareness on the opportunity for companies to declare a purpose beyond profit and to make it easier for companies to incorporate around purpose. At the same time, the report recognised that legal frameworks are not the only solution; business models, culture and engagement play an important role. Moreover, the report stated "there is a lot of legal flexibility that allows companies to set out a purpose beyond profit. The problem is that this flexibility is not always well understood…Too often companies revert to the default format."

Canada

In 2014, the Canadian Bar Association released a document recommending that Canada adopt the Benefit Corporation model of the United States, rather than the "restrictive hybrid models" available in British Columbia, Nova Scotia, and the UK. [12] The document argues that "the market for benefit corporations is large, the potential impact significant, and they should be flexible and dynamic as they fundamentally operate as for-profit corporations". The authors propose a number of features for the Benefit Corporation legislation and identify parts of the Canada Business Corporations Act that could be amended. The government does not appear to have acted on the recommendations. In early 2017, an academic paper written by a prominent law professor detailed a series of arguments against the adoption of the benefit corporation in Canada. [13] The paper highlights that "some of the fundamental legal characteristics of the benefit corporation are already reflected in existing Canadian corporate laws" and that "landmark judgments from Canada's highest court have affirmed the board requirement to consider stakeholder interests". Therefore, questions remain as to whether the benefit corporation is really needed, given the relatively progressive nature of Canadian corporate law.

Australia

B Lab is currently advocating for changes to the Corporations Act 2001, to include a new corporate structure known as a "benefit company". [14] B Lab is actively lobbying the government to embrace proposed amendments to the Act that have been drafted by a working group comprised of academics, lawyers, business leaders and governance experts. Notable participants of the working group include leading Australian law firm Clayton Utz, Professor Ian Ramsay of Melbourne University, and Australian Ethical Investments. [15] Chair of B Lab Australia, Mele-Ane Havea, states that the working group "has been investigating what an appropriate policy change or legislative change might be, and we're still in the very early stages of drafting that. We've received pro bono support from Clayton Utz to put the first draft of the legislation and an explanatory memorandum about the legislation together. We'll then take it out to stakeholders, interested parties around the country in order to get feedback and comments on the legislation in order to then eventually finalise it and then try to get it passed." [16]

In March 2016, B Lab and the Governance Institute of Australia hosted an information session on the Benefit Corporation and its potential application in Australia, with guest speaker William Clark, the attorney behind the model Benefit Corporation legislation. [17]

> *"Australian companies are free to adopt voluntary codes and corporate social responsibility measures to achieve sustainability targets or deliver social justice outcomes. However, these measures do not remove the legal uncertainty which directors are forced to confront when considering non-shareholder interests. The benefit corporation attempts to address this by placing both profit-making and the public good at the forefront of the purpose of the corporation."*
>
> *Sam Morrissy, Lawyer and member of the B Lab Australia Policy Working Group* [18]

Chile

The Latin American arm of B Lab, known as *Sistema B*, has gained the support of an important partner in Chile – CORFO, the governmental organization that exists to promote economic growth and entrepreneurship. [19] This partnership has given Sistema B added impetus in Chile, and is perhaps a key factor behind it being the Latin American country that is leading the way by number of certified B corporations and also by progress with Benefit Corporation legislation. As early as 2014, a group of 40 organisations co-authored and presented a document about social entrepreneurship to the Chilean Ministry of Economics, entitled “101 solutions”. [20] One key recommendation of the document was for the government to create a legal form for “social companies”. By October 2015, the government’s House of Representatives had presented a legal motion regarding the creation of a legal framework for social companies. [21] The government bulletin explained that legislation being developed would establish a framework for “social companies”, businesses with profit motives that have in agreed in their bylaws a social purpose of generating a positive impact on society and the environment. [22] Although the legislation has some way to go before it enters into force, significant progress has been achieved. The government has demonstrated a commitment to creating an inclusive economy, exemplified by the creation of a dedicated Ministry department for furthering the social economy. [23] In conclusion, significant legislative developments are expected soon in Chile, and will likely serve as an example for more countries in the region to follow suit.

Colombia

A legal bill on the creation of ‘Sociedades Comerciales de Beneficio e Interes Colectivo’ (Benefit and Collective Interest Commercial Corporations Law) was formally introduced to the Colombian Congress in September 2016. [24] This new legal form will require companies to develop social activities for the benefit of the community and the environment alongside the generation of profit for shareholders. The current bill includes legal requirements around ethical salary policy, employee training, access to shares for employees, and the employment of minorities. It also includes some requirements regarding the environmental performance of the company such as the implementation of recycling and energy efficiency measures and annual reporting on environmental performance. Members of congress from different political parties have shown interest in supporting the bill.

Argentina

In 2014, a group of lawyers formed the ‘Grupo Juridico B’ (‘B Judicial Group’) to expand Argentinian law under the ‘Ley de Sociedades de Beneficio e Interes Colectivo’ (Benefit and Collective Interest Corporations Law). [25] The group has worked in conjunction with the Latin American arm of B Lab to draft the bill and gain political and legal support. The bill was submitted to the Congress in November 2016 and is currently under consideration. In its current form, the bill does not introduce a new corporate form but a special designation applicable to all types of corporate entity.

France

The proposition of introducing the ‘Société à Objet Social Etendu’ (Extended Purpose Corporation) in French law was developed in 2015 by two leading French academics. [26] The purpose of the Extended Purpose Corporation is to broaden the existing interpretation of 'corporate purpose as solely financial purpose’. It aims to go beyond maximising financial shareholder value to include social and environmental impact goals. Accountability and transparency regarding the extended purpose would be secured through a second purpose-oriented board. It would be composed of experts and committed parties. The Board of Directors would be bound to take into account its reports. The purpose-oriented board would evaluate the corporate strategy regarding its extended corporate purpose and assess the company’s performance against it. This project has yet to be formally introduced to the French Parliament but has been presented in reports to various governmental bodies.

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