

A Better Bottom Line

www.bestlawyers.com/Article/better-bottom-line/752/



A single business can't cure the world's ills, but one can address existing problems. Some call it being a "social business." In 32 states with new corporate legislation, another term is a "benefits corporation," or a corporation that amends its charter to provide for stakeholder value, not purely stockholder benefit, and mandates its directors consider the impact on all stakeholders—from immediate neighbors to society at large to the environment.

Considering everyone and everything affected by a company's operations makes it possible to address the broad impact business decisions can have. The expansion of corporate responsibility is growing in popularity, due in large part to technology. Some tech companies were born with that sense of responsibility, but technology is also a tool for making an expanded bottom line possible. Increasing awareness about stakeholder impact could be seen as just another business marketing fad, like "going green" in the 90s, but consider these questions:

- **When buying a book online, would you prefer a company that offers free shipping and donates a book (at no cost to you) to a person in need?**
- **If you could choose your power company, would you rather pay a little more to one using renewable sources (wind, solar) or pay a little less to one dependent on fossil fuels?**
- **When you travel, would you choose a well-known hotel chain or stay with a “local,” having a chance to see the community for lower cost?**

Everyone won't make the same choice, but support for environmentally and socially conscious businesses is getting attention in the for-profit world. And employees are raising expectations for employers.

“Consider the impact on all stakeholders—from immediate neighbors to society at large to the environment.”

“In the war for talent in the millennial generation, being able to show that you walk the walk of corporate purpose is a huge advantage,” says Frederick Alexander, head of legal policy for B Lab. “In recruiting and engagement of the employees you already have, it's very big.”

CREATING A CONSCIENCE

The non-profit agency B Lab was founded in 2006 with the mission to serve as “a global movement of people using business as a force for good.” In addition to helping companies define their stakeholders and embody responsible social, environmental, and governance practices, the group developed the B Corp Certification program. Since its founding, the number of certified companies has grown to more than 1,700 in 50 countries across 130 industries. Every two years, B Lab updates and strengthens the mandatory requirements to verify that a company has “overall social and environmental performance, public transparency, and legal accountability.” Now on version five of the rigorous standards, B Lab anticipates the launch of version 6.0 in 2018.

Becoming a B Corp tells consumers that a company embodies conscientious principles, and many B Corps appreciate the benefits of a healthier, more balanced internal structure, says Alexander.

“Practical needs are too great for business as usual.”

“For the people I've talked to, the number-one theme is employee engagement,” he says. “It's how you treat your employees. It's also how you treat the community; it's your environmental footprint; it's your charitable giving programs—everything across the board.”

“The certification assessment, called the Impact Assessment, has embedded tools for self-improvement,” says Alexander. “The idea is that you don't just use it to get a static score; rather, you use it to improve your performance.”

Better World Books says accountability is “part of our DNA.” A B Corp certified company, Better World began selling new and used books online in 2002. Three friends from the University of Notre Dame in South Bend, Indiana, wanted to do more than just make cash. So they developed a business plan that included a mission to promote literacy. They established “the online bookstore with a soul,” believing “education and access to books are basic human rights.”

Better World funds literacy projects and donates one book for every one sold. The program, called Book for Book™, has donated over \$20 million in books. They've also donated more than \$25.5 million to literacy campaigns.

Every order shipped from their Mishawaka, Indiana, warehouse is "carbon balanced with Green-e Climate certified offsets." Better World Books has developed a network of 5,300 college campuses and libraries to collect books; they've diverted more than 73,000 tons of material from landfills by recycling or reselling more than 233 million books. Customer happiness is also part of the bottom line: free shipping on all orders.

CHALLENGING EXISTING LAW

The opportunity to improve an existing business model by leveraging the Internet is challenging laws, regulations, and tax codes. One such challenge is in the short-term-stay industry, according to Jennifer L. Hernandez, a land use and zoning attorney with Holland & Knight in San Francisco, California.

"Technology may introduce some disruption, but it's also enabling the very change that's needed."

Internet matching companies like Airbnb allow homeowners to register rooms, apartments, or houses, offering out-of-towners places to stay. The host defines amenities and services. Airbnb does background checks on hosts and guests, provides insurance, and inspects listed properties, but some municipalities, neighbors, and homeowners' associations are fighting this kind of rental.

"There have been short-term rentals in vacation communities...for as long as there have been vacation communities," says Hernandez. "What's new about this is how easy the Internet has made it."

"The way we use our homes evolves over time. There were some homes with servants and servants' quarters. That model disappeared. It's really about repurposing space. How do you regulate the repurpose of an existing space?"

The answer is: You don't. Existing case law clearly allows property owners (or, in this case, the "host") to determine who resides in their spaces, Hernandez says. While municipalities might have some say in things like parking and littering, the inside of a home is off limits. Some zoning codes prohibit the operation of a business, hotel, or boarding house in residential areas, but this might not cover the occasional rental of personal space.

"This is a city-by-city, county-by-county regulatory drama," says Hernandez. "When Airbnb had to defend its business model in San Francisco, hosts showed up. They were teachers, retired people, folks who really needed the income from renting that second bedroom...which is very different from some outside developer."

Some places, such as San Francisco and Portland, Oregon, are exchanging legalization of most types of Airbnb listings for taxes and other concessions.

EMPOWERED INDIVIDUALS

Like the temporary-stay revolution, changes in the power industry are starting at a grassroots level.

“Residential solar is something that people want to do,” says Sheryl A. Sweeney, an energy law attorney with Ryley Carlock & Applewhite in Phoenix, Arizona. “They want to feel like they’re contributing to making the Earth a better place and that is going to change the industry.”

Sweeney believes the incremental changes she’s seen in 32 years in this field are inadequate. She recognizes that power companies have significant infrastructure investments, giving them a “natural monopoly,” but practical needs are too great for business as usual.

For example, solar-powered homes produce their own electricity. But on cloudy days or when the sun goes down, those homes need access to power from utilities. According to Sweeney, that’s five to six million people demanding power all at once—without the infrastructure to handle it.

“They need to find some way to smooth out [the power supply] when the sun goes down and they have four to five minutes to react—things like commercial-scale batteries for the home to store energy when the sun is out,” says Sweeney. “Then you don’t just turn off [the power] the minute the sun goes down.”

Those batteries are in development, but not the focus on extensive infrastructure upgrades.

“The biggest electric utility in Arizona has asked our corporation commission for [rate] changes,” she says, “to charge a flat fee for being connected so that they can try to cover their fixed costs, and to allow them to pay [lower than] market rates to each homeowner for electricity that’s coming into the grid.

The regulatory community and the utilities didn’t get out in front of this—they’re reacting,” says Sweeney. “The utilities are able to resist things they don’t like for a long time, until they’re forced by law or regulation to do something different.”

Resistance to change, a common institutional response, can prove detrimental. Technology may introduce some disruption, but it’s also enabling the very change that’s needed. B Lab’s Alexander believes the growing interest in paying attention to stakeholders, not just stockholders, will erode even more of that resistance.

“Benefit corporation legislation can appeal to both sides of the aisle,” he says. “A lot of corporate-responsibility themes are thought of as liberal values, but it’s a very conservative principle in that it’s allowing businesses to choose to do these things, giving them flexibility. In a lot of legislatures, it’s bipartisan legislation.”

When he helped draft Delaware’s bill, Alexander says resistance came from the bar association and from lawyers. The typical arguments are that corporate law has evolved this way for a reason, that it’s best left as is, and that caring about stakeholders is “crazy.” Yet those same stakeholders are exerting enough pressure for companies to pay attention.

“A benefit corporation is like a lock on the refrigerator,” says Alexander. “You’re tying to your future hands so that you won’t betray all the promises you made at the beginning to all of your stakeholders.”