

Use of Benefit Corporations by the Restaurant Industry

By Dennis L. Monroe

Benefit Corporations (BCs) are not limited liability companies, C corporations, S corporations or partnerships. They are a new type of entity that is becoming more popular as many states pass legislation to establish them.

The sustainable business movement is having an impact on investment, and social enterprise sectors are developing rapidly, particularly in the food industry, where there is already a well-established sustainability movement, co-ops and, in general, a lot of use of food and food service to serve the greater good. BCs are designed to have significant social benefits as well as make money for the owners.

Yet many businesses that see social benefits as their primary reason for existence have been using outdated legal framework, whose primary function is a generation of profits for their shareholders. Prior to the creation of Benefit Corporations, our legal system had no blueprint for a type of entity that has social benefit as its primary purpose.

The notion that a corporation's main responsibility was to maximize the shareholders' financial gain originated in the 1919 case *Dodge vs. Ford Motor Company*, in which the Michigan Supreme Court ruled that it was Henry Ford's duty to operate his business to profit his company's shareholders rather than the community as a whole. Through the passage of time, both law and custom have widely accepted the concept of the shareholder supremacy. Nonetheless, it may be helpful—particularly for the restaurant industry in trying to attract customers and make a difference—to consider BCs as a great alternative to a model founded on the principle of shareholder value.

BCs offer clear market differentiation. They provide legal protection to officers and directors, expanded shareholder rights and greater access to capital than current alternative approaches. As a result, BCs are also attracting broad support from entrepreneurs, legal experts, citizens and policy makers who are interested in a new corporate form and are encouraging states to pass this type of legislation.

Using BCs gives companies freedom to do things that bring social benefits while still making money. BCs are not nonprofit organizations; they are for-profit companies that can have a great impact on the restaurant and food service industry.

The major characteristics of the BCs are:

1. The companies must have a corporate purpose to create a material, positive impact on society and the environment. Minneapolis-based Kids Café and sustainable farming activities are examples of groups that would qualify for BCs.
2. An expansion of the duties of the directors requires consideration of nonfinancial stakeholders as well as financial interest of shareholders. Perhaps McDonald's might have done better if they had considered this approach.
3. The companies have an obligation to report on their overall social and environmental performance using comprehensive, credible, independent and transparent third-party standards.

BCs may attract more consumers because of their social mission; they may, for example, not only offer sustainable and organic products but also use part of their funding to help develop training centers for people in the food service industry.

The beauty of BCs is that there is no pressure for the management to run the company simply for profit. While BCs can and should make a profit, they are not burdened by shareholder actions if profit is not made. The key concerns for the shareholders are to get their invested money back or to keep reinvesting their money to serve the purpose for which the BC was formed.

There are a number of corporations (we all know them) that have been slaves to their investors, and because of that they perhaps have not made the right decisions for the long term. In summary, the BC provides the best of both worlds—retaining the advantages of a normal corporation that is run in a very prudent business manner; preserving the investment of the shareholders; serving its stakeholders (which include shareholders, employees and general public)—but doing so in a purposeful manner to produce a tangible societal benefit.

The number of states that have adopted BCs is changing weekly. To date, about half of the states have adopted them.

While the restaurant industry will always be driven by profits, particularly at the unit level and free cash flow, the question is, what will that profit and cash flow be utilized for? The profit can certainly continue to be utilized for reinvestment

and growth; but BCs grant a company the ability to have a higher purpose by using its profit for a worthy social cause (for example: environmental issues, health-oriented issues, help for disadvantaged people, training programs, research and development or feeding our country).

When looking at your next endeavor, do not forget about BCs. They may be a worthy choice for moving your company ahead and making a difference.

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