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Virginia Enacts "Benefit Corp." Law for Social Entrepreneurs

As of July 1, 2011, Virginia becomes one of the early adopters among states that will permit social entrepreneurs to legally create a new corporate form known as a "benefit corporation." This new form of corporate entity is intended to permit social entrepreneurs to codify their missions in their corporate charters. This permits the board of directors and management of a benefit corporation to pursue and take societal benefits and social goals into account in exercising their fiduciary discretion instead of being required to act strictly in the best interest of shareholders, a change that eliminates concerns over liability for breach of fiduciary duty under existing corporate law.

Pursuing Public Benefit

The law is modeled on a similar statute enacted by Maryland in 2010, and similar proposals are pending in a number of other states. Virginia's legislation improves upon Maryland's statute and makes Virginia the preferred jurisdiction for social entrepreneurs. Virginia's benefit corporation statute, which is codified as Sections 13.1-782 to -791 of the Virginia Stock Corporation Act, requires that the corporation's purpose include pursuit of "general public benefit." The legislation broadly defines "general public benefit" to mean "a material positive impact on society and the environment taken as a whole, as measured by a third-party standard, from the business and operations of a benefit corporation." However, it also allows benefit

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corporations to pursue specific public good purposes, including any benefit that serves one or more public welfare, religious, charitable, scientific, literary or educational purposes, or another purpose or benefit beyond the strict interest of the shareholders of the benefit corporation, such as:

- Providing low-income or underserved individuals or communities with beneficial products or services;
- Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;
- Preserving or improving the environment;
- Improving human health;
- Promoting the arts, sciences or advancement of knowledge; or
- Increasing the flow of capital to entities with a public benefit purpose.

The statute allows entrepreneurs to commit their for-profit ventures to a specific public good, requires directors and officers to take specified public good interest into account in corporate decisions and actions, and requires them to report on contributions to that goal and submit to auditing of their impact. The statute includes remedial provisions for shareholders to take action against directors and officers who fail to consider the specific public benefit in their decision making and actions. Having official "benefit corporation" status allows entrepreneurs to consider stakeholders such as employees, communities or the environment in business decisions.

Eliminating Risk of Lawsuits and Reducing Costs

Under existing corporate law, company directors may face lawsuits for acting on social objectives if contrary to the financial interest of shareholders, but this statute eliminates that risk. Social entrepreneurs have often faced difficulty fitting their hybrid missions of making money and doing good into existing business entity forms. The variety of arrangements historically utilized (e.g., nonprofits controlling for-profits) can be costly to set up and operate, and often limit the ability to raise money from outside investors. By allowing for the adoption of the "benefit corporation" form of entity, Virginia has permitted its economic institutions – in this case the laws that govern corporations – to keep up

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with the growing interest in the social enterprise sector.

Many expect that the new legal designation will unlock new capital for social ventures from investors who want to park their money in mission-driven companies.

Enacting the Law

Virginia Gov. Bob McDonnell (R.) signed the bill on March 26, 2011 at the end of Virginia's legislative session. The bill, sponsored by Democratic state delegate Jennifer McClellan, passed Virginia's Senate unanimously and passed the House of Delegates by a vote of 97-0.

For more information on this new form of corporate entity for social entrepreneurs, please contact your principal Squire Sanders lawyer or one of the individuals listed in this Alert.

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

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