Moral Money Forum

FINANCIAL TIMES

Stakeholders Incorporated

Can capitalism change if company charters stay the same?

Quick Read

- Across the world, we are seeing a proliferation of alternative corporate forms that require companies to balance shareholders' financial interests with the interests of employees, customers and the environment
- Once the preserve of smaller, private organisations, "stakeholder governance" models are being adopted by larger, publicly listed companies
- Many people remain confused by the terminology: a certified B Corp is not the same as a company incorporated as a benefit corporation, and there are many different types of benefit corporation
- Advocates argue that embedding stakeholder interests in a company's articles of association attracts talent and business partners while preserving its mission for the long term
- But there are concerns about alternative structures: some investors are unfamiliar with them, they impose an additional reporting burden and uncertainty remains about how they affect directors' fiduciary duties
- The companies that have changed their charters have done so voluntarily, but there is now a debate about whether governments should mandate corporate structures that emphasise sustainable approaches

Editor
Andrew Edgecliffe-Johnson

Report author
Sarah Murray

Data visualisation
Alan Smith

Sub-editor
Will Bramhill

Production
George Kyriakos

Visit the editorial hub at
ft.com/moral-money-forum

The FT Moral Money Forum is supported by

HIGH MEADOWS INSTITUTE

WHITE & CASE

PlanetFirst PARTNERS

Illustration: Matt Kenyon

Foreword

As a Financial Times journalist in New York, I am expected to know the difference between a C Corp and a S Corp, but even in my day job the finer points of US incorporation structures are not exactly a hot topic (and I won't tax readers with them here). So I was struck when I ordered some Allbirds shoes and they arrived in eco-friendly packaging that trumpeted the B Corp status held by the San Francisco sneakers startup. Opening the fridge, I realised that the milk carton was similarly branded.

Consumers, employees and even investors once gave little thought to what companies' charters or certifications encouraged them to do beyond making money for their owners, but that is changing. The rethink of business's place in society that we have witnessed in recent years has stirred debate about how to bake a public mission into corporate structures.

It is one thing for chief executives to profess an interest in benefiting their people, their communities or the planet; it is another for them to be instructed to do so. But, from California to Paris, we are seeing more companies voluntarily adopt stakeholder-friendly mandates. With a few notable exceptions, investors have not batted an eyelid.

The rise of the public benefit corporation has been a striking phenomenon, but such alternative structures are still exceptions to the rule, and many people in business and investment remain confused about their exact meaning.

In this, our latest Moral Money Forum report, Sarah Murray cuts through the complexities and illuminates a trend that looks likely to become more important to all of us, whether we are assessing our portfolios or simply buying shoes.

We hope you enjoy it, and look forward to hearing your feedback at **www.ft.com/moral-money-forum**

Andrew Edgecliffe-Johnson
US Business Editor,
Financial Times

Stakeholders Incorporated

Can capitalism change if company charters stay the same, asks *Sarah Murray*

When Lemonade launched its initial public offering in 2020, the US home insurance start-up saw its market capitalisation double in the first morning's trading to $3bn, far above the private market valuation it had secured from early investors such as SoftBank.

With bots signing up customers and managing claims, Lemonade uses artificial intelligence to maximise underwriting efficiency. After paying claims, it gives any leftover money, up to 40 per cent of premiums, to charity.

It is a disrupter in another way, too. Rather than being classed as a C or S Corp, as is usual for large US companies, Lemonade is incorporated as a public benefit corporation (PBC).

State laws in Delaware, where more than two-thirds of Fortune 500 companies are incorporated, dictate that a PBC must balance the financial interests of shareholders with the interests of other stakeholders, such as employees, customers and the environment. It must pursue a specific social or environmental purpose that is identified in its corporate charter.

This was not, of course, the main reason for the frenzied demand: investors were drawn to Lemonade's innovative business model. That said, the fact that a company with social and environmental sustainability baked into its articles of incorporation attracted such interest is proof of how much has changed since the days when most investors thought sustainability was nice but not necessarily profitable.

Lemonade is not an isolated case. PBC structures were once the preserve of private organisations, entrepreneurial growth companies or sustainable start-ups, but this has started to change. In the past year several private PBCs have gone public and some existing public companies have adopted the new structure.

Veeva Systems, the US cloud-computing group, was the first, with institutions such as BlackRock and State Street among the mainstream investors that supported its conversion. Other US companies followed, including Amalgamated Financial, the first publicly traded financial services company to make the change. Vital Farms and Zymergen, a Californian synthetic biology company, also sought public listings as PBCs.

"The most successful IPO in 2020 financially was a PBC, and that was Lemonade — that's a market signal," says Susan Mac Cormac, a corporate lawyer at Morrison & Foerster who teaches at University of California, Berkeley. "It went from one publicly traded company to eight over 12 to 15 months, so it is scaling up very fast."

The structure offers companies more than simply legal protection for their efforts to take a longer-term, more sustainable approach to business. "You have to show true signals to markets, investors, regulators and consumers that you are going to do something rather than talk," says Jonathan Webb, founder and chief executive of AppHarvest, an agricultural technology company that began as a PBC and listed this year using a special purpose acquisition company (Spac). "One way is the way you incorporate the company."

Surprisingly given the country's political divides, laws introducing alternative structures have passed with bipartisan support across the US, where corporations can incorporate in the state of their choice. At least 30 states now have a public benefit corporation statute or something similar.

"There's a growing recognition, not just on the left, about the negatives of shareholder primacy," says Christopher Marquis, the author of *Better Business: How the B Corp Movement is Remaking Capitalism*, and a management professor at Cornell University, New York.

This rare moment of harmony still leaves plenty of room for disagreement. Some worry that the new structures create legal risks for directors while others view them as a distraction from the focus on shifting mainstream business towards more sustainable practices.

When we asked Moral Money readers whether they thought traditional corporate structures were holding back the shift to a more sustainable, stakeholder-focused form of capitalism, the response was an overwhelming "yes".

Yet some legal experts argue that nothing in the traditional forms of incorporation prevents companies from pursuing sustainability strategies if they are in the long-term interests of shareholders.

This begs a question: is traditional fiduciary duty so open to interpretation that it allows companies to serve all stakeholders — or are alternative corporate entities a necessity to set capitalism on a more sustainable path?

What is a benefit corporation?

While many people celebrate the growing number of companies choosing to embed sustainability in their articles of incorporation, a new problem is emerging: confusion over the terminology and what the different legal forms entail.

Terms such as B Corp, benefit corporation and public benefit corporation are often used interchangeably, yet they refer to different things. In Delaware, for example, a "public benefit corporation" is a for-profit company, while in California it is a non-profit. "It's a mess," says Mac Cormac. "And it will be a mess for some time."

The most common confusion is over companies that call themselves B Corps. While B Corps must place the same emphasis on delivering social and environmental returns as on generating profit, the B Corp is a certification, not an alternative corporate form.

To become a B Corp, companies must undertake a B Impact Assessment, which is how B Lab, the awarding body, evaluates the effect that their operation has on workers, communities, the environment and customers. B Corp certification is valid for three years, after which companies must reapply.

"More education is needed, because it is confusing to know the difference between the legal structure, which is the benefit corporation, and the certification by the third party," says Marquis.

Even within the alternative corporate forms, there are different structures and legal requirements. Mac Cormac identifies "three basic flavours":

- the Delaware PBC, through which shareholders and management agree on the mission in the charter;
- the California social-purpose corporation, which is similar to the Delaware PBC (but is distinct from the state's previously mentioned twist on the public benefit corporation); and
- the benefit corporation, another state-level piece of legislation, whose statute lists mission factors and requires third-party enforcement and the appointment of a benefit director.

Different flavours of corporate governance existed before the advent of these alternative corporate forms. Some direct companies to consider all stakeholders, as do employee-owned enterprises. Others, including Nordic industrial foundations (foundations that own for-profit companies), tackle short-termism.

In recent years there has been a proliferation of alternative corporate forms — mainly in US states but elsewhere too — which require companies to factor society and the environment into their decisions. Six countries — Italy, France, Colombia, Ecuador, Peru and Rwanda — now have this type of legislation in place, as does British Columbia in Canada.

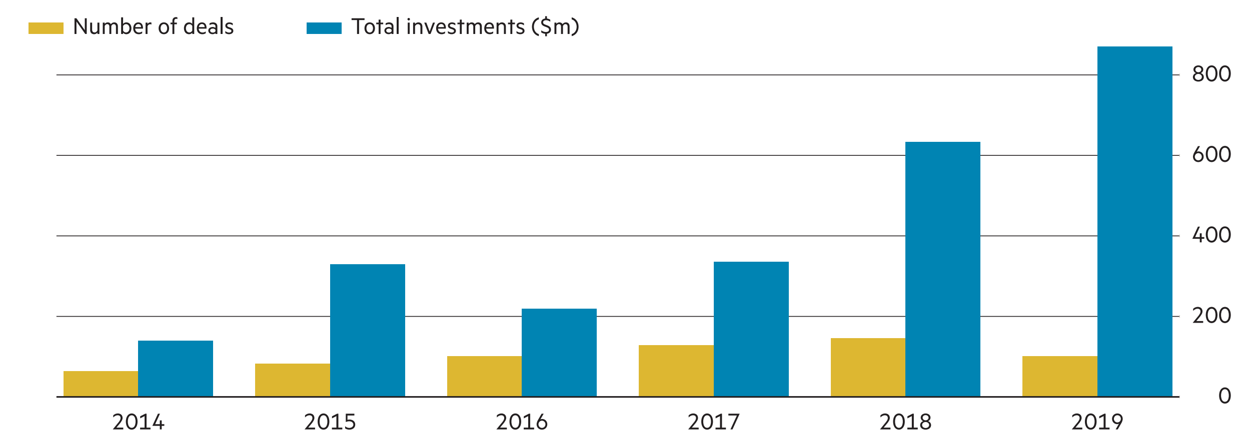
France has a similar statute that governs the *entreprise à mission* structure, which was adopted in 2020 by Danone, the multinational food company. In the UK the Better Business Act Campaign, an initiative backed by Ed Miliband, the shadow business secretary, is pushing to amend section 172 of the Companies Act 2006 to ensure all UK companies align the interests of shareholders with those of employees, customers, suppliers, their communities and the environment.

"In all of them, they require a balancing or a consideration of all stakeholders, but they get at it slightly differently," says Andrew Kassoy, the co-founder and chief executive of B Lab, the non-profit behind B Corp certification. He says B Lab has started to use the umbrella term "stakeholder governance" for the new structures.

While there may be confusion about the different entities, not everyone is dismayed by their abundance. "What is interesting about these different forms is that they allow for new ways to respond in corporate law to societal needs," says Karen Brenner, the executive director of law and business at New York University Stern School of Business. "Whether or not they're absolutely necessary remains to be seen, but I like the idea of more diverse answers to challenges and a less homogeneous view of governance."

Investors are becoming more comfortable with PBCs

Venture capital investment in Delaware public benefit corporations



Source: European Corporate Governance Institute

A new set of sustainability levers

If Moral Money readers are united in blaming traditional corporate structures for hampering the shift to stakeholder capitalism, their views on priorities are diverse. These range from altering how productivity and value are measured to eliminating short-term financial targets, giving employees representation on boards and linking pay to long-term sustainability goals.

While some of these fixes require no change in corporate structure, Leo Strine, a former chief justice of the Delaware supreme court, identifies two levers in the PBC that can make a difference.

The first becomes relevant in the event of a company's sale since, in traditional corporate structures, directors are required to do their best for stockholders by selling to the highest bidder. "The benefit corporation model adopted in Delaware takes away that rule," he says. "The board can make a business judgment and they have to take into account the other stakeholders. They do not have to take the highest price."

The second is that PBC legislation does not simply allow companies to consider the interests of all stakeholders — it requires them to do so. "You can't seek damages but you can sue to enforce benefit," Strine explains. "So a socially responsible fund could sue if they thought a company was doing something environmentally irresponsible: that helps the directors."

A different type of incorporation also helps to preserve a purpose-driven mission beyond the tenure of the chief executive. A good example is Danone, where Emmanuel Faber was ousted as chief executive in March. Many saw the event as a blow to the long-term, sustainability-driven approach championed by the former CEO but Faber took a different view.

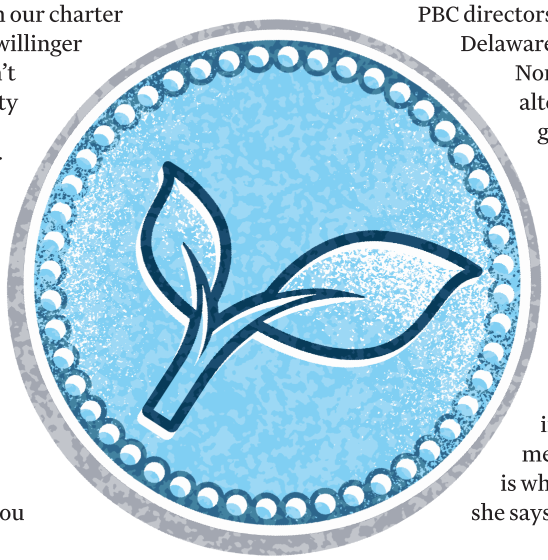
The trigger for his removal, he told the Financial Times, was the company's poor results through the pandemic, which weighed on its share price. "So then an activist came in and the CEO was ousted," he said. "But [Danone] is still an *entreprise à mission*. So I think it's a perfect case, if things unfold properly, to show that it's a very solid model."

A similar reason drove Allbirds to incorporate as a PBC in 2015. The San Francisco-based sustainable footwear company has a long-term strategy to address climate change at the heart of its business model. What worried Joey Zwillinger, the co-founder, was the idea that as a C Corp a future management team could use the business judgment rule to dilute or even abandon Allbirds' climate strategy.

"We named environmental conservation in our charter documents to enshrine it as an obligation," Zwillinger explains. "If the next management team didn't uphold that obligation, there'd be legal liability that the company would take on."

While those that have adopted stakeholder governance see operational benefits and a means to preserve their mission, it remains to be seen whether the structures will resonate with the consumers who are among the stakeholders they profess to prioritise.

The number of brands that use the B Corp logo on their packaging suggests that shoppers are already familiar with the certification. Few consumers, though, pay attention to the structures of the businesses they buy from. "With B Corp [certification] you have B Lab, that's out there marketing that brand," says Kassoy. "There's no one doing that for consumers with legal structures."



Stakeholder governance models could be more effective in winning business with supply chain partners, Kassoy argues. "For a B2B it creates trust in the supply chain," he says. "And for companies that are doing business with government, it is a way of creating a leg up in a bidding process by showing that you are accountable to the public interest."

Many Moral Money readers agree, saying that alternative structures enable them to "see the same values" in their supply chain, and that companies with mission-aligned structures are "much easier to work with". Others, however, say that what counts are a supplier's values, regardless of its corporate structure.

Another possibility is that mission-aligned corporate structures will appeal to the growing ranks of ESG-focused investors and asset managers. "This is a way of communicating to investors that you actually mean it and are willing to be held accountable to it," says Kassoy.

While Moral Money readers are not entirely convinced, twice as many investors who responded to our survey said they would view both B Corp-certified companies and registered benefit corporations differently from traditional companies. The reasons include their "diligence in considering longer-term and stakeholder impacts", their "wider impact on society and planet", and the belief that "other structures lack credibility".

This is not to say that a commitment to a dual fiduciary duty has no downside. Moral Money readers highlight disadvantages, from the possibility of deterring investors unfamiliar with or not ready to invest in these types of entities due to the additional reporting burden they impose.

Zwillinger can relate to both challenges. "We now have a significant amount of accountability that we've self-imposed on the company and we need to uphold those obligations," he says. This is exacerbated by the fact that Allbirds has to work across an extensive network of suppliers to gather the information. "For a small company, this is a big lift."

During the first financing rounds after incorporating as a PBC in 2015, the company faced questions from investors about what the incorporation meant. "They didn't understand, so we had to do an education for shareholders," says Zwillinger.

Mac Cormac points to other challenges. There is, she says, uncertainty over the scope of the dual fiduciary duties of PBC directors and officers due to a lack of Delaware case law.

Nor does she see the shift to an alternative business structure as a guarantee against greenwashing. While reporting requirements mean that a PBC cannot make false claims about its social and environmental impact, Mac Cormac says there is room for a company to use its positive impact in one area to mask poor performance in another, particularly in the absence of rigorous measurement standards. "This is where you need government," she says.

Case study: Veeva Systems

It was on a bike ride, where he does much of his thinking, that Peter Gassner decided to make Veeva Systems the first publicly traded company to convert from a C Corp to a public benefit corporation (PBC).

Gassner had founded the company, which provides cloud-computing services to the life sciences industry, in 2007. His decision to change to a PBC was based on a feeling that he had harboured since signing Veeva's articles of incorporation. "It said you have to make money for shareholders and don't do anything illegal," he says.

As a form of fiduciary duty, this ran counter to his view that the purpose of business was to benefit not just shareholders but also customers, employees, communities and others. He also worried that if Veeva was ever sold, it might end up in the hands of a company focused solely on profit. But at the time, the C Corp was his only option. "I decided to sign it and move on," he says.

Fast-forward to 2018 and Gassner started to set the wheels in motion. He had to ensure that the board would buy into the idea and that enough shareholders would vote for the conversion. As a public company, there were risks. "We were going into the unknown," he says. "Nobody had done this before and we didn't know what would be the reaction of the financial markets or employees."

Gassner also worried that by making a bold statement about the company's values, it might attract increased scrutiny from environmental or social justice activists. "You're putting yourself out there as a target," he says. "But to cave to that is to be scared, and that's a road to perdition."

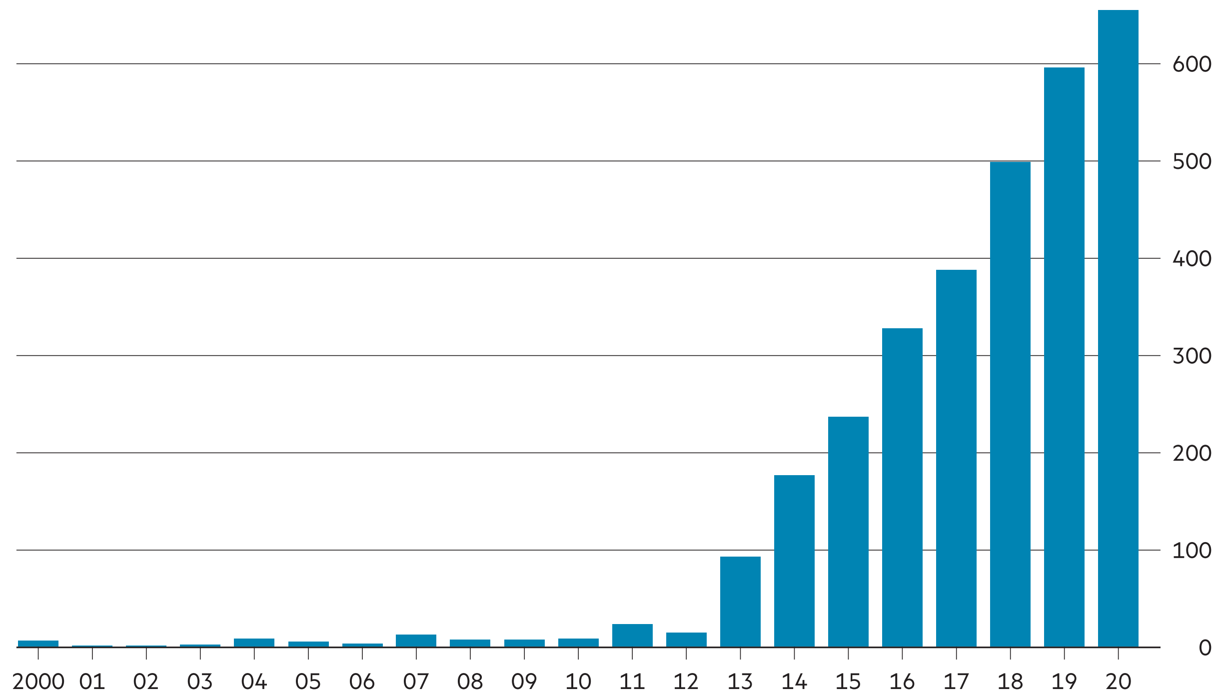
As things turned out, 99 per cent of voting shareholders backed Veeva's adoption of a new certificate of incorporation.

Gassner has already seen the benefits. Securing the company's values for the long-term, even in the event of a sale, has enabled it to deepen relationships with existing customers and helped it find new ones. Greater freedom to develop business ideas has unleashed innovation.

And while Gassner admits to uncertainty over what the new form of governance may mean in the long term, "the bogeyman hasn't come to find us yet".

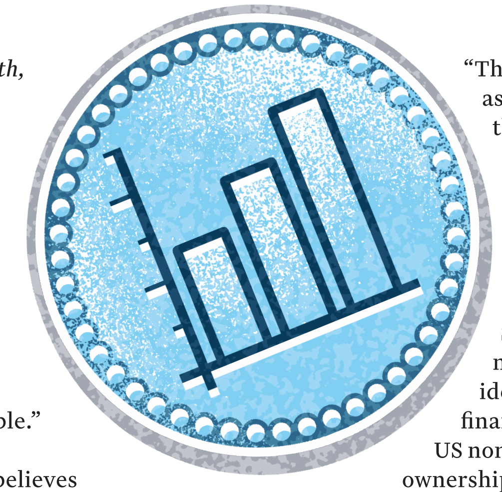
PBCs gain favour in corporate America's favourite state

Number of companies incorporating in Delaware as public benefit corporations



Source: B Lab

Beyond the legal niceties



In her book, *The Shareholder Value Myth, How Putting Shareholders First Harms Investors, Corporations and the Public*, the late Lynn Stout questioned the need for a new corporate form to address shareholder primacy. "There is no solid legal support for the claim that directors and executives of US public corporations have an enforceable legal duty to maximise shareholder wealth," wrote Stout, a Cornell University professor and corporate law scholar. "The idea is fable."

Strine, the former judge, sits on the other side of this legal argument. He believes that alternative statutes give more power to corporations that want to "do the right thing". And while he concedes that traditional corporate law allows boards to consider the interests of other constituencies, such as communities and workers, he says its language gives them no enforcement rights. "The stockholders remain the sole constituency with power."

Strine says PBC requirements represent a subtle but important shift from "may" to "shall" in shareholder governance. "'May' is optional," he says. "If I have a 'shall' duty towards the employees and the community, that's different for me as a fiduciary, and that's what happens in the PBC."

Corporate lawyers will no doubt continue the debate, yet which argument wins is perhaps less important than what new corporate forms will do to shift the culture of business. Even if those who share Stout's views are technically correct, the mantra of shareholder primacy is, as emerged in our first article in this series, proving tough to dislodge.

For this reason, Kassoy believes much of the power in stakeholder governance lies in the signals it sends.

Top PBC investment targets (2013-2019)

Company	Industry	Total investment ($m)	Number of rounds
Lemonade	Finance	480	6
Altitude Learning	Education	174	4
Meow Wolf	Arts	161	3
Qwil	Finance	136	5
Ripple Foods	Food	121	4
AppHarvest	Agriculture	97	2
Allbirds	Apparel	78	5
Change.org	Internet	73	5
Yerdle Recommerce	Internet	52	3
Lung Biotechnology	Health	52	2

"There's lots of arguments by scholars as to whether the law actually says that [directors' duty is to maximise shareholder value] or whether it's interpreted that way," he says. "But at some level it doesn't matter — what matters is what the culture in the boardroom is as a result."

Rick Alexander, who founded the Shareholder Commons, agrees. "It does make a statement and it does instil this idea that the world doesn't revolve around financial returns," says Alexander, whose US non-profit promotes responsible corporate ownership. "It is important in beginning to have participants in the market expressly stand behind these ideas."

To enlist more participants, the Shareholder Commons uses shareholder resolutions to press companies into embracing stakeholder governance. This year, for example, it helped shareholders at companies including Chevron, Fox, Goldman Sachs and JPMorgan Chase put forward proposals to address the increasing use of "dual" (or multi) class share structures, which give disproportionate voting rights to corporate leaders and founders.

None of those votes have attracted more than 3 per cent support, and some of the boards it has targeted have warned that such a change could expose them to more shareholder litigation. But the Shareholder Commons is not alone. Activists such as John Harrington of Harrington Investments and Natasha Lamb of Arjuna Capital have used similar tactics to push banks and tech companies into adjusting their articles of incorporation. So far, pressure from these activists has succeeded only in raising awareness. "But this was the first year," says Alexander.

In the meantime, should governments make it mandatory for companies to incorporate in this way? When we posed this question to Moral Money readers, the response was mixed but, surprisingly, the larger group favoured regulation.

George Dallas believes that the regulatory approach faces hurdles. Dallas, the policy director at the International Corporate Governance Network, argues that before introducing such a requirement, governments would need to demonstrate that long-term, sustainable approaches to business necessitated a change in corporate structure.

"Any significant change of law should be supported with clear evidence," he says. "And there would be a substantial burden of proof on anyone claiming that government should promote better social outcomes by requiring benefit corporations. That would face a lot of scrutiny."

Even without government regulation, pressure for companies to enshrine their values in their corporate structure is likely to come from one group of constituents in particular: their employees.

A large number of Moral Money readers said that their stakeholder-focused structure or B Corp certification had helped them to engage and retain staff and attract new talent.

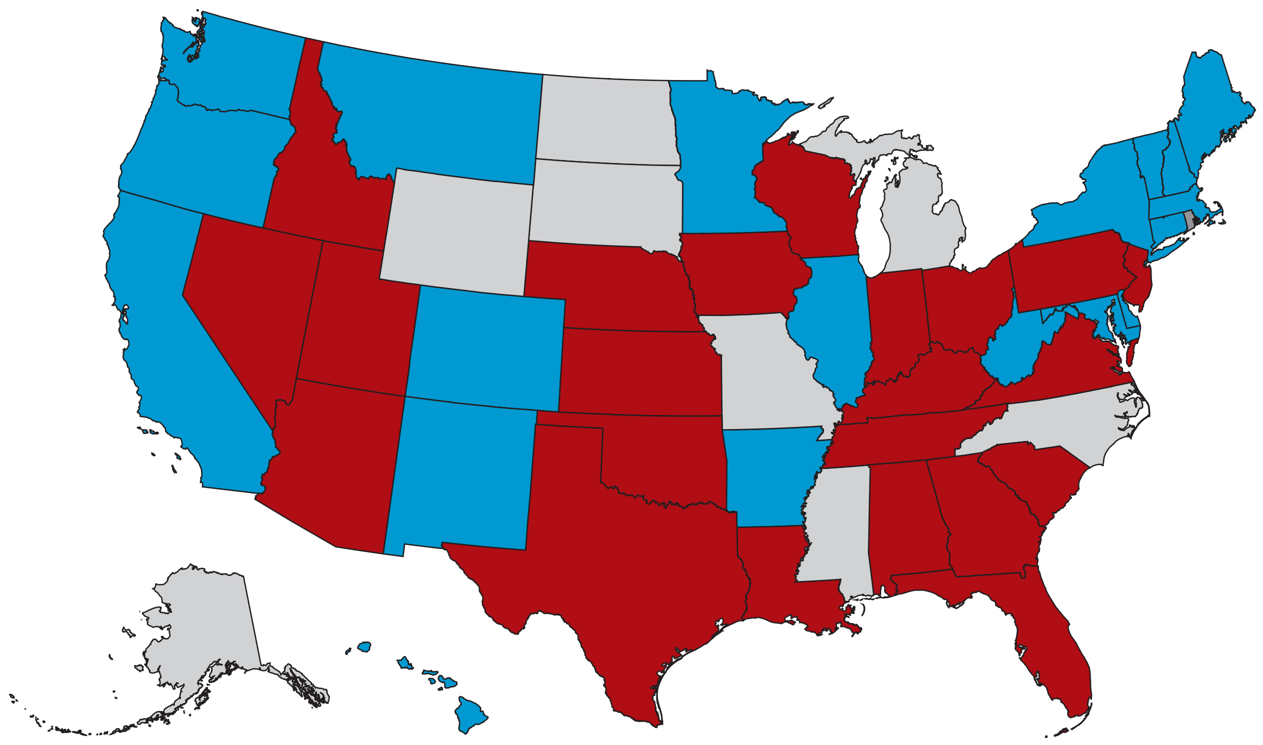
Marquis confirms this phenomenon. "Many companies I've talked to have said that in the past few years people who apply to work for them often do so because they're a B Corp," he says.

Red states and blue states agree on the benefits of benefit corporations

States passing benefit corporation legislation since 2010

Governor at time of legislation

Democrat | Independent | Republican | State has not passed legislation



Source: B Lab

Where stakeholder governance goes next

While few large companies used to worry about the nature of their articles of incorporation, interest in stakeholder governance is starting to take hold, including in the public markets.

However, Mac Cormac of Morrison & Foerster believes real change will come when corporations that are not the usual suspects make the move. "This needs to be picked up by the dirty companies," she says. "It's not been used for that yet but I want it to be."

Webb of AppHarvest goes further. "When people say they will make these commitments but they're not going to actually structure the company differently in any way, it's very hollow," he says.

Dallas warns that the focus on alternative structures should not let traditional companies off the hook when it comes to pursuing sustainable strategies. "It is hard to disagree that a benefit corporation is an entity whose structure will, if successful, generate positive social and economic outcomes — but that need not be the only way those outcomes can occur."

Nor do alternative structures provide the only tools needed to advance stakeholder capitalism. As our second article in this series concluded, the ability to shift capital in a more sustainable direction will rest heavily on robust and standardised impact measurement and reporting.

But while Strine, the former Delaware judge, warns against seeing stakeholder governance as a silver bullet to reform capitalism, he believes it will make an important contribution. "You don't want to oversell it, and I don't," he says. "But if you turn a series of knobs in the right direction, you can make some real change."

In some ways, particularly in the US, the rise of shareholder governance may simply allow businesses to return to the way they operated before shareholder primacy took hold in the 1970s. "It's not a wild overcorrection," says Zwillinger. "It's just swinging it back to the way it was."

Advisory Partners

The FT Moral Money Forum is supported by its advisory partners, *High Meadows Institute*, *Planet First Partners* and *White & Case*. They help to fund the reports.

The partners share their business perspective on the forum advisory board. They discuss topics that the forum should cover but the final decision rests with the editorial director. The reports are written by a Financial Times journalist and are editorially independent.

Our partners feature in the following pages. Each profiles their business and offers a view on corporate structures.
Partners' views stand alone: they are separate from each other, the FT and the *FT Moral Money Forum*.

Advisory Partner

HIGH MEADOWS INSTITUTE

Corporate structure is neither the problem nor the solution to increasing sustainability
Chris Pinney, president and CEO, High Meadows Institute

Some people say the solution to the ESG challenge is to embed social-purpose statements into corporate charters, and that this will oblige companies to consider all stakeholders and to measure and report on their social effect.

This sounds good — but as we engage business in trying to meet the sustainability challenge, is corporate structure the right place to focus?

The leading model for reform is the benefit corporation. In companies that amend their governance, directors have to consider their group's effect on all stakeholders. They must publicly state their social and environmental performance measured against a third-party standard. B Lab, a non-profit that certifies benefit corporations, says 3,500 such companies exist worldwide. This is encouraging but the truth is that most of these companies are small, and only 10 are publicly traded. Set against the global economy, in which the US alone has 1.7 million C corporations, the effect of the benefit corporation is at best negligible.

The late Lynn Stout, a corporate law scholar, noted in The Shareholder Value Myth: "There is no solid legal support for the claim that directors and executives of US public corporations have an enforceable legal duty to maximise shareholder wealth."

Stout recognised that the challenge is not corporate structure but moving purpose and opinion away from the Friedman doctrine, which says that the only rationale of a company is to maximise shareholder value.
To move forward we have to change this view at scale. This is where our focus should be.

Fortunately with public expectations for corporate responsibility and leadership increasing, we are starting to see significant progress on this with business organisations such as Business Roundtable and the World Economic Forum making public declarations on sustainability and stakeholder capitalism — unthinkable a decade ago.

Most importantly, large institutional investors have pushed investee companies to commit to sustainability. As was shown at the Exxon annual meeting in May, investors will support the removal of directors who block progress.

Keeping up the pressure on companies to operate sustainably is our best opportunity to advance the ESG agenda. Regardless of corporate form, all companies must be held accountable.

** High Meadows Institute' views are separate from other advisory partners, the FT and the FT Moral Money Forum*

Advisory Partner

PlanetFirst PARTNERS

Frédéric de Mévius, co-founder, Planet First Partners

The beginning of the evolution of corporate structures and the end of old-school governance dates back to the 1980s and the deregulation of capital markets.

We can trace the way in which changes have occurred at different speeds in different markets to give us the complex plurality of structures that we have today, from traditional limited companies, to partnerships, to special-purpose acquisition companies and B Corps.

The same is true for impact measurement. A decade ago, the effect that a company had on its environment was seen only in terms of how much it involved trading off financial return against a set purpose. Today, impact measurement is increasingly important to a company's reputation as well as part of the formula that determines its financial value.

Planet First Partners has been reminded of this by the experience of Oatly, a company that provides a healthy alternative to milk, which we know well. Together with Alexander de Wit, my co-managing partner, we helped to bring this brand to market when we ran Verlinvest, a private investment platform.

Since we left Verlinvest to set up Planet First Partners, Oatly has gone from strength to strength and in May its IPO raised $1.4bn. Now, as the Financial Times reported last month, a short-seller has suggested that the company, which has always focused on reducing its impact on the environment, is not as sustainable as it has claimed.

I am sure that Oatly remains true to its original mission but the episode shows clearly how the question of impact has a direct contribution to share price. Here, though, is a lesson for everyone operating or investing in businesses where a positive environmental impact is important to the overall mission. As the FT said, there are many examples beyond Oatly.

Investors and consumers are demanding more transparency and scrutiny in what impact means. Moreover, they want performance indicators. Planet First Partners focuses exclusively on companies that can provide and prove that they make a substantial contribution to a defined UN sustainable development goal (SDG) without — and this is crucial — causing harm to any other SDGs.

When environmental impact is so important to investors, a business has to be certain that its structure and governance guarantees its commitment to sustainability.

Activism based on exposing the negative side of such compliance is unusual. More common is a scenario such as that of Emmanuel Faber, the Danone CEO, who was ousted in March after two activist investors, with combined shares of only 6 per cent, accused him of favouring stakeholder capitalism and environmental sustainability over the sustainability of the price of their shares.

In this investment landscape, companies struggle to find the right framework to follow the dual goals of sustainability and profitability. Impact on the environment and impact on the share price both have to be positive.

We know consumers will pay more for the right products in health and nutrition, and by "right" we mean products that are good for people and good for the planet. People will want to work for companies that pursue dual goals, which will make those organisations more nimble and more resilient.

Saleability and sustainability must be twin forces, because in today's markets they are critical to each other. Companies that harness both will be the success stories of the 21st century.

** Planet First Partners' views are separate from other advisory partners, the FT and the FT Moral Money Forum*

Advisory Partner

WHITE & CASE

White & Case ESG Group

Shareholders, investors and governments are expecting more of companies: that is an undeniable reality. The advent of third-party certification programmes such as B Corps, or classification of companies in accordance with shareholder participation, illustrates the increasing expectation that corporations will work for and together with stakeholders.

Companies sit on a spectrum of corporate purpose, from Friedman's "shareholder primacy" model to the "stakeholder capital" model, in which a group's mission is to serve not only shareholders but customers, suppliers, workers and communities too.

That range could be seen clearly during the pandemic, when some companies focused on dividend payments to shareholders while others cut dividends to support staff.

The question now for governments and civil society is the extent that shareholder primacy will play in legislative development.

Legal requirements are pushing companies along the spectrum from shareholder primacy, and at present these are focused on large companies with the greatest stakeholder impact. For example, companies in the UK with a premium listing have to explain their fundamental purpose and values under the UK Corporate Governance Code. Under section 172 of the Companies Act, large companies are required to prepare a statement that lists their stakeholders and says how they are taken into account in company decision-making.

The Better Business Act Campaign advocates the greater promotion of stakeholder interests. It proposes a change to the Companies Act that would legally oblige directors of UK companies to operate in a manner that benefits all stakeholders. This leads to questions such as which group should be prioritised where there is a conflict, and what liability directors have to a group that has not been prioritised.

Certified B Corporations are legally required to consider the effect of decisions on all stakeholders. The B Corp framework helps companies to protect their mission through funding rounds and leadership changes. It also gives entrepreneurs and directors more flexibility when evaluating potential sale and liquidity options.

Those establishing a company in the UK can already set up a business where shareholder primacy is not the core purpose. A community interest company (CIC) trades with a social purpose or carries on other activities that benefit the community. CICs have an "asset lock" which means they can only transfer assets to an asset-locked body that is named in the articles. Similar legal corporate forms exist in Belgium (social purpose company), Spain (social initiative cooperative) and Greece (Koi SPEs).

If new structures push companies away from the purpose of maximising shareholder value, shareholders may have to accept lower returns. They should also recognise that the rights of competing stakeholders may not be aligned with theirs but could be prioritised.

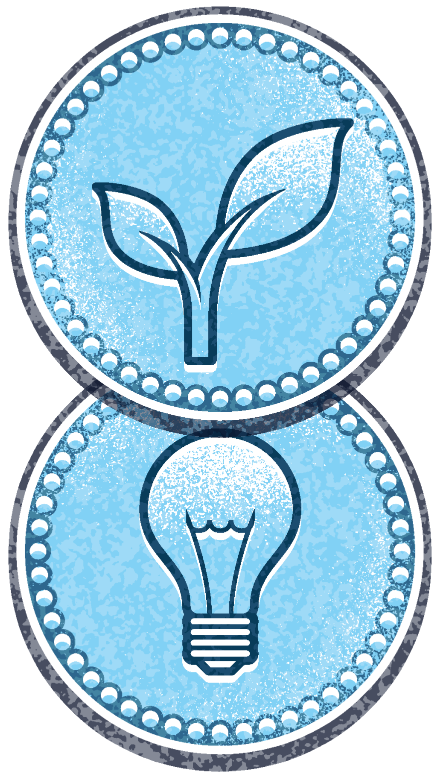
All of this will change companies' legal liabilities as they decide what is acceptable to the wider stakeholder base. It may also increase the number of groups and individuals they are answerable to and who can bring a claim against them.

** White & Case's views are separate from other advisory partners, the FT and the FT Moral Money Forum*

About the FT Moral Money Forum

The FT Moral Money Forum takes key issues from the ESG debate and explores them in depth for FT Moral Money subscribers.
The forum highlights the macro and philosophical questions and explores the experiences and solutions being proposed. We apply an editorial filter to these and present the most interesting ideas and experiences. We also engage our data visual team to find the best form of presentation.
The forum produces regular reports to highlight the ideas, policies and practices that are making a difference.

Find how to take part in the FT Moral Money Forum by emailing
michael.hepburn@ft.com



www.ft.com/moral-money-forum