

Benefit Corporations – Corporations with a Social Conscience

Corporations are generally associated with maximizing profits rather than making societal benefit a high priority. Well think again. An emerging corporate structure called the benefit corporation is a corporation with a social conscience. A benefit corporation is required by law not only to create profits for shareholders but also to positively impact society. This social benefit mission must be incorporated into the benefit corporation's entire being, from the Articles of Incorporation to its directors' decision-making.

A benefit corporation is a for-profit entity that, like all for-profits, has a goal of generating profit for its shareholders. In addition to that goal, however, the benefit corporation must also articulate a clear business purpose that includes a commitment to effect a material social or environmental benefit. A benefit corporation's directors still carry the fiduciary duty to act in the best interest of the corporation, but unlike the traditional for-profit corporation, the directors must also consider the impact their decisions will have on stakeholders, which include shareholders, employees, customers, suppliers, the community, and the environment.

Because of their social benefit responsibilities, benefit corporations are held to a higher degree of accountability through additional transparency requirements. In addition to an annual financial report, a benefit corporation must also provide its shareholders and post on its website (or otherwise make publicly available) an annual "benefit report" that captures the corporation's community and environmental performance and outlines its efforts to achieve its social benefit goals. Some states, such as New York, also require that the corporation file the benefit report with the state.

Seven states currently allow for the formation of benefit corporations: California, Hawaii, Maryland, New York, New Jersey, Vermont, and Virginia. As of this writing, Pennsylvania, Michigan, North Carolina and Colorado are expected to soon follow.

Benefit Corporation vs. "B Corp" Certification

Conducting a Google search on benefit corporations will inevitably yield results for "B Corps" as well as benefit corporations. Though the terms sound similar and are used interchangeably by some, a benefit corporation is not synonymous with a "B Corp." A benefit corporation is a legal, corporate entity that is approved and administered by the state like other corporate entities. A "B Corp," on the other hand, is a certification administered by The B Lab, a Pennsylvania-based nonprofit. Like "Fair Trade" certification, "B Corp" certification tells consumers that a particular corporation is committed in some way to addressing social or environmental concerns. Benefit corporations are not required to become certified B Corps, and not all B Corps are benefit corporations. Any corporation can apply for B Corp certification but not every corporation can be legally incorporated as a benefit corporation.

Benefit Corporation compared with the L3C

In May 2010, a [G&G Alert](#) announced a new corporate structure call the low-profit limited liability corporation, or L3C, the "for profit with a nonprofit soul." The L3C is similar to the benefit corporation in that they are both for-profit entities with missions for social good. Unlike a benefit corporation, whose mission must benefit society as well as shareholders, the L3C places social good as the primary purpose while profits are secondary, making the L3C more of a cross between a for-profit and nonprofit corporation. L3C's also differ structurally

from benefit corporations in that they are a type of LLC. Both L3C's and benefit corporations are treated as for-profit companies for tax purposes and all profits are fully taxable. Like an LLC, an L3C provides the corporation with liability protection but has the option of choosing pass through tax treatment to its members.

Whether to form a benefit corporation, L3C, or more traditional corporate structure for your organization depends on the organization's goals and mission. The good news is that with the creation of benefit corporations and L3Cs, the options are expanding for organizations to further social good as well as engage in making profit.

To discuss with an attorney what kind of corporate structure can best enable your organization to accomplish its mission, contact Gammon & Grange P.C. at (703) 761-5000.

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