Social
Economic
Environmental
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Benefit Corporation Standards Institute, Inc.

Frequently Asked Questions

1. What is a benefit corporation?

Benefit corporations are a newly created class of for-profit business enterprise. They are not nonprofits, nor are they tax exempt. Rather, they are corporations that have made a formal commitment to improving society and the environment, as well as making a profit. Becoming a benefit corporation is completely voluntary.

2. Where are benefit corporations in operation?

As of March 1, 2012 the following states have adopted laws establishing this new corporate class: California, Hawaii, Maryland, New Jersey, New York, Vermont and Virginia. Legislation to create benefit corporations has been introduced in North Carolina, Pennsylvania, Michigan, Minnesota, Oregon and Washington DC.

3. Who is supporting the drive to establish benefit corporations?

Many people and entities are supporting the benefit corporation movement. Thus far, the movement has been led by B-Lab (www.bcorporation.net). B-Lab is a 501(c)(3) entity that is devoting time and resources to the passage of this legislation in addition to a broad swath of businesses interested in becoming benefit corporations themselves. In most states, the legislation has seen very little significant resistance. It has typically benefitted from broad bi-partisan support from both Democratic and Republican lawmakers.

4. What is the difference between a benefit corporation and a regular for-profit corporation?

Typically the law has supported the idea that the sole purpose of a corporation is to maximize shareholder value at all costs. Benefit corporations challenge that notion by allowing for-profit businesses to choose to provide a "general public benefit," along with profit. For this reason, being a benefit corporation strongly differentiates that entity from its competitors in a favorable way.

5. Can't corporations pursue all these goals already?

Yes, they can, but only in limited ways. Indeed, over the past thirty years, many corporations have seen a business and social imperative to shift their operations away from the pursuit of pure profit and to pursue a triple-bottom line (people, planet, profit) instead. However, the legal landscape has not yet caught up with these corporate initiatives and in many places, legal and judicial decisions still support a single standard of "maximizing shareholder value." Shareholders can still sue Boards of Directors who choose to make decisions based on social and environmental considerations instead of shareholder value. This new corporate class aims to correct that deficiency in the corporate code and offer protection to Board of Directors that want to use the power of business to pursue broader societal goals.

6. Does this exempt Boards of Directors from fiduciary duties or reporting requirements?

No. Boards of Directors of benefit corporations must still exercise fiduciary duties and make decisions that are in the best interest of the corporation. Their shareholders can still hold them accountable for their actions and take appropriate actions to remedy if necessary.

7. What is the definition of "general public benefit?"

General public benefit is defined as, "a material positive impact on society and the environment, taken as a whole, as assessed against a third-party standard, from the business and operations of a benefit corporation." All benefit corporations are required to report annually concerning their performance and progress with respect to their general and specific public benefits.

8. What would those additional "specific public benefits" be?

In addition to amending their articles of incorporation to state they are a benefit corporation and will provide a "general public benefit," benefit corporations may also stipulate additional, specific public benefits they intend to provide as well. Those specific benefits include all of the following:

- 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 ordinary course of business;
- Preserving the environment;
- Improving human health;
- Promoting the arts, sciences or advancement of knowledge;
- Increasing the flow of capital to entities with a public benefit purpose;
- The accomplishment of any other particular benefit for society or the environment.

9. Who decides whether or not a "general public benefit" has been achieved?

Achievement of benefit goals is not determined by the government. Rather, consumers and investors can review the annual reports of benefit corporations and decide for themselves whether or not the benefit provided is sufficient for its purposes. Benefit corporations may also – on a voluntary basis -- seek "certification" of their status as qualifying as a benefit entity by an independent third party certifier.

10. What is the difference between a "benefit corporation" and a "mutual benefit corporation?"

Not-for-profit trade and professional associations are referred to as "mutual benefit corporations" and are tax-exempt under IRS Code 501(c)(6). However, benefit corporations are not eligible for tax exemption, but they are allowed to (and expected to) make a profit, and are not subject to the requirements and restrictions placed upon nonprofit entities. They are for-profit entities and subject to all laws that govern for-profit corporations in their states except for those provisions that are unique to the benefit corporation status.

11. When can my business become a benefit corporation?

You can choose to become a benefit corporation at any time. If you are a brand new business, you can choose to incorporate as a benefit corporation. If you are currently incorporated and wish to change your incorporation status to a benefit corporation you may do that as well. This corporate action must be voted on and approved by 2/3rds of shareholders. The corporation is required to buy dissenting shares at fair market value. There are also provisions in the law that covers mergers and acquisitions.

12. What is required?

You must amend your articles of incorporation to state that you are a benefit corporation, you will provide a general public benefit and any additional specific public benefits that you choose to provide. "Specific public benefits" are in addition to a general public benefit, and cannot be used on their own as a substitute for general public benefit. You are also required to choose an independent, third-party set of standards to measure your activities against and to prepare an annual report detailing how you met those standards with your activities throughout the year.

13. What third-party standards can I use?

There are a number of standards currently in existence that you can choose to use. You are not required to use a specific standard however you must use a standard that is a credible, comprehensive assessment of the impact of the business and the businesses operations upon society and the environment. The third-party standard must be developed by an entity that has no material financial interest in or relationship with the benefit corporation itself or any of its subsidiaries. In other words, you can't set your own standard (for reasons that should be obvious). BCSI, Inc., standards are developed to meet all third-party standard criteria.

14. Can my trade or professional association set the standard?

Trade and professional associations are precluded from setting their own standards due to the potential for conflict of interest issues to arise. However, the BCSI standards development process encourages the participation of associations as a way to add credibility and specificity to standards. The rules are associations and their representatives cannot make up more than one-third of any of our standards committees and cannot materially finance the development of the standard. Aside from that, their participation is welcome and encouraged.

15. What about this annual benefit report?

Each benefit corporation is required to submit an annual benefit report to their Secretary of State's office and their shareholders within 120 days of the end of the fiscal year or at the same time the benefit corporation delivers any other annual reports to its shareholders. The benefit corporation should post the annual report on the public portion of its Internet website but on that version of the report they may exclude the compensation paid to directors and any financial or proprietary information. If the benefit corporation doesn't have a website, they must provide a copy of its most recent annual benefit report to any person that requests a copy without charge.

16. What is included in the annual benefit report?

A. A narrative description of the following:

- The process and rationale for selecting the third-party standard used to prepare the report
- The ways in which the benefit corporation pursued a general public benefit during the applicable year and to what extent benefits were created
- The ways in which the benefit corporation pursued any additional specific public benefits enumerated in their articles of incorporation and to what extent benefits were created
- Any circumstances that hindered the creation of any general or specific public benefits

B. Assessment of the overall social and environmental performance of the benefit corporation in accordance with the selected third-party standards. (This assessment does not have to be certified or audited by a third party.)

C. The name of each person who owns 5 percent or more of the outstanding shares of the benefit corporation

D. If, in the opinion of the Board of Directors the benefit corporation has failed to pursue its general, or any of its specific, public benefit purposes, the Board of Directors will include a statement in the annual benefit report to that effect and provide clear descriptions of the ways the Board believes the benefit corporation failed to pursue its general, or any specific, public benefit purpose

E. A statement of any connection between the developers of the third-party standards and the benefit corporation itself including any financial or governance relationship that might materially affect the credibility of the objective nature of the third-party standard

17. Can I lose my status as a benefit corporation?

Yes, your status as a benefit corporation can be terminated. A benefit enforcement proceeding means a claim or action related to any of the following:

- Failure to pursue the general, or any additional specific, public benefit purpose(s) of the benefit corporation as set forth in the articles of incorporation;
- Violation of a duty or standard of conduct imposed upon a director
- Failure of the benefit corporation to deliver or post an annual public benefit report

18. Can we voluntarily terminate our own status as a benefit corporation?

Yes. Electing benefit corporation status is voluntary. The process to stop being a benefit corporation is almost identical to the process to become one in the first place just in reverse. You would need to amend your articles of incorporation to remove language identifying your business as a benefit corporation and removing reference to any general or specific public benefits you provide. This corporate action will need to be ratified by two-thirds of your shareholders and the corporation must purchase dissenting shares at fair market value.