

Legal FAQs

What is a Delaware Public Benefit Corporation?

Same as a traditional corporation, except:

- Expanded corporate purpose: required 'to operate in a responsible and sustainable manner' AND to identify one or more public benefit purposes
- Expanded accountability: required to 'balance financial interests of shareholders with . . . the best interests of those materially affected by the corporation's conduct (and the identified specific benefit purpose) shareholders are given a private right of action to enforce the new purpose and commitment to stakeholders
- Expanded transparency: required to report biennially to shareholders about corporation's overall impact on those interests (and that purpose)

What are the legal benefits of adopting benefit corporation status?

Protection to consider non-financial issues, even in a sale scenario

- Benefit corporations are not required to maximize shareholder value; instead, they enjoy legal protection to balance financial and non-financial interests when making decisions.
- Benefit corporations are not subject to the *Revlon Rulings*, which require the company to prioritize financial interests at the time of sale.

Protection of mission over time

- Shareholders of benefit corporation enjoy additional rights to enforce the above expanded corporate purpose, accountability, and transparency.
- Shareholders of benefit corporations have the opportunity to name and enforce pursuit of one or more specific public benefit purposes.
- It requires a 2/3 super-majority vote of shareholders to remove these higher standards and specific purposes.

Additional rights for existing shareholders only

- The additional rights described above apply only to shareholders and not to third parties.
- These additional rights apply only to shareholders who at the time a suit is filed own individually or collectively own at least two percent of the corporation's outstanding shares, or as to corporations with shares listed on

a national securities exchange, the lesser of two percent of the outstanding shares or shares with a market value of at least two million dollars.

What are the business benefits from electing benefit corporation status?

Enhanced reputation as a leader both internally and externally

- Benefit corporation status helps companies compete for talent and customers.
 - Millennials, which represent 50% of the global workforce, want work with meaning.
 - Nearly 70 Million U.S. consumers state a preference for making purchasing decisions based upon their sense of a company's social and environmental responsibility.
 - Fact: 90% of Americans say that companies must not only say a product or service is beneficial, but they need to prove it. - Cone Communications
 - Fact: 73% of consumers care about the company, not just the product when making a purchasing decision. – BBMG
 - Fact: 86% of consumers are more likely to trust a company that shows the impact of its cause efforts. – Cone Communications
 - Fact: 96% of consumers who viewed the B Corp ad campaign said the next time they go shopping, they'll look out for B Corps featured, or at least want to learn more about them - BBMG

Increased attractiveness to retail investors and mission protection as a publicly-traded company.

- Benefit corps create an attractive investment opportunity for the same nearly 70 Million 'conscious consumers' that have fueled organics, fair trade, and 'buy local', while enjoying a form of inoculation from the short-termism that plague public equity markets.

Are there tax implications of electing benefit corporation status?

- No. There are no tax implications when you switch from a traditional corporation to a benefit corporation.
- Just like traditional corporations, a benefit corporation can elect to have its earnings taxed at the corporate level (C corp) or to pass through earnings directly to shareholders who will be taxed at the individual level (S corp).

Potential concerns rebuffed:

Does benefit corporation status make it more difficult to raise money?

- No. Benefit corporations are attractive to a large and growing market for socially responsible and impact investments. According the U.S. Social Investment Forum, \$3.7 Trillion (or approx. 11% of U.S. assets under management) is currently invested in some form of Socially Responsible Investing. According to JPMorgan, there is a \$1 Trillion investment opportunity in impact investing over the next decade.
- A number of leading investors across venture capital, commercial banking, and private equity signed an Open Letter to Fellow Investors expressing their support of benefit corporations because they combat short-termism, reduce transaction costs, reduce risk, and build trust, helping benefit corporations attract talent and customers.
- Using the community of more than 750 Certified B Corporations as a proxy, benefit corporation status will not hurt, and may help make a company more attractive.
 - **Albert Wenger, Union Square Ventures:** “What benefit corporation legislation does is facilitate a market that is badly needed: the market for mission driven companies. For me as an investor that is exciting news”.
 - **Michael Eisenberg, Benchmark Capital:** “B Corp re-imagines corporate governance in a way that drives value creation for all and creates lasting companies. We are pleased that our portfolio companies Farmigo and Couchsurfing have embarked on these lasting paths.”
 - **Kevin Jones, Good Capital:** “There is so little commonality among social ventures that we have to evaluate investments on an individual basis. But if we know it is a B Corporation, we already know a lot about the company and its values.”
 - **David Chen, Equilibrium Capital Group:** "Our firm, Equilibrium Capital Group, is a B Corp, and one of a growing number of investors that are seeking to invest in B Corps and companies that explicitly create value for both shareholders and society."
 - **Paul Sellow, CEO of Harvest Power:** "Our shareholders knew about it, and supported it. Harvest Power is focused on profitability as a business, and I don't think being a B Corporation contradicts that." (recently raised \$58 million from investors including Kleiner Perkins, Triple Point Capital, and Generation Investment Management)
 - **Ryan Allis, Founder & CEO, iContact:** "Our investor saw iContact's focus on social and environmental responsibility as a point of differentiation with our competitors and a driver of long-term growth." (recently sold for \$169 million)
 - **Gigi Lee Change, Founder, Plum Organics:** "I knew that Nest would be a partner that would really safeguard the mission as much as I would. The whole model is about being a holding company for early-stage mission-driven companies to allow them to flourish." (sold to Nest Collective which itself later became a Certified B Corporation)

- **David Murphy, Chairman, Better World Books:** "We raised capital and our lead investor was also a Certified B Corporation. The B Corp connection meant access to capital from mission-aligned investors."

Can benefit corporations go public?

- Yes. Due to the recent passage of benefit corporation laws, currently, there are no examples of benefit corporations that are or have gone public.
- Rally Software, a Certified B Corporation, completed a successful IPO in April 2013 at \$14/share and is now trading at \$24/share.

How are shareholders' financial interests protected?

- Shareholders are among the stakeholders whose interests the directors of a Delaware public benefit corporation are required to balance.
- Shareholders are the only stakeholder entitled to bring a legal action against the corporation or its directors.
- Benefit corporations are required to provide shareholders with a biennial report on overall social and environmental performance and on its success achieving its specific public benefit purpose.
- Shareholders of a company seeking to elect or terminate benefit corporation status enjoy dissenters rights, entitling them to a fair market appraisal of their shares.
- Shareholders of benefit corporations can vote to terminate benefit corporation status (by a 2/3 supermajority vote).

Is there risk of lawsuits by third parties like environmental or labor groups?

- No. Third parties do not have legal standing to sue a benefit corporation for failing to act in a responsible or sustainable manner, balance the interests of the various stakeholders, or produce a public benefit.

Do directors have increased liability?

- The Delaware benefit corporation statute gives companies the option to restrict potential liability to specifically exclude director, officer and corporate liability for monetary damages.
- Opting in eliminates the concerns of directors that they will be subject to personal liability and focuses courts on the exclusive remedy of awarding injunctive relief requiring the benefit corporation to simply live up to the commitments it voluntarily undertook.
- Model benefit corporation legislation in other states restricts liability to non-monetary damages.

Will it be more difficult for benefit corporations to get D&O insurance?

- No. B Lab is unaware that any of the nearly 300 existing benefit corporations across the country have had difficulty obtaining D&O insurance or been asked to pay a higher premium.
- This experience is corroborated by meetings with brokers at Marsh McLennan and underwriters from several major D&O (director and officer) insurance carriers, including ACE, Chubb and Zurich.
- Some say that over time benefit corporation might enjoy reduced rates as a result of their enhanced governance regime and stakeholder engagement.

What are the new director duties under Delaware benefit corporation status?

- Directors must manage the corporation in a responsible and sustainable manner
- Directors must manage or direct the business and affairs of the benefit corporation in a manner that balances the pecuniary interests of the stockholders, the best interests of those materially affected by the corporation's conduct, and the specific public benefit or public benefits identified in its certificate of incorporation.
- Directors must also provide a biennial report to the shareholders on the corporation's promotion of the public benefit identified in its certificate of incorporation and of the best interests of the stakeholders.

Does a benefit corporation need to be certified by B Lab or any third party?

- No. In addition to the benefit corporation itself not needing to be certified, the biennial benefit report also is not required to be verified by a third party.

If there is no third party certification/verification, then how do we know a benefit corporation does what it says?

- Under the Delaware statute, stockholders of Delaware benefit corporations are permitted to require the benefit corporation to have its biennial report verified by a third party, to have it made transparent to the public, and/or to have it completed annually.
- Under all other states' benefit corporation laws, benefit corporations are required to have their annual benefit report prepared against a credible third party standard and to make that report transparent to the public.