



**Vermont Benefit Corporation How-To-Guide:
Incorporating as a Benefit Corporation Step-by-Step**

October 2013

B Lab



I. Introduction

This paper serves as a guide for benefit corporation law. This guide will help to introduce what the benefit corporation law is and will guide businesses through the process of incorporating as a benefit corporation as required by the Secretary of State. All legal matters should be consulted with a legal representative before any actions are taken. This tool is simply to educate companies who are interested in incorporating as a benefit corporation.

II. What is Benefit Corporation Law?

Before making the decision to incorporate as or switch to a benefit corporation, it is important to understand what the bill requires and if this is the right business form for your company. The benefit corporation law allows for the creation of a new and voluntary corporate entity that will allow businesses to consider profit as well as society and the environment. This form of incorporation allows a business to balance fiduciary duty between its shareholders and stakeholders. Currently, nineteen (19) states and the District of Columbia have enacted benefit corporation law around the country. These states have passed benefit corporation laws to encourage business growth, provide options for entrepreneurs and to attract the sizable social impact investment community to create new opportunities for economic growth.

The corporate form consists of three main parts that are required for the entrepreneur/business owner to comply with in order to incorporate as a benefit corporation. These parts are as follows:

Purpose: Benefit corporations have a new purpose that differs from traditional corporations. While traditional corporations have the single duty to maximize profit, benefit corporations have the increased purpose of considering society and the environment in addition to seeking a profit.

- 1) The form requires that businesses incorporating as a benefit corporation must declare their commitment to creating general public benefit (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.”), and in some cases may be required to declare a specific benefit that the business produces.
- 2) Conversion into and out of a benefit corporation form takes a supermajority vote of 2/3 of all classes of shareholders. This ensures a high level of agreement amongst the shareholders. (Especially relevant for businesses looking to amending articles of incorporation.)
- 3) Each business is required to assess itself by a third-party standard to ensure that the benefit corporation is creating a positive impact.

Accountability: To ensure business accountability to creating material positive impact, the benefit corporation form requires directors to consider society and the environment. Additionally, the form provides shareholders with a private right of action to ensure their social impact investments are functioning according to the new purpose. These are much like the accountability elements of traditional corporations, however they include the consideration of society and the environment in addition to profit.

Transparency: Benefit corporations are required to produce an annual Benefit Report, which is assessed against a third party standard. The statute describes the parameters of

what to look for when picking a standard for the basis of the report. The benefit corporation statute also requires that annual benefit reports be made public and shared with shareholders. Finally, some states require that the benefit report be filed with or submitted to the state.

The brief description of the benefit corporation law above will help to lay a foundation for the steps explained in the following sections. These steps will cover the processes of incorporation/electing benefit corporation status as required by the Secretary of State to the procedures required from companies that are benefit corporations. This is a guide for incorporation and other requirements by the Secretary of State, and is not intended to stand as legal advice. For all legal advice please seek a lawyer or speak to your legal board. If you would like more information regarding what a Benefit Corporation is visit www.benefitcorp.net.

III. Incorporating as a Benefit Corporation?

Incorporating as a benefit corporation may change slightly from state-to-state, however this section will help businesses to think about, prepare and plan for the process of incorporating according to the requirements of the Secretary of State. The following is not meant to serve as legal advice and therefore all legal matters should be taken to a legal advisor. Before jumping into the incorporation process, there are two main questions for businesses looking to incorporate as a benefit corporation: (1) Is the business a newly formed entity? Or (2) is the business amending its Articles of Incorporation and becoming a benefit corporation? For those looking to incorporate for the first time, see the next section *IV. Newly Formed Benefit Corporations*. For those businesses looking to amend their articles of incorporation to be governed by the benefit corporation status, see section *V. Amending Articles of Incorporation*. Finally, if currently an LLC and can't become a corporation for certain circumstances such as tax reasons, you can include the benefit corporation statute provisions in your governing documents (see *V. Amending Articles of Incorporation*).

IV. Newly Formed Benefit Corporations

The steps for incorporation as a benefit corporation with the Secretary of State are much like the steps needed to establish any form of corporation. However, there are a few intricacies that are specific to the steps for incorporating as a benefit corporation. The following will help to walkthrough each step to ensure incorporation is done properly. Note that each state has a different process for incorporation and that legal assistance is recommended and sometimes required.

The following steps need to be taken in order to incorporate as a benefit corporation:

- 1) Articles of Incorporation – This form or letter must be filed with the Secretary of State in order to form a corporate entity.
 - a. Fill out Articles of Incorporation Form, Vermont profit T11A to Secretary of State. Include the following in the Articles in the order requested by the Secretary of State:
 - i. Corporation Name
 - ii. Brief Purpose (*to create a general public benefit*)

- iii. Name and Signature of Registered Agent
 - iv. Name(s) and Address(es) of Incorporator(s)
 - v. Share of stock being made available
 - vi. Signatures of Incorporators, Registered Agent and any other parties involved
- b. To ensure benefit corporation status when incorporating as a new entity the following two steps are required:
- i. Must declare benefit corporation status by selection check box: Benefit (T11A, Ch. 21)
 - ii. Must list designated Benefit Director and Benefit Officer who will oversee benefit proceedings
 - iii. Must list one or more specific benefits for purpose in addition to purpose
- 2) Processing (*Application*) Fee (See website for fee amount).
- 3) Submit forms to Secretary of State.

V. Amending Articles of Incorporation

Existing businesses that are interested in changing their existing articles of incorporation to a benefit corporation are allowed to do so by taking the following steps. The procedure will likely need a legal representative to ensure all taxation and the amending of articles is done correctly, therefore all legal decisions should be made with a legal advisor. The following will be a walkthrough guide of the process for amending your Articles of Incorporation:

- 1) Fill out the Vermont Articles of Amendment Form to Amend Articles of Incorporation and submit to the Secretary of State
- 2) Can amend certificate of incorporation by including a statement declaring benefit corporation status
- 3) The decision to amend articles of incorporation is contingent upon a two-thirds/minimum vote by the board of directors and shareholders (legal advisement may be required). A notice of the meeting where shareholder and directors decision was made to elect benefit corporation status must be submitted with amended articles
- 4) If a Benefit Director and Benefit Officer is required, they must be appointed upon amending of the articles

For more in-depth legal advice and considerations see [*How to Switch to Being a Benefit Corporation.*](#)

VI. Further Benefit Corporation Considerations

The benefit corporation statute also mandates certain activities that a benefit corporation will need to enact upon in order to operate as a benefit corporation. It also prescribes what action to take in certain situations. Such activities and situations include, filing annual reports with the State Department (if mandated by state). Each of these processes may vary from state-to-state however businesses incorporating as a benefit corporation should have an understanding of these processes before committing to this corporate form.

- 1) Filing Annual Reports – The benefit corporation statute requires that businesses incorporated as benefit corporations must assess their operations against a third-party standard and prepare an annual report. The benefit report must be shared with shareholders, made available to the public. Each state will have its own process on how filings should be processed.

To prepare an annual benefit report use the following steps:

- a) Use a qualified third-party standard as a basis for your annual benefit report (More information and a list of third-party standards can be found at www.benefitcorp.net/selecting-a-third-party-standard)
- b) Use the results of that assessment to create a benefit report that states the following:
 - a. A narrative description of:
 - i. Process and rationale for selecting and/or changing third-party standard
 - ii. Ways in which the company pursued public benefit that amounted to general public benefit
 - iii. Ways in which the company pursued a specific benefit
 - iv. Any circumstances that have hindered the pursuit of creating general public benefit or specific benefit
 - b. Third-Party Assessment of general social and environmental performance
 - i. Must be consistent with original application or otherwise explained why not consistent
 - c. Name of benefit director and benefit officer, if any, and contact address
 - d. Compensation of Benefit Director
 - e. Name of each person that owns 5% or more in shares
 - f. Statement from director stating any connection with third-party standard and any information of restrictions or changes of the board
- c) Share finished annual benefit report with each shareholder (must be done within 120 days after end of fiscal year, where stated)
- d) Make the benefit report public by posting on company website or have available copies to send to those who request it. Director compensation can be removed from publicly available documents.

*Note that each state has its own requirements for how the Benefit Report should be prepared and with whom it should be shared.

Any questions or concerns relative to corporate filings may be directed to the Vermont Secretary of State at 802-828-2386. Questions in any other area should be directed to Holly Ensign-Barstow by email to Holly@bcorporation.net or by telephone to 212-608-4150.