

Connecticut Benefit Corporation How-To Guide

Overview

Unlike traditional corporations that make business decisions primarily to maximize shareholder value, benefit corporations aim to create value for all of their stakeholders. Status as a benefit corporation requires a company's management to consider the impact of its business on stakeholders (such as employees, suppliers, and communities where they operate) while also fulfilling fiduciary duties to shareholders. Benefit corporations also have some legal responsibilities that differ from typical business corporations. For example, benefit corporations must use a third-party standard to prepare an annual report to shareholders that reports on the corporation's social and environmental performance. This guide will help to explain the process for forming a benefit corporation and for converting an existing company into a benefit corporation in Connecticut. The full text of Connecticut's Benefit Corporation Act (Conn. Gen. Stat. § 33-1350, et seq.) is available at the [Connecticut General Assembly's website](#). As with most legal matters, you should consult with a legal professional before taking any action.

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Forming a Brand New Entity as a Benefit Corporation

In Connecticut, the process for forming a benefit corporation tracks closely to the process of forming any other type of corporation. You must file certificate of incorporation with the Connecticut Secretary of State and must state in that filing that the corporation is creating a benefit corporation.

Step #1: Select an available name for your company

Your company's name cannot be the same as or too closely resemble another Connecticut corporation's name. The name that you choose must comply with Section 33-655 of the Connecticut BCA and include the word "association", "company", "corporation", "limited", "Societa per Azioni", or "incorporated", or an abbreviation of one of those words.

Actions

- Check the availability of your preferred name by searching the [Connecticut Secretary of State Business Name Database](#).
- Reserve an available name for 120 days by filing an [Application for Reservation of Name](#) with the Connecticut Secretary of State.

Step #2: Choose a registered agent, incorporator, and directors

You will need to designate a registered agent, incorporator, and directors. Every Connecticut corporation must have a registered agent that agrees to accept legal documents on behalf of the corporation if it is sued. The initial directors can be appointed by the incorporator, which should be documented in written resolutions that are signed by the incorporator.

A publicly traded Connecticut benefit corporation must, and any other Connecticut benefit corporation may, appoint an individual to serve as a benefit director. A benefit director, in addition to his/her normal duties as a director, is responsible for issuing an opinion in the annual benefit report on the benefit corporation's progress in promoting its general public benefit and any specific public benefits during that year.

Fill the Following Roles		
Registered Agent	<ul style="list-style-type: none"> An individual who is a full-time resident of Connecticut or a business entity that is registered with the Connecticut Secretary of State. 	<input checked="" type="checkbox"/>
Incorporator(s)	<ul style="list-style-type: none"> The person(s) who initiate the process of incorporating the company by signing and filing the certificate of incorporation. A corporation can have more than one incorporator. 	<input checked="" type="checkbox"/>
Directors	<ul style="list-style-type: none"> Members of your corporate board tasked with overseeing the affairs of your company. 	<input checked="" type="checkbox"/>
Benefit Director (Optional unless corporation is publicly traded)	<ul style="list-style-type: none"> A director whose role is to opine on the company's, its directors', and its officers' compliance with the company's general public benefit and specific public benefit(s) in the annual benefit report. 	<input checked="" type="checkbox"/>

Draft the Following Documents		
Resolutions of the Incorporator	<ul style="list-style-type: none"> Resolutions can be used to appoint the directors. Resolutions should be written and signed by the incorporators. 	<input checked="" type="checkbox"/>

Step #3: Draft your certificate of incorporation and file them with the Secretary of State

Certificate of incorporation can be created either by using a standard form provided by the [Connecticut Secretary of State](#) or by drafting your own certificate of incorporation. Below we describe what must be included in your company's certificate of incorporation, as well as optional items that are permitted, but not required, by the Benefit Corporation Act.

Statement of Status: Your company's certificate of incorporation must state explicitly that the company is a benefit corporation. This can be accomplished by including the following language to your certificate of incorporation: "This corporation is a benefit corporation."

Purpose: By virtue of the Benefit Corporation Act, all benefit corporations automatically have the purpose of creating a material positive impact on society and the environment. This is called "general public benefit." You also have the option of identifying one or more "specific public benefit" purposes in your certificate of incorporation.

Optional: Include a Specific Public Benefit or Benefits In Your Certificate of Incorporation

Connecticut permits benefit corporations to include one or more specific public benefit purposes in their certificate of incorporation. Examples of “specific public benefits” include:

- 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 normal course of business.
- Protecting or restoring the environment.
- Improving human health.
- Promoting the arts, sciences, or advancement of knowledge.
- Increasing the flow of capital to entities with a purpose to benefit society or the environment.
- Conferring any other particular benefit on society or the environment as specified in the benefit corporation’s certificate of incorporation.

Note: In Connecticut, any amendment of the certificate of incorporation to amend, add, or delete a specific public benefit must be approved by your shareholders by a “minimum status vote” (i.e., by the holders of at least two-thirds of the outstanding shares of each class or series of shares entitled to vote, each class voting separately, regardless of any voting limitations imposed by the certificate of incorporation or bylaws).

Standard of Conduct: The directors of a benefit corporation are required to consider the effect that their actions or inaction has on the following:

- The shareholders of the benefit corporation.
- The employees and workforce of the benefit corporation, its subsidiaries, and its suppliers.
- The interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation.
- Community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located.
- The local and global environment.
- The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation.
- The ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose.

Your company may require directors to prioritize certain of the above-mentioned interests in pursuit of your company’s general public benefit purpose or specific public benefit purpose, if

any, by including a provision in the certificate of incorporation that it intends to give priority to certain considerations over others.

Standing for Benefit Enforcement Proceedings: Certain parties may bring a claim against a benefit corporation by commencing a “benefit enforcement proceeding.”

If the certificate of incorporation is silent about this issue, benefit enforcement proceedings may be commenced only by:

- the benefit corporation itself;
- a shareholder or a group of shareholders owning 5% or more of any outstanding class or series of shares of the benefit corporation; or
- a shareholder or a group of shareholders owning 10% or more of the outstanding equity of the benefit corporation’s parent entity.

You may also include a provision in your certificate of incorporation or bylaws to authorize any other person or group to commence a benefit enforcement proceeding.

Using Connecticut’s Standard Form to Create Your Certificate of Incorporation	Drafting Your Certificate of Incorporation Without a Standard Form
<u>Required Items</u>	<u>Required Actions</u>
<ul style="list-style-type: none"> • Access the Certificate of Incorporation form via the Connecticut Secretary of State’s website. • Complete the form by following the accompanying instructions. • Ensure that you elect benefit corporation status by checking the appropriate box. • Include the signature of each incorporator, and indicate that each person is signing in the capacity as an incorporator. 	<ul style="list-style-type: none"> • Include each provision required by Conn. Gen. Stat. § 33-636. • Put the provisions in the order in which they appear in the statute. • Follow as closely as possible the wording of the statute. • Do not forget to include the provision stating that the corporation is a benefit corporation.
<u>Optional</u>	
<ul style="list-style-type: none"> • Include one or more specific public benefit purpose(s). • Identify one or more considerations that the board must prioritize over other considerations. • Identify additional persons who are authorized to commence a benefit enforcement proceeding. 	

Step #4: Draft corporate bylaws to establish governance rules for your business

Actions

- Consider some of the unique responsibilities of benefit corporations before crafting your bylaws.
- If the benefit corporation has chosen to appoint a “benefit director” or a “benefit officer,” the corporation should consider whether to include provisions in its bylaws setting forth the duties and powers of the position. The benefit officer, if any, performs management duties related to carrying out the general public benefit and, if applicable, the specific public benefit(s). The benefit officer is also responsible for preparing the annual benefit report.

Note: Connecticut benefit corporations must publish an annual benefit report each year. Consider including procedures for the creation of this report in your bylaws to help ensure that your business and its purposes are aligned.

Step #5: Draft resolutions to be adopted at an initial meeting of the directors or by unanimous written consent in lieu of a meeting

After your corporation is formed or in connection with its formation, you should hold a meeting of the directors, at which the board’s resolutions are adopted and recorded in corporate minutes. Alternatively, a meeting of the directors is not required if all directors consent in a signed writing to the proposed resolutions and those consents are included in the corporation’s minutes or filed with the corporate records.

Actions

- Hold your first board of directors meeting or obtain written consent to:
 - Appoint corporate officers.
 - Adopt bylaws.
 - Authorize the issuance of stock.
 - Authorize, approve, and ratify any other preliminary tasks related to the formation of the benefit corporation.

Step #6: Post-formation considerations

After forming your benefit corporation, you should consider taking additional steps to address requirements unique to benefit corporations in Connecticut. For example, you can establish procedures for publishing the “annual benefit report,” which you must provide to your shareholders within 120 days following the end of the benefit corporation’s fiscal year (or at the same time you deliver any other annual report to your shareholders, whichever is earlier). Your benefit report should be accessible free of charge to the public. Connecticut also requires the

benefit corporation to post the report to the public portion of the company's website. For help with generating your annual benefit report, access the online tool [here](#).

The preparation of your annual benefit report requires your company to choose a standard for defining, reporting, and assessing your corporation's overall social and environmental performance. This is known as the "third-party standard." The standard you select must be comprehensive, independent, and transparent. For more information on third-party standards, visit benefitcorp.net.

In Connecticut, a benefit corporation may, not earlier than 24 months after the date that it became a benefit corporation, adopt a "legacy preservation provision" by amending its certificate of incorporation, which amendment must be unanimously approved by the corporation's shareholders. A benefit corporation that adopts a legacy preservation provision remains a benefit corporation in perpetuity, and may only dispose of its assets via sale to or merger with a benefit corporation that has also adopted a legacy preservation provision.

Actions

- Choose a third-party standard.
- Set a timeline with key dates for the preparation and filing of your annual benefit report.
- Deliver your report to each shareholder within 120 days of the end of the fiscal year (or at the same time you deliver any other annual report to your shareholders, whichever is earlier).
- Post the annual report on your website.
- Consider the adoption of a legacy preservation provision.

Summary: To Form a New Benefit Corporation

- **In connection with formation:**
 - Draft articles of incorporation.
 - Deliver to the Connecticut Secretary of State:
 - Certificate of incorporation.
 - Payment of filing fee.
 - Draft:
 - Resolutions of the incorporator(s).
 - Resolutions of the board, to be adopted at a meeting or by written consent in lieu of a meeting.
 - Bylaws.
- **Post-formation:**
 - Choose a third-party standard.
 - Prepare the annual benefit report.
 - Send the annual benefit report to all shareholders within 120 days of fiscal yearend, or concurrently with any other annual reports you send to shareholders (whichever is earlier).
 - Post the annual benefit report publically on the company's website.
 - Consider the adoption of a legacy preservation provision.

Converting Your Company into a Benefit Corporation

An existing corporation can become a benefit corporation by amending its certificate of incorporation to include a statement that the organization is a benefit corporation. This How-To Guide addresses the steps required for an existing corporation to become a benefit corporation in Connecticut.

For entities like Limited Liability Companies, Limited Partnerships, or other types of entities that are not standard business corporations, transitioning to a benefit corporation must be accomplished through a conversion or merger. If your existing company is not a business corporation and you would like it to become one, you should seek the assistance of a legal professional.

Step #1: Conduct due diligence and plan ahead

There are no tax implications for an existing corporation that elects to become a benefit corporation, but this transition may impact your organization in other ways. You should review your corporate documents and contracts to determine if any updates or changes may be necessary or desirable after your company becomes a benefit corporation. You should also consider all of the changes and steps that you may need to take as you transition your business into a benefit corporation, like putting procedures in place to measure your social and environmental impact.

<u>Required Actions</u>
<ul style="list-style-type: none"> • Analyze and plan for business implications including: <ul style="list-style-type: none"> ○ Legal requirements. ○ Corporate governance considerations. • Draft amendments to the certificate of incorporation: <ul style="list-style-type: none"> ○ Include a statement that the corporation is a benefit corporation.
<u>Optional Actions</u>
<ul style="list-style-type: none"> • Draft amendments to bylaws, if any: <ul style="list-style-type: none"> ○ Draft amendments to your bylaws governing the management of the benefit corporation. ○ If your company has chosen to appoint a “benefit director,” which is optional unless the company is publicly traded, include provisions setting forth the duties and powers of the position. ○ If your company has chosen to appoint a “benefit officer,” the corporation should include provisions in its bylaws setting forth the duties and powers of the position.

Due Diligence		
Contracts	<ul style="list-style-type: none"> Review contracts including any bank or loan documents to determine if any consents, notices, or other actions are required in connection with your company's amendment of its certificate of incorporation. 	☑
Corporate Organizational Documents	<ul style="list-style-type: none"> Review certificate of incorporation and bylaws to determine if you would like or need to make any changes as a result of electing benefit corporation status. Review certificate of incorporation, bylaws, and any voting or other shareholder agreements to determine if any consents, notices, or other actions are required in connection with your company's amendment of its certificate of incorporation. 	☑

Step #2: Draft amendments to the certificate of incorporation

You must amend the certificate of incorporation to include a statement that your company is a benefit corporation. You can do this by completing and filing a Certificate of Amendment, which can be found at the [Connecticut Secretary of State's website](#). If you originally drafted your certificate of incorporation, you may draft your own amendments and file them with the Secretary of State. Below we describe what amendments to the certificate of incorporation you must make, as well as optional amendments that are permitted, but not required, by the Benefit Corporation Act.

Statement of Status: You must include an amendment to the certificate of incorporation that states explicitly that the company is a benefit corporation. This can be accomplished by drafting an amendment that includes the following language: "This corporation is a benefit corporation."

Purpose: By virtue of the Benefit Corporation Act, all benefit corporations automatically have the purpose of creating a material positive impact on society and the environment. This is called "general public benefit." You also have the option of amending the certificate of incorporation to identify one or more "specific public benefit" purposes in your articles.

Optional: Include Specific Public Benefits In Your Certificate of Incorporation

Connecticut permits benefit corporations to include one or more specific public benefit purposes in their certificate of incorporation. Examples of “specific public benefits” include:

- 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 normal course of business.
- Protecting or restoring the environment.
- Improving human health.
- Promoting the arts, sciences, or advancement of knowledge.
- Increasing the flow of capital to entities with a purpose to benefit society or the environment.
- Conferring any other particular benefit on society or the environment as specified in the benefit corporation’s certificate of incorporation.

Note: In Connecticut, any amendment of the certificate of incorporation to amend, add, or delete a specific public benefit must be approved by your shareholders by a “minimum status vote” (i.e., by the holders of at least two-thirds of the outstanding shares of each class or series of shares entitled to vote, each class voting separately, regardless of any voting limitations imposed by the certificate of incorporation or bylaws).

Standard of Conduct: The directors of a benefit corporation are required to consider the effect that their actions or inaction has on the following:

- The shareholders of the benefit corporation.
- The employees and workforce of the benefit corporation, its subsidiaries, and its suppliers.
- The interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation.
- Community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located.
- The local and global environment.
- The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation.
- The ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose.

You may amend the certificate of incorporation to require directors to prioritize certain of the above-mentioned interests in pursuit of your company’s general public benefit purpose or specific public benefit purpose, if any, by including a provision in the certificate of incorporation that it intends to give priority to certain considerations over others.

Standing for Benefit Enforcement Proceedings: Certain parties may bring a claim against a benefit corporation by commencing a “benefit enforcement proceeding.”

If the certificate of incorporation are silent about this issue, benefit enforcement proceedings may be commenced only by:

- the benefit corporation itself;
- a shareholder or a group of shareholders owning 5% or more of any outstanding class or series of shares of the benefit corporation; or
- a shareholder or a group of shareholders owning 10% or more of the outstanding equity of the benefit corporation’s parent entity.

You may also include a provision in your certificate of incorporation to authorize any other person or group to commence a benefit enforcement proceeding.

Using Connecticut’s Standard Form to Amend Your Certificate of Incorporation	Drafting Amendments to Your Certificate of Incorporation
<u>Required Items</u>	<u>Required Actions</u>
<ul style="list-style-type: none"> • Find the Certificate of Amendment form on the Connecticut Secretary of State’s website. • Include the required new provision stating that the corporation is a benefit corporation. • Complete other required information. • File the form with the Connecticut Secretary of State. 	<ul style="list-style-type: none"> • Include each provision required by Conn. Gen. Stat. § 33-800. • Put the provisions in the order in which they appear in the statute. • Follow as closely as possible the wording of the statute. • Do not forget to include the provision stating that the corporation is a benefit corporation.
<u>Optional Amendments</u>	
<ul style="list-style-type: none"> • Include one or more specific public benefit purpose(s). • Identify one or more considerations that the board must prioritize over other considerations. • Identify additional persons who are authorized to commence a benefit enforcement proceeding. 	

Step #3: Obtain board approval of the amendments at a meeting of the directors or by unanimous written consent in lieu of a meeting

The board of directors will have to approve any amendments to the existing certificate of incorporation and any amendments to the bylaws by adopting resolutions that reflect the board’s

approval of the amendments, using the procedures laid out in [Conn. Gen. Stat. §§ 33-748—33-752](#), your current certificate of incorporation and bylaws. You may convene a special meeting to vote on your plan or conduct a vote during one of your scheduled board meetings. The amendments must be approved by a majority of the board at a meeting where a quorum is present. The board must then adopt resolutions approving the amendments and record the resolutions in the minutes.

Alternatively, if your bylaws so allow, the board may adopt the resolutions in lieu of a meeting if all directors consent in a signed writing to the proposed actions and those consents are included in the corporation's minutes or filed with the corporate records. Check your certificate of incorporation and your bylaws for any additional requirements for board approval of amendments that they may impose.

Actions

- Review your certificate of incorporation and bylaws to determine the procedures required for the board to adopt amendments to those documents.
- Propose your amendments at a regular meeting or a special meeting of the board of directors and vote on the proposal, or obtain the written signed consent of all directors authorizing the amendments.
- Document the board's approval with resolutions recorded in the meeting minutes.

Note: If by vote, the board must approve the amendments by a majority vote in favor of the amendments at a meeting where a quorum is present.

Step #4: Obtain shareholder approval of the amendments and the election of benefit corporation status

Your shareholders will have to approve the decision to become a benefit corporation and the required amendments to the certificate of incorporation. Shareholders can approve the amendment by voting at a shareholder meeting or by signing a written consent. When voting to amend the certificate of incorporation to include the statement that the corporation is a benefit corporation, the amendment must be approved by a minimum status vote (i.e., by the holders of at least two-thirds of the outstanding shares of each class or series of shares entitled to vote, each class voting separately, regardless of any voting limitations imposed by the certificate of incorporation or bylaws).

Unless otherwise provided by the company's certificate of incorporation, a shareholder meeting is not required if the action is approved by all of the shareholders evidenced by one or more consents describing the proposed action or amendment, signed by each shareholder and included in the minutes or filed with the corporate records reflecting the action approved. Check your certificate of incorporation and your bylaws for any additional requirements for shareholder approval of amendments that they may impose.

Actions

- Review your certificate of incorporation and bylaws to determine the procedures required for the shareholders to adopt amendments to those documents.
- Hold a vote on any amendments to your certificate of incorporation or draft a consent and have it signed by all shareholders.
- Document the shareholders' approval in the meeting minutes or corporate records.

Note: A “minimum status vote” is needed for shareholder approval of the amendment to the articles stating that the corporation is a benefit corporation (i.e., the approval of the holders of at least two-thirds of the outstanding shares of each class or series of shares entitled to vote, each class voting separately, regardless of any voting limitations imposed by the certificate of incorporation or bylaws).

Step #5: File the amendments to the certificate of incorporation

File your approved amendments to your certificate of incorporation with the Connecticut Secretary of State.

Step #6: Post-conversion considerations

After forming your benefit corporation, you should consider taking additional steps to address requirements unique to benefit corporations in Connecticut. For example, you can establish procedures for publishing the “annual benefit report,” which you must provide to your shareholders within 120 days following the end of the benefit corporation’s fiscal year (or at the same time you deliver any other annual report to your shareholders, whichever is earlier). Your benefit report should be accessible free of charge to the public. Connecticut also requires the benefit corporation to post the report to the public portion of the company’s website. For help with generating your annual benefit report, access the online tool [here](#).

The preparation of your annual benefit report requires your company to choose a standard for defining, reporting, and assessing your corporation’s overall social and environmental performance. This is known as the “third-party standard.” The standard you select must be comprehensive, independent, and transparent. For more information on third-party standards, visit benefitcorp.net.

In Connecticut, a benefit corporation may, not earlier than 24 months after the date that it became a benefit corporation, adopt a “legacy preservation provision” by amending its certificate of incorporation, which amendment must be unanimously approved by the corporation’s shareholders. A benefit corporation that adopts a legacy preservation provision remains a benefit corporation in perpetuity, and may only dispose of its assets via sale to or merger with a benefit corporation that has also adopted a legacy preservation provision.

Actions

- Choose a third-party standard.
- Set a timeline with key dates for the preparation and filing of your annual benefit report.
- Deliver your report to each shareholder within 120 days of the end of the fiscal year (or at the same time you deliver any other annual report to your shareholders, whichever is earlier).
- Post the annual report on your website.
- Consider the adoption of a legacy preservation provision.

Summary: To Convert to a Benefit Corporation

- **In connection with conversion:**
 - Draft:
 - Amendment(s) to the certificate of incorporation.
 - Resolutions of the board approving the amendment(s) to be adopted at a meeting or by written consent in lieu of a meeting.
 - Stockholder consents.
 - Amended bylaws (optional).
 - File with the Connecticut Secretary of State:
 - Certificate of amendment.
 - Payment of filing fee.
- **Post-conversion:**
 - Choose a third-party standard.
 - Prepare the annual benefit report.
 - Send the annual benefit report to all shareholders within 120 days of fiscal yearend, or concurrently with any other annual reports you send to shareholders (whichever is earlier).
 - Post the annual benefit report publically on the company's website.
 - Consider the adoption of a legacy preservation provision.