

4 KEY TAKEAWAYS

Corporations v. “B Corps” What Are They and Why Do They Matter?

Benefit Corporations, Certified B-Corps™ and similar social purpose entities are gaining traction, especially with Generation Z aging into the prime consumer and investor generation. Still, there is confusion around what exactly these entities or certifications are, and which one to choose to achieve certain goals.

Below are key takeaways from the above titled Contra Costa County Bar Association [webinar](#) featuring Smith Shapourian Mignano’s Lindsey Mignano and [Kilpatrick Townsend’s](#) [Siegmar Pohl](#):

1

Benefit Corporation

The Benefit Corporation is a type of for-profit corporation that has been added to the corporation codes of many states, including Delaware and California. Existing C-Corps can be converted to Benefit Corporations, sometimes referred to as Public Benefit Corporations (P.B.C.s), by adding specific social purposes to the certificate of incorporation. The Board of Directors will be required to pursue this purpose, in addition to maximizing shareholder profits. This can lead to sometimes difficult trade-offs for the Board, especially in day-to-day decisions between short-term profits and pursuing the social purpose, or when selling the company or admitting new shareholders or investors. The Board is required to prepare a formal annual social/environmental impact report using an independent third-party standard for preparing the report.

2

Social Purpose Corporation

The Social Purpose Corporation (SPC) is another type of for-profit corporation that is currently codified in California, Washington, Florida, and, to some extent, in Texas. It is designed to expand the additional safe harbor of the business judgement rule when the directors promote the social purpose. This purpose must be included in the articles of incorporation by stating a general lawful purpose and/or a specific purpose concerning the impact on the employees, community and/or the environment. The SPC’s annual report must include a management discussion addressing the public purpose and must be published on the company’s website. However, the company is not required to pursue the social purpose and only has to “consider” it in its decisions.

3

B-Corps Certification™

The B-Corps Certification is a third-party certification offered by the non-profit company, B-Labs. The certification is available for numerous types of legal entities worldwide, including corporations, partnerships, limited liability companies, and even sole proprietorships and their equivalents in foreign countries. A number of public companies or their subsidiaries have obtained the certification. To get certified, an applicant must complete a B-Impact Assessment, which benchmarks a company’s impact on workers, the community, the environment, and customers using over 300 indicators. U.S. corporations that want to be certified have to convert to the legal form of a Benefit Corporation or a Social Purpose Corporation (see above) within two years of being certified. Other entities have to meet other legal requirements. B-Labs requires an annual certification fee, which ranges from \$1,000 to \$50,000 or more depending on the annual sales of the applicant.

4

Impact Investing Trends

Benefit Corporations, Social Purpose Corporations or certified B-Corps may have advantages when accessing additional funding sources, such as philanthropic grants, program-related investments from foundations, angel groups investing around themes, impact venture capital, corporate sponsorships, and certain accelerators. In addition, many mainstream Venture Capital (VC) firms and almost every Silicon Valley VC firm invest in Benefit Corporations. Some might prefer Delaware Benefit Corporations because, besides the purpose, they can be almost identical to their preferred structure, the Delaware C-Corp. Deal flow in social purpose entities has dramatically picked up in the last few years, both in number and volume of deals. Investors like social purpose corporations because their strong governance practices and “supercharged” employees often also lead to better financial returns, especially in the long run. Some investors like to review the B-Impact Assessment that companies prepare for the B-Labs certification (see above) as part of their investment due diligence to identify a company’s strengths. Becoming a benefit corporation makes most sense for mission-driven business, where pursuing the social purpose is also the business’ competitive advantage.

For more information, please contact:
Siegmar Pohl at spohl@kilpatricktownsend.com

www.kilpatricktownsend.com