



LEXINGTON FINANCIAL MANAGEMENT INSIGHT

Strategies for Exponential Life™

Business Entities With A Public Benefit Purpose

Are you considering starting a business (or transition a business) that will not only generate a profit but will also produce a public benefit. These two goals are no longer incompatible.

B” or “Benefit” Corporations.

The primary purpose of a corporation, known as a C corporation (because it is bound by the rules and regulations of subchapter C of the Internal Revenue Code), is a business that is organized to conduct business, realize net income or loss, pay taxes on its income, and distribute profits to its shareholders. The primary purpose of a non-profit organization is to produce a public benefit. Many U.S. states now allow the formation of an entity that has these dual purposes, and most states recognize them. These entities are known as “B” corporations, or “Benefit” corporations. The distinguishing characteristic of a B corporation is that Shareholders hold the company accountable to produce a financial profit and a public benefit. A benefit corporation can elect to be taxed as either a C-Corporation or an S-Corporation, but it cannot obtain tax-exempt status as a nonprofit.

As fate would have it, February is B Corp Month, a time to recognize and celebrate companies that take social and environmental responsibility seriously, and that believe business can be a force for good in the world. Examples of some well-known B Corp certified businesses include [Patagonia](#), [Ben & Jerry's](#), [Eileen Fisher](#) and [King Arthur Flour](#), [Stonyfield Farms](#), [Cabot Creamery Coop](#), to name a few.

The Model Benefit Corporations Legislation requires that the directors of a benefit corporation consider the impact of any action or inaction on the business and its:

- shareholders.
- workforce and employees.
- interests of the customers.
- societal and community factors.
- global and local environment.

- long-term and short-term interests.
- ability to accomplish its general benefit purpose.

There are [four steps](#) that must be completed to become a certified B corporation:

- **Take and pass the B Impact Ratings System.** This test gives you a score on your company's existing employee and environmental practices.
- **Participate in a telephone interview with a B Lab staff member** that reviews the findings of the B Impact Ratings System. If you score above an 80, your company is eligible for a B corp. certification.
- **Adopt the [B Corporation Legal Framework](#)** .
- **Complete and sign a Term Sheet** that makes your certification official.

To change from a standard corporation to a benefit corporation, the three steps must be taken:

1. Verify that the state in which the business is incorporated allows B corporations.
2. Obtain stockholder approval.
3. File a restated or amended articles of incorporation that:
 - identifies the entity in its name as a "B" or Benefit corporation;
 - describes the entity's public purpose.
 - declares that the business is a benefit corporation.

Perpetual Business Purpose Trust

An alternative to a Benefit Corporation but with a similar purpose is a Perpetual Business Purpose Trust. This Trust) is a non-charitable trust that is established for the benefit of a purpose rather than a person. A Perpetual Business Purpose Trust (aka "Purpose Trust"). holds business interests, including interests in a family business.

Its governance-is regulated by a Trust agreement, which is the **core governing document**, a Trust Stewardship Committee, a Trust Enforcer, and a Corporate Trustee.

Trust Agreement -The trust agreement defines the beneficiary of the trust, the purpose of the trust, and its governance. In the case of a Purpose Trust that owns a majority stake in a business, its purpose commonly includes:

- (1) the mission of a business.
- (2) protection against any future sale of the business.

(3) definition and protection of governance structure for stakeholders/peer governance.

(4) protection for employee/stakeholder value-sharing.

Trust Stewardship Committee (TSC) -The TSC is responsible for governing the assets held by the trust in accordance with the purpose laid out in the trust agreement. TSC members are legally responsible and liable for executing the purpose of the trust. The TSC votes on board directors and other issue for which owners must vote (i.e., sale of the company, board restructure, capital structure changes).

Trust enforcer- The trust enforcer serves as an independent arbitrator for grievances brought by stakeholders against the Trust Stewardship Committee.

Corporate Trustee - This is a required element of the PPT legal structure.

A recent article in the Wall Street Journal highlights Patagonia's conversion to a Perpetual Business Purpose Trust. Patagonia is a \$3 billion apparel company that until now has been best known for its sale of fleece vests and parkas. For years, the Company has had an environmental agenda, steadily increasing the use of recycled materials in its products, supporting factories that pay fair wages and donating 1% of its sales to green causes. However, now its prime goal, as flaunted on its T shirts, is "to save our home planet".

Patagonia is now structured so that 100% of Patagonia's voting stock is held by the Purpose Trust, and 100% of the nonvoting stock is held by a nonprofit corporation whose purpose is to fight the environmental crisis. The Company's profits are allocated so that to the extent necessary for business operations, Patagonia's funds are reinvested in the business; its excess funds are distributed as a dividend to the nonprofit corporation to respond to the climate ecological issues. The CEO of Patagonia, Ryan Gellert, stated in a recent Wall Street Journal Article that "the climate ecological crisis is an existential threat to humanity, and it's one of our own creations. The days of business as usual are over."

Patagonia continues to operate as a for-profit business that is a certified B Corp and a California benefit corporation. It continues to manufacture high quality products and preserves the financial health of the Company. At the same time, it considers the impact of the business on employees, customers, the community and the natural world. The Purpose Trust, which owns all voting stock in the Company, monitors the operations of the business and approves key Company decisions, such as who sits on the Board of Directors, changes to the Company's charter and other decisions necessary to protect the Company's values and mission. Mr. Gellert conceded that it is awkward to both prize the planet and produce unnecessary consumer goods. "That's a real tension... Gaming out these trade-offs is never-ending. This is the work, forever and all time".

Please call or email Rona S. Fingold, JD, LLM for any questions you may have.