



BENEFIT COMPANIES HAVE ARRIVED IN BRITISH COLUMBIA: WHAT DOES THAT MEAN?

Beginning on June 30, 2020, a corporation formed under British Columbia’s *Business Corporations Act* (the “BCBCA”) can qualify as a benefit company (a “Benefit Company”). New BCBCA corporations can be created as a Benefit Company, and existing BCBCA corporations can take steps to convert into a Benefit Company. Additionally, corporations formed under the corporations statutes of other Canadian jurisdictions – for example, under the *Canada Business Corporations Act* – may be able to take steps to change the regime under which they are governed to the BCBCA and take steps to convert into a BCBCA Benefit Company.

This document describes the features of BCBCA Benefit Companies and identifies the steps necessary to create a Benefit Company or to convert an existing corporation into a Benefit Company. Taking these steps may be right for you and your business, but before taking any of those steps you should consult your legal advisors so that you can consider whether your business can meet the criteria for creating and maintaining a BCBCA Benefit Company.

What is a Benefit Company?

Benefit Companies formed under the BCBCA are for-profit corporations that operate in a responsible and sustainable way. A Benefit Company balances the goals of profit generation and social commitment.¹ Benefit Companies have these two goals embedded into the key documents that form the corporation – the corporation’s “DNA”, so to speak – and these goals guide the operation of the corporation. While Canadian corporate law is flexible enough to allow a for-profit corporation to promote social commitments a BCBCA Benefit Company is formed for that purpose. To see how you can meet the legal requirement for Certification using a traditional corporate form view the [legal roadmap](#) page on www.bcorporation.net.

How to Become a Benefit Company

The outline below describes the major steps required (i) to form a Benefit Company and (ii) for an existing corporation to become a Benefit Company.

Summary

1. To form a Benefit Company, a business must satisfy three key legal requirements. First, the business must be incorporated under the BCBCA. Second, the business’s notice of articles must include a “benefit statement”. Third, the business’s articles must include a “benefit provision”.

¹ Other forms of business organization may accommodate achieving those goals in different ways, such as community contribution companies, but they are not discussed here.



The notice of articles and articles must be filed online through the BC Registry and they are open to the public to review.

2. To become a Benefit Company, an existing BCBCA corporation must take the following steps. First, the corporation must alter its articles to include a benefit provision. Second, the corporation must alter its notice of articles to include a benefit statement. These alterations require approval of the corporation's shareholders via a special resolution (meaning that, at a corporate meeting of shareholders, two thirds of the shareholders who vote must vote in favour of these changes). Finally, corporation must file its notice of articles online through the BC Registry.
3. A Benefit Company must publish – and continue to publish – an annual benefit report.
4. Finally, the directors of a Benefit Company must balance their duty to act in the best interests of the corporation with their new duties specific to Benefit Companies to conduct business in a responsible and sustainable manner and promote the business's specified public benefits.

An existing corporation formed in another jurisdiction may also be able to become a BCBCA Benefit Company. Doing so will mean that corporation will need to take the additional preliminary step of moving (i.e., "continuing") from the jurisdiction where the corporation was formed into the BCBCA and satisfy the legal requirements for that additional preliminary step. Because the BCBCA does not have a director residency requirement, it is possible that a corporation formed in Canada outside British Columbia may be able to become a BCBCA Benefit Company without significant changes to its business operations, but advice should be obtained to determine if this is appropriate for you and your business having regard to other concerns and risks.

The Benefit Provision

A Benefit Company includes a benefit provision in its articles. The benefit provision serves like a corporate mission statement for the Benefit Company by stating the public benefits it has committed to.

The benefit provision must state: (i) the Benefit Company's public benefits; and (ii) the commitments to promote those public benefits and to conduct business in a responsible and sustainable manner. For an existing BCBCA corporation, its shareholders must authorize the alteration to the corporation's articles via special resolution to be considered at a meeting called for that purpose (i.e., approval by two thirds of shareholders voting at the meeting).

The Benefit Statement



A Benefit Company must include in its notice of articles a benefit statement that: “this corporation is a benefit corporation and, as such, is committed to conducting its business in a responsible and sustainable manner and promoting one or more public benefits”.

For an existing BCBCA corporation, the alteration to the notice of articles must be authorized by the corporation’s shareholders through a special resolution (as described above) and the corporation must file a notice of articles online through the BC Registry. The purpose of the benefit statement is to notify third parties that the corporation is a Benefit Company.

Objecting Shareholders

Shareholders of an existing BCBCA corporation opposed to the conversion into a Benefit Company through addition or removal of the benefit provision and benefit statement can exercise a right of dissent. That means, if the special resolution is approved, the shareholders are entitled to be paid the fair value of their shares, including, if necessary, through a court process. This mechanism is intended to protect shareholders who no longer want to be investors in a BCBCA corporation that has become a Benefit Company.

The Benefit Report

A Benefit Company must produce an annual benefit report that provides an assessment of the business’s performance against a third-party standard. This benefit report is a mechanism for keeping the Benefit Company accountable in respect of the commitments to pursuing public benefits that it has made.

A third-party standard – for example, the standard established by B Lab – means a standard for defining, reporting and assessing the performance of a Benefit Company in conducting its business in a responsible and sustainable manner and in relation to its public benefits. The Benefit Company applies the assessment to itself. The third-party does not perform the assessment and there is no government oversight of the assessment.

The BCBCA does not prescribe the form of a benefit report, but it does set out the process for preparing it and the issues it must address. The directors are responsible for selecting the third-party standard and assessing the performance of the Benefit Company against that standard for the previous year. The report must disclose: (i) a fair and accurate description of the way the Benefit Company has demonstrated its commitment to conducting its business in a responsible and sustainable manner and promotes the public benefits specified in the benefit provision; (ii) the results of the third-party assessment described above; and (iii) anything that hindered the Benefit Company from meeting the commitments set out in its benefit provision.



A Benefit Company must keep its benefit reports at the Benefit Company's registered office where the benefit reports are accessible to the public without charge. If the Benefit Company has a publicly accessible website, it must also post the benefit report on that website. The benefit report is not filed with the BC Registry.

Duties of Directors and Officers of a Benefit Corporation

For any Canadian corporation, including a BCBCA Benefit Company, the directors and officers have a duty of loyalty requiring them to act honestly and in good faith with the best interests of the corporation, and a duty of care. These duties guide the decisions taken by directors and officers and they set a standard for making directors accountable to stakeholders, including shareholders.

Directors and officers of Benefit Companies have two additional duties that complement the duties of loyalty and care: (i) to act honestly and in good faith with a view to conducting the business in a responsible and sustainable manner and promoting the public benefits specified in the Benefit Company's; and (ii) to balance that duty with their other statutory duties.

The additional duties of directors and officers of a BCBCA Benefit Companies are owed to the Benefit Company rather than to specific stakeholders (e.g., shareholders) or the public at large. However, breaches of these additional duties can be enforced through legal proceedings commenced by shareholders holding specified minimum levels of investment in the Benefit Company.

Directors that want a business they govern to pursue public benefits will be protected in making public benefit-focused decisions if the business is a Benefit Company. In view of the benefit provision and the additional duties the directors of a Benefit Company have, it would be difficult, for example, for a shareholder to complain that the directors of a Benefit Company made decisions promoting approved public benefits if that means not maximizing profits that may benefit shareholders.

Ceasing to be a Benefit Company

A Benefit Company can cease to be a Benefit Company with shareholder approval, but subject to the same right of dissent right for shareholders objecting to that development. In the event shareholders vote in favour of ceasing to be a Benefit Company, the benefit provisions and benefit statements are removed from the articles and notice of articles.

Additional Resources

While legal advice may be advisable for a business considering becoming a Benefit Company, the BC government has published helpful and accessible guidance on the requirements for Benefit Companies, including how to prepare the necessary corporate documents and obtain shareholder approval and links to electronic versions of the forms of the corporate documents needed to create and maintain a Benefit Company (current as at September 2, 2020):



- <https://www2.gov.bc.ca/gov/content/employment-business/business/bc-companies/benefit-company>
- <https://www2.gov.bc.ca/gov/content/employment-business/business/managing-a-business/permits-licences/businesses-incorporated-companies/forms-corporate-registry/forms-bc-company>
- <https://www.bcregistry.ca/business/auth/home/decide-business>