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Best Practice Guide

The Basics of Mission-Aligned Governance

The most effective way to ingrain inclusive and impactful practices into your company over the long term is to build mission alignment into your legal DNA, i.e. your actual governance structure.

This guide will help you understand what mission alignment means and the best approaches to achieve it by:

1. Providing an overview of why mission alignment is necessary based on the current state of corporate law;
2. Sharing strategies on how to get buy-in from key decision-makers, including executives, board members, and owners;
3. Showing how to find the most appropriate path to mission alignment given a company's current entity type and legal jurisdiction and how to formally execute the change; and
4. Suggesting ways to put your mission-aligned governance into action.

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Introduction to Mission-Aligned Governance and Corporate Law

**THIS BEST PRACTICE GUIDE IS FOR INFORMATIONAL PURPOSES AND DOES NOT CONSTITUTE LEGAL ADVICE. IMPLEMENTING MISSION-ALIGNED GOVERNANCE HAS IMPORTANT LEGAL IMPLICATIONS THAT DIFFER BY JURISDICTION AND TYPE OF ENTITY. YOU SHOULD CONSULT WITH LEGAL COUNSEL IN CONNECTION WITH ANY DECISION TO CHANGE YOUR CORPORATE STRUCTURE TO BECOME MISSION-ALIGNED.*

What is Mission-Aligned Governance and How Is It Different?

Companies are generally expected to put the interests of shareholders ahead of the interests of other stakeholders, including workers, customers, and the community. This expectation is often referred to as "shareholder primacy" and arises from a combination of legal rules and patterns of investor behavior. Many entrepreneurs and investors believe this expectation is outdated and makes it more difficult for business to address pressing social and environmental issues and be truly inclusive. It also means that many legal entities are not fit for purpose-driven companies that have objectives beyond maximizing profit for shareholders.

Mission-aligned governance, on the other hand, creates legal entities that allow companies to preserve their mission and consider stakeholders in their decision-making. This commitment gives them a powerful tool to create value for all stakeholders over the long term, even through exit transactions such as IPOs or acquisitions.

> *A [traditional] "corporation" "cannot...defend a business strategy that openly eschews stockholder wealth maximization."* [1]
>
> *-eBay v. Newmark, 2010*

Mission-aligned governance is available for companies:

- With varying legal entity types,
- Of all sizes and stages of their life cycle
- In different industries, and
- In different legal jurisdictions around the world

Mission-aligned governance has been used by:

- Venture capital backed firms
- Publicly-traded companies
- Micro-enterprises, family businesses, and worker-owned cooperatives

Mission-Aligned Governance
(noun)

Governance that embeds a purpose beyond creating profit and requires directors to consider the impact of their actions on their stakeholders as well as their shareholders.

"[Mission-aligned governance]..creates the legal framework to enable mission-driven companies like Patagonia to stay mission-driven through succession, capital raises, and even changes in ownership by institutionalizing the values, culture, processes, and high standards put in place by founding entrepreneurs."[2]

- Yvon Chouinard, Founder at Patagonia (Certified B Corp since 2007)

Your business may be interested in mission-aligned governance if:

- ❏ You're a mission-driven business that anticipates a change in ownership or management
- ❏ You want to build brand trust with a conscious consumer base
- ❏ You want to decrease liability for your directors while prioritizing long-term impact KPIs
- ❏ You're pursuing B Corp Certification
- ❏ You're interested in attracting impact investors
- ❏ You want to maintain your company's mission over time
- ❏ You plan to raise outside capital

Considering a change to mission-aligned governance first requires a general understanding of the key concepts related to governance.

The glossary below provides an overview of key terms relevant to governance and how to achieve a mission-aligned governance structure.

Some Companies That Have Adopted Mission-Aligned Governance

Patagonia, United States - Patagonia is a recognized leader in the sustainable apparel industry and became the first benefit corporation in the State of California.

Natura, Brazil - Natura, a publicly traded cosmetics company, amended their articles of incorporation to include mission-alignment with shareholder approval.

Kickstarter, United States, became a benefit corporation with the support of their venture capital investors.

Laureate Education, United States, became a benefit corporation prior to their initial public offering, becoming the first ever publicly traded benefit corporation in 2017.

Pasticceria Filippi, Italy, a family-based business that makes traditional Italian cakes, was among the first companies in Italy to become a Societá Benefit, the Italian equivalent of benefit corporations.

Governance Term	Common Definition
Corporation	A legal business entity, generally managed by a board, whose shareholders are generally not liable for corporate debts
Benefit corporation	Benefit corporation law frees corporations from the shareholder primacy paradigm; corporations that convert have a broad purpose to positively impact society and the environment, and must consider all stakeholders.
Shareholders	An owner of an interest in a corporation or LLC, who generally has an economic interest in the entity's financial performance, as well as corporate governance rights; also known as a stockholder or members in LLCs.
Stakeholders	Anyone directly impacted by the company's operations, including workers, the local community, customers, society, and the environment.
Fiduciary Duty	An obligation to act in the best interests of another party. In the context of corporate law, company director's typically have a fiduciary duty to act in the best interests of the company's shareholders, creating "shareholder primacy."
Limited Liability Company (LLC)	In the United States, a legal business entity that can elect taxation like an S-Corp or like a C-Corp, and with limited liability like a corporation. The laws governing LLCs are generally much more flexible than the rules governing corporations.
Charter / Articles	A document that is filed with the state to create a corporation, which includes the business's purpose, its share structure, and certain other provisions.
Operating Agreement	A document that lays out an agreement among the members of an LLC that governs the company's business and the financial and managerial rights and duties.
Bylaws	A corporation's internal rules set out in a formalized document that outlines its internal rules, including the requirement of board decisions, the composition of the board, voting rights, powers and responsibilities, etc.
Board of Directors	The body responsible for managing or directing a company's management, which has fiduciary obligations to the company and its shareholders and can be held liable for its actions and performance.
Manager	A technical term in the case of LLCs, managers are individuals who manage or direct the management and have fiduciary responsibility similar to a director.
Amendment	An update to the company's articles or charter made by filing a document with the Secretary of State called 'Certificate of Amendment' or 'Charter Amendment' that deliniates the changes.
Appraisal Rights	Rights shareholders have to be paid the fair value of their stock upon occurrence of certain events. Upon adoption of mission-aligned governance, appraisal rights might require that the company compensate owners who wish to sell at that time.
Capital Structure (Cap Structure)	The outstanding debt and equity of a company, and the priority of payment among the holders of those securities and obligations, including equity or ownership in the company.

Reflection Questions:

- *How does the idea of mission-aligned governance fit the objectives and values of your business?*
- *What resources or information would be helpful for you to learn more about mission-aligned governance?*
- *Who in your organization (or outside counsel) would it be worthwhile to share information about mission-aligned governance with?*

Getting Buy-In For Mission-Aligned Governance

Adopting mission-aligned-governance can seem like a daunting prospect, especially if your company has a complicated capital structure. Because adoption often requires approval by the board, shareholders, or managing members, understanding why mission-aligned governance might be right for your company and getting buy-in from all parties is an important step in the process.

The best place to start is with a clear understanding of mission-aligned governance and the benefits that it might offer your company. These benefits will vary across different companies and circumstances, but they may include:

- *Flexibility and reduced liability*. Allows directors and managing members to consider stakeholders, including social and environmental factors, alongside shareholders.
- *More options at exit*. Directors and managing members can consider stakeholders and nature of buyer in sale transaction
- *Enables entrepreneurs to pursue mission*. Allows founders to maintain company's mission over time.
- *Employee loyalty*. Attracts and helps to retain talented employees looking for meaningful careers.
- *Branding*. Positions the company as a leader of a new way to do business, creating positive brand association and trust with important consumer markets.
- *Investors*. Can be used to attract impact investors focused on your mission, while also not deterring funding from traditional investor communities.
- *Long-term value*. Combats short-termism by creating a structure that is more amenable to building value for all stakeholders, including shareholders, over the long term.

In addition to the benefits highlighted above, a key list of Frequently Asked Questions and resources are available at www.benefitcorp.net.

Impact Snapshot: Value In Mission-Alignment

Schoolzilla
(Certified B Corp Since 2014)

Founded in 2013, Schoolzilla, a data organization and insight platform for K-12 schools, adopted mission-aligned governance with the full support of their shareholders and customers in 2015. Mission protection, employee loyalty, and branding were the benefits that Schoolzilla emphasized to both groups. Schoolzilla found that their customers (the school districts that use their product) were reassured by the mission protection and legal commitment to consider the impact of decisions on students.

After Schoolzilla adopted mission-aligned governance, they proceeded to raise capital from a new round of investors. This second group of investors also saw the value in mission-aligned governance in furthering Schoolzilla's goals and had this to say:

> "Schoolzilla's transition to a...Benefit Corporation and their stated social purpose make it clear to school districts that Schoolzilla is committed to their students' success now and in the future. That is especially important for schools. Furthermore, Schoolzilla's...status has enabled them to hire amazing, mission-driven talent." – Reach Capital, NewSchools Venture Fund

After considering which potential benefits of mission-aligned governance resonate and apply to your circumstances, it will be necessary to get buy-in from decision-makers. There isn't one way to do this, but a few useful steps to engaging them are:

- *Identify key decision-makers, as well as the potential key "influencers" on those decisions.* Review your constitutional documents, capital structure, or other relevant company information to understand who needs to be involved in a decision to change your governance, which could include executives, shareholders, general counsel or outside counsel and board members. It's also useful to understand what thresholds for any vote are required in order to appropriately prioritize.

- *Practice articulating the why.* Understanding why mission-aligned governance might be right for your company is one thing—explaining it is another. Be clear about the value it can provide; putting these benefits in terms that are specific to your own company can help decision makers understand its importance and justify making a change.

- *Anticipate questions and concerns.* With a new concept like mission-aligned governance, some decision makers may be hesitant, or even confused. Companies should try to anticipate some of those follow up questions. In the past, common concerns included "Will we be able to raise capital?", "Does this increase my liability?", or "Does this change our tax status?" Answers to these questions and many more are easily determined by working with knowledgeable counsel, and many are available at www.benefitcorp.net. Anticipating these questions will demonstrate that the company has thought through all of the potential implications of the change.

- *Find the support you need.* Starting with legal counsel is useful, but it may also be helpful to highlight or even speak with other mission-aligned companies in your network to share their story. If your company plans on raising capital, it might be useful to list the types of investors that have already invested in companies with mission-aligned governance structures.

The most appropriate method and timeline for educating your decision-makers will vary depending on the company's relationship with the shareholders and board, the number of people involved, and the constitutional documents or membership agreement of the company. Companies have successfully used presentations, individual calls or meetings, and memo briefings to deliver the necessary information.

Educating your board, members, or shareholders well before any actual vote occurs minimizes the risk of an unexpected result from voting, creating greater assurance of success. For example, when raising capital, some companies have asked new shareholders to sign voting agreements that require they vote in favor of mission-aligned governance at a future point. Others have held board meetings with a presentation by outside counsel specifically to introduce this concept. Following a period of education, the vast majority of investors have been supportive of mission-aligned governance.

Investors are increasingly comfortable with mission-aligned governance. In fact, many top venture capital funds in the United States now have companies with mission-aligned governance in their portfolio, including Benchmark, Founders Fund, Andreessen Horowitz and First Round Capital. Many publicly traded corporations have also acquired or converted subsidiaries to benefit corporations or other mission-aligned structures, including Unilever (Seventh Generation) and Campbell's Soup (Plum Organics).

Reflection questions:

- *How would you articulate the value of mission-aligned governance for your company?*
- *What groups or individuals are necessary to engage when considering adopting mission-aligned governance?*
- *What potential concerns or objections could your decision-makers have to mission-aligned governance?*

We seek out exceptional, mission-driven companies creating long-term value, both financially and for humanity. AltSchool is a perfect example of a company that's building a strong business while driving positive change. Their benefit corporation legal status allows the team to think beyond short-term profits and focus on fundamentally improving the education system for many decades to come."

- Brian Singerman, Founder's Fund

"There are those who say that Benefit Corporations and venture capital are not compatible. We don't agree and we think companies that align their values with their customers and communities will benefit over the long term, not suffer. And that alignment can produce value for shareholders sustainably and profitably." [3]

- Fred Wilson, Union Square Ventures

"Benefit corporation creates alignment between investors and entrepreneurs around the mission and focus of the business, allowing both parties to work together successfully."

- Seth Levine, Foundry Group

When Is the Right Time to Adopt Mission-Aligned Governance?

Mission-aligned governance is useful at all stages of a company's lifecycle, but is easiest to adopt when first incorporating a company. Early adoption will ensure that the company's mission is part of its legal DNA and operations before capital raises or IPOs and eliminates the need to obtain shareholder or member approval midstream.

Founders can rest assured that their mission is protected over the long term and won't be forced aside as the company grows. Investors may also find it more palatable to invest in a company when mission-aligned governance is in place rather than changing the status of a current portfolio company. Early adoption can also differentiate a startup that is competing for talent, market share, and recognition.

While adopting mission-aligned governance at startup is easiest, later stage companies benefit as well, especially as they begin to contemplate a sale or an IPO.

Finding the Path to Mission-Alignment

To find your path to mission-aligned governance, start by knowing *where and who you are*. This requires determining your entity type (i.e. whether the company is an LLC, a corporation, or some other form of entity) and where you are incorporated. Remember that your place of incorporation can be different from where you operate. For example, in the United States many companies are incorporated in Delaware but operate out of their home state.

With support from legal counsel or others, you'll be able to use that information to understand the current laws governing your legal entity type in your jurisdiction. Because this varies around the world, some companies might already have mission-aligned governance incorporated into their structure, some might be able to amend their governing documents to include stakeholder consideration, and some, unfortunately, might not currently have a path to achieve mission-aligned governance without legislative changes. For a list of resources on finding the specific path for your company, see the chart below.

While not exhaustive, the following list provides a sampling of different pathways towards mission-aligned governance specific to the jurisdictions and corporate forms of the United States.

For LLCs:

LLCs are generally very flexible, so an existing LLC can usually adopt mission-aligned governance by amending their Operating Agreement with legal language that commits the company to pursue a broader purpose beyond profit and to consider their stakeholders in the decision making process. New LLCs can build this language into their Agreements from the start. Because state laws differ, however, a lawyer should be consulted before adding these provisions. Similar rules apply to Limited Liability Partnerships (LLPs) and Limited Partnerships (LPs).

Despite this flexibility, several states including Oregon, Maryland and Pennsylvania adopted a special form of LLC that provides a turnkey, recognized solution for mission-aligned governance. These are known as benefit LLCs. Existing LLCs that want to convert to benefit LLCs can usually do so by amending their Operating Agreements.

For Corporations:

In the United States, every state and territory has slightly different rules that apply to adopting mission-aligned governance, and in some states the law is not clear. The options depending upon your state can include:

Converting to a Benefit Corporation:

The benefit corporation form is available in 30+ states in United States and provides the clearest path to strong mission-aligned governance. A benefit corporation is a traditional corporation with modified obligations committing it to higher standards of purpose, accountability, and transparency. Benefit corporations commit to creating public benefit and sustainable value in addition to generating profit.

How To Learn More About the Paths to Mission Alignment for Your Company

For information about benefit corporations:
www.benefitcorp.com

For instructions on how to become a benefit corporation:
http://benefitcorp.net/sites/default/files/documents/How_to_become_a_benefit_corporation.pdf

For information about standards for mission alignment that meet requirements of B Corp Certification internationally:
https://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp/legal-roadmap

For information about the specific availability of options in your jurisdiction and where to access documents to make the change:

Your Secretary of State's website or other government agency that manages corporate filings

If you aren't sure if mission-aligned governance is available in your jurisdiction, or if it is not available and you are interested in supporting it, please reach out to thelab@bcorporation.net.

Benefit corporations are required to regularly report to shareholders on how the company is considering and balancing these interests. Converting to a benefit corporation generally requires an article/charter amendment approved by the board of directors and a supermajority vote of shareholders.

Amending Your Articles of Incorporation:

Adding mission-aligned governance directly into a corporation's existing articles/charter is possible in some jurisdictions.

These Article amendments can be implemented in the 33 states that have "constituency statutes" (which permit directors to consider the impact of their decisions on their stakeholders) and can similarly require boards to consider those stakeholders. In order to achieve true mission-aligned governance in these jurisdictions, a corporation may add broader language into the corporation's articles, committing the company to consider those stakeholders and to have a purpose beyond profit. Because these amendments differ from the law prescribed by the constituency statutes, the actual effect of these amendments is uncertain, and it is important to consult with lawyers familiar with the law of the state in which the corporation was created.

Other Options

All of the above options involve fully comprehensive stakeholder consideration and a purpose towards public benefit. There are a variety of other governance structures that provide some degree of "mission lock" for the company or partial stakeholder consideration. Among these entities in the United States are:

- Non-profit organizations, which do not have "ownership" and therefore do not distribute profits, preserve the mission of an organization, but do not have a requirement to consider all stakeholders in decision-making.
- Low Profit Limited Liability Company (L3C), a form of LLC subject to specific rules that require them to focus primarily on a charitable mission and only secondarily on profit, putting a limit on the profit that can be distributed to owners, but similar to non-profit organizations do not automatically require consideration of all stakeholders.
- Social Purpose Corporations (SPC), which are available in a handful of states (including CA, FL, MN, TX, TN, PR and WA) though the name varies from state to state. SPCs are required to make a commitment to pursue a social or environmental impact that it specifies in its articles/charter, but it is not required to consider the interests of all of its stakeholders—only those whose interests are related to its chosen purpose.
- Cooperatives (Co-ops), which through their ownership and governance build in the consideration of one specific stakeholder group (such as workers or supplier/owners) but not all stakeholders affected by the business.
- Other ownership/governance solutions, such as as the creation of "golden shares," or "founders shares" that enable a specific owner or owners of the company to hold the company accountable to mission, may also create a degree of "mission-aligned governance." However, they may be less attractive to outside investors and may not formally integrate stakeholder consideration into the structure of the company.

For many of these structures, including L3Cs and Social Purpose Corporations, additional article provisions can strengthen mission alignment of the company by requiring stakeholder consideration.

The Difference Between Mission-Aligned Governance and B Corp Certification

Mission-aligned governance is an important component of B Corp Certification, although there is technically a distinction between "B Corps" and "benefit corporations."

Certified B Corps are companies certified by an independent third party (B Lab) to meet performance and legal requirements, while benefit corporations are a recognized corporate form. In addition to meeting the performance requirement, Certified B Corps are required to adopt mission-aligned governance.

If you're interested in B Corp Certification, adopting mission-aligned governance now is a great way to get a jump on one of the requirements and can also help you meet the performance requirement. The type of legal commitment that meets the requirements for Certification will depend on the company's legal entity type and the state or country of incorporation.

For more information on B Corp Certification visit bcorporation.net; for more information on ways to achieve mission-aligned governance at the highest level (that meets B Corp legal requirements) see https://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp/legal-roadmap.

Excerpt from United Kingdom Mission Aligned Governance

Amendment to the articles/charter includes:

1. *The purposes of the Company are to promote the success of the Company for the benefit of its members as a whole and, through its business and operations, to have a material positive impact on society and the environment, taken as a whole..*

2. *A Director shall have regard (amongst other matters) to:*
   a. the likely consequences of any decision in the long term,
   b. the interests of the Company's employees,
   c. the need to foster the Company's business relationships with suppliers, customers and others,
   d. the impact of the Company's operations on the community and the environment,
   e. the desirability of the Company maintaining a reputation for high standards of business conduct, and
   f. the need to act fairly as between members of the Company,
   (together, the matters referred to above shall be defined for the purposes of this Article as the "Stakeholder Interests"). [4]

Mission-Aligned Governance Outside the United States:

While some countries may have corporate codes that are less rigidly focused on "shareholder primacy," proactively adopting a mission-aligned governance structure is nonetheless possible and necessary to fully protect the purpose of the company and stakeholder consideration in most countries around the world.

Some countries have flexible corporate laws that allow amendments using a traditional legal entity (similar to the stakeholder amendment), while other countries have specific legal forms designed to serve social enterprise.

- **Stakeholder Article Provisions**: Many countries, but not all, give companies permission to consider stakeholders under their traditional business statutes. Because of this flexibility, many companies incorporated outside the USA are able to achieve mission-aligned governance through a stakeholder article provision that includes broader language committing the company to consider its stakeholders and have a purpose beyond profit.

- **CICS and similar entities.** In the UK, certain provinces in Canada, and elsewhere, corporations can be formed as Community Interest Companies (or similar) that typically lock up some portion of the company's assets for the social purpose without explicitly requiring stakeholder consideration. In most circumstances these entities can also amend their articles to directly incorporate stakeholder consideration as well. As compared to benefit corporations or corporations with expanded purpose, these forms may be less attractive to many investors because of the restrictions they pose on the distribution of profits and assets.

- **Benefit Corporations.** Just as they are available in many states in the United States, benefit corporations or similar entities are currently available in Italy and being explored by several other countries as well.

If you're interested in pushing forward legislation that enacts mission-aligned governance in your jurisdiction B Lab would be happy to set you on the right path. Reach out to thelab@bcorporation.net

To see various opportunities for mission-aligned governance in your country, including specific language that can be used for amendments, visit the legal roadmap page of www.bcorporation.net

If you are based in Europe, you may also be interested in contacting the European Social Enterprise Law Associate (ESELA) as well as their list of experts at esela.eu.

Reflection Question:

- *What information or resources would you need to find the right path to mission alignment for your company?*

Formalizing Mission-Aligned Governance

After understanding the most appropriate path to mission-aligned governance for your company and receiving buy-in from your key decision-makers, it's time to make your new structure official. While this will also vary depending on your exact jurisdiction, legal entity type, and choice of approach, there are a few common steps:

- ❏ Seek Legal Counsel: Determining which type of mission-aligned governance is right for your company is often a question that is best answered by an attorney. There are many attorneys around the country and the world that are familiar with mission-aligned governance who can help you through this process. To see a list of US based attorneys that are familiar with these issues visit www.benefitcorp.net.
- ❏ Get approval from decision-makers and make them aware of their rights. To understand what this requires, review company constitutional documents and your capital structure (that is, who owns the company, and what rights they have), as well as existing relevant laws.
- ❏ File your documents. If you've sought the counsel of an attorney, they will normally draft and file amendments with the appropriate authorities. It can, however, also be done on your own if you so choose. Form providers like Clerky.com and legalzoom have incorporation forms and amendment forms for benefit corporations. Registered agents, like CT and CSC, have forms available to create a benefit corporation and can be good sources of information as well.

How much does it cost?

The cost of adopting mission-aligned governance depends on your legal type, the form of mission-aligned governance that you pursue, as well as your company's capital structure. Generally, a complicated capital structure or choosing a complicated form of mission-aligned governance means a higher cost. Attorney fees can range from a few hundred dollars for a very simple process to five figures for a complicated structure. Filing fees are usually less than $100.

Process for Converting to a Benefit Corporation:

Amendment to the articles/charter to adopt benefit corporation status:

1. *Prepare article amendment by adding required language (specific to each state) and choosing a specific public benefit purpose that reflects the mission of your company if applicable. Some states have online forms that make this process easy, while others require you to draft your own articles. Check with your Secretary of State for the right procedure. Your lawyer or registered agent may be able to provide guidance as well.*
2. *Begin outreach to decision-makers to educate them about mission-aligned governance, answer questions and gauge their acceptance.*
3. *Obtain Board approval*
4. *Obtain shareholder approval (⅔ in most states)*
5. *File amendment with the Secretary of State. The website for the Secretary of State or your registered agent can direct you to the most convenient way to file.*
6. *Notify stockholders of appraisal rights rights if applicable. Appraisal rights may be available to shareholders who do not vote in favor of a conversion to benefit corporation status. If you are in a state where that rule applies, and if you have more than one shareholder, you should consult an attorney to make sure you have addressed this issue.*

Putting Mission-Alignment into Action

Adopting mission-aligned governance is the beginning of a journey, not the end. In order to maintain compliance with the responsibilities of your mission-aligned structure, as well as to leverage mission alignment to create more impactful businesses for the long term, be aware of these specific best practices for mission-aligned companies.

Clarifying Your Purpose by Designing Your Specific Public Benefit

As a company that has created a governance structure fit for purpose and stakeholder consideration, it is important to have a clarified purpose, or a "specific public benefit." Depending upon your mission-aligned governance structure, it might also be legally necessary.

In most jurisdictions, benefit corporations are allowed to select a specific public benefit purpose. Benefit corporations incorporated in Delaware, Colorado, and Kentucky must choose a specific public benefit in addition to serving a general public benefit purpose. In most other jurisdictions with benefit corps in the United States, the specific public benefit purpose is optional.

The Delaware model statute defines a specific public benefit purpose as "a positive effect (or reduction of negative effects) on one or more categories of persons, entities, communities or interests

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Impact Snapshot: Defining Public Benefit

Kickstarter PBC
(Certified B Corp Since 2015)

In September 2015, Kickstarter, a Brooklyn-based Certified B Corp and popular crowdfunding site, adopted mission-aligned governance by becoming a Delaware benefit corporation. The specific public benefits that Kickstarter chose highlighted the company's long-term goals:

1. **To ensure** that money—or the promise of it—would not jeopardize their company's mission of enabling creative projects to be funded.
2. **To attrac**t like-minded employees, or those more focused on the overall mission and less on the value of their equity.
3. **To set** an example for the next generation of entrepreneurs.

Kickstarter's specific public benefits can be viewed on their website at www.kickstarter.com as well as in a letter signed by their investors, including Union Square Ventures, Thrive Capital, Betaworks, and Abundance Partners.[5]

(other than stockholders in their capacities as stockholders) including, but not limited to, the effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature."

Providing a specific benefit that is more particular than a restatement of the general benefit will ensure that corporations receive all the protections provided under the statute. In addition to specificity, it is also a best practice to provide a purpose that is broad enough to limit the need to change the purpose as circumstances change in the future. Whether for a benefit corporation or other mission-aligned governance structure, a specific public benefit purpose can be used to drive decision-making within the organization and engage employees with the company's mission.

Team Activity: Defining Public Benefit

Duration: 60-90 minutes
Resources: facilitator, pens, paper, whiteboard, and whiteboard markers
Objectives:

1. Create your company's specific public benefit
2. Help your team gain a deeper understanding of the company's purpose
3. Build consensus around shared values
4. Help guide company strategy and vision over the long-term

First, have the team identify the current purpose, values or mission statement of the company if it exists. Ask team members to distil the company's purpose into one or two sentences. Pair off and have team members discuss and workshop their sentences, working to create the best version. Come back together to share and discuss with the goal of reaching a consensus on one or two versions of the specific public benefit that can be presented or shared with leadership. Be sure to share out and invite feedback from employees who weren't able to attend the meeting, and use the common language that you came up with to formally and informally structure discussions around the company's purpose in the future.

Mission-Aligned Decision-Making Procedures:

Integrating your expanded purpose and consideration for stakeholders into your everyday practices and management procedures should be next on your list.

Mission-aligned governance requires directors and managers consider with broad discretion the impact of their decisions on their stakeholders. The list below is an example of procedures a company may adopt in order to ensure that it is properly attending to their stakeholders. There is no requirement that these particular procedures be used, but they are intended as a starting point for consideration.

The company should engage in a continual process of:

- ❑ Determining which specific stakeholders are affected by the corporation's business and potentially conducting materiality assessments of the impact on those stakeholders
- ❑ Choosing criteria for how to consider stakeholders, which can include direct stakeholder engagement such as community townhalls, meetings or partnerships with environmental experts or non-profit organizations, employees and/or labor groups, etc. to understand their perspectives and concerns
- ❑ Measuring and analyzing performance on stakeholder-related factors annually, which can include the use of a third party assessment like the B Impact Assessment
- ❑ Encouraging board diversity and including stakeholder representation on the board or a director with stakeholder experience
- ❑ Establishing a regular review process to ensure that the above considerations are continually updated and enshrined in all decision-making at the management and board level
- ❑ Being transparent with the board, employees, stakeholders, and customers about the company's current performance, any pitfalls or roadblocks, and future goals

With up-to-date data and appropriate review mechanisms in place, the company can ensure that its directors and managing members are informed and are meeting their obligations to consider stakeholders and act with a broader purpose. For more specific recommendations for benefit corporations and social purpose corporations visit www.benefitcorp.net.

Transparency

In the United States, only benefit corporations and social purpose corporations are required by law to produce a full "benefit report" that makes their impact performance transparent; however, transparency is beneficial for all types of legal entities.

Reporting on your impact to your board, shareholders, employees and customers can increase business trust and prove to these important constituents that your commitment to purpose goes beyond lip service. Providing accurate and timely data can also help your board or managing members meet their obligations to consider the impact of their decisions on the company's stakeholders and can promote accountability for the company to achieve its purpose.

All types of entities can follow best practice reporting by,

- Being transparent to the public in addition to your shareholders
- Setting a specific reporting interval, which would normally be annually or biannually

- Using a comprehensive third-party standard to report your social and environmental performance, such as the B Impact Assessment or GRI Standards
- Setting targets and improving your performance on key metrics over time (consider making your targets transparent as well)

Remember that your report does not have to be a visual masterpiece. Good data is always better than a pretty picture!

Benefit corporations and social purpose corporations have reporting requirements that are delineated in state statute—be sure to double-check your state's specific requirements.

To see some example reports that run the spectrum from simple to elaborate and for more information on the reporting requirements for your state visit www.benefitcorp.net.[6]

Reflection Questions:

- *What does success for your company's purpose or mission statement look like in one year? Five years? Ten years?*
- *How does your company's purpose drive your business case?*
- *What ways would you ensure mission-aligned decision making and/or what would be the most appropriate methods to engage directly with your stakeholders?*
- *Does your company already produce a sustainability / impact / benefit report? What methods of reporting could you use to increase transparency and accountability for your organization?*

Did you find this resource guide useful? Do you have feedback on how it can be improved, or ideas for other resources we can provide? Let us know what you think at standards@bcorporation.net.

Endnotes:

1 https://scholar.google.com/scholar_case?case=3585550984873858612
2 http://www.patagonia.com/b-lab.html
3 http://avc.com/2015/09/kickstarter-pbc/
4 https://www.bcorporation.net/sites/default/files/documents/uk/Legal_Test_Final_August_2015.pdf
5 https://www.kickstarter.com/charter
6 http://www.kingarthurflour.com/about/documents/King_Arthur_Flour_Benefit_Corporation_Report_for_Fiscal_Year_2014.pdf

B Lab is a non-profit organization dedicated to using the power of business as a force for good.
Learn more at:
www.Bcorporation.net
www.Bimpactassessment.net
www.B-Analytics.net
www.Benefitcorp.net
www.Bthechange.com