



**District of Columbia Benefit Corporation How-To-Guide:
Incorporating as a Benefit Corporation Step-by-Step**



September 5th 2013

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I. Introduction

This paper serves as a guide for benefit corporation law. This guide will help to introduce what the benefit corporation law is and will guide businesses through the process of incorporating as a benefit corporation as required by the District of Columbia (DC) Department of Consumer and Regulatory Affairs (DCRA) Corporations division. All legal matters should be consulted with a legal representative before any actions are taken. This tool is simply to educate companies who are interested in incorporating as a benefit corporation.

II. What is Benefit Corporation Law?

Before making the decision to incorporate as or switch to a benefit corporation, it is important to understand what the law requires, and if this is the right business form for your company. The benefit corporation law allows for the creation of a new and voluntary corporate entity that will allow businesses to consider profit as well as society and the environment. This form of incorporation allows a business to balance fiduciary duty between its shareholders and stakeholders. Currently, twenty (20) states, including the District of Columbia have enacted benefit corporation law around the country. These states have passed benefit corporation laws to encourage business growth, provide options for entrepreneurs and to attract the sizable social impact investment community to create new opportunities for economic growth.

There are important considerations for every business owner before considering incorporating or changing to benefit corporation:

Purpose: Benefit corporations have a new purpose that differs from traditional corporations. While traditional corporations have the single duty to maximize profit, benefit corporations have the increased purpose of considering society and the environment in addition to seeking a profit.

- 1) The form requires that businesses incorporating as a benefit corporation must declare their commitment to creating general public benefit (defined as a “material, positive impact on society and the environment, taken as a whole, as assessed against a third-party standard, from the business and operations of a benefit corporation.”), and in some cases may be required to declare a specific benefit that the business produces.

In the District of Columbia, every benefit corporation must state in their articles that corporation is a benefit corporation and be in compliance with Title 29 Chapter 13 – Benefit Corporation.

- 2) Conversion into and out of a benefit corporation form takes minimum status vote as defined by Title 29 Chapter 13. This ensures a high level of agreement amongst the shareholders.

- 3) Each business is required to be assessed by a third-party standards organization to ensure that the benefit corporation is creating positive impact.

Accountability: To ensure business accountability to creating material positive impact, the benefit corporation form requires directors to consider society and the environment. Additionally, the form provides shareholders with a private right of action to ensure their social impact investments are functioning according to the new purpose. These are much like the accountability elements of traditional corporations, however they include the consideration of society and the environment in addition to profit.

Transparency: Benefit corporations are required to produce an annual Benefit Report, which is assessed against a third party standard. The statute describes the parameters of what to look for when picking a standard for the basis of the report. The benefit corporation statute also requires that annual benefit reports be made public and shared with shareholders. Finally, some states require that the benefit report be filed with or submitted to the state. In the District of Columbia, the benefit report must be filed as the attachment and due the same time as the mandatory biennial report form BRA-25.

The brief description of the benefit corporation law above will help to lay a foundation for the steps explained in the following sections. These steps will cover the processes of incorporation/electing benefit corporation status as required by the District of Columbia (DC) Department of Consumer and Regulatory Affairs (DCRA) Corporations division to the procedures required from companies that are benefit corporations. This is a guide for incorporation and other requirements by the DCRA, and is not intended to stand as legal advice. For all legal advice please seek a lawyer or speak to your legal counsel. If you would like more information regarding what a Benefit Corporation is visit www.benefitcorp.net.

III. Incorporating as a Benefit Corporation?

Incorporating as a benefit corporation may change slightly from state-to-state, however this section will help businesses to think about, prepare, and plan for the process of incorporating according to the requirements of the DCRA Corporations division. The following is not meant to serve as legal advice, and therefore all legal matters should be taken to a legal advisor. Before jumping into the incorporation process, there are two main questions for businesses looking to incorporate as a benefit corporation: (1) Is the business a newly formed entity? Or (2) is the business amending its Articles of Incorporation and becoming a benefit corporation? For those looking to incorporate for the first time, see the next section *IV. Newly Formed Benefit Corporations*. For those businesses looking to amend their articles of incorporation to be governed by the benefit corporation status, see section *V. Amending Articles of Incorporation*. Finally, if currently an LLC and can't become a corporation for certain circumstances such as tax reasons, you can include the benefit corporation statute provisions in your governing documents (see *V. Amending Articles of Incorporation*).

IV. Newly Formed Benefit Corporations

The steps for incorporating as a benefit corporation with the DCRA Corporations division are much like the steps needed to establish any form of corporation. However, there are a few intricacies that are specific to the steps for incorporating as a benefit corporation. The following will help to walkthrough each step to ensure incorporation is done properly. Note that each state

has a different process for incorporation and that legal assistance is recommended and sometimes required.

The following steps need to be taken in order to incorporate as a benefit corporation:

- 1) Articles of Incorporation – This form must be filed with DCRA Corporations division in order to form a corporate entity.
 - a. Fill out Form DBU-1 online by visiting Corponline site at <http://corp.dcr.dc.gov/> . Include the following in the Articles in the order requested by the District of Columbia:
 - i. Name of Entity;
 - ii. Number of shares being made available and the par value of those shares;
 - iii. Name and Address of Registered Agent;
 - iv. Name(s) of Incorporator(s)
 - v. Signatures of Incorporators;
 - vi. *The following additional items can be included in the articles:*
 - (1) The names and addresses of the individuals who are to serve as the initial directors;
 - (2) Provisions not inconsistent with law regarding:
 - (A) The purpose or purposes for which the corporation is organized;
 - (B) Managing the business and regulating the affairs of the corporation;
 - (C) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;
 - (D) A par value for authorized shares or classes of shares;
 - (E) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;
 - (3) Any provision that under this chapter (Title 29) is required or permitted to be set forth in the bylaws;
 - (4) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director;
 - (5) A provision permitting or making obligatory indemnification of a director for liability, as defined in § 29-306.50, to any person for any action taken, or any failure to take any action, as a director.
 - b. To ensure benefit corporation status when incorporating as a new entity the following step is required:
 - i. Must declare that corporation is a benefit corporation
- 2) Processing (*Application*) Fee (See form DBU-1 for fee amount). General fee is \$220 for the corporation with total shares of up to \$100k.
- 3) Submit forms online via <http://corp.dcr.dc.gov/>.

V. Amending Articles of Incorporation

Existing businesses that are interested in changing their existing articles of incorporation to a benefit corporation are allowed to do so by taking the following steps. The procedure will likely need a legal representative to ensure all taxation and the amending of articles is done correctly, therefore all legal decisions should be made with a legal advisor. The following will be a walkthrough guide of the process for amending your Articles of Incorporation:

- 1) Fill out form DBU-2 Articles of Amendment to Amend Articles of Incorporation and submit to DCRA Corporations Division.
- 2) Include the statement that corporation will be a benefit corporation as defined by Title 29.
- 3) The amendment of articles of incorporation shall be done according to the provisions stipulated under Title 29 Chapter 4 Subchapter VIII and minimum vote provision as defined by Title 29 Chapter 13.

For more in-depth advice and considerations see [*How to Switch to Being a Benefit Corporation*](#).

VI. Further Benefit Corporation Considerations

The benefit corporation statute also mandates certain activities that a benefit corporation will need to enact upon in order to operate as a benefit corporation. It also prescribes what action to take in certain situations. Such activities and situations include, filing annual reports with the DCRA Corporations division. Each of these processes may vary from state-to-state however businesses incorporating as a benefit corporation should have an understanding of these processes before committing to this corporate form.

- 1) Filing Annual Reports – The benefit corporation statute requires that businesses incorporated as benefit corporations must assess their operations against a third-party standard and prepare an annual report. The benefit report must be shared with shareholders, made available to the public and be filed with the District of Columbia Corporations division. Each state will have its own process on how filings should be processed.

To prepare an annual benefit report use the following steps:

- a) Use a qualified third-party standard as a basis for your annual benefit report (More information and a list of third-party standards can be found at www.benefitcorp.net/selecting-a-third-party-standard)
- b) Use the results of that assessment to create a benefit report that states the following:
 - a. A narrative description of:
 - i. Process and rationale for selecting and/or changing third-party standard
 - ii. Ways in which the company pursued public benefit that amounted to general public benefit
 - iii. Ways in which the company pursued a specific benefit

- iv. Any circumstances that have hindered the pursuit of creating general public benefit or specific benefit
 - b. Third-Party Assessment of general social and environmental performance
 - i. Must be consistent with original application or otherwise explained why not consistent
 - c. Name of benefit director and benefit officer, if any, and contact address (*If required*)
 - d. Compensation of Benefit Director and/or all directors (*If required*)
 - e. Name of each person that owns 5% or more in shares (*If required*)
 - f. A statement of any connection with third-party standard (*If required*)
 - g. A statement with any information of restrictions or changes of the board (*If required*)
- c) Share finished annual benefit report with each shareholder (must be done within 120 days after end of fiscal year, where stated)
 - d) Make the benefit report public by posting on company website or have available copies to send to those who request it. Director compensation can be removed from publicly available documents.
 - e) File annual benefit report with along with form BRA-25 – mandatory biennial report for all business entities; annual benefit report is due whenever the biennial report is due for Business Corporation.

Any questions or concerns relative to corporate filings in the District of Columbia may be directed to Corporations division at 202-442-4432. Additional information is available by visiting www.dcrd.dc.gov and navigating to Corporate Registration section. Questions in any other area should be directed to Holly Ensign-Barstow by email to Holly@bcorporation.net or by telephone to 212-608-4150.