

## The (Triple) Bottom Line on New Corporate Forms: Benefit, Social Purpose and Flexible Purpose Corporations, and B Corp Certification

	CA BENEFIT CORPORATION ~70 companies since 1/2012 Ca Corp. Code 14600-14631	SOCIAL PURPOSE CORPORATION ~40 SPCs in WA since 6/7/12 RCW 23B.25	CERTIFIED B CORP ~725 companies ~\$4 billion/annual revenue
LEGAL STANDARD	Company must endeavor to create a "material positive impact on society and the environment."	Company organized to promote positive (or minimize negative) effects of SPC's activities on constituents, community, or environment	None. However, if possible, company must be a Benefit Corporation under state law in state of incorporation.
LEGAL FORMATION/ CERTIFICATION	Articles must state that it is a Benefit Corporation. Status election must be approved by SHs. Company <u>may</u> identify a specific public benefit.	Articles must state that it is a SPC. Status election must be approved by 2/3 of SHs. Company must designate a social purpose (can be specific or general)	Certification process managed by B Lab, a non-profit. Certification based on self-reported performance metrics; annual fee (\$500-25K).
MANAGEMENT	Directors <b>must</b> consider the interests of: shareholders; employees; customers; the community and society; and the environment.	Directors/officers <b>may</b> consider stated social purpose in all decision-making (SPCs may require this consideration).	Company subject to random audits to assess the accuracy of its self-assessment.
TRANSPARENCY	Company must conduct an annual evaluation of its performance using a third-party standard. Report of findings must be made public.	Company must conduct an annual evaluation (SPCs may use own metrics or require 3rd party audits). Annual report must be public.	Self-assessment scores are made public. Factors are: governance, workers, consumers, community and environment.
AVAILABLE IN	CA HI IL LA MD MA NJ NY PA SC VT VA (Pending in 20 other states)	Washington (SPC) California (Flexible Purpose Corporation – similar to SPC)	Anywhere (Etsy, Patagonia, Method, Ben + Jerry's, Seventh Generation)

### Advantages of using a social enterprise corporate form:

- Investors: Most big funds have SRI investment portfolios, and social ventures are especially popular with crowdfunders
- Marketing: Differentiate brand and communicate values to consumers
- Fiduciary Duties: Reduced legal liability for social and environmental decisions of directors/officers
- Happy-medium: Ability to quickly scale like for-profits but with a halo effect like nonprofits

### Disadvantages of using a social enterprise corporate form:

- Investors: Many investors will be deterred by triple bottom line investment strategies ("patient capital")
- Unnecessary: Existing corporate forms allow flexibility for most (all?) protections
- Costs: Costs associated with annual evaluation and reporting
- Uncertainty: Uncertainty regarding application of new and untested laws in courts



### Client Counseling Considerations

- These options are only relevant for certain types of business. A company's industry, consumers, competitors and growth strategy may dictate whether to pursue a unique corporate form, certification, both or neither.
- Electing to become a Benefit Corporation or a B Corp may allow founders to integrate and preserve environmental and objectives into the company's decision-making process. However, traditional corporations can achieve substantively similar outcomes at a lower cost and with fewer reporting obligations. (See, [The Truth about Ben and Jerry's](#)).
- Delaware corporations can become certified as B Corps without making any changes to their legal form.
- Financial incentives may emerge for social enterprises. For example, San Francisco gives Benefit Corporations priority when selecting contractors and Philadelphia gives a one-time \$5,000 tax credit to certified B Corps.

### Growing social entrepreneurship ecosystem, especially in the Bay Area and Pacific Northwest:

**Angel/VC support:** Calvert Group; Google Ventures; Investors' Circle; Newground Social Investment; Omidyar Network; Pacific Community Ventures; SJF Ventures; Underdog Ventures  
**Accelerators and Fellowships:** Ashoka; Echoing Green; Fledge; Global Social Benefit Incubator; Hub Ventures, Skoll Foundation; Social Venture Partners; Unreasonable Institute  
**University support:** Stanford offers stipends to support new social ventures; UW hosts a global social enterprise competition; MIT, Harvard, Wharton, NYU and Michigan have similar programs