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Delaware public benefit corporations

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Delaware Public Benefit Corporations (PBCs) are a relatively new type of business entity that have gained popularity in recent years as social and environmental issues have taken center stage. With more businesses looking into PBCs, it is important to understand what sets PBCs apart from traditional corporations and Certified B Corporations, as well as the benefits and drawbacks of forming a PBC.

What is a Delaware Public Benefit Corporation (PBC)?

A Delaware PBC is a type of for-profit corporation required by law to pursue a public benefit and to operate in a responsible and sustainable manner, in addition to its traditional business objectives. This means that a PBC is legally obligated to consider the impact of its actions on its stakeholders, such as employees, customers, the environment, and the community, in addition to maximizing shareholder value. A PBC's public benefit can be social, environmental, or other, but it must be identified in its certificate of incorporation.

In contrast, Delaware PBCs must have a purpose beyond profit and are required to consider the interests of all their stakeholders, not just shareholders, known as stakeholder governance.

Further, a PBC is required to provide its stockholders with a statement at least every other year, including the objectives it has established to promote its public benefit, the standards the board has adopted to measure the corporation's progress in promoting its public benefit, and an assessment of the corporation's success in meeting those objectives. PBCs can also be public companies or private companies.

What sets Delaware PBCs apart from traditional corporations?

Traditional corporations are organized primarily to maximize shareholder value, known as shareholder primacy. While traditional corporations can consider other factors, such as social or environmental impact, these are not legally required to be considered.

In contrast, Delaware PBCs must have a purpose beyond profit and are required to consider the interests of all their stakeholders, not just shareholders, known as stakeholder governance. This opt-out of shareholder primacy and opt-in to stakeholder governance makes PBCs popular for companies that want to balance profit with social or environmental goals. In sum, PBCs commit to higher standards of purpose, accountability, and transparency than traditional corporations.

What sets Delaware PBCs apart from Certified B-Corporations?

Whereas a PBC is a for-profit corporation pursuing a public benefit, the non-profit organization B Lab administers B Corp Certifications to businesses (not just corporations) who pass B Lab's rigorous "B Impact Assessment" and risk review. B Lab awards B Corp Certification to businesses that meet high standards of verified social and environmental performance, accountability to all stakeholders (workers, communities, customers, suppliers, and the environment), and transparency in a wide range of factors including employee benefits, charitable giving, supply chain practices, and input materials.

Finally, in order to maintain certification, Certified B Corporations must update their B Impact Assessment and verify their B Impact Score every three years, or after a change of control or IPO.

However, PBCs and Certified B Corporations are not mutually exclusive. That is, a PBC can also obtain B Corporation Certification. For example, Lemonade Insurance is both a PBC and certified B Corp. Think of B Corporation Certification as a stamp of approval by B Lab — an international non-profit network of organizations focused on transforming the economic system into a more inclusive, equitable, and regenerative global economy — that gives a business more credibility. B Corp Certification builds trust with consumers, communities, and suppliers and draws mission-aligned investors.

Benefits of forming a Delaware PBC

There are several benefits to forming a Delaware PBC. One of the main benefits is that a PBC provides legal protection for directors and officers who prioritize the company's public benefit over shareholder returns. This legal protection known as the "safe harbor" provision shields directors and officers from lawsuits by shareholders who disagree with decisions made in pursuit of the company's public benefit.

In addition, PBCs can be attractive to socially and environmentally conscious investors who want to invest in businesses that prioritize these values. Likewise, forming a PBC can help companies differentiate themselves from their competitors, build brand recognition, enhance their reputation, and attract more customers that prioritize the company's values. Similarly, PBCs may help attract and retain like-minded employees who want to make a difference through their work.

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Finally, PBC status can protect the company's mission through capital raises, leadership changes, and an IPO. Having a public benefit in the company's certificate of incorporation adds an extra layer of confidence that the company will continue to pursue its public benefit through major changes to the company. And although data is limited thus far, stock analysts have indicated that PBC status is either positive or neutral for public PBCs trading on a stock exchange, indicating that PBC status could positively impact a company's stock price after going public.

Drawbacks of forming a Delaware PBC

There are also some drawbacks to consider. One of the main concerns is that the requirement to pursue a public benefit could distract a company from its primary goal of generating profits. Additionally, the legal requirement to consider the interests of all stakeholders could create conflicts of interest and make decision-making more complex.

Another potential drawback is that a two-thirds vote of the shareholders can change the public benefit identified in a PBC's certificate of incorporation. This drawback means that a company's public benefit could be changed over time, potentially eroding its commitment to its original purpose.

Converting from a traditional corporation to a Delaware PBC

In addition to forming a corporation as a PBC, existing corporations can convert to a PBC. Converting from a Delaware corporation to a Delaware PBC requires approval of a simple majority vote (unless the certificate of incorporation provides otherwise). The simplest way to convert to a PBC is usually by amending a company's certificate of incorporation.

However, before becoming a PBC, the board of directors should consider the above pros and cons, curate an appropriate public benefit purpose through conversations with management and advisors, and obtain the requisite board and stockholder approval.

Opting out of PBC status

Just as a traditional corporation can opt-in to PBC status through a simple majority vote, a PBC can opt-out of its PBC status through a simple majority vote (unless the certificate of incorporation provides otherwise). This simple majority requirement was a key amendment to the PBC statute in 2020, which was lowered from its original 90% approval required in 2013.

Does PBC status alter opportunities to raise capital?

Founders rightfully wonder whether PBC status will affect their opportunity to raise capital. However, many mainstream investors are investing in PBCs. A number of notable venture capital firms have invested in PBCs with interest in investing in PBCs continuing to grow in the investment community.

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In order to well-position your PBC to access this capital successfully, PBCs should incorporate in Delaware, educate potential investors about the positives of PBC status, and gear the mandated PBC report to educate and inspire readers and potential investors.

Impact investments are investments made with the intention to generate positive and measurable social and environmental impact alongside a financial return. From 2017 to 2018, the global impact investing market doubled from $114 billion to $228 billion. And in 2022, the size of the impact investing market stood at a whopping $1.164 trillion.

The Global Impact Investing Network's 2022 report boasted that impact investing is growing globally and is well-positioned to continue to build upon its momentum in the coming years — a good sign for PBCs who align themselves with social and environmental goals.

Social and environmental concerns are much more top of mind with consumers than they have ever been, making PBCs a more attractive option for many companies. PCBs can still go public and engage in mergers and acquisitions, making the exit options comparable to a traditional corporation. When forming your company, it is important to consider all your options and choose the structure that best fits your needs, and your company mission.

About the author

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