


# U.S. FOR-PROFIT LEGAL STRUCTURE OPTIONS FOR SOCIAL ENTREPRENEURS<sup>1</sup>

## ONE-PAGE SUMMARY CHART

Rev. 9/1/15

Option:	Legal Description:	Key Traits: <sup>2</sup>	Notes & Main Sources:
<b>BENEFIT CORPORATION</b>  (not to be confused with “B Corps,” see below)	New type of Corporation	Model benefit corporation legislation: <ul style="list-style-type: none"> <li>• <i>Purpose</i>: must pursue a “general public benefit,” which is broadly defined as a “material positive impact on society and the environment”; may also pursue one or more “specific public benefit(s)” as stated in its articles</li> <li>• <i>Duty</i>: clarifies fiduciary duties by expressly requiring directors to consider other stakeholders beyond just SHs (emphasis on process, not outcome)</li> <li>• <i>Transparency</i>: annual public report required, performance must be assessed against a third-party standard (but no separate audit by a third party is required)<sup>3</sup></li> <li>• <i>Accountability</i>: SHs, directors and other persons granted standing (if specified in the governing docs) to bring a special right of action called a “benefit enforcement proceeding” to enforce public benefit purposes and other obligations related thereto</li> </ul>	<ul style="list-style-type: none"> <li>• MD passed first law in 2010</li> <li>• 31 laws passed (30 states + DC) (as of 9/1/15)</li> <li>• Most laws based on model benefit corporation legislation but variations exist: See <a href="http://benefitcorp.net/sites/default/files/documents/Model_Benefit_Corp_Legislation.pdf">http://benefitcorp.net/sites/default/files/documents/Model_Benefit_Corp_Legislation.pdf</a> (6/24/14 version)</li> <li>• Main source: <a href="http://benefitcorp.net">http://benefitcorp.net</a> (search also for the white paper)</li> </ul> <p><b>Public benefit corporations (DE):</b></p> <ul style="list-style-type: none"> <li>• DE passed a “public benefit corporation” (PBC) statute, which varies in many ways from the model benefit corporation legislation (Note: CA nonprofits are also called public benefit corporations)</li> </ul>
<b>SOCIAL PURPOSE CORPORATION (SPC)</b>	New type of Corporation	<ul style="list-style-type: none"> <li>• <i>Purpose</i>: adds one or more “social purpose(s),” which is more narrowly defined than a “general public benefit”; given more flexibility to further define specific social purposes as stated in its articles</li> <li>• <i>Duty</i>: clarifies fiduciary duties by expressly giving directors flexibility to consider other stakeholders beyond just SHs (not required, except in CA under the new SPC Act)</li> <li>• <i>Transparency</i>: annual public report required; may choose to assess against a third party standard (N/A to TX)</li> <li>• <i>Accountability</i>: may bring special action; standing varies (N/A to TX)</li> </ul>	<ul style="list-style-type: none"> <li>• CA passed first law in 2011 (f/k/a “flexible-purpose corporation,” but amended it to SPC effective 1/1/15)</li> <li>• Variations exist in CA, WA, FL and TX (as of 9/1/15)</li> <li>• Sources:                             <ul style="list-style-type: none"> <li>○ CA: <a href="http://www.businessforgood.co/2011/03/frequently-asked-questions-proposed.html">http://www.businessforgood.co/2011/03/frequently-asked-questions-proposed.html</a> (in re the original bill)</li> <li>○ WA: <a href="http://www.spcwa.com">http://www.spcwa.com</a></li> <li>○ FL: <a href="http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/FV?SearchView&amp;Query=Spc+v.+B">http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/FV?SearchView&amp;Query=Spc+v.+B</a></li> </ul> </li> </ul>
<b>LOW-PROFIT LIMITED LIABILITY COMPANY (L3C)</b>	New type of LLC	<ul style="list-style-type: none"> <li>• <i>Purpose</i>: L3Cs must define its purpose in its governing documents to mirror requirements for program-related investments (PRIs): (1) must significantly further one or more charitable or educational purposes; (2) cannot generate significant income; (3) no political or legislative purpose</li> <li>• <i>Duty/Accountability</i>: adds new charitable/educational fiduciary duty (“significantly further”)</li> </ul>	<ul style="list-style-type: none"> <li>• VT passed first law in 2008</li> <li>• Variations exist in 8 states (as of 9/1/15), repealed in NC on 1/1/14; new legislative efforts remain stagnant</li> <li>• Main sources:                             <ul style="list-style-type: none"> <li>• <a href="https://www.americansforcommunitydevelopment.org">https://www.americansforcommunitydevelopment.org</a></li> <li>• <a href="http://www.intersector13c.com/l3c_tally.html">http://www.intersector13c.com/l3c_tally.html</a></li> </ul> </li> </ul>
<b>BENEFIT LLC</b>	New type of LLC	<ul style="list-style-type: none"> <li>• Similar traits for purpose, duty and transparency as the model benefit corporation legislation above, but applied w/in an LLC structure</li> </ul>	<ul style="list-style-type: none"> <li>• MD passed first law in 2011</li> <li>• Variations exist in MD and OR (as of 9/1/15)</li> </ul>
<b>TANDEM STRUCTURE</b> (sometimes called “hybrids”)	Existing nonprofit (NFP) entity + existing for-profit (FP) entity	<ul style="list-style-type: none"> <li>• Typical formats include common ownership or interconnected governance setup (NFP parent + FP subsidiary, or vice-versa)</li> <li>• May establish contractual relationships (e.g., licensing IP)</li> </ul>	<ul style="list-style-type: none"> <li>• Not a new legal form; combo of existing ones</li> <li>• Often referred to as “hybrid” structures, but that can be confusing b/c such term is often used in two ways to describe: (1) multiple legal forms; or (2) multiple purposes within a single legal form</li> </ul>
<b>“CERTIFIED B CORPORATION”</b> (a/k/a “B Corps”)	Certification for existing for-profit entities ( <i>not</i> a new legal form) 	<ul style="list-style-type: none"> <li>• Granted by B Lab, a nonprofit organization</li> <li>• Existing businesses apply to B Lab to obtain certification as a “B Corp” by completing an extensive online questionnaire</li> <li>• Questionnaire is based on, <i>inter alia</i>, governance, treatment of workers, impact on community, effect on environment</li> <li>• Must score at least 80 out of possible 200 points to obtain certification</li> <li>• May need to convert to benefit corporation, if applicable, w/in certain time</li> </ul>	<ul style="list-style-type: none"> <li>• This is a certification (like Fair Trade or LEED)</li> <li>• Not a new legal form, though commonly confused with benefit corporations</li> <li>• Terminology matters b/c there are key distinctions between a legal form and a certification</li> <li>• 1,381 certified B Corporations (as of 9/1/15)</li> <li>• Main source: <a href="http://www.bcorporation.net">http://www.bcorporation.net</a></li> </ul>

<sup>1</sup> This chart provides a summary highlighting key traits and common sources regarding for-profit legal options for social entrepreneurs who create business models with purposes beyond generating profits. It provides a general overview and is not meant to be exhaustive. Nothing herein constitutes legal advice and is intended only for informational purposes.

<sup>2</sup> These are generally applicable traits but will vary based on each state’s statute and each individual company’s internal approvals. No special federal tax benefits are granted to any of these options. The first four options are for-profit entities and may distribute profits to owners. For an interactive map providing links to all applicable state legislation, see <http://socentlawtracker.org>.

<sup>3</sup> For a summary of each state’s reporting requirements, see <http://benefitcorp.net/sites/default/files/Benefit%20Corporations%20Chart.pdf> (current as of 6/10/15)