

# Starting a Business in DC:

## What Type of Business is Right for You?



### The Benefit Corporation

One of the most important decisions for a businessperson is determining the form of business organization to use for their enterprise. There are several forms of business organization that are available to you. This information sheet discusses the benefits and disadvantages of a benefit corporation. This information sheet reflects changes in the DC Code that went into effect on May 1, 2013.

- **What is a Benefit Corporation?**

Benefit corporations, like all corporations, are organizations in which shareholders own a share (a percentage) of the organization. These shareholders elect directors to manage the overall operation of the corporation and the directors appoint officers to direct the day-to-day operation of the business. A benefit corporation may be either a C-Corp or a S-Corp at its core but is distinct in that it has an obligation to strive to generate profits *and* provide social and environmental benefits.

- **How are Benefit Corporations operated?**

DC requires corporations to have at least one director, and corporations usually have multiple directors. The directors, in accordance with the bylaws, appoint officers who manage the corporation's daily operations.

The DC Code also requires that the board of directors of a benefit corporation designate one director as a benefit director. The benefit director will provide their assessment of the corporation's performance of its public benefit purpose and the conduct of directors and officers.

A benefit corporation may also have a benefit officer with duties related to the corporation's public benefit and the preparation of the annual benefit report. This annual benefit report enables shareholders to not only evaluate financial performance, but also social and environmental performance.

- **What are the advantages of a Benefit Corporation?**

- *Promoting Public Benefit Purposes*

Benefit corporations, in addition to the purpose of maximizing profits, are also committed to 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." Permitting factors other than the bottom line to be used to evaluate performance enables a corporation to be assessed more holistically, recognizing the value and importance of social responsibility alongside traditional factors such as profits, sales, or market share.

- *Accountability and Transparency*

A benefit enforcement proceeding for failure by the corporation to pursue or create the public benefit purpose set forth in the articles of incorporation can be brought by the benefit corporation directly or derivatively by a shareholder, a director,

or certain limited other parties. Permitting benefit enforcement proceedings ensures that a benefit corporation is held accountable to its societal and environmental purposes.

Further, the strict requirements regarding the contents of and methodology for producing the annual benefit report, which must be publicly available, provide a high level of transparency.

- **What are the disadvantages of a Benefit Corporation?**

One disadvantage is the onerous additional reporting required. In addition to a biennial report that must be submitted to DCRA, benefit corporations must produce an annual benefit report that complies with stringent requirements for both content and methodology. This annual benefit report must be provided to shareholders, made publicly available, and filed with DCRA alongside the biennial report.

In addition, benefit corporations are often misunderstood or confused. For example, some mistakenly believe that a benefit corporation is related to or a hybrid nonprofit organization. The difference between a benefit corporation as a legal entity and a corporation that holds a B-Corp Certification is another frequent source of confusion. B-Corp Certification is awarded to businesses by B Lab, a third-party, based on the business' social and environmental performance, and is not recognized as a distinct legal structure or classification.

- **How do I form a Benefit Corporation?**

- *Registration of the Benefit Corporation*

DC requires benefit corporations to register with the Department of Consumer and Regulatory Affairs ("DCRA"), which is done by filing "Articles of Incorporation." Registration costs a minimum of \$220 and can increase depending on the amount of stock the corporation issues. Benefit corporations are required to file articles of incorporation including the name of the entity, the number of authorized shares, the registered agent and the name and address of each incorporator. Further, the articles must declare that the entity is a benefit corporation. Form DBU-1, an instruction sheet and Articles of Incorporation sample sheet, is available to [download](#) and can also be completed online at <https://corponline.dcradg.gov>.

Corporations are required to have either "Corporation," "Company," "Incorporated," or "limited" or an abbreviation of these words in its name. Also, corporations are not allowed the same or a deceptively similar name as another corporation. A business name can be registered or reserved online at <https://corponline.dcradg.gov> or by [downloading Form GN-3](#).

Businesses may also operate under a registered trade name that differs from the benefit corporation's legal name. This can be completed online at <https://corponline.dcradg.gov> or by mail by [downloading Form TN-1-4](#).

- *Registration of an Agent*

Benefit corporations must register a "registered agent" within DC. The registered agent receives official notices from the

government for you. It can be either an individual or a business entity, provided that the registered agent has a street address in DC that is not a post office box. The agent need not be someone who is a part of the business; for a small fee, third-party services will act as a registered agent. Please refer to <https://dcra.dc.gov/service/corporate-registration-registered-agent> for more information.

To change a previously designated registered agent, complete the form online at <https://corponline.dcra.dc.gov> or by mail by [downloading Form RA-1-7](#).

- *Drafting the Bylaws*

The bylaws generally address such issues as: the types of stock to be issued, the corporation's system for electing directors, the place and organization of the corporation's annual shareholder meeting, the length of directors' terms, the number of corporate officers, and how they are to be selected.

- **What additional requirements govern Benefit Corporations?**

Benefit corporations must file a bi-annual report with DCRA that provides basic information about the corporation, such as: a list of its directors, a description of its business, and the number of shares of stock it has issued. The filing fee is \$300. Form BRA-25 is available to [download](#) or can be completed online at <https://corponline.dcra.dc.gov>

Benefit corporations are also required to hold shareholder meetings each year. Each shareholder must be notified of the meeting place and time. At the meeting, the shareholders elect the corporation's director(s). The company's business and status is usually discussed. In-person attendance at these meetings is not required as shareholders are permitted to vote by proxy.

In addition, benefit corporations are required to keep and make available accurate accounting books, pertinent business records and the minutes of its meetings.

- **What other licenses and certificates must I obtain?**

DC requires many types of businesses to obtain specific licenses and permits. Even if a specific license is not required, a general basic business license often is. A list of business activities having special license and permit requirements and information about the general basic business license can be found at:

<https://dcra.dc.gov/node/514522>

After determining your business' location, you will need to obtain either a Certificate of Occupancy (running the business from an office or storefront) or a Home Occupation Permit (running the business from your home). Generally, if you are leasing space and the owner of the building has a Certificate of Occupancy that covers your type of business, then you do not need to apply. Applications for these permits must be submitted in person at the DCRA Permit Center and can be downloaded from:

<https://eservices.dcra.dc.gov/DocumentManagementSystem/Home/retrieve?id=Certificate%20of%20Occupancy%20Application.pdf>

(Certificate of Occupancy)

<https://eservices.dcra.dc.gov/DocumentManagementSystem/Home/retrieve?id=Home%20Occupation%20Permit%20Application.pdf>

(Home Occupation Permit)

- **What tax-related requirements should I know about?**

Benefit corporations must obtain a Federal Employment Identification Number (FEIN) for tax filing and reporting purposes. The FEIN Form SS-4 can be found at:

<https://www.irs.gov/pub/irs-pdf/fss4.pdf>

Organizations can also apply for a FEIN online at: <https://sa.www4.irs.gov/modiein/individual/index.jsp>

DC businesses must also complete the Combined Business Tax Registration, Form FR-500. For FR-500 requirements and online registration information, visit:

<https://otr.cfo.dc.gov/page/new-business-registration>

For federal tax purposes, a benefit corporation will file their income tax based on their status as a C-Corp or S-Corp. A C-Corp will file its income tax on IRS Form 1120. A S-Corp will file its income tax on IRS Form 1120-S and its shareholders use IRS Form 1040, schedule E. If the benefit corporation has employees, they are subject to federal withholding tax and the benefit corporation needs to submit W-2 and W-3 forms to the IRS. In addition, a benefit corporation with employees needs to file an IRS Form 941 every quarter and IRS Form 940 annually. These forms are available at:

<https://apps.irs.gov/app/picklist/list/formsPublications.html>

- **Where can I find more information?**

For general DC business information visit the DC Department of Consumer and Regulatory Affairs website at

<http://www.dcra.dc.gov> or call at (202) 442-4400.

For DCRA documents and forms, visit:

<https://eservices.dcra.dc.gov/DocumentManagementSystem>

For additional information on starting and maintaining a business, visit <https://business.dc.gov>

For an overview of federal tax information, visit the IRS website at: <http://www.IRS.gov>

For more information about small businesses, you can visit the Small Business Administration website at:

<http://www.SBA.gov>

For the Benefit Corporation Act of 2012 (D.C. Code Title 29, Chapter 13), visit:

<https://code.dccouncil.us/dc/council/code/titles/29/chapters/13>

For the DC Business Corporation Act of 2010 (DC Code, Title 29, Chapter 3), visit:

<https://code.dccouncil.us/dc/council/code/titles/29/chapters/3>

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