

MISSION-LED COMPANIES

INTERNATIONAL OVERVIEW
OF HYBRID LEGAL FORMS SERVING
THE COMMON GOOD

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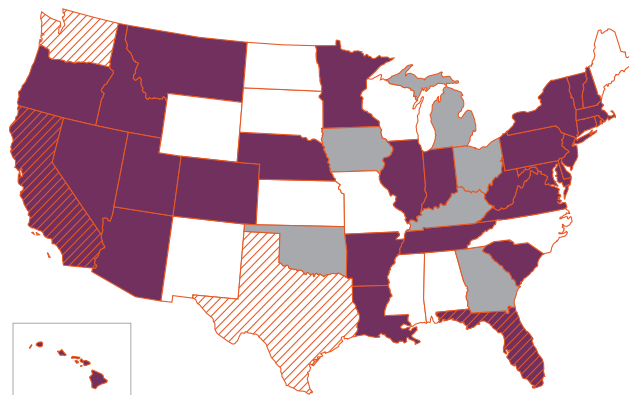


MORE THAN
2000 BC
ACTIVE
BENEFIT CORPORATIONS

AROUND
60 SPC
SOCIAL PURPOSE
COMPANIES

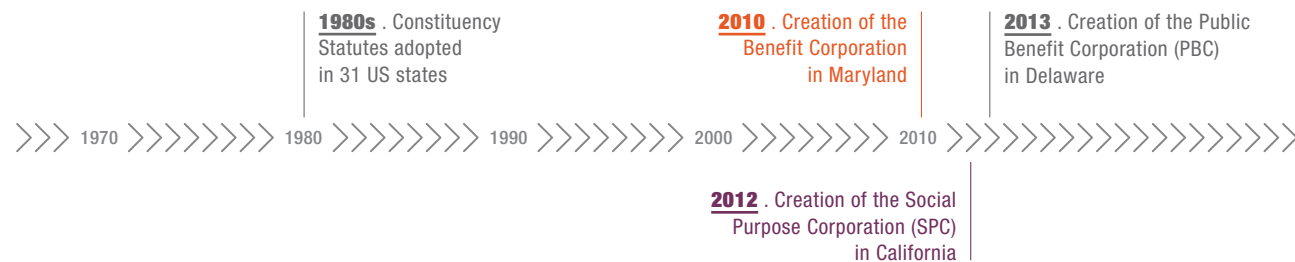
55 PBC
PUBLIC BENEFIT
COMPANIES
REGISTERED
IN DELAWARE
3 MONTHS AFTER
INTRODUCTION

KEY AMERICAN CONTEXT FIGURES



- States having adopted Benefit Corporation status
- States having adopted Social Purpose Corporation status
- States currently considering a new legal form

SRI ACCOUNTS
FOR OVER
20%
OF ASSETS UNDER
MANAGEMENT*
**all investment strategies
combined*



THE LEGAL AND FISCAL CONTEXT

A proliferation of new legal structures

From the decline of Constituency Statutes to the rise of new legal forms

In the United States, the first attempted reform of company law that aimed to promote long-term decisions that would benefit all of a company's stakeholders was the adoption of laws referred to as the Constituency Statutes in the 1980s. These laws allowed company executives and directors to take a list of non-financial factors (such as ESG issues) into account when making management decisions. The aim was to redefine their fiduciary duties. */// SEE P.15 ///* However, these statutes quickly drew criticism on the grounds of their limited legal effects. Indeed, they imposed no obligation in terms of consideration of the impact of decisions on each of the abovementioned groups of stakeholders, and could easily be misused by directors in order to favor their own personal interests. In light of these limitations, Governor Schwarzenegger vetoed the introduction of the Constituency Statutes in California in 2008. Elsewhere, however, they still exist.

From B-Lab to Benefit Corporation

The Constituency Statutes were supported by an organization named B-Lab, which certifies companies on the basis of non-financial criteria. */// SEE BOXED TEXT P. 19 ///* The veto from the Governor of California thus prompted the founders of B-Lab to extend their activities beyond certification, creating a legal form designed specifically for the companies they assessed (referred to as 'B-Corps'). At such time, the B-Corp network had begun to count a number of major corporations among its ranks. These big businesses feared that, in pursuing social and environmental objectives, they could find themselves in breach of their fiduciary duties towards their seed investors. Hence the Benefit Corporation was born, and was first adopted in 2010, in Maryland. Thirty-one US states have since followed suit, allowing companies to register as Benefit Corporations. Although the first states simply adopted the model proposed by B-Lab, many others have taken the opportunity to make certain adjustments. The generic term Benefit Corporation therefore covers a variety of legal forms from state to state.

From Benefit Corporation to Social Purpose Corporation

In addition to the impetus it gave to Benefit Corporations, the 2008 California veto also prompted work on a new legal form: the Flexible Purpose Corporation (FPC), now known as the Social Purpose Corporation (SPC). A group of Californian lawyers teamed up to develop a different corporate status from that proposed by B-Lab: one better suited to major public corporations (or those intending to go public), with the aim of federating directors and shareholders around a common goal.

Although each state is free to define and adapt its own legal forms of enterprise, two models have dominated over recent years: the **Benefit Corporation** and the **Social Purpose Corporation**. The main differences between them are as follows:



After a consultation process lasting several years, the SPC was adopted in California in 2012. Since then, the model has also been embraced in Indiana, Washington State, Florida and Texas. Nonetheless, the SPC is not as widespread as the Benefit Corporation, which has the advantage of B-Lab's network and marketing resources. Although each model has its own specific characteristics, it should be noted that businesses that have chosen to adopt one or other of these forms are subject to the same tax obligations and do not benefit from any additional advantages.

PBC

The specific case of the Delaware Public Benefit Corporation*

The Public Benefit Corporation (PBC) came into existence under Delaware state law in 2013. Despite the fact that its name includes the words 'Benefit Corporation', the PBC is actually closer to a legal form in its own right, combining aspects from both of the abovementioned models. The PBC promotes the definition of a clear, company-specific mission (like the SPC), but in the context of the responsible pursuit of its activities, with a view to making a positive social and environmental impact (like the Benefit Corporation).

In practice, the PBC is therefore very similar to the SPC, and many lawyers wish to see the two forms combined and given the same name. Whereas the SPC has failed to win over major corporations, the PBC has begun to attract some big names: Kickstarter, the leading crowdfunding platform, Laureate Education, the US higher education giant that became the first PBC to go public in February 2017, and Danone, which is looking to bring all its US activities together within a single PBC further to its merger with White Wave Food Company.

* not to be confused with the California Public Benefit Corporation, which is a legal form available solely to non-profit organizations.

Certified TO BE OR NOT TO B CORP



B-Corp is a certification mark created by B-Lab in 2006. B-Lab was founded by a group of US entrepreneurs who wished to help responsible businesses improve their practices through the creation of a certification mark.

The certification is awarded on the basis of non-financial criteria, evaluated by means of a specific assessment created by B-Lab (the B Impact Assessment) comprising 200 questions designed to gauge both **Governance and the business's impact** on four major stakeholder groups: **workers, clients, the local community and the environment**. A score of 80/200 is required for B-Corp certification, which is valid for two years (the average score obtained is 105/200).

In most US states (and in Europe), B-Corp certified businesses must amend their by-laws to incorporate a mention of the pursuit of a significant positive impact on society and the environment.

		UNITED STATES		
		BENEFIT CORPORATION	SOCIAL PURPOSE CORPORATION (SPC)	PUBLIC BENEFIT CORPORATION (PBC)
MISSION-LOCK	General mission <i>The company undertakes to pursue its activities in a responsible manner and to take into account the social/environmental interests of its stakeholders</i>	Yes	No	Yes
	Specific mission <i>The company defines a specific mission that it wishes to pursue</i>	Optional	Yes	Yes
PERFORMANCE-LOCK	Production of a mission assessment and/or impact report	Annual assessment report on the company's impact on its stakeholders	Annual mission assessment report (expenditure, strategies implemented to fulfill the mission)	Mission assessment report every two years
	Certification of the report by an independent third party	Yes <i>Very often by B-Lab</i>	No	No
TRANSPARENCY		The impact report must be published and easily accessible	The report must be sent to the shareholders A non-confidential version must be published and made easily accessible	No statutory requirement in respect of reporting transparency
PROFITABILITY		Unlimited	Unlimited	Unlimited
ASSET-LOCK		No	No	No
GOVERNANCE		Free	Free	Free
SPECIFIC TAXATION		No	No	No
MISSION ENFORCEABILITY MECHANISMS		Inspection by an independent third party (e.g. B-Lab); Benefit Enforcement Proceedings allow a group representing 5% of the shareholders to take legal action against the directors	Mission is binding, but no formal mechanisms outside of court action <i>(no case-law yet available)</i>	Mission is binding, but no formal mechanisms outside of court action <i>(no case-law yet available)</i>

ITALY	UNITED KINGDOM	FRANCE
<i>SOCIETÀ BENEFIT</i>	COMMUNITY INTEREST COMPANY (CIC)	<i>SOCIÉTÉ À OBJET SOCIAL ÉTENDU (SOSE) Proposal</i>
Yes	No	Optional
Yes	Yes <i>The mission must benefit the community</i>	Yes <i>The mission corresponds to the 'OSE': Extended Corporate Purpose</i>
An impact report must accompany the annual report	Annual Community Interest Statement	Annual mission assessment report prepared by the Extended Corporate Purpose Board (COSE)
Yes	No <i>But verified by the CIC Regulator</i>	Optional
The impact report must be published and easily accessible	The mission assessment report must be published and easily accessible	The mission assessment report must be published and easily accessible
Unlimited	Limited <i>Only 35% of the profits can be distributed</i>	Unlimited
No	Yes <i>The company cannot be sold other than to another CIC or a non-profit organization</i>	No
Free	Free	Creation of a COSE comprising various stakeholders affected by the OSE/mission is recommended
No	No <i>But preferential treatment for certain public procurement contracts</i>	No
Mission is binding, but no formal mechanisms outside of court action <i>(no case-law yet available)</i>	The CIC Regulator ensures compliance with the mission	Role of the COSE; mission may be enforced through the courts