

Delaware Public Benefit Corporation Conversion Checklist

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This Checklist summarizes the necessary steps for a traditional corporation to become a public benefit corporation (PBC) in Delaware. A PBC is similar to a traditional corporation, but has more requirements, including obligations to pursue one or more public benefits and to operate in a manner that considers the interests of those materially affected by its conduct.

AMENDMENT TO CERTIFICATE OF INCORPORATION

The certificate of incorporation of a PBC must be changed so that:

- The heading of the certificate states that the corporation is a public benefit corporation.
- The certificate identifies one or more specific public benefits to be promoted by the corporation.

(DGCL § 362(a).)

Optional changes to the certificate of incorporation include:

- The name of the corporation may be changed to include the words “public benefit corporation,” the abbreviation “P.B.C.,” or the designation “PBC.” If the name does not include these indicators and the PBC is not publicly traded, the PBC must notify anyone who purchases stock that the corporation is a PBC.
- The certificate of incorporation may include a provision that a disinterested failure by a director to satisfy its duties under the PBC statutes is not an act or omission not in good faith or a breach of the duty of loyalty. The purpose of this provision is to protect directors and should be considered by any corporation considering an election to be a PBC.
- The certificate of incorporation or by-laws of a PBC may include a commitment to make its statement about its efforts to promote its specified public benefits:
 - available to the public (as opposed to its stockholders only);
 - annually (as opposed to biennially); or

- according to a third party standard (as opposed to using its own methodology).

Placing this commitment in the certificate of incorporation makes it more difficult to change.

(DGCL §§ 362(c), 365(c), and 366.)

For more information on PBCs, see Practice Note, Public Benefit Corporations (DE) ([w-004-4738](#)).

BOARD APPROVAL

The board of directors must approve the Amendment and recommend that the Amendment be submitted to the stockholders for approval (DGCL § 242(b)). The corporation’s certificate of incorporation and by-laws should be reviewed to determine the vote required.

STOCKHOLDER APPROVAL

The stockholders must approve the Amendment with an affirmative vote of two-thirds of the outstanding shares of the corporation (DGCL § 363). The certificate of incorporation and by-laws of the corporation, as well as any agreements among the corporation’s stockholders, should be reviewed to determine whether any additional vote is required.

APPRAISAL RIGHTS

If the corporation is not publicly traded, stockholders who do not vote for the Amendment are entitled to an appraisal by the Delaware Court of Chancery of the fair market value of the stockholder’s share of stock (DGCL § 363(b)). The corporation must provide its stockholders with notice of their right to an appraisal. For more information on appraisal rights, see Practice Note, Appraisal Rights ([8-517-0205](#)).

FILE AMENDMENT

After the board and stockholders approve the Amendment, the Amendment must be finalized and filed with the Delaware Secretary of State.

PRINT AND ISSUE NEW STOCK CERTIFICATES

The PBC statutes require that stock certificates issued by a PBC conspicuously note that the corporation is a PBC. It is unclear whether that requirement applies to stock certificates issued before a corporation becomes a PBC. To avoid a later challenge by a person that acquires shares represented by a stock certificate without the PBC notation, the corporation should consider printing new stock certificates with the required notation and issuing the new stock certificates to its existing stockholders. (DGCL § 364.)

NAME CHANGE

If the PBC has adopted a new name, it should make the necessary changes to reflect its new name. For example, the PBC should update bank accounts, business cards, and any registrations. Although there is no set timing for completion of these changes, a corporation should aim to complete these changes within a commercially reasonable time following the PBC election.

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