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FLEXIBLE PURPOSE CORPORATIONS AND BENEFIT CORPORATIONS - PEOPLE, PLANET AND PROFIT!

On January 1, 2012, legislation became effective in California to permit the formation of two new types of for-profit corporations: the "flexible purpose corporation" (FPC) and the "benefit corporation" (Benefit Corp). By doing so, California joined a growing number of states that have enacted legislation to combine traditional corporate profit-seeking goals with social or environmental objectives. The ultimate purpose is to build a better business model and serve a growing number of U.S. consumers opting for a health and sustainability lifestyle.

What's the Difference?

A traditional corporation operates under a singular focus: to maximize shareholder returns. Its directors and officers serve as fiduciaries and are held accountable under this standard, placing corporate governance at odds with societal or environmental objectives.

FPC's and Benefit Corps are not held to the same standard. While similar to traditional corporations, these new entities need not maximize the benefit to shareholders if they serve a higher purpose to society and their employees. FPC's may pursue social welfare objectives without incurring liability to directors for not maximizing profit. However, the Articles of Incorporation must specify one or more "special purposes". Benefit Corps must pursue social welfare objectives and have more transparency requirements than traditional corporations. The directors of both the FPC and Benefit Corp. are protected because they owe no fiduciary duty to the person who benefits from the purpose or purposes.

FPC's and Benefit Corps vs. Non-Profits

FPC's and Benefit Corps are dissimilar from non-profits in that they may legitimately pursue for-profit activities. But like non-profits they can serve broader social or environmental purposes. These purposes may include the same type of traditional charitable or public purpose activities. Purposes may be broadly or narrowly defined.

Under a broad definition, a general public benefit may be so general as to confer "a material positive impact on society and the environment". Narrowly defined specific public benefits include such activities as:

- Providing beneficial products, services or economic opportunities to low-income or under served individuals;
- Preserving the environment;
- Improving human health;
- Promoting the arts, sciences, or advancement of knowledge;
- Increasing the flow of capital to other entities with a public benefit purpose; or
- Accomplishing any other particular environmental or social benefit.

Although California FPC's and Benefit Corps may adopt social and environmental goals, neither is entitled to any special tax benefits under state and federal income tax law.

Accountability and Transparency

With greater flexibility comes the requirement of heightened accountability and transparency. Both types of entities are required to adhere to additional annual reporting requirements. The FPC must provide an annual financial report and a special report including a management discussion and analysis concerning the FPC's stated purpose(s). There are reporting exemptions for FPC's with fewer than 100 shareholders.

The Benefit Corp must consider the impact of an action or proposed action on the shareholders, employees, its subsidiaries and suppliers, customers, the community and society (including the local community), the environment and both short and long term interests of the corporation. To assess performance, the law mandates that an annual review of bottom line performance must be conducted under an independent third party standard. The third party standard means reporting and assessing the overall corporate social and environmental performance under a variety of criteria and making the information available to the public.

Conclusion

While these new entities are not right for every type of incorporation, they open the door to new opportunities for both start-up entrepreneurs and established corporations who may seek to convert. If you are interested in exploring this topic in more depth or think that an FPC or Benefit Corp may work for your business, please contact us!