Federal Reserve Bank of Kansas City

Shift Innovation:
Community Development Conference

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“Sparking Social Entrepreneurship”

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Key Legal Characteristics of Formal Hybrid Forms

**Benefit Corporation (generally):** (27 states)
General Public Benefit: Entity must have a purpose of creating “a material positive impact on society and the environment, taken as a whole, assessed against a third party standard”

Specific Public Benefit: Entity may choose to do the one or more of the following:
- Provide products or services to low income or underserved
- Promote economic opportunity other than creation of jobs “in the ordinary course”
- Preserve the environment
- Improve human health
- Promote arts, sciences, and advancement of knowledge
- Increase capital to entities with public benefit purpose
- Accomplish any other “particular benefit for society or the environment”

Directors must consider the impact of their decisions on:
- shareholders;
- employees of firm, subsidiaries & suppliers;
- customers;
- community and society;
- the local and global environment;
- short and long term purposes; and
- ability to accomplish the general and specific purposes.

Social accountability: annually provide shareholders with and post on its website a benefit report that presents the entity’s “assessment of [its] overall social and environmental performance against a third party standard”

Legal accountability: benefit director may be appointed; benefit enforcement proceeding by corporation or derivatively by shareholders or directors

**B Corp:**
The B Corp is not a form but is a certification provided by B Labs based on reporting having met certain threshold standards. The B Corp certification is available to C corporations, S corporations, limited liability companies, benefit corporations, flexible purpose corporations, L3Cs, partnerships, etc.

**Flexible/Social Purpose Corporation:** (3 states)
Special Purpose: Directors are required to consider at least one of the following “in addition to or at the expense of” shareholder interests:
- That which is “charitable” under the Code or permitted by nonprofit public benefit corporation; and/or
- Promoting or minimizing effects on:
  - employees
  - suppliers
  - customers
  - creditors
  - community & society, or
  - environment

Social accountability: mandated public disclosure of objectives, goals, standards of measure, and impact
**L3C (low profit limited liability company):** (8 states; 2 Indian Nations)
- Entity must significantly further charitable purpose(s) as defined by the Code
- But for the connection to that purpose(s), entity would not have been formed
- No significant purpose can be production of income or appreciation of value
- No significant purpose can be lobbying or intervening in a political campaign

**Social accountability:** no filings or public disclosures required (but see proposed Philanthropic Facilitation Act of 2014)

**Legal accountability:** fiduciary, securities, consumer protection, *ultra vires* acts

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### Comparing Certain Practical Aspects of Key Business Forms

<table>
<thead>
<tr>
<th></th>
<th>L3C</th>
<th>Benefit Corporation</th>
<th>B Corp</th>
<th>Flexible Purpose Corporation</th>
<th>For Profit Partnership, LLC and Corporation</th>
<th>Tax Exempt Charitable(^1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Distribute Profits?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Exempt From Taxes?</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes (generally)</td>
</tr>
<tr>
<td>Contributions Deductible as Charitable?</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Purposes <strong>Must</strong> Be Charitable?</td>
<td>Yes (must significantly further)</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Purposes <strong>May</strong> Be Charitable?</td>
<td>Not optional (must significantly further)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Not Optional</td>
</tr>
<tr>
<td><strong>May</strong> Pursue Social/Public Purposes?</td>
<td>Yes (secondary to charitable)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Maybe (with limits)</td>
<td>Yes (charitable only)</td>
</tr>
<tr>
<td><strong>May</strong> Maximize Owner Value?</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Not Optional</td>
<td>No</td>
</tr>
</tbody>
</table>

\(^1\) Tax exempt charitable is not a form but is included for comparative purposes because entities so organized are frequently considered among the traditional structures or approaches.