



Comparison of the Requirements Applicable to Delaware Public Benefit Corporations (“PBCs”), B Corporations, and 501(c)(3) Tax-Exempt Entities

This summary is intended for reference purposes only and is not an exhaustive description of the legal and other requirements associated with the matters addressed herein

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	Delaware Public Benefit Corporations	B Corporations	501(c)(3) Tax-Exempt Entities
General	A PBC is a Delaware state law creation permitting an otherwise for-profit enterprise to promote public benefits specified in the entity's charter (rather than just the pecuniary interests of its stockholders). Subject to the rules described below, Delaware PBCs are legally treated like other corporations.	A B corporation is an entity that has received B corporation certification from B Lab, an independent, private nonprofit organization. B corporation status is not a legal status, though it requires the entity in question to fulfill certain legal requirements.	A 501(c)(3) tax-exempt entity is primarily a matter of federal tax law, though the entity should also be formed as a nonprofit entity under state law. Note: the requirements that apply to 501(c)(3) nonprofits are extensive. A full description of these requirements is outside the scope of this summary. The material contained here is intended to provide a high-level perspective on 501(c)(3) compliance.
Organizing document requirements	The specific public benefit(s) of the corporation must be specified in the corporation's charter.	The organizing document requirements depend on the state of incorporation. If the state in question has benefit corporation legislation, a B corporation can satisfy the legal requirements by being or becoming a benefit corporation. For instance, a Delaware entity can satisfy the legal requirements by becoming a PBC. If not, there are specific organizing document provisions required by B Lab.	The charter must contain certain provisions limiting the purposes for which the entity operates and requiring that the assets of the entity must be distributed to other qualifying nonprofit entities upon dissolution.

	Delaware Public Benefit Corporations	B Corporations	501(c)(3) Tax-Exempt Entities
Aims of corporation	<p>Directors are authorized to consider and pursue the public benefits listed in the corporation's charter.</p> <p>Permissible benefits include, but are not limited to, positive "effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature."</p>	<p>B Lab certifies and verifies that the corporation pursues social good.</p>	<p>501(c)(3)s must be organized and operated <u>exclusively</u> for religious, charitable, scientific, educational, or literary purposes. By contrast with B corporations and PBCs, which are free to operate to serve profit motives in addition to the authorized public benefit, nonprofits cannot be operated for any purposes other than permissible tax-exempt purposes.</p>
Tax implications	<p>PBCs are subject to standard federal income tax consequences (i.e., C or S corporation taxation).</p>	<p>B corporations are subject to standard federal income tax consequences (i.e., C or S corporation taxation). B corporation certification is available for certain LLCs, in which case partnership taxation is also relevant.</p>	<p>501(c)(3)s are exempt from tax except to the extent of any unrelated business income.</p>

	Delaware Public Benefit Corporations	B Corporations	501(c)(3) Tax-Exempt Entities
Qualification process	<p>PBCs simply must comply with the charter requirements above. Qualification is immediate.</p>	<p>An aspiring B corporation must complete an online impact assessment, must participate in an assessment review and supply supporting documentation regarding certain aspects of the entity’s practices, must participate in a phone review, must complete a disclosure questionnaire, and may be required to submit to background checks. To complete the application, a B corporation must sign a term sheet and a “declaration of interdependence.”</p> <p>A new entity can apply for “pending” status for 12 months (with slightly less rigorous application procedures as a result of the entity’s limited operating history) prior to being eligible for full certification.</p>	<p>Entities seeking 501(c)(3) status must complete and file an extensive application (Form 1023), which includes financial information, details on employee, officer, and director compensation, current and proposed activities, and conflict of interest policy. Completed applications frequently exceed fifty pages in length. The IRS may take up to two years to process these applications, though three to six months is more typical.</p>
Oversight	<p>Stockholders holding 2% or more of the Company’s shares can sue directors in a derivative action to require them to consider the public benefit purposes of the Company.</p> <p>The PBC must provide a biennial report to its stockholders regarding the entity’s pursuit of its public benefit objectives.</p>	<p>B Lab oversees compliance in accordance with the requirements immediately above.</p> <p>10% of B corporations are chosen for an on-site review by B Lab.</p> <p>B corporations must be re-certified every two years.</p>	<p>Tax exempt entities are overseen both by the IRS and the rules of its state of incorporation/formation.</p> <p>The entity must file annual tax returns including information about salaries and activities for entities above a certain size. The entity is subject to IRS audit and loss of tax exempt status.</p> <p>In addition, the state of organization may have requirements that can include audit and reporting obligations.</p>

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Fees	PBCs pay the Delaware Secretary of State's standard corporate filing fees.	An annual fee to B Lab is required, starting at \$500 and escalating with annual sales (see here: https://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp/make-it-official).	The filing fee for the Form 1023 may be either \$400 or \$850, depending on the entity's gross receipts prior to filing the application.
Name/trademark issues	The entity's corporate name must contain "PBC" or "public benefit corporation" or, prior to issuing stock to an individual, the entity must notify that individual that it is a public benefit corporation.	B corporations are entitled to use B Lab certifying stamp in conformance with its usage policies.	N/A

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Miscellaneous	Currently, approximately 31 states enacted benefits corporation statutes including: California, Massachusetts, New York, Colorado and North Carolina.	N/A	<p>Tax exempt entities must comply with strict operational requirements. Specifically:</p> <ul style="list-style-type: none"> - The profits of a 501(c)(3) nonprofit cannot “inure” to the benefit of a private individual. Practically, this means that the entity cannot have stockholders and that the salaries it pays employees must be reasonable. - A 501(c)(3) cannot be organized or operated for the benefit of private interests. That is, a nonprofit cannot provide benefits specifically to an unrelated for-profit enterprise or an individual. - As a general rule of thumb, a 501(c)(3) needs to get at least 33% of its funding from "public" sources (i.e., public grants, donations from other nonprofits, donations from the general public). For the first 5 years of an organization's existence, the entity is assumed to meet the test based on the projections contained in the entity's 501(c)(3) application. - 501(c)(3)s cannot conduct lobbying activities.



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