

Delaware Public Benefit Corporation Conversion Checklist

by Eric S. Klinger-Wilensky, and Melissa A. DiVincenzo, Morris, Nichols, Arsht & Tunnell LLP, with Practical Law Corporate & Securities

Status: **Maintained** | Jurisdiction: **Delaware, United States**

This document is published by Practical Law and can be found at: us.practicallaw.tr.com/w-004-4526

Request a free trial and demonstration at: us.practicallaw.tr.com/about/freetrial

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 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) and 366.)

For more information on PBCs, see [Practice Note, Public Benefit Corporations \(DE\)](#).

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 board vote required.

Stockholder Approval

The stockholders must approve the amendment with an affirmative vote of a majority of the voting power of the outstanding shares of the corporation (DGCL § 242(b)). 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.

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



Delaware Public Benefit Corporation Conversion Checklist

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.

About Practical Law

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at legalsolutions.com/practical-law. For more information or to schedule training, call 1-800-733-2889 or e-mail referenceattorneys@tr.com.