

New Public Benefit Corporation Act to Take Effect January 1, 2015

Earlier this year, Minnesota Governor Mark Dayton signed into law an act permitting the creation of Minnesota Public Benefit Corporations. These new types of corporations fall between nonprofit and for profit companies, allowing companies to make a profit and pay their shareholders all while benefitting the environment and/or communities in which the companies serve.

Specifically, under the new formation structure, companies may act as a “general public benefit corporation” or a “specific benefit corporation.” A general public benefit is broadly defined as a net material positive impact from the business and operations of the corporation on society, the environment, and the well-being of present and future generations. A specific benefit is broadly defined as one or more positive impacts, or reduction of a negative impact, on specified categories of natural persons, entities, communities, or interests, other than shareholders in their capacity as shareholders. As implied by these definitions, a specific benefit corporation may focus on one or more explicit benefits without the general societal concerns required for general benefit corporations.

Various duties and obligations for these public benefit corporations differ from those of other corporations. For example, directors of a public benefit corporation must consider the general or specific public benefit purpose and the interests of constituencies, not just the pecuniary interests of shareholders. In addition, each public benefit corporation is required to file an annual report with the Minnesota Secretary of State which describes the manner in which it pursued and created the public benefit.

Any company (other than a current nonprofit corporation), whether publicly traded or privately held, may become a public benefit corporation after January 1, 2015, so long as the company has shareholders. In addition, after January 1, 2015, a Minnesota limited liability company (“LLC”) may either merge into a newly created public benefit corporation or convert to a public benefit corporation.

A presently incorporated company must, however, amend its articles of incorporation to reflect the general or specific public benefit it will pursue, which will require shareholder approval. In addition, the name of the company must include either GBC (General Benefit Corporation) or SBC (Specific Benefit Corporation) in its legal name. There are no explicit tax advantages to becoming a public benefit corporation and, instead, each company will be taxed as a regular business corporation.