How to Become a California Benefit Corporation

This outline describes the major steps required for an existing California corporation to become a benefit corporation.

Due diligence. Becoming a benefit corporation requires that a corporation's articles of incorporation (the "articles") be amended to elect benefit corporation status. Before taking any formal steps to amend its articles, a corporation should review its contracts to determine if they require any consents, notices or other actions in order for an amendment of the articles not to constitute a default under any contracts. This is particularly important with respect to bank or other loan documents because they often require the consent of the lender, or at least notice to the lender, before the borrower may amend its articles.

1. **Prepare amendment of articles.** Prepare an amendment to the corporation's articles. The following provisions are either required or should be considered:
    a. The articles must contain the following statement: This corporation is a benefit corporation.
    b. The articles may also identify one or more specific public benefits to be promoted by the corporation.
2. **Board approval.** The board of directors approves the amendment to the articles and directs that the amendment be submitted to the shareholders for approval.
3. **Dissenters rights.** In California, even if the shareholders approve the amendment to the articles by the required 2/3 affirmative vote, dissenting shareholders who elect statutory dissenters' rights are entitled to the fair market value for each share of stock held by such shareholders (see Appendix A).
4. **Shareholder approval.** The shareholders approve the amendment to the articles of incorporation. This requires a 2/3 affirmative vote of the outstanding shares of each class of stock of the corporation.
5. **File amendment.** After the board and shareholders approve the amendment, a certificate of amendment or amended and restated articles of incorporation must be prepared and filed with the Secretary of State.
6. **Stock Certificate Legends.** After the articles have been amended, the following legend must be placed on the face of all stock certificates: This entity is a benefit corporation organized under Part 13 (commencing with Section 14600) of Division 3 of Title 1 of the California Corporations Code.

Note: This outline is not intended to provide legal advice to California corporations. An existing California corporation should obtain competent legal and accounting advice before taking any steps to become a benefit corporation.

Appendix A

"Dissenters' rights" are a statutory remedy available to shareholders who object to certain extraordinary actions taken by a corporation (such as mergers, and now, under the benefit corporation statute, amendments to articles of incorporation to convert to benefit corporation status). This remedy allows shareholders to require the corporation to buy their stock at a price equal to its fair market value as determined immediately before the extraordinary corporate action is approved.

The Corporation's Obligations Relating to Dissenters' Rights

- If the amendment to the articles of incorporation is approved by the shareholders, the corporation must:
    - Notify all shareholders who did not consent to such amendment within 10 days of the approval of the amendment that dissenters' rights are available;
    - include in the notice a copy of Sections 1300, 1301, 1302, 1303, and 1304, a statement of the price determined by the corporation to represent the fair market value of the dissenting shares, and a brief description of the procedure to be followed if the shareholder desires to exercise the shareholder's dissenters' rights.

How a Shareholder Perfects Dissenters' Rights

To perfect dissenters' rights in California, a dissenting shareholder must comply with all of the following procedures:

- Demand purchase. The shareholder must file a written demand for the corporation to purchase any dissenting shares with the corporation within 30 days of the notice. The demand must:
    - include the identity of the shareholder and state the number and class of shares held of record by the dissenting shareholder;
    - inform the corporation that the shareholder demands to have the corporation purchase his dissenting shares;
    - state such shareholder's determination of the fair market value of such shares; and
    - submit the dissenting shares to the corporation.

- Not vote in favor of or consent to the amendment of the articles of incorporation to become a benefit corporation. The shareholder may either vote against the amendment or abstain from the vote.

- File a complaint with the California Superior Court. Within 6 months of the notice, if the corporation and shareholder are unable to agree to the fair market value of the dissenting shares or the corporation denies that the shares are dissenting shares, a dissenting shareholder may file a petition with the Superior Court and demand that it determine the value of the stock.
- Appraisal of Dissenting Shares. If the Court is requested to determine the fair market value of the shares, it will appoint one or more impartial appraisers to determine the fair market value of the shares. Within ten days of their appointment, the appraisers, or a majority of them, will make and file a report with the Court. If the Court finds the report reasonable, the Court may confirm it. However, if the appraisers cannot determine the fair market value within ten days of their appointment, or within a longer time determined by the Court or the report is not confirmed by the Court, then the Court will determine the fair market value. If the Court determines that the shareholder's shares qualify as dissenting shares, then, following determination of their fair market value, the corporation will be obligated to pay the dissenting shareholder the fair market value of the shares, as so determined, together with interest thereon at the legal rate from the date on which judgment is entered. Payment on this judgment will be due upon the endorsement and delivery to the corporation of the certificates for the shares as to which the appraisal rights are being exercised.
- Costs of Appraisal. The costs of the appraisal action, including reasonable compensation to the appraisers appointed by the court, will be allocated among the corporation and dissenting shareholders as the Court deems equitable. However, if the appraisal of the fair market value of the shares exceeds the price offered by the corporation, then the corporation will pay such costs. If the fair market value of the shares awarded by the Court exceeds 125% of the price offered by the corporation for the shares, then the Court may in its discretion include attorneys' fees, fees of expert witnesses and interest at the legal rate on judgments in the costs payable by the corporation.