

Business Fundamentals: Flexible Purpose Corporations

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What are Flexible Purpose Corporations?

UPDATE: *In January of 2015, California revised the name of this corporate form to a Social Purpose Corporation.*

A Flexible Purpose Corporation (Flex C) is one of two new corporate structures that became available in California beginning January 1, 2012. The other corporate form that became available in 2012 was the Benefit Corporation.

Flexible Purpose Corporations, like Benefit Corporations, recognize the value of social responsibility and socially conscious business decisions. As a result, Flex C's offer traditional for-profit companies the ability to identify and pursue a "special purpose" in its charter and provide owners and managers with the ability to weigh the stated special purpose against traditional shareholder value without fear of liability.

What are the Requirements to Become a Flexible Purpose Corporation?

Designation as Such in Name

The name of the corporation must include the phrase "flexible purpose corporation" or an abbreviation of the phrase. The Articles must also include one of two statements provided by the California Corporations Code Section 2602 and the designation of one or more special purposes.

Identification of a "Special Purpose"

A special purpose is one or more social and/or environmental purpose(s) that will be pursued by the company and has been agreed upon by both the management and shareholders and has been included in the Flex C's organizational documents. California Corporations Code Section 2602(b)(2) provides the parameters for acceptable special purposes.

Disclosure and Reporting

Flex C's are subject to strict public disclosure and reporting guidelines. They must publish regular reports that include:

- The corporation's objectives,
- The corporation's goals,
- A measurement of whether or not those goals and objectives are met, and
- Reports on the impact of the actions undertaken to further the corporation's special purpose.

Enforcement Rights

Some people might assume that the intended beneficiary of the special purpose would have some sort of enforcement rights if the Flex C didn't live up to its stated purpose. However, in this sense Flex Cs are treated like a traditional corporation, where the shareholders hold enforcement rights. If a Flex C fails to meet its stated goals the shareholders may remove directors, seek legal action or exercise any other enforcement rights available to them.

Can a Corporation Convert from another Corporate Form?

Currently existing corporations can choose to become a Flexible Purpose Corporation upon a two-thirds vote of each class of voting shares. But it should be noted that Flex C's and Benefit Corporations are very serious business structures that require a real commitment to operating a sustainable business and should not be taken lightly. The public disclosure and transparency requirements also subject these businesses to the potential for public scrutiny and should be carefully considered.

If you are committed to growing a business that values social responsibility, working with an experienced attorney can help you weigh the options of forming a Flex C or Benefit Corporation against forming a nonprofit or traditional corporation. If you have questions about which form is best for your goals, we are happy to discuss your options with you. At For Purpose Law we are also happy to help you convert your traditional for profit corporation into either a Flex C or Benefit Corporation.