

BUSINESS CORPORATIONS AMENDMENT ACT, 2018

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

- 1 ***Section 1 (1) of the Business Corporations Act, S.B.C. 2002, c. 57, is amended by adding the following definitions:***
 - “**benefit company**” means a company that has a benefit statement in its notice of articles;
 - “**benefit provision**”, in relation to a benefit company, means the provision of the benefit company’s articles required by section 51.992 (2);
 - “**benefit report**” means a report produced under section 51.996 (2);
 - “**benefit statement**”, in relation to a benefit company, means the statement in the benefit company’s notice of articles required by section 51.992 (1); .
- 2 ***Sections 10 (3) (d) (ii) (A), 21 (1) (b), 263 (3) (c) (i), 275 (2) (b) (i) (C) (I), 302 (2) (b) (ii) (A), 355 (2) (c), 357 (c) and 366 (1) (b) are amended by striking out “or, if the company is a community contribution company, “B.C. Community Contribution Company Ltd.”” and substituting “, if the company is a community contribution company, “B.C. Community Contribution Company Ltd.” or, if the company is a benefit company, “B.C. Benefit Company Ltd.””.***
- 3 ***Section 28 (1) (c) is amended by adding the following subparagraph:***
 - (iii) in the case of a benefit company, the requirements set out in section 51.993, .
- 4 ***Section 42 is amended***
 - (a) in subsection (1) by adding the following paragraph:***
 - (q.2) if the company is a benefit company, a copy of each benefit report; , ***and***
 - (b) in subsection (1) (r) by adding the following subparagraph:***
 - (vi) paragraph (q.2).
- 5 ***Section 43 (1) is amended by striking out “(q.1) or (r) (ii), (iii), (iv) or (v)” and substituting “(q.1), (q.2) or (r) (ii), (iii), (iv), (v) or (vi)”.***
- 6 ***The following Part is added:***

PART 2.3 – BENEFIT COMPANIES

Definitions

51.991 (1) In this Part:

“**associate**” has the same meaning as in section 192 (1);

“**public benefit**” means a positive effect, including, without limitation, of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature, for the benefit of

- (a) a class of persons, other than shareholders of the company in their capacity as shareholders, or a class of communities or organizations, or
- (b) the environment, including, without limitation, air, land, water, flora or fauna, or animal, fish or plant habitat;

“**responsible and sustainable manner**”, in relation to the conduct of a business, means a manner of conducting the business that

- (a) takes into account the well-being of persons affected by the operations of the benefit company, and
- (b) endeavours to use a fair and proportionate share of available environmental, social and economic resources and capacities;

“**third party standard**” means a standard for defining, reporting and assessing

- (a) the overall performance of a benefit company in relation to conducting business in a responsible and sustainable manner, and
- (b) the performance of the benefit company in relation to the public benefits specified in that benefit company’s articles,

which standard is developed by a third party standard setting body and in accordance with the regulations, if any;

“**third party standard setting body**”, in relation to a benefit company, means a person or entity that is not related, in accordance with subsection (2), to the benefit company and that makes public the following information:

- (a) the name of each member of the third party standard setting body’s governing body;
- (b) the selection process for membership in that governing body;
- (c) the name of each person who,
 - (i) if the third party standard setting body is a corporation, controls the standard setting body within the meaning of section 2 (3) of this Act, or
 - (ii) if the third party standard setting body is not a corporation, controls the operations of the standard setting body;
- (d) a description of the sources of the third party standard setting body’s funding in sufficient detail to disclose any relationship that could

reasonably be considered to compromise the standard setting body's independence from the benefit company;

- (e) a description of the process used to develop a third party standard, including the criteria against which the benefit company's performance is to be measured and the relative weight to be given to those criteria.
- (2) For the purposes of the definition of "third party standard setting body", a third party standard setting body is related to a benefit company,
- (a) in the case of a standard setting body that is a corporation, if it is an affiliate of the benefit company, and
 - (b) in the case of a standard setting body that is not a corporation, if
 - (i) a director, officer or shareholder, or an associate of a director, officer or shareholder, of the benefit company or of an affiliate of the benefit company is a member of the governing body of, or controls, the third party standard setting body, or
 - (ii) a person who beneficially owns shares of the benefit company, or an associate of such a person, is a member of the governing body of, or controls, the third party standard setting body.

Benefit company notice of articles and purposes

51.992 (1) A company is a benefit company if its notice of articles contains the following statement:

This company is a benefit company and, as such, has purposes that include conducting its business in a responsible and sustainable manner and promoting one or more public benefits.

- (2) A benefit company must set out in the articles a commitment to
- (a) conducting its business in a responsible and sustainable manner, and
 - (b) promoting one or more public benefits specified in the articles.

Corporate name

51.993 (1) A benefit company must have the words "Benefit Company" or the abbreviation "B.Co." as part of its name.

(2) For all purposes, the words "Benefit Company" are interchangeable with the abbreviation "B.Co."

(3) A person must not use in British Columbia any name of which "Benefit Corporation" or "B.Co." is a part unless the person is

- (a) a benefit company,
- (b) a federal corporation entitled or required to use those words or that abbreviation,
- (c) an extraprovincial company entitled or required to use those words or that abbreviation by the legislation under which the company was incorporated, or

- (d) a prescribed person or class of persons.
- (4) Subsection (1) does not apply to a company that alters its notice of articles under section 51.997 to become a benefit company or amalgamates by agreement referred to in section 51.998.

Directors and officers

- 51.994** (1) A director or officer of a benefit company, when exercising the powers and performing the functions of a director or officer of the company, must
- (a) act honestly and in good faith with a view to
 - (i) the best interests of persons who may be materially affected by the company's conduct, and
 - (ii) the promotion of the public benefits specified in the company's benefit provision, and
 - (b) balance the duty under section 142 (1) (a) with the duty under paragraph (a) of this subsection.
- (2) Despite subsection (1),
- (a) the directors and officers of a benefit company have no duty to a person who may be materially affected by the company's conduct or to a person who has an interest in a public benefit specified in the company's benefit provision, and
 - (b) no proceeding may be brought by such a person against a director or officer of a benefit company in relation to the duties under subsection (1).
- (3) Despite section 142 of this Act, a director or officer of a benefit company does not contravene that section by reason only that the director or officer acts in accordance with subsection (1) of this section.
- (4) A proceeding under this Act or otherwise may be commenced in relation to the duties under subsection (1) only by shareholders of the benefit company and only if,
- (a) in the case of a public company, the proceeding is commenced by shareholders owning individually or collectively at least the lesser of
 - (i) 2% of the issued shares of the company, and
 - (ii) issued shares of the company with a market value of at least \$2 000 000, and
 - (b) in any other case, the proceeding is commenced by shareholders owning individually or collectively at least 2% of the issued shares of the company.
- (5) Despite any rule of law to the contrary, a court may not order monetary damages in relation to any breach of this Part.

Shares – certificated and uncertificated

- 51.995** (1) A share certificate issued by a benefit company must include a conspicuous statement that the company is a benefit company under this Part.
- (2) A notice referred to in section 107 (6) issued by a benefit company must include a conspicuous statement that the company is a benefit company under this Part.

Benefit report

- 51.996** (1) In this section, “**publish**”, in relation to a benefit report, has the same meaning as in section 1 (1) and, for that purpose, a reference in that definition to a company’s financial statements or an auditor’s report is deemed to be a reference to the benefit report.
- (2) On or before each annual reference date for the company, the directors of a benefit company must produce and publish a report that discloses in the prescribed manner the following in relation to the company’s latest completed financial year:
- (a) a fair and accurate description of the ways the benefit company demonstrated commitment to
 - (i) conducting its business in a responsible and sustainable manner, and
 - (ii) promoting the public benefits specified in that benefit company’s benefit provision;
 - (b) a record of the assessment carried out under subsection (3) and the results of that assessment;
 - (c) the circumstances, if any, that hindered the benefit company’s endeavours to carry out the purposes set out in that benefit company’s benefit provision;
 - (d) the process and rationale for selecting or changing the third party standard used to prepare the benefit report, including, as applicable,
 - (i) a statement that the standard was applied in a manner consistent with the benefit company’s previous application of that standard,
 - (ii) a statement that the standard was not applied as described in subparagraph (i) and the reasons for the inconsistency, or
 - (iii) a statement that the report is the first benefit report for which the standard was selected and applied;
 - (e) any other information required by the regulations.
- (3) The directors of a benefit company must, for the purposes of preparing a benefit report, annually
- (a) select a third party standard, and
 - (b) assess, for the latest completed financial year, the performance of the benefit company in carrying out the purposes set out in the benefit company’s benefit provision against the third party standard.

- (4) The directors of a benefit company must ensure that, before a benefit report is published, the report is
 - (a) approved by the directors, and
 - (b) signed by one or more directors to confirm that the approval required by paragraph (a) was obtained.
- (5) Promptly after a benefit report is published, the directors of the benefit company must post the report on the company's publicly accessible website, if any.

Alteration of notice of articles to become or cease to be a benefit company

- 51.997**
- (1) A company may become a benefit company by altering its notice of articles to include a benefit statement.
 - (2) A company must not alter its notice of articles under subsection (1) of this section unless the shareholders authorize the following by a special resolution:
 - (a) the alteration referred to in subsection (1);
 - (b) if the company elects to comply with section 51.993 (1), a change in the company's name in accordance with section 263 (3) to a name that complies with section 51.993 (1).
 - (3) A benefit company may cease to be a benefit company by altering its notice of articles to delete the benefit statement.
 - (4) A benefit company must not alter its notice of articles under subsection (3) of this section unless the shareholders authorize the following by a special resolution:
 - (a) the alteration referred to in subsection (3);
 - (b) if applicable, a change in the company's name in accordance with section 263 (3) to delete reference to "Benefit Company" or "B.Co."

Amalgamation resulting in benefit company

- 51.998**
- (1) Despite section 269, a corporation must not amalgamate with a benefit company unless the amalgamation results in an amalgamated benefit company.
 - (2) If an amalgamation is proposed to result in an amalgamated benefit company and the amalgamation is not to be effected under section 273 or 274,
 - (a) sections 270 (1) (b) and 271 do not apply, and
 - (b) the amalgamation agreement must be adopted by a special resolution of each amalgamating company.

7 *Section 238 (1) (a) is amended by striking out "or" at the end of subparagraph (i), by adding ", or" at the end of subparagraph (ii) and by adding the following subparagraph:*

(iii) without limiting subparagraph (i), in the case of a benefit company, to alter the company's benefit provision; .

8 Section 260 is amended by striking out “or” at the end of paragraph (a), by adding “, or” at the end of paragraph (b) and by adding the following paragraph:

(c) without limiting paragraph (a), in the case of a benefit company, to alter the company's benefit provision.

9 Section 266 is amended

(a) in subsection (1) (a) (ii) by striking out everything after “and, if the converted company is to be” and substituting the following:

(A) a community contribution company, section 51.92, or

(B) a benefit company, section 51.992, and , **and**

(b) in subsection (4) (b) (ii) by striking out everything after “or, if the company is to be” and substituting the following:

(A) a community contribution company, “B.C. Community Contribution Company Ltd.”, or

(B) a benefit company, “B.C. Benefit Company Ltd.”,
after the incorporation number of the company, and .

10 Section 270 (2) (d) (i) is amended by striking out everything after “and, if the amalgamated company is to be” and substituting the following:

(A) a community contribution company, section 51.92, or

(B) a benefit company, section 51.992,

and be signed by one or more of the individuals referred to in paragraph (a) of this subsection, and .

11 Section 302 (1) (c) is amended by striking out everything after “and, if the continued company is to be” and substituting the following:

(i) a community contribution company, section 51.92, or

(ii) a benefit company, section 51.992.

12 Section 426 is amended

(a) in subsection (1) (a) by adding “51.996 (4),” after “51.96 (3),”

(b) in subsection (1) by adding the following paragraph:

(d.2) fails to publish or post a benefit report in accordance with section 51.996 (2) or (5), as the case may be, or publishes or posts a benefit report that does not comply with the Act or regulations, , **and**

(c) *in subsection (2) by striking out “or 51.921 (3)” and substituting “, 51.921 (3) or 51.993 (3)”.*

13 *Section 428 (1) is amended by adding “(d.2),” after “(d.1).”.*

14 *Section 432 is amended by adding the following subsection:*

(9.2) Without limiting the ability of the Lieutenant Governor in Council to make regulations respecting benefit companies under any other subsection of this section, the Lieutenant Governor in Council may make the following regulations respecting benefit companies:

- (a) prescribing, for the purposes of the definition of “third party standard” in section 51.991 (1),
 - (i) the matters that the standard must define and address,
 - (ii) the methods of assessment the standard must require, and
 - (iii) the matters that must be included in a report that applies the standard;
- (b) prescribing persons or classes of persons for the purposes of section 51.993 (3) (d);
- (c) prescribing, for the purpose of section 51.996,
 - (i) information that must be included in a benefit report, and
 - (ii) the manner in which the benefit report must disclose the required information.

Commencement

15 This Act comes into force by regulation of the Lieutenant Governor in Council.

Explanatory Notes

SECTION 1: *[Business Corporations Act, section 1]* adds definitions of “benefit company”, “benefit provision”, “benefit report” and “benefit statement”.

SECTION 2: *[Business Corporations Act, sections 10, 21, 263, 275, 302, 355, 357 and 366]* allows benefit companies to use their registration numbers in their names.

- SECTION 3: *[Business Corporations Act, section 28]* allows the registrar to order a change of a non-compliant name of a benefit company.
- SECTION 4: *[Business Corporations Act, section 42]* requires a benefit company to keep copies of its benefit reports at its records office.
- SECTION 5: *[Business Corporations Act, section 43]* allows a benefit company to keep copies of its benefit reports at a different location after 7 years, as long as the records can be produced on 2 days' notice.
- SECTION 6: *[Business Corporations Act, Part 2.3]* adds a Part respecting benefit companies.
- SECTION 7: *[Business Corporations Act, section 238]* allows a shareholder of a benefit company to dissent under section 260 of the Act if the articles of the company are altered to change the company's benefit provision.
- SECTION 8: *[Business Corporations Act, section 260]* allows a shareholder of a benefit company to dissent in the circumstances described in section 238 of the Act in relation to a benefit company.
- SECTION 9: *[Business Corporations Act, section 266]*
- allows special Act corporations that convert to benefit companies to use their registration numbers in their names , and
 - provides that a special Act corporation that converts itself into a benefit company must adopt articles that set out a benefit provision.
- SECTION 10: *[Business Corporations Act, section 270]* provides that a company resulting from an amalgamation must, if it is to be a benefit company, adopt articles that set out a benefit provision.
- SECTION 11: *[Business Corporations Act, section 302]* provides that a corporation that is continuing into British Columbia must, if it is to be a benefit company, adopt articles that set out a benefit provision.
- SECTION 12: *[Business Corporations Act, section 426]* makes it an offence to
- fail to comply with approval and signing requirements for a benefit report,
 - fail to publish or post a benefit report,
 - publish or post a non-compliant benefit report, or

- use a name indicating the company is a benefit company when it is not.

SECTION 13: *[Business Corporations Act, section 428]* sets out the penalty for an offence referred to in section 426 (1) of the Act.

SECTION 14: *[Business Corporations Act, section 432]* authorizes regulations in relation to third party standards and benefit companies.