

**CLIENT ALERT**

**BENEFIT CORPORATIONS:  
NEW FOR-PROFITS WITH SOCIAL MISSIONS**

This year, Massachusetts will become the eleventh state in the union to allow for-profit corporations to incorporate as “benefit corporations.” A benefit corporation is a for-profit corporation whose purposes include the creation of a “general public benefit”. A benefit corporation may also choose to create “specific public benefits”. Benefit corporations are not to be confused with non-profit corporations, as benefit corporations are for-profit corporations which may distribute earnings to their shareholders and otherwise operate for the benefit of their shareholders.

- **What is a general public benefit?** A material, positive impact on society and the environment, taking into account the corporation’s actions as a whole, as measured by a third-party standard.
- **What are specific public benefits?** Specific examples include providing beneficial products or services for the poor, promoting the arts and sciences, promoting environmental conservation, and improving human health.
- **What are the unique duties of the board of directors of a benefit corporation?** Members of the board of directors of a benefit corporation will not have fiduciary duties to the individual beneficiaries of the general or specific public benefits of the public benefit corporation. However, they will be required to consider the effects of any action they take as directors on the customers and clients of their corporation’s general or specific public benefit, the community and society, and the local, regional and global environment (as well as the effects on shareholders, employees, and the corporation’s other customers and clients). The board of directors of a benefit corporation must include a member who is a designated benefit director, with no material relationship to the benefit corporation. The role of the benefit director is to evaluate the corporation’s performance of public benefits.
- **What are the new reporting requirements?** Benefit corporations must prepare annual benefit reports in addition to their annual corporate reports. These benefit reports will explain how the corporation has pursued public benefits and evaluate the corporation’s performance, including an assessment of the corporation’s performance against a third-party standard.
- **How can benefit corporations be held accountable?** A “benefit enforcement proceeding” may be brought by the corporation against its officers and directors, or derivatively by a shareholder, director or others identified in the benefit corporation’s organizational documents, if the benefit corporation does not pursue a general or specific public benefit or fails to fulfill its duties under the new law. However, no monetary damages may be awarded against the corporation or its directors or officers in such a proceeding.

The new Benefit Corporation legislation will take effect on December 1, 2012.

If you have any questions or would like additional information, please contact Elka Sachs ([Esachs@kb-law.com](mailto:Esachs@kb-law.com)) or Sheryl Howard ([SHoward@kb-law.com](mailto:SHoward@kb-law.com)) at Krokidas and Bluestein LLP.

The Benefit Corporation statute, Massachusetts General Laws Chapter 156E, may be accessed at <http://www.mass.gov/legis/journal/desktop/Current%20Agenda%202011/H4352.pdf>.