Alert: Minnesota Public Benefit Corporation Act - Preparing for Public Benefit Corporation Status on January 1, 2015

August 6, 2014

In its most recent session, the Minnesota legislature enacted legislation that allows for the formation of public benefit corporations. Public benefit corporations are not charitable or tax-exempt—they are commercial enterprises at their core—but in addition to general business purposes, they are formed to benefit the public and designed to operate in a responsible and sustainable manner. In short, the form accommodates both a public mission and private commercial ambition.

Although typically new laws take effect August 1 in Minnesota, the Minnesota Public Benefit Corporation Act, to be codified at Minnesota Statutes Chapter 304A (the Act), will not become effective until **January 1, 2015.**

Can we form a public benefit corporation in Minnesota before January 1?

The Secretary of State's office will not be prepared to accept filings of organizational documents for public benefit corporations until the new calendar year begins.

We want to get our company up and running before 2015, but want to operate as a public benefit corporation as soon as the law takes effect. What can we do?

The simplest course is to form a Minnesota business corporation now, and elect public benefit corporation status later. The Act contains explicit provisions allowing an existing Minnesota business corporation (formed under Minnesota Statutes Chapter 302A) to elect status as a public benefit corporation. This means that Minnesota corporations organized before January 1, 2015, may elect public benefit corporation status after the Act becomes effective by filing Articles of Amendment amending their Articles of Incorporation:

1. **Name Change**: A corporation must formally change its name to include one of the following phrases or abbreviations: General Benefit Corporation/GBC or Specific Benefit Corporation/SBC.
2. **Change in Purposes**: The Articles of Incorporation must include a purposes clause that states one of the following:

- The organization is a general benefit corporation (GBC) organized and operated to pursue general public purposes;
- The organization is a general benefit corporation organization and operated to pursue general public purposes, as well as a company-defined specific public benefit purpose;
- The organization is a specific benefit corporation (SBC) organized and operated to pursue a company-defined specific public benefit purpose.

Although not required by the Act, corporations making the election may also choose to include other amendments to their articles or bylaws to make allowance for the special duties required of directors of a public benefit corporation—specifically, such directors are bound to consider the effects of a proposed course of action not merely on the pecuniary interests of shareholders, but on the corporation's ability to pursue the public benefits for which it was formed.

If we form a business corporation now, will our shareholders have a say in whether we may elect public benefit corporation status later?

Yes. It is important to note that the amendments to a corporation's articles to become a public benefit corporation will give rise to shareholder's rights under the Minnesota Business Corporation Act, so shareholder consent will be required before a corporation is able to elect public benefit corporation status. In addition, even in cases where the election is supported by the required shareholder vote, the Act provides that dissenting shareholders must be paid fair value for their shares.

Can we form a Minnesota nonprofit corporation now, and elect public benefit corporation status later?

No. Remember, a public benefit corporation is essentially a business corporation with a general or specific public mission overlaid. Nonprofit corporations are not formed to pursue business purposes and do not have owners. *A Minnesota nonprofit corporation will not be permitted to elect public benefit corporation status, nor may it merge into a public benefit corporation.*

What if we have an existing Minnesota limited liability company and want to be a public benefit corporation?

After January 1, 2015, a Minnesota limited liability company may merge into a newly created public benefit corporation. A Minnesota limited liability company that is not a nonprofit limited liability company may also convert to a public benefit corporation using the conversion process provided in the Minnesota Limited Liability Company Act, Minnesota Statutes Chapter 322B. Note that members will have the approval rights and dissenter's rights provided to them in Chapter 322B.

* * *

Please keep an eye out for future nonprofit alerts from Gray Plant Mooty on public benefit corporations. Future topics will include directors' duties, information on how "public benefit" is measured, and more. Read our previous alert for general information about the Minnesota Public Benefit Corporation Act.

If you have any questions about the Minnesota Public Benefit Corporation Act, please contact Julia Offenhauser (julia.offenhauser@lathropgpm.com, 612.632.3067) or Greg Larson (greg.larson@lathropgpm.com, 612.632.3276).