

The logo for K&L GATES, featuring the text "K&L GATES" in white, uppercase letters on an orange rectangular background. The background of the slide is a blue bokeh pattern with light spots.

# Legal Considerations for Social Enterprises

Stephanie Ann Dangel  
Oded Green  
Eryn Correa

# OUTLINE

- What is a Social Enterprise?
- Choice of Entity
  - For Profit
  - Benefit Corporation
  - Not-For-Profit (or Non-Profit)
- B Corp Certification
- Fund Raise
- Management
- What's Good for Me?



## WHAT IS A SOCIAL ENTERPRISE?

- A “social enterprise” is “a business that directly addresses a social need through its products and services.”

- Jerr Boschee, Adjunct  
Professor, CMU Heinz College



## RISE IN SOCIAL ENTREPRENEURSHIP

- Blake Mycoskie, founder of Tom's shoes, pledged \$100M to fund social enterprises
- President Barack Obama in his State of the Union Address promised to lift up business that are “doing right” by their employees
- Mark Zuckerberg pledging 99% of Facebook shares to philanthropic causes
- Rise in companies such as Warby Parker, the Honest Company, Thread

# REASONS FOR FOUNDING A SOCIAL ENTERPRISE

- Do something positive
  - Community
  - Welfare
  - Environment
- Economic Benefit
  - Customers
  - Investors
- Available Funding
  - Foundations

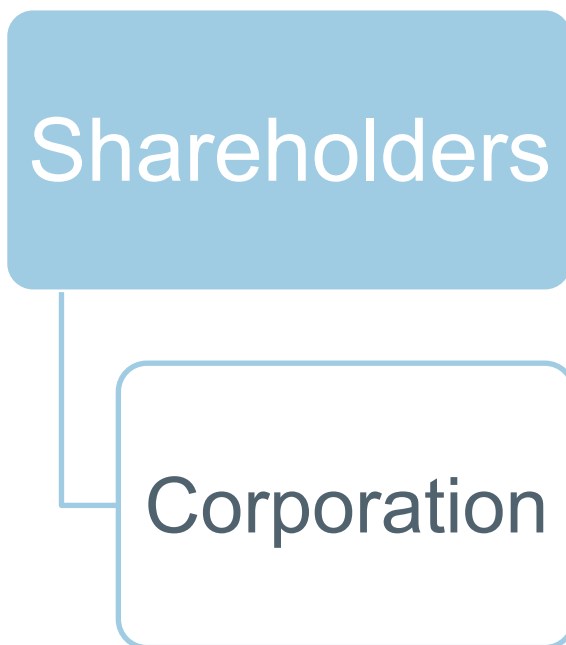


# FOR-PROFIT ENTITY CHOICES

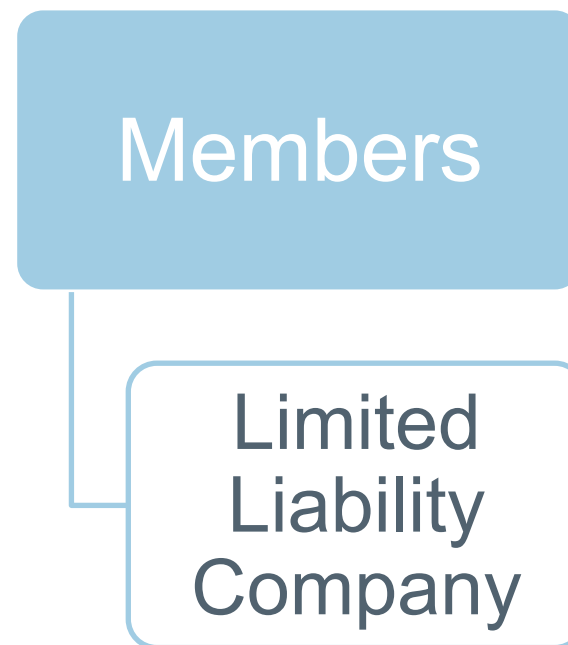
- Three “REAL” choices
  - C Corporation
  - S Corporation
  - Limited liability company
- Others
  - Sole Proprietorship
  - Partnerships
  - Limited Partnerships



## CORPORATIONS



## LIMITED LIABILITY COMPANIES



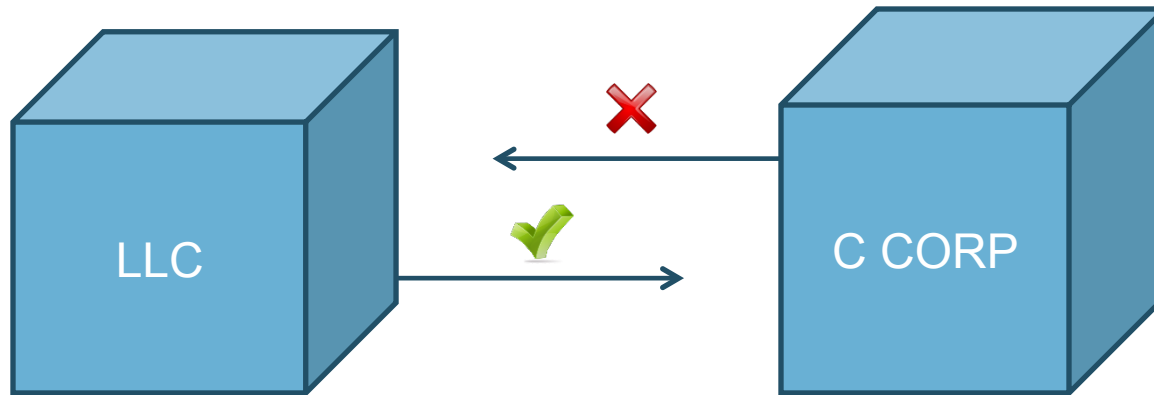
# FORM OF FOR-PROFIT ENTITY: CONSIDERATIONS

	CORPORATION*	LIMITED LIABILITY COMPANY	S CORPORATION
NO DOUBLE TAX			
FLOW THROUGH			
VC ACCEPTABLE			
LIMITATION ON SHAREHOLDERS			
MEDICARE TAX EFFICIENT			

\*benefit corporations are taxed as corporations



# CHANGING COURSE



# BENEFIT CORPORATION

- For-Profit, With a Look Beyond
- Purpose: “General Public Benefit” or a Specific One
- Adopted in 31 States (including Pennsylvania and Delaware). In the Pipeline for 5 additional States
- Taxation: May be Taxed as a C Corporation or as an S Corporation



# BENEFIT CORPORATION

- Advantages
  - Great Marketing Tool
  - Strong Commitment to Social Purpose
  - Legal Protection for Directors
- Disadvantages
  - Non-Recognized Entity
  - No Legal Precedents
  - No Tax Incentives
  - Fund Raise

# B CORP CERTIFICATION

- Third Party Certification
- Not a Legal Entity
- Laundry List of Requirements
  - Purpose
  - Amendment of Certificate of Incorporation
  - Annual Reporting Requirements
  - Other Burdens



# B CORP CERTIFICATION

- Advantages
  - Commitment to Social Purpose
  - Access to Community of Other B Corps
  - Marketing Tool for Consumers
  - Does Not Intimidate Investors
- Disadvantages
  - No Tax Incentives
  - Burden; Stringent Requirements



# NOT-FOR-PROFIT ENTITIES ("NON-PROFITS")

- What Is a Non-Profit Organization?
  - An organization formed under a state's nonprofit corporation statute
  - Must have a charitable purpose (as described in the tax code) in order to qualify for tax-exempt status
- How Do I Form a Non-Profit?
  - Two step process:
    - Incorporate under state nonprofit corporation
    - Apply for tax-exempt status (both federal and state)
- Structure
  - Like a corporation, a Board of Directors oversees the management, but the board's obligation is to the general public (as opposed to shareholders)



# NOT-FOR-PROFIT ENTITIES

- Advantages
  - Mission-based organization
  - Tax deductions
  - Foundation grants
  - Legally able to use unpaid volunteers



# NOT-FOR-PROFIT ENTITIES

- Disadvantages
  - You do not own it – the public does!
  - You cannot make a profit
    - Non-profits can pay you a reasonable salary and reimburse legitimate expenses
    - You cannot share in the financial upside/success of the organization
    - Serious penalties for private inurement and conflicts of interest



# NOT-FOR-PROFIT ENTITIES

- Management
  - You do not make the decisions – a board of directors (acting for the public) makes the decisions
    - This includes the decision as to whether to hire or fire you and the rest of the staff
  - Founders' Syndrome

BILL & MELINDA  
GATES *foundation*

# NOT-FOR-PROFIT ENTITIES

- Administrative Burdens
  - Public filings
    - Initial filing
    - Annual return
      - Includes disclosure of all potential board conflicts of interest
  - Grant reporting

## WHAT ENTITY IS GOOD FOR ME?

- It Depends...
  - What Is My Purpose?
  - Funding
  - Management
  - Tax
  - Flexibility
  - Administrative Burdens

**QUESTIONS?**

Thank you!