

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 blue and white circular highlights.

K&L GATES

Legal Considerations for Social Enterprises

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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



REASONS FOR FOUNDING A SOCIAL ENTERPRISE

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



INVESTMENT IN A SOCIALLY RESPONSIBLE ENTERPRISE (IMPACT INVESTMENT)

- An investment intended to generate positive social and/or environmental impact and generate financial returns involving a diverse group of investors

FOR-PROFIT ENTITY CHOICES FOR SOCIALLY RESPONSIBLE ENTITIES

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

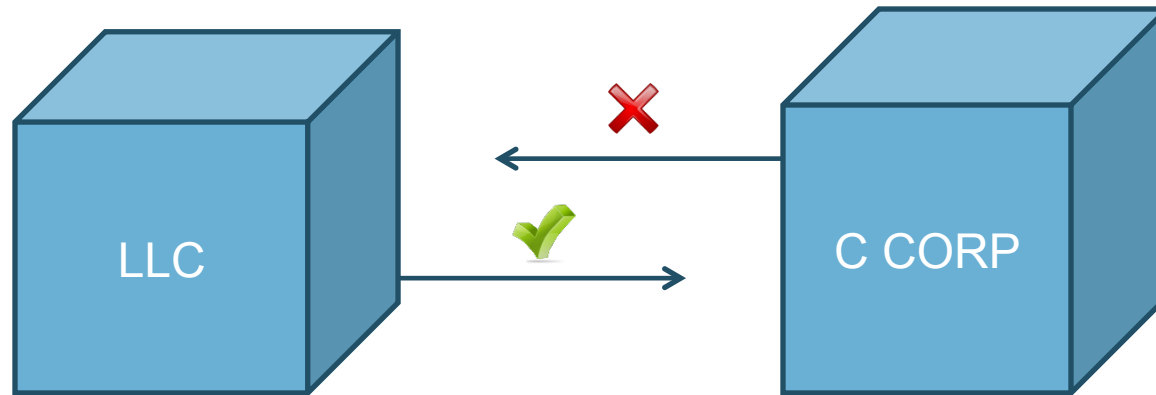


FORM OF FOR-PROFIT ENTITY: CONSIDERATIONS

	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



FOR-PROFIT STRUCTURE FOR A SOCIALLY RESPONSIBLE ENTITY

- Advantages
 - Familiarity of Investors with the Structure.
 - Predictability / Available Case Law
 - Flexibility Regarding Tax Treatment
 - Branding as a Socially Responsible Entity May be Achieved Through Other Means

FOR-PROFIT STRUCTURE FOR A SOCIALLY RESPONSIBLE ENTITY

- Disadvantages
 - Branding/Public Perception
 - Director Liability / Corporate Law Protection
 - Limited Flexibility for the Board in Case of Sale of the Company

THE UNIVERSE OF HYBRID ENTITIES

- For-Profit, With a Look Beyond
- Purpose: “General Public Benefit” or a Specific One
- Adopted in 31 States (including Pennsylvania and Delaware)
- Universe of Hybrid Entities:
 - Benefit Corporations/Companies
 - Low Profit Limited Liability Companies (LC3)
 - Others
- Taxation: May be Taxed as a C Corporation, Partnership or as an S Corporation



BENEFIT CORPORATION

- Advantages
 - Great Marketing Tool
 - The Sustainability Factor
 - Strong Commitment to Social Purpose
 - Legal Protection for Directors
 - Flexibility for the Board in Case of Sale of the Company
- Disadvantages
 - Investor Hesitancy / Raising Funds
 - Legal Uncertainty/No Legal Precedents
 - Additional Reporting and Disclosure Requirements
 - No Tax Incentives

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



NON-PROFIT 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-PROFIT ADVANTAGES

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

BILL & MELINDA
GATES *foundation*

NON-PROFIT 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



MORE NON-PROFIT DISADVANTAGES

- 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



MORE NON-PROFIT DISADVANTAGES

- Administrative Burdens
 - Public filings
 - Initial filing
 - Annual return
 - Includes disclosure of all potential board conflicts of interest
 - Grant reporting
- You Cannot Engage in Political Activities



FOR-PROFIT/NON-PROFIT HYBRID ENTITIES

- FOR-PROFIT WITH RELATED NON-PROFIT FOUNDATION
- NON-PROFIT WITH FOR-PROFIT SUBSIDIARY – DISREGARDED ENTITY
- FISCAL AGENCY RELATIONSHIP

- BUT REMEMBER – ONCE YOU ARE A NON-PROFIT, YOU CAN ONLY TRANSFER ASSETS TO ANOTHER NON-PROFIT
- IF YOU ARE A FOR-PROFIT, YOU CAN TRANSFER ASSETS TO A NON-PROFIT (so long as it's all right with the owners!



WHAT ENTITY IS GOOD FOR ME?

It Depends....

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

QUESTIONS?



Thank you!