

BERMUDA'S NEW BENEFIT ENTITY

LEGAL FRAMEWORK FOR BENEFIT COMPANIES, LLCs AND LPS



GOVERNMENT OF BERMUDA
Ministry of Economy and Labour

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Introduction

The Bermuda Government is introducing a legal framework for public benefit entities. Amendments to the Companies Act 1981, the Limited Liability Company Act 2016, and the Limited Partnership Act 1883 will create a new type of legal entity that can be used by for-profit entities seeking to incorporate public benefits into their business decisions and operations.

Key Features of Benefit Entities

Benefit companies, benefit limited liability companies, and benefit limited partnerships—collectively referred to as benefit entities—are a new type of business structure designed for social impact investing and ESG initiatives. They allow for-profit companies and partnerships to focus on public benefits, like helping communities or the environment.

Traditional companies primarily focus on maximising revenues and overall value for their owners and investors. On the other hand, benefit entities balance making a profit with achieving positive social and environmental impacts for the benefit of the public. Benefit entities can positively impact people, communities, or the environment. Positive impacts pursued by benefit



entities might relate to art, charity, education, health, science, and sport, or other areas of interest pertaining to entity stakeholders.

Stakeholders in benefit entities include shareholders and employees, as well as the community and the wider society. This broader focus on stakeholder interests is a significant departure from the traditional company model, which primarily considers the interests of shareholders.

The Framework for Benefit Entities



- 1. Optional Choice:** Companies, limited liability companies (LLCs), or partnerships can choose to become a benefit entity if their shareholders, members, or partners agree.
- 2. Registration:** A benefit entity can be a new or existing company that transitions to follow the framework rules. It must state in its memorandum of association, certificate of formation, or partnership certificate, as the case may be, that it is a benefit entity.
- 3. Switching Back:** If a benefit entity wants to stop being one, it can remove the statement from its official documents and become a traditional entity.
- 4. Public Benefit:** Benefit entities can include a public benefit provision statement in their memorandum of association, certificate of formation or partnership certificate. Such a provision would identify the positive impact they aim to have on society or the environment, but it is not required.

5. Responsibilities: The company directors, LLC managers, or partners must:

- ▶ Act honestly and in good faith in the best interests of the benefit entity,
- ▶ Exercise the care, diligence and skill a reasonable person would exercise in similar situations, and
- ▶ Run the entity responsibly and sustainably, pursuing a positive impact on society or the environment and considering the interests of stakeholders.

6. Annual Statement: Unless otherwise approved, benefit entities must provide an annual statement to their shareholders, members, or partners, explaining how they operated responsibly and sustainably, and how they met any specified public benefit goals.

7. Self-Regulation: Like most other privately-owned companies, LLCs or limited partnerships, the shareholders, members, or partners of a benefit entity must ensure the entity operates in accordance with the applicable requirements to be found in the Companies Act 1981, the Limited Liability Company Act 2016 or the Limited Partnership Act 1883, including the new benefit entity framework. The avenue for enforcement by shareholders, members or partners is through the Court.



Bermuda's Opportunity

8. Bermuda can stand out by offering a flexible legal framework for benefit entities, as few countries do, to support the achievement of public benefit goals. We could attract socially conscious companies, family offices and individual investors who want to engage in sustainable investment strategies and socially responsible business practices.
9. Benefit entities would provide an alternative to Bermuda's traditional companies, limited liability companies and limited partnerships for those looking to align for-profit business activities with corporate objectives designed to positively impact society or the environment.





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