

Effective 5/12/2015

16-10b-103 Definitions.

As used in this chapter:

- (1) "Annual benefit report" means a report required under Section 16-10b-401.
- (2) "Benefit corporation" means a business corporation:
 - (a) that elects to become subject to this chapter; and
 - (b) the status of which as a benefit corporation has not been terminated.
- (3) "Benefit director" means the director designated as the benefit director of a benefit corporation under Section 16-10b-302.
- (4) "Benefit enforcement proceeding" means a proceeding in a court of competent jurisdiction for:
 - (a) failure of a benefit corporation to pursue or create general public benefit or a specific public benefit purpose set forth in its articles of incorporation; or
 - (b) a violation of an obligation, duty, or standard of conduct under this chapter.
- (5) "Benefit officer" means the individual designated as the benefit officer of a benefit corporation under Section 16-10b-304.
- (6) "Business corporation" means a corporation formed under Chapter 10a, Utah Revised Business Corporation Act, or Chapter 11, Professional Corporation Act.
- (7) "Division" means the Division of Corporations and Commercial Code.
- (8) "Executive officer" means:
 - (a) a benefit corporation's president;
 - (b) a vice president of the benefit corporation in charge of a principal business unit, division, or function; or
 - (c) any other officer who performs a policy-making function for the benefit corporation.
- (9) "General public benefit" means a material positive impact on society and the environment:
 - (a) taken as a whole;
 - (b) assessed against a third-party standard; and
 - (c) from the business of a benefit corporation.
- (10) "Immediate family" means a parent, spouse, surviving spouse, child, or sibling of a person.
- (11)
 - (a) "Independent" means having no material relationship with a benefit corporation or a subsidiary of the benefit corporation.
 - (b) Serving as a benefit director or benefit officer does not make an individual not independent.
 - (c) A material relationship between an individual and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if one or more of the following apply:
 - (i) the individual is, or has been within the last three years, an employee other than a benefit officer of the benefit corporation or a subsidiary of the benefit corporation;
 - (ii) an immediate family member of the individual is, or has been within the last three years, an executive officer other than a benefit officer of the benefit corporation or a subsidiary of the benefit corporation; or
 - (iii) there is beneficial or record ownership of 5% or more of the outstanding shares of the benefit corporation, calculated as if all outstanding rights to acquire equity interests in the benefit corporation had been exercised, by:
 - (A) the individual; or
 - (B) an entity of which the individual is a director, an officer, or a manager, or in which the individual owns beneficially or of record 5% or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.
- (12) "Minimum status vote" means:

- (a) in the case of a business corporation, in addition to any other required approval or vote, the satisfaction of the following conditions:
 - (i) the shareholders of every class or series may vote as a separate voting group on the corporate action regardless of a limitation stated in the articles of incorporation or bylaws on the voting rights of a class or series; and
 - (ii) the corporate action is required to be approved by vote of the shareholders of each class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or series are entitled to cast on the action; or
- (b) in the case of a domestic entity other than a business corporation, in addition to any other required approval, vote, or consent, the satisfaction of the following conditions:
 - (i) the holders of every class or series of equity interest in the entity that are entitled to receive a distribution of any kind from the entity may vote on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of a class or series; and
 - (ii) the action must be approved by vote or consent of the holders described in Subsection (12) (b)(i) entitled to cast at least two-thirds of the votes or consents that all of those holders are entitled to cast on the action.
- (13) "Publicly traded corporation" means a business corporation that has shares listed on a national securities exchange or traded in a market maintained by one or more members of a national securities association.
- (14) "Specific public benefit" includes:
 - (a) providing low-income or underserved individuals or communities with beneficial products or services;
 - (b) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;
 - (c) protecting or restoring the environment;
 - (d) improving human health;
 - (e) promoting the arts, sciences, or advancement of knowledge;
 - (f) increasing the flow of capital to entities with a purpose to benefit society or the environment; and
 - (g) conferring any other particular benefit on society or the environment.
- (15) "Subsidiary" means, in relation to a person, an entity in which the person owns beneficially or of record 50% or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.
- (16) "Third-party standard" means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that:
 - (a) assesses the effect of the business and its operations upon the interests listed in Subsections 16-10b-301(1)(a)(ii), (iii), (iv), and (v);
 - (b) is developed by an entity that is not controlled by the benefit corporation;
 - (c) is developed by an entity that both:
 - (i) has access to necessary expertise to assess overall corporate social and environmental performance; and
 - (ii) uses a balanced multistakeholder approach to develop the standard, including a reasonable public comment period; or
 - (d) makes the following information publicly available:
 - (i) about the standard:
 - (A) the criteria considered when measuring the overall social and environmental performance of a business; and
 - (B) the relative weightings, if any, of those criteria; and

- (ii) about the development and revision of the standard:
 - (A) the identity of the directors, officers, material owners, and the governing body of the entity that developed and controls revisions to the standard;
 - (B) the process by which revisions to the standard and changes to the membership of the governing body are made; or
 - (C) an accounting of the revenue and sources of financial support for the entity, with sufficient detail to disclose a relationship that could reasonably be considered to present a potential conflict of interest.

Amended by Chapter 20, 2015 General Session