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Goodbye Flexible Purpose Corporation, Hello Social Purpose Corporation: Governor Brown Signs S.B. 1301

On September 27, Governor Brown signed into law an [amendment](#) to the Corporate Flexibility Act of 2011, which had established the flexible purpose corporation (“FPC”) as a hybrid corporate form then unique to California. The amendment, S.B. 1301, changes existing law (found under Corporations Code Sections 2500-3503) to emphasize the social-purpose nature of the FPC, most notably by changing its name to the “Social Purpose Corporation.”

A working group of California attorneys originally designed the FPC as an alternative to both a traditional corporation and the other hybrid corporate form adopted at the same time in California, the benefit corporation. While both the flexible purpose corporation and the benefit corporation were intended as a way to hardwire a social purpose into an otherwise traditional for-profit corporate structure, the FPC offers more flexibility in balancing profitability and the pursuit of a social purpose, as its name implied. Unlike benefit corporations, FPCs can, but are not required to, pursue the creation of a general benefit for society and the environment; they can focus instead on the specific purposes in their articles, which can be broadly or narrowly defined. Also, FPCs are not required to measure their performance towards their social purposes against a third-party standard, as benefit corporations are required to do. Unlike directors of a benefit corporation (at least until S.B. 1301), FPC directors could, but again were not required to, factor into their decision-making considerations other than profitability, such as the corporation’s social purposes. Since the FPC became available in California on January 1, 2012, other states such as [Washington](#) and [Florida](#) have enacted laws that establish roughly similar corporate forms.

S.B. 1301 left most of the provisions of the Corporate Flexibility Act intact, introducing the following significant changes:

- › The “Flexible Purpose Corporation” has been renamed the “Social Purpose Corporation” (“SPC”) to more accurately reflect the social-purpose motivations intended.
- › Directors of a FPC/SPC are now required to take into account factors such as the overall prospects of the corporation and the social purposes set forth in its articles, as they deem relevant in their decision-making.
- › Previously, FPCs with under 100 shareholders that followed certain procedures could avoid the requirements to prepare special-purpose annual reports (including an MD&A discussion of the company’s operations and performance with respect to its special purposes) and special-purpose current reports after events specified in Corporations

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Code Section 3501. S.B. 1301 eliminates this exemption.

The bill also makes some procedural clarifications and corrections.

S.B. 1301 takes effect on January 1, 2015. On that date, existing FPCs will automatically continue their existence as SPCs. They may, but are not required to, amend their articles of incorporation or reissue share certificates to reflect their new status as SPCs.