
Embracing Stakeholder Governance

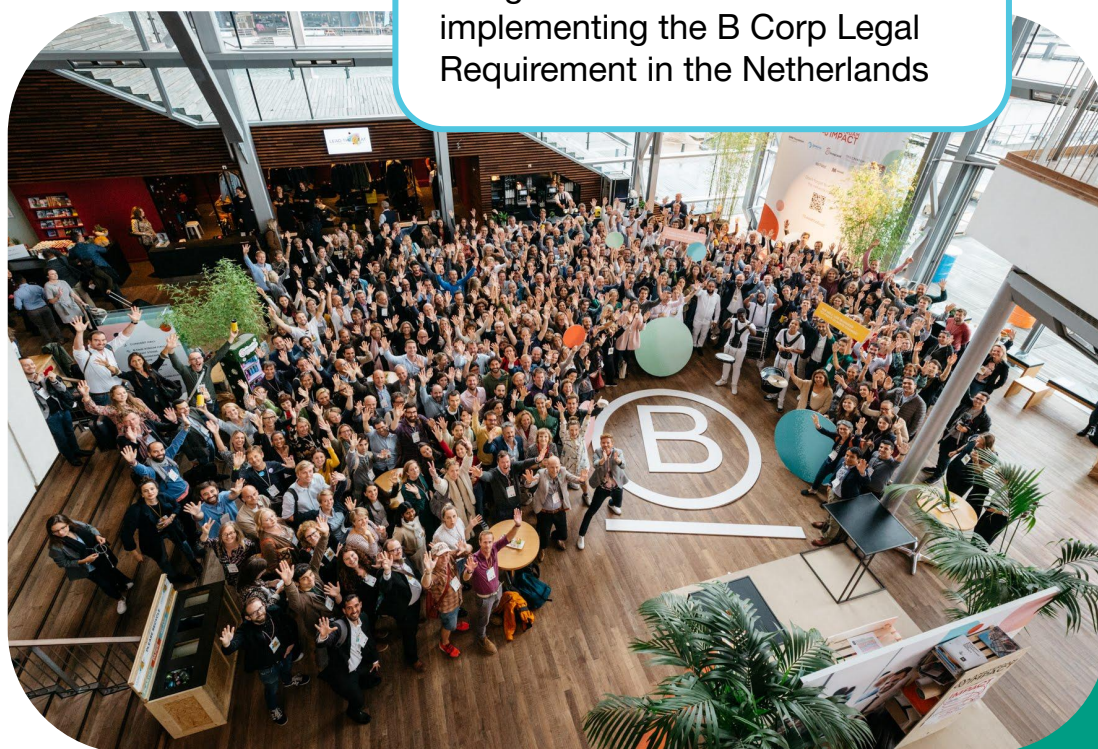
A Guide to the B Corp Legal
Requirement



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B Lab Benelux and De Zaak van Advocaten teamed up to create this guide which focuses on implementing the B Corp Legal Requirement in the Netherlands



About B Lab

B Lab was founded in 2006 with the idea that a different kind of economy was not only possible, but necessary — and that business could lead the way towards **a new, stakeholder-driven model**. B Lab became known for certifying B Corps, which are companies that meet high standards of social and environmental performance, accountability, and transparency.

But B Lab is doing much more than that. It is building the B Corp movement to change our economic system — and to do so, **we must change the rules of the game**. B Lab creates standards, policies, tools, and programs that shift the behaviour, culture, and structural underpinnings of capitalism. B Lab mobilises the B Corp community towards collective action to address society's most critical challenges.



By harnessing the power of business, B Lab positively impacts companies around the world, helping them balance profit with purpose. **Together, we are shifting our global economy from a system that profits few to one that benefits all**: advancing a new model that moves from concentrating wealth and power to ensuring equity, from extraction to generation, and from prioritising individualism to embracing interdependence.

**We won't stop until
all business is a
force for good**

[More info on B Lab](#)

B Corps and the Legal Requirement

B Corps explicitly focus on achieving societal and environmental goals, voluntarily considering a wide range of different stakeholder interests. To become a certified B Corp, companies need to:

1. Meet high standards of social and environmental performance;
2. Exhibit transparency by allowing information about their performance measured against B Lab's standards to be publicly available on their B Corp profile on B Lab's website;
3. Make a legal change to their constitutional documents, to show a commitment to consider the impact of their decisions on all stakeholders, now and in the future.

This last change is called the 'B Corp Legal Requirement'.

As such, **B Corps are required to consider the impact of their decisions on all of their stakeholders** - a model known as stakeholder governance. Thus B Corps need to incorporate stakeholder governance in their legal DNA. The B Corp legal framework allows companies to protect their mission and ensures that the

The B Corp Movement demonstrates that businesses of any size can adopt stakeholder governance

company will continue to practice stakeholder governance even after f.e. capital raises and leadership changes. The legal requirement ensures that B Corps remain legally accountable to all of their stakeholders - workers, the environment customers communities, and suppliers - not just shareholders.

This can be done in different ways depending on different jurisdictions - in the Netherlands, this requirement is currently fulfilled by incorporating a predefined paragraph into the Articles of Association. It covers:



the purpose of the company



the description of the directors' duties.

Access the Appendix (pp. 11- 12) and check how it translates to the different corporate structure types in the Dutch system.

The Dutch Corporate Law and Stakeholder Governance

What does the current Dutch corporate law say about Stakeholder Governance?

Contrasting to the legal system of the United States, where shareholder interest is paramount, under Dutch law the so-called 'stakeholder model' is the legal system.

Directors and supervisory board members in the Netherlands must focus on the 'corporate interest' when performing their duties. This central element of corporate interest is defined by *promoting the continued success of the company*. In doing so, the directors must consider the interests of *all* stakeholders involved in the company. In addition, directors of Dutch listed companies must be guided by the guideline of 'sustainable long-term value creation' in carrying out their duties.

However, despite the legal frame of focusing on the corporate interest, **Dutch corporate law has no general rule that societal interests must be considered as part of the corporate interest.** Hence, human- and environmental- related interest of third parties not directly involved in the company *only play a role*

insofar as they contribute to the corporate interest of the company. As such, in spite of the legally binding stakeholder model, in practice it is still possible to focus primarily or exclusively on financial interests for the benefit of shareholders.



What about the director's duties and liability?

A director has an obligation to perform his directors' duties properly. A lot of factors play a role in this and a director has policy-making discretion in considering how to act in the best interests of the company. A director can only be liable when 'improper management' is established. This requires 'serious culpable action' on the part of the director. Directors' liability mainly occurs in the bankruptcy phase of the company.

The B Corp Legal Requirement: What Changes?

The articles of association often make no statement on the vision, mission, and strategy the company's leadership has. **By amending the articles of association to conform to the B Corp Legal Requirement, the company explicitly commits itself to having a positive impact on society and the environment. This greatly affects the circle of stakeholders described above: the interests of the environment and society must now be considered as stakeholders.**

In addition to this legal fact, changing the articles of association obviously also has the effect of publicly emphasising the company's commitment to its stakeholders.

The B Corp amendments have an effect for directors: they can better justify certain decisions aimed at a positive contribution to people and the environment to their shareholders, investors and other stakeholders. If the directors make a decision that prioritises a positive social or environmental impact over an alternative that would prioritise profit maximisation or cost minimization, the directors are not automatically exposed to possible claims from shareholders. This is because the key guidelines for them are to act in the best

interests of the company, (in the case of publicly traded companies: focused on sustainable long-term value creation) while considering the interests of all relevant stakeholders. Because of the B Corp Legal Requirement, the environment and society are part of that circle of stakeholders and the “corporate interest” has a broader meaning.



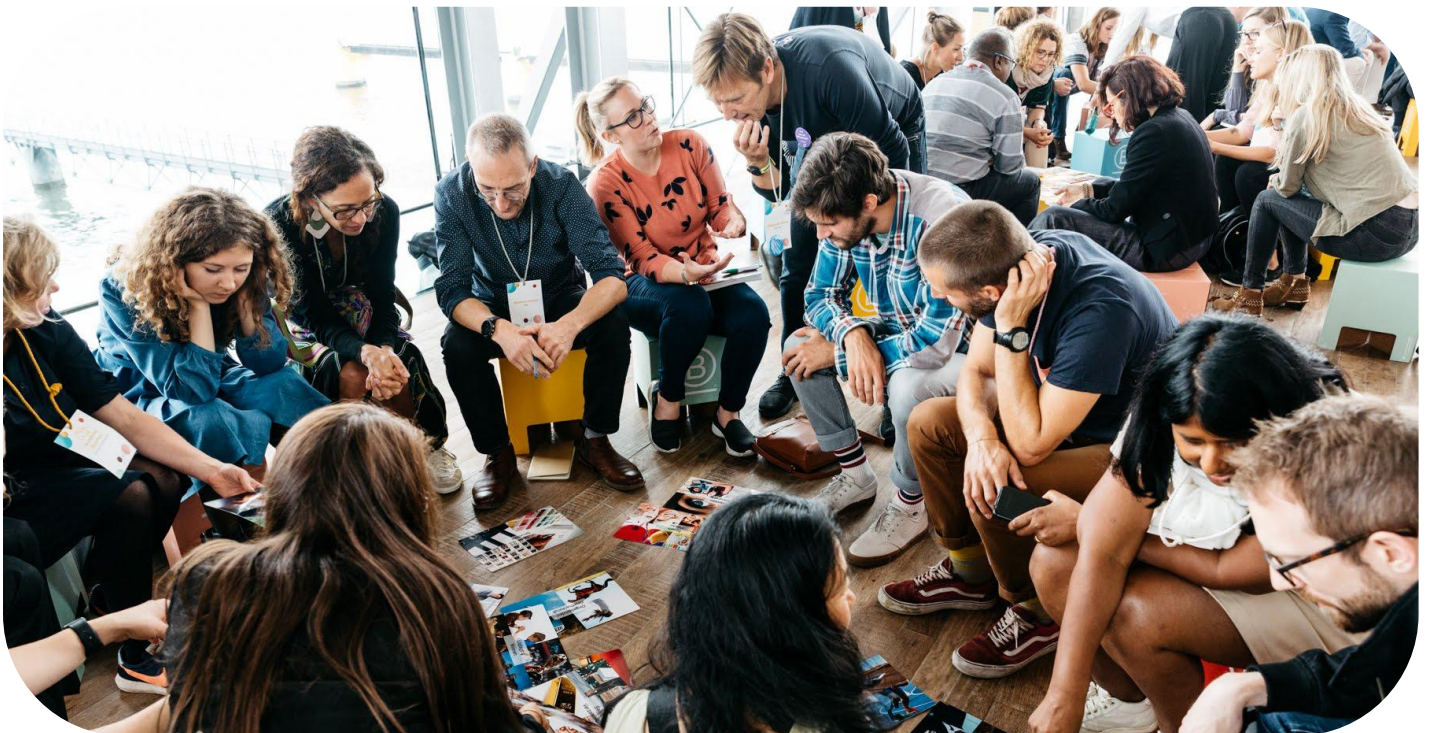
At the same time, the board can never be fully 'protected' against possible conflict with shareholders. A board has to make deliberate and informed considerations in balancing all the

stakeholders interests. When a board would fully neglect the economic aspects of the company, the B Corp Legal Requirement is not a guaranteed safety net. A board always has to make deliberate and informed considerations in balancing all the stakeholders interests.

Furthermore, the board can also be more quickly called to non-legal accountability to these stakeholder interests by, for example, consumers if in their view decisions do not meet B Corp standards. Like with any publicly expressed commitment to the environment, critical consumers can seize this commitment to

challenge the company's business operations.

The B Corp Legal Requirement is in line with the renewed Dutch Corporate Governance Code. This Code requires directors of listed companies to create long-term value in a sustainable manner, taking into account the effects of the actions of the company and its affiliates on people and the environment. When defining strategy and making decisions, their long-term sustainability and durability are central, and stakeholder interests are carefully considered.



How to meet the B Corp Legal Requirement

A company wishing to become B Corp certified must amend its articles of association. An amendment to the articles of association requires a shareholder resolution: after all, in the case of an NV and BV, the power to amend the articles of association belongs only to the general shareholders' meeting.

The resolution of the general shareholders' meeting must meet the legal and statutory requirements. The articles of association may require a qualified or absolute majority for the resolution, for example 3/4th of the votes cast, or some other type of quorum.



As a director, it is therefore important to check the articles of association and any shareholder agreements of the company for any additional requirements that the resolution to amend the articles of association must meet. It is also important to assess whether existing arrangements with investors may affect B Corp obligations.

The B Corp Legal Requirement must be met by all companies as it demonstrates your commitment to the triple bottom line of people, planet and profit.

Key reasons for meeting the B Corp Legal Requirement

Integrating a stakeholder model in a company's articles enables a mind-shift in decision making, which is the foundation of the B Corp approach to doing business. This step is therefore a crucial factor on the path to becoming a B Corp and influences all business decisions once certified.

Adopting the B Corp Legal Requirement into a company's articles of association:

Enables the directors to balance the interests of stakeholders, in order to pursue the long-term sustainability of the business, society and the planet;

Provides the directors with a way to advance the B Corp purposes and reconcile competing stakeholder considerations;

Helps to safeguard the culture and purpose of the business beyond leadership changes, mergers, acquisitions and receiving investments;

Supports the board to set goals on social and environmental impact alongside financial performance, track progress and better report on the outcome of its statutory purpose clause;

Does NOT place any additional liability on directors to the company's wider stakeholders;

Does NOT, in itself, create new constraints on investor matters such as payments of dividends, indebtedness, use of preference shares or liquidation preferences, exits, nor affect voting arrangements, shareholder agreements, or create additional obligations upon the business' investors.



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Appendix 01. BV and NV Legal Requirement

Companies pursuing B Corp Certification in the Netherlands will need to have or adopt governing documents which include a commitment to a 'triple bottom line' approach to business. In practice, for a typical business, this is likely to mean having an objects clause which states that it exists to promote the success of the business for the benefit of its shareholders but also to have a material positive impact on society and the environment.

The governing documents of B Corps will also need to state that the board members of the company need to consider a range of 'stakeholder interests'—including shareholders, employees, suppliers, society and the environment—when making decisions and, critically, that shareholder value is not the supreme consideration but is one factor amongst the many stakeholder interests which board members need to take into account when running the business.

The following language should be used by both Besloten vennootschap (BV) and Naamloze vennootschap (NV).

Amendment to the company object: *“Een van de doelen van de Vennootschap is door middel van haar bedrijfsvoering en activiteiten, een significant positieve invloed te hebben op de maatschappij en het milieu in zijn algemeenheid.”*

Amendment to the articles of association in the chapter regarding Directors: *"Bij hun besluitvorming zullen de bestuurders ook rekening houden met de sociale, economische, juridische of andere gevolgen van de bedrijfsuitvoering van de Vennootschap ten aanzien van (i) de werknemers, de dochtermaatschappijen en leveranciers (ii) de belangen van de klanten van de Vennootschap en haar dochtermaatschappijen, (iii) de gemeenschappen en de samenleving waarin de Vennootschap, haar dochtermaatschappijen en leveranciers hun bedrijf uitvoeren, (iv) het lokale en globale milieu en (v) de korte en lange termijn belangen van de onderneming."*

Amendment to the articles can be amended with shareholders' resolution with a majority vote or other threshold if specified.

Appendix 02. UA Legal Requirement

Companies pursuing B Corp Certification in the Netherlands will need to have or adopt governing documents which include a commitment to a 'triple bottom line' approach to business. In practice, for a typical business, this is likely to mean having an objects clause which states that it exists to promote the success of the business for the benefit of its shareholders but also to have a material positive impact on society and the environment.

The governing documents of B Corps will also need to state that the board members of the company need to consider a range of 'stakeholder interests'—including shareholders, employees, suppliers, society and the environment—when making decisions and, critically, that shareholder value is not the supreme consideration but is one factor amongst the many stakeholder interests which board members need to take into account when running the business.

The following language should be used by UA companies.

Amendment to the company object: *“Een van de doelen van de Vennootschap is door middel van haar bedrijfsvoering en activiteiten, een significant positieve invloed te hebben op de maatschappij en het milieu in zijn algemeenheid.”*

Amendment to the articles of association in the chapter regarding Directors: *“Bij hun besluitvorming zullen de bestuurders ook rekening houden met de sociale, economische, juridische of andere gevolgen van de bedrijfsuitvoering van de Vennootschap ten aanzien van (i) de werknemers, de dochtermaatschappijen en leveranciers (ii) de belangen van de klanten van de Vennootschap en haar dochtermaatschappijen, (iii) de gemeenschappen en de samenleving waarin de Vennootschap, haar dochtermaatschappijen en leveranciers hun bedrijf uitvoeren, (iv) het lokale en globale milieu en (v) de korte en lange termijn belangen van de onderneming. “*

Amendment to the articles can be amended with shareholders' resolution with a majority vote or other threshold if specified.

“Completing the B Corp Legal Requirement will require buy-in from across the company, and so involving decision-makers from the beginning is key. Engaging your board early on will help ensure clarity about what the legal requirement means for the company, and engaging the rest of your teams will create space for new ideas about how to bring stakeholder governance to life within the business.”

Tessa van Soest, Executive Director B Lab Benelux



If you have any questions about B Corp Certification or the B Corp Legal Requirement, please contact us at benelux@bcorporation.eu