

**Comparison of Structures of the PTI**

**Public Benefit Corporation vs. Limited Liability Company**

Variable	Public Benefit Corporation	Limited Liability Company
<p>Composition of Board</p>	<p>One or more directors.</p> <p>Must meet the “interested person” rule. No more than 49 percent of the directors may be interested persons. The term “interested persons” includes (Corp C §5227):</p> <ul style="list-style-type: none"> <li>• Any person compensated for services rendered to the corporation (other than as a director) during the previous 12 months; and</li> <li>• Brothers, sisters, spouses, parents, descendants, and in-laws of interested persons.</li> </ul>	<p>One or more managers.</p>
<p>Fiduciary Duties of Board</p>	<p>Each director is a fiduciary and is obligated to act prudently (duty of care) and in good faith and in the best interests of the corporation (duty of loyalty). In addition, in a non-profit corporation, a “duty of obedience” – a duty to carry out the mission expressed in the articles of incorporation – applies.</p>	<p>LLC Agreements of a Delaware LLCs may eliminate fiduciary duties from managers.</p>
<p>Minimal Responsibilities of Board</p>	<p>Directors must:</p> <ul style="list-style-type: none"> <li>• Adhere to the articles of incorporation and bylaws.</li> <li>• Keep minutes of their proceedings, keep accurate written books and accounting, and keep a membership list if there are members.</li> <li>• Elect officers. Nonprofit corporations must have a chair of the board or a president (and may have both), a secretary, and a chief financial officer or treasurer (and may have both);</li> <li>• Directors must adopt the annual budget.</li> <li>• Directors must act on members’</li> </ul>	<p>Structuring the PTI as a Delaware LLC will result in flexibility; managers will need to adhere to:</p> <ul style="list-style-type: none"> <li>• The LLC Agreement.</li> </ul>

	<p>requests for inspection of records.</p> <ul style="list-style-type: none"> <li>• Directors must issue annual reports and financial statements to members.</li> <li>• Directors must designate the corporate depository and authorized signatories.</li> <li>• Directors must bring or defend legal actions on behalf of the corporation.</li> </ul>	
Governance Generally	Greater formality, and slightly less flexibility in defining the governance structure.	Great flexibility; the LLC Operating Agreement is a contract and can be structured with more or less formality, as desired.
Tax Considerations	<p>PTI will not be considered part of ICANN for tax purposes. Will require tax exemption from the IRS and California Franchise Tax Board.</p> <ul style="list-style-type: none"> <li>• Risk that the IRS may view PTI’s activities as commercial, rather than as furthering a tax-exempt purpose, and deny exemption.</li> <li>• Risk that an exemption application for the PTI could cause the IRS to revisit ICANN’s exemption.</li> </ul>	<p>PTI will be a “disregarded entity.”</p> <ul style="list-style-type: none"> <li>• Considered part of ICANN for tax purposes.</li> <li>• No separate tax exemption required.</li> </ul>
Bankruptcy Protection	PTI may not be forced into involuntary bankruptcy because it is not a “moneyed, business, or commercial” entity under the US Bankruptcy Code (the “Code”).	PTI may be entitled to similar treatment if it is able to show that it is not “moneyed, business, or commercial.”