

Public Banking And L3Cs

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650 461 1246

www.commonwealthgroup.net

In the articles [*Public Banking – A Tool For Fixing The Economy And The Means to Achieve It*](#)¹ and [*A Common Bank Holding Company For States, Counties & Cities: A Solution for Our Economic Problems*](#)² Commonwealth Group introduces the idea of using banks, owned and operated solely for the benefit of the public, as the means for bootstrapping economic development nationwide. We showed how governments, non-profit organizations, foundations, pension funds, unions and others can join forces to implement public banking.

To collaborate, they have to work through corporate vehicles (for-profit LLCs or corporations) that have been designed to serve a narrow group of constituents (owners) and not the general public. LLC (limited liability company) and corporate law usually define that the purpose for such organizations is the maximization of profit for its owners. Serving the public would be antithetical to that purpose.

So how do we design a system that can exist in both the for-profit and non-profit worlds? This question has broader implications than our public banking objective, as entrepreneurs increasingly are interested in forming businesses that do not have profit as their prime objective.

Often described as social and/or environmental entrepreneurs, most can attest to the fact that the world of for-profit corporations and LLCs presents unique challenges, as the laws under which they exist are at odds with those alternative purposes. (For a more in-depth exploration of this topic of corporate law and how it influences corporate behavior, see [*Rewiring Corporate DNA*](#))³ Such purposes are presumed to be more non-profit in nature, yet non-profit corporate law likewise makes it very difficult to pursue business objectives, especially if they entail capital requirements and ownership interests.

What is needed is a hybrid corporate vehicle that recognizes this dual objective and provides the entrepreneur with the flexibility to pursue a social and/or environmental objective while preserving the flexibility of bringing in investments and having ownership interests. Such a vehicle now exists in six states, with more planned.

The L3C: “The For-Profit with the Non-Profit Soul”

A new form of LLC has been created with those hybrid characteristics. This new variant of LLC is called an L3C⁴ (i.e., LLLC or low-profit limited liability company). L3Cs are not prohibited from making profit, and in fact can be quite profitable. But profit is not their primary objective: they are intended to serve as the vehicle for pursuing a socially beneficial objective within the structure of a for-profit entity.

In 2008, Vermont became the first state to create this new category of LLC. Michigan quickly followed, as did four other states, most recently Illinois. Two Native American nations have also enacted these laws, and more states are expected to follow. An entrepreneur located in a state that has not already adopted this L3C category can form one in a state that has it and conduct business in their home state under that L3C structure. When and if their state adopts this new LLC form, they can convert over if they want to, but don't need to.

¹ <http://www.commonwealthgroup.net/docs/PublicBanking.pdf>

² <http://www.commonwealthgroup.net/docs/CommonBankHoldingCompany.pdf>

³ <http://www.commonwealthgroup.net/docs/Rewiring.pdf>

⁴ <http://en.wikipedia.org/wiki/L3C>

L3Cs were the brainchild of Robert "Bob" M. Lang, Jr. of The Mary Elizabeth and Gordon B. Mannweiler Foundation, who coined the term "The For-Profit with the Non-Profit Soul." Lang worked with the Vermont legislature to pass the legislation with unanimous approval.⁵

As the CEO of a small foundation, Lang had struggled with this dual objective of making investments in socially and/or environmentally oriented companies, something that would be in concert with a typical foundation's broader mission. Such investments are called "program related investments" (PRIs) if they are synchronous with the foundation's main mission. Unfortunately, private foundations can be penalized by the IRS for investments in such companies unless they obtain special permission.⁶

Although the impetus for creating the L3C concept was to specifically address this PRI problem with IRS, the concept has far broader ramifications. The L3C explicitly provides an ideal vehicle for social and environmental entrepreneurs who previously had no such vehicle. L3C laws provide a legal and safe environment for such for-profit efforts. The reason we say safe is that normal corporate and LLC laws can put managers at risk of shareholder lawsuits if they don't prioritize profit over all other objectives. This topic is explored in-depth by Inc. Magazine editor-at-large and independent author Bo Burlingham in his book [Small Giants](#).⁷

Inside the L3C

How does the L3C vehicle accomplish its dual goal? The key is found in the statutes defining the language that this type of LLC must form under. L3Cs must have certain key language in their articles of organization (like articles of incorporation for a corporation) that sets them apart. Such statutes vary slightly state by state, but follow closely on these clauses:

A "low-profit limited liability company" means a limited liability company that has included in its articles of organization a purpose that meets, and that at all times conducts its activities to meet, all of the following requirements:

- (i) The limited liability company significantly furthers the accomplishment of one or more charitable or educational purposes described in section 170(c)(2)(B) of the internal revenue code, 26 USC 170, and would not have been formed except to accomplish those charitable or educational purposes.
- (ii) The production of income or appreciation of property is not a significant purpose of the limited liability company. However, in the absence of other factors, the fact that a limited liability company produces significant income or capital appreciation is not conclusive evidence of a significant purpose involving the production of income or the appreciation of property.
- (iii) The purposes of the limited liability company do not include accomplishing one or more political or legislative purposes described in section 170(c)(2)(D) of the internal revenue code, 26 USC 170.

⁵ See more about the history of L3Cs, the current state of development state by state, and a number of articles and other resources about L3Cs here: *Americans for Community Development*, <http://americansforcommunitydevelopment.org>

⁶ The Michigan Low-Profit Limited Liability Company—Encouraging Investment in Socially Beneficial Enterprises http://www.michbar.org/business/BLJ/Summer%202009/deldin_kopietz.pdf

⁷ <http://www.smallgiantsbook.com> Also see this interview with the author: <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/02/21/BUGFTHARMB1.DTL&hw=Ilana+DeBare&sn=002&sc=592>

This resembles IRS and state statutes that spell out the purposes of non-profit corporations formed under IRS Code Sec. 501(c)(3). They normally require that such an organization be dedicated exclusively to charitable, scientific, educational or religious purposes. Section 170(c)(2)(B) pertains explicitly to non-profits, thus making it very clear that an L3C is a for-profit organization that exists to fulfill what is in effect a non-profit mission. For both non-profits and L3Cs, “charitable” is broadly interpreted to mean almost anything that can be construed as having a public benefit.

Thus a properly formed L3C has a legal right and mandate to pursue a publicly oriented mission using for-profit tools, and its owners could in fact legally pursue the managers of the L3C if they did not prioritize and pursue that broader public mission and prioritize it over profits.

Public Banking and L3Cs

If one industry epitomizes the idea of making money (i.e. profit), the core of our capitalist system, it is banking. The concept of banks and profit has been taken to such an extreme, especially by the big banks on Wall Street, that society now largely equates those big banks with virtually nothing but self serving greed and all that is wrong with capitalism.

We find ourselves in the perfect storm of the very worst that banking has to offer while still needing its benefits: the critical financial tools that are needed to get our economy functioning again. But can we get the best of banking without also getting its worst?

The solution is to use L3Cs as the legal vehicle for ownership of public banks, as detailed in the articles [*Public Banking – A Tool For Fixing The Economy And The Means to Achieve It*](#) and [*A Common Bank Holding Company For States, Counties & Cities: A Solution for Our Economic Problems*](#). Banks formed and operated under an L3C structure would be required to serve the public need over private interests and the L3C provides us with the only viable vehicle for such a public/private partnership.

The L3C vehicle also provides a flexible investment option making it easy to blend the interests of governments, foundations, non-profits, unions, pension funds, private equity funds, private banks and the other players who might have a vested interest in a public banking organization.

Such banks could prioritize societal needs and not be constrained to only making the maximum amount of profit. For example, conventional private banks are disincentivized from negotiating with homeowners who are having difficulty making their mortgage payments. The resulting foreclosures are not good for the homeowner, the bank or the community. Because of their larger social mission, public banks would be motivated to find ways to keep homeowners in their homes. And given sufficient public bank assets that could support rewriting these kinds of loans, public banks would be in a better position to do so than private banks.

These public banks could also prioritize such things as the greening of their local economies and provide credit for a wide range of green products and services, including wind, tidal and solar systems (from residences to large energy farms); energy efficiency and conservation in homes, businesses, schools and public buildings; and green mass transit systems, etc. Other priorities can include low-cost housing, student loans, farm loans, business loans to startup companies and others who will create jobs and other socially beneficial loans that are off the radar screen of private banking interests.

Public banks could also be used to help ailing community banks that serve vital roles in their local communities. Those banks focus on conventional, local loans. If those community banks stop lending, the local economy suffers. So the public banks can not only provide lending in areas not normally served by those banks, but they can also help those banks in such a way that the broader needs of the community are being served and the local economy is revitalized.

Articles on L3Cs

Dozens of Companies Are Sprouting With the Same Goal: Doing Good

<http://philanthropy.com/article/Dozens-of-Companies-Are/57786/>

L3C - Low-profit Limited Liability Company <http://www.nonprofitlawblog.com/home/2008/07/13c.html>

L3C - Developments & Resources <http://www.nonprofitlawblog.com/home/2009/03/13c-developments-resources.html#more>

Contact:

Michael Sauvante, Executive Director, sauvante@commonwealthgroup.net