# Title: Social Enterprises: A New Business Form Driving Social Change
**By: Marc J. Lane**

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Many mission-driven organizations, both nonprofits and for-profits, are becoming "social enterprises" that embrace market-based strategies in the pursuit of their social purposes. New business models and even entity forms are emerging to help the social entrepreneur drive positive social change. Lawyers have new opportunities to aid their clients in advancing these new business forms.

Some social enterprises are customer-focused substance abuse recovery centers, literacy initiatives, supportive housing developments, adult day-care facilities, hospices, and supplemental educational services. Others are employee-focused ventures that offer disadvantaged and disabled people job training, mentoring, and a path to permanent employment.

As social enterprises have grown in popularity, partly in response to the worst economic recession in modern times, two new business forms have emerged: the "low-profit limited liability company" (L3C) and the "benefit corporation." Each is a creature of state law and available to social enterprises in the growing number of states that authorize them.

**Low-profit limited liability company (L3C)**

The L3C is a new, for-profit business form available to social entrepreneurs who seek the legal and tax flexibility of a traditional LLC, the social benefits of a nonprofit organization, and the branding and market positioning advantages of a social enterprise. The L3C is a potent tool to attract private capital to ventures with modest financial prospects but great potential to make a positive social impact.

The opportunity turns on a little-known feature of the Tax Reform Act of 1969, which mandated that private foundations distribute at least 5 percent of their assets every year for charitable purposes. This legal requirement explains the feverish competition for grants among charities. But the 1969 law also created an alternative way for foundations to satisfy their 5 percent payout obligation—the program-related investment (PRI). A PRI can take a variety of forms, from a loan, a loan guarantee, a line of credit, a linked deposit, or even an equity investment, as long as the investment is primarily made for a charitable, religious, scientific, literary, educational, or other purpose for which charities are organized. And, although there is no cap on the venture's eventual profits or the appreciation of its assets, the production of income or the appreciation of property may not be a significant purpose of the investment.

Like any other LLC, the L3C shields its owners from the debts of their enterprise and affords them flexibility in governance and tax planning—but with one striking difference: the L3C's articles of organization are required by law to mirror the standards for program-related investing imposed on foundations by the Tax Reform Act of 1969. So the business form itself gives the foundation comfort that the target company is specifically organized to accept PRIs.

Because an L3C seeks social impact over economic rewards, it forgoes market-rate returns. By taking on higher risk in exchange for lower financial returns, the L3C can attract private-sector investment that otherwise might never be tapped to support a social venture.

Take the case of my client Harborquest, Inc., a Chicago-based nonprofit. Harborquest is dedicated to helping low-income, inner-city workers secure and maintain decent jobs. Over the years, the organization has provided temporary work experience for 40,000 employees through various businesses it has created and placed 15,000 of them in full-time jobs with other employers. But virtually every time a business achieved scale, Harborquest found itself short of the cash it needed to fund further growth. Now that it has launched Civic Staffing L3C, its fair-wage day labor subsidiary, Harborquest need never be capital-constrained again.

Not only can a foundation's financial commitment to an L3C's mission draw urgently needed private investment into the social sector, it also can elevate the foundation's role to that of a social venture capitalist that has a stake in both the viability of the venture and the social impact it delivers.

**The benefit corporation**

The benefit corporation is a new class of corporation that is obligated to create a material, positive impact on society and the environment and to report on its overall social and environmental performances as vetted by an independent third-party standard.

The officers and directors of benefit corporations are protected from shareholder claims when corporate decisions reflect the nonfinancial interests of a company's workforce, community, and environment at the expense of financial returns to shareholders. In demanding greater transparency and accountability of its management, the form is expected to more easily attract funding from social-impact investors and the loyalty of consumers who seek to patronize socially responsible companies.

The L3C and the benefit corporation are useful platforms to leverage as the attorney discharges his or her responsibility to empower clients who are addressing society's most vexing problems.

*Marc J. Lane, a business and tax attorney and financial advisor, practices law at The Law Offices of Marc J. Lane, P.C. (www.MarcJLane.com) in Chicago.*

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