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The (svb) Company

as an Alternative for Social Enterprises in the Welfare Industry

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Abstract

Private entrepreneurship as a response to the social challenges of society is a hot topic today. As a consequence, during the last two decades the public sector has been in competition with private actors delivering welfare services funded by public financing. At the same time, public opinion poll figures indicate an increasing distrust against private for-profit actors in tax-financed industries. A way of solving the equation could be found in the social enterprise; a company with a social purpose, but which runs and finances its activities by using businesslike methods. However, the social enterprise has a challenge in finding a suitable legal body to represent its activities. A not-for-profit purpose combined with businesslike methods must be both theoretically possible and feasible to sustain through the regulations of the legal body. The setup of a limited liability company is an optimal match when it comes to the methods, providing possibilities for self-financing and sustainable business without donations, but the social purpose is not so easily incorporated, since shareholder supremacy allows the purpose to be changed if it is the will of the owners.

An alternative to the traditional limited liability company can be found in the (svb) company; a particular type of limited liability company. The important ingredient is a limitation on how much of the yearly profit can be transferred out of the company. The (svb) company can utilize the same businesslike methods as any other limited liability company, but with a social purpose. This means that the (svb) company could be appealing to the public in a unique way and serve as a better alternative for the social enterprise than the limited liability company does. Nevertheless, there are only 89 (svb) companies registered at Bolagsverket today, even though the possibility to start a company of (svb) type has existed since 2006, when chapter 32 was introduced to the Companies Act. However, the failure is not in the lack of demand or impossible rationale of not-for-profit, but in the political implementation of the (svb) company, which has made it unappealing to the social entrepreneur. The function of the (svb) company is still a good match for the needs of a social enterprise that should not be forgotten in the Swedish company landscape.

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Glossary

The Act on Freedom of Choice	Lagen om valfrihet
The Act on Public Procurement	Lagen om offentlig upphandling
Articles of association	Bolagsordning
Association	Förening
The Board of Directors	Styrelsen
Businesslike	Affärsmässig
The Companies Act	Aktiebolagslagen
Capital debenture loan	Kapitalandelslån
Chief Executive Officer (CEO)	Verkställande director (VD)
Consolidated account statement	Koncernredovisning
Controlling company	Moderbolag
Covert distribution of profits	Förtäckt utdelning
Discount	Diskontera
The District Court	Tingsrätten
Dividends	Aktieutdelning
Economic association	Ekonomisk förening
Endowment capital	Tillskjutet kapital
Foundation	Stiftelse
Government borrowing rate	Statslåneränta
Group	Koncern
Group contribution	Koncernbidrag
Intra-group	Koncernintern
Liable equity capital	Bundet eget kapital
Limited liability company with specific limitation of dividends	Aktiebolag med särskild vinstutdelningsbegränsning
Limited liability company	Aktiebolag
Limited liability company beneficial to the community	Allmännyttigt aktiebolag
Liquidating distribution	Skifteslikvid
Non-profit association	Ideell förening
Open distribution of profits	Öppen utdelning
Outstanding dividends	Innestående utdelning
Partnership	Personbolag
Profit debenture loan	Vinstandelslån
Quota value	Kvotvärde
Religious body	Trossamfund
Sale of assets and liabilities	Inkråmsförsäljning
Shareholder's meeting	Bolagsstämma
Sister company	Systerbolag
Social enterprise	Socialt företag
(svb) company	(svb)-bolag
Transfer of value	Värdeöverföring
Worker participation	Arbetstagarinflytande

1 Introduction

This paper addresses the structural difficulties that the social entrepreneur meets when setting up her business. In addition, it responds to the narrow selection of literature there is to find on the company form known as the (svb) company, a company type that has existed since 2006, but still remains rather unknown. The intention with this paper is to make a contribution in changing that. The paper is not, however, a paper on the (svb) company. It is rather an evaluation of the not-for-profit rationale, from its importance in the market economy, to its implementation in the legal body that will represent its activities. The (svb) company is both put forward and criticized as the result of this evaluation.

This chapter starts with an introduction of the topic of the paper (section 1.1), presenting the not-for-profit dilemma. It continues by presenting the purpose (section 1.2), research questions (section 1.3) and method (section 1.4) of the paper, followed by some delimitations (section 1.5) to give the reader the right expectations on the content. The disposition guides the reader quickly through the outline of the paper (section 1.6), and the chapter ends with some reading directions to help the external reader focus on the relevant parts of the paper (section 1.7).

1.1 Background

Private entrepreneurship as a response to the social challenges of a society is a hot topic today. The advantages of a free market are believed not only to be applicable on commercial activities, but also on social services, including the welfare services industry.¹ As a consequence, the public sector has been in competition during the last two decades with private actors delivering welfare services funded by public financing.²

Most of these entrepreneurs are conducting their activities with a for-profit purpose; although the services are benefiting the community, the enterprise can also generate and distribute profit.³ Other factors than return-on-investment are however starting to become recognized as incitements for conducting a successful business. Some researchers and universities want to see their results utilized for the benefit of society without profit motives, and

¹ DG Regional and Urban Policy. *Guide to Social Innovation*, 5.

² Nilsson. ”Starkt stöd för välfärdsstaten”, 290-291.

³ Nilsson. ”Nej till vinstutdelning – Ja till valfrihet i välfärden”, 309.

entrepreneurs are starting to show interest in running businesses *not-for-profit*.⁴

The not-for-profit purpose has no obvious place in the world of enterprises. The legislator has the for-profit purpose as a benchmark for bodies with businesslike methods,⁵ and traditionally, social purposes are more commonly found in non-profit organizations such as associations and foundations. There is one businesslike body strictly not-for-profit, *the (svb) company*, but it has had limited impact so far. The *social enterprise*, a company without profit motives, seems to be difficult to incarnate in the existing legal bodies, and in this paper I will discuss some of the reasons why.

1.2 Purpose

The purpose of this paper is to examine to what extent the existing legal bodies in general, and the limited liability company in particular, support the concept of a social enterprise in the welfare industry.

1.3 Research questions

In order to reach the above stated purpose, I will answer the following questions.

1. Is there a place for a social enterprise in the welfare industry?
2. What are the requirements on the embodiment of a social enterprise?
3. Does the limited liability company fulfill these requirements?
4. Does the (svb) company fulfill these requirements?
5. Why has the (svb) company not been successful as an alternative for social enterprises?

1.4 Method

In this section, I present how data have been gathered and interpreted (section 1.4.1), the ontological considerations that are made (section 1.4.2), and how I have handled issues of reliability and validity (section 1.4.3).

1.4.1 Data collection and interpretation

In order to answer question 1, the paper first examines how the market today is divided between the public sector, the private sector and the private not-for-profit third sector in order to establish the prerequisites. This is based on research performed by SOM-institutet at the University of Gothenburg, which

⁴ Ström.

⁵ See e.g. SFS 2005:551. *Aktiebolagslag*, 3:3.

investigates the public's relation to the welfare state, and data presented by Statistiska Centralbyrån. The paper then examines the market need for a third sector by looking at the public's opinions concerning for-profit in the private sector. This is also based on extensive statistics performed by SOM-institutet during almost 30 years. In order to establish whether it is realistic to view the third sector as a serious competitor in the private welfare market, research is laid forward comparing efficiency between for-profit and not-for-profit. This is based on Swedish, British and American studies on the subject. The political and the public's views on the private not-for-profit sector are then used in order to further examine the market need for the third sector. This is based on SOM-institutet's research, as well as the European Commission's guidelines on the subject of social innovation.

Question 2 is answered by first establishing what a social enterprise is, by looking at the definitions presented by the European Commission, Sektor3, and the International Center for Non-profit Law. In order to establish the requirements on a body for a social enterprise, the paper then focuses on the conditions that can differ between a for-profit and a not-for-profit enterprise, and analyzes how these conditions have certain implications. The pilot project *GPCC Implement* performed by the University of Gothenburg is in this used as a case study. In this project, an essential part was to set up an appropriate legal body for the utilization of certain research results. Involved actors were the center GPCC, the Grants and Innovation Office, and GU Holding AB, among others. The requirements of the body was different from the University's usual utilization ventures, since the project was financed by public means as well as having public customers. A not-for-profit rationale was therefore agreed upon, instead of a commercial venture. From this project, qualitative data was drawn after I presented all the possible legal structures available for the project and their implications. The concerns, questions and feedback from the steering group of the project were noted and used as a source for what deliberations need to be taken for a not-for-profit venture.

To answer question 3, the views of several academics on the limited liability company's for-profit purpose are first presented to draw some conclusions on how the for-profit purpose can be problematic when other values are conflicting. The selection is chosen based on the discussions started by Berle and Means.^{6 7} The cited literature portrays a selection of opinions that have influentially criticized the purpose of the enterprise. The purpose of the

⁶ Berle & Means. *The Modern Corporation & Private Property*, 220.

⁷ Dotevall. *Skadeståndsansvar för styrelseledamot och verkställande direktör*, 375-377.

section is to show that several voices have been raised against a strict for-profit purpose in the past.

The paper then examines the not-for-profit purpose of the limited liability company by analyzing how well other sections of the Company's Act support the not-for-profit purpose that can be chosen according to 3:3 in the Company's Act. In the examination I use an interpretation of the law comparing its intention to the results. In this, the preparatory works of the Companies Act play an important role. Chapter 32 of the Companies Act was a direct political effort to enable and encourage social entrepreneurship,⁸ and the comparison between the intention of the legislation and its results are therefore relevant. The intention of the legislation is also interesting in the light of the establishment of public opinion that strongly influences the paper.

Question 4 is answered by initially laying out the purpose of the (svb) company to see if it corresponds to the purpose of the social enterprise. This is done by comparing the motives for chapter 32 in the Company's Act to the definition of the social enterprise. In order to analyze whether the (svb) company structure also in practice supports the inhabitation of a social enterprise, the specific character of the (svb) company is first presented, from which some consequences are drawn based on the concerns in the pilot project GPC Implement and an analysis performed by KPMG. Additionally, the experiences of the (svb) company Mitt Liv AB (svb) are used.

Finally, question 5 is answered by comparing the (svb) company with other setups for not-for-profit enterprises in the UK and the US that have been more successful than the (svb) company in Sweden. This comparison also is the foundation for the suggestions for the improvement of the (svb) company.

1.4.2 Ontology

The enterprise is merely a social vehicle for transactions that are the foundation for what we call a business. The intention is to show how the requirements of this social vehicle are met by the regulations we acknowledge as factoid, influenced by the subjective opinions of people. The paper has a constructionist view on both the enterprise and the law, by showing how the use of one social construction (legislation) can affect another social construction (the company) in order to promote the values that the community of external actors (the public) prefers. By doing so, the social phenomena of the company and the law are portrayed as created by

⁸ Prop 2004/05:178, 18.

society, entirely dependent on what is agreed in society, and therefore also changeable.

1.4.3 Reliability and validity

In section 2.2, I examine the public's view on for-profit and not-for-profit. In order to do this, I have used almost thirty years of research performed by SOM-institutet. Unfortunately, SOM-institutet has only performed polls concerning *dividends* in tax-financed welfare since 2012, which means that it is not possible to deduce long-term trends in opinion from this data. Instead, I have drawn parallels from opinions concerning other sides of the welfare state, which have shown clear overall trends concerning the decrease of the welfare state. These trends are coherent with the current opinions on dividends.

Section 2.3 is based on research on efficiency. As I make clear in this section, research about the consequences of the welfare reform is to a large extent missing. This section must therefore be viewed as examination of the notion that there *is* clear evidence of efficiency in for-profit enterprises. The section should not be taken as evidence in favor of not-for-profit.

The analysis on what characteristics are most important for a social enterprise, and how well these fit with the limited liability company as well as the (svb) company is in part based on the requirements of the stakeholders in the pilot project GPCC Implement and the reflections from the (svb) founder of Mitt Liv AB (svb). This qualitative data serves as a confirmation of the reliability of more quantitative data. Additionally, KPMG did an analysis of what a shift to (svb) would mean, the results of which corresponds with the interviews and conclusions drawn from the pilot project.

1.5 Delimitations

This paper will focus on the Swedish limited liability company as a vehicle for social entrepreneurship. Although other legal bodies are mentioned, they are not investigated thoroughly. This is the consequence of the limited liability company being the only body with the combination of limited personal liability for the company's owners/members, possibility for a social purpose, qualified membership and detailed regulations. These are characteristics that are crucial for the social enterprise, as I will show in section 3.3.

The paper discusses social entrepreneurship in general, but the focus is set on the welfare industry. The welfare industry differs from the general social industry mainly in two ways. First, it is an industry that is more controlled than other industries by several additional regulations. Two specific

regulations discussed in the paper are The Act on Public Procurement and the Act on Freedom of Choice. The healthcare industry is affected by several other regulations as well, which will not be discussed in this paper. Second, welfare is financed by taxes. This creates other expectations on how the funds are used. By specifically investigating the welfare industry instead of the whole social industry, these two specific circumstances can be used as affecting factors.

A comparative study is performed in the end of this paper (chapter 6). The study looks at British as well as American legislation, but is more focused on the company regulations of the United Kingdom than the US. The rationale is that the Community Interest Company in the UK and the Swedish (svb) company have been around for about the same time, and that the Swedish (svb) company legislation was created with an eye looking at the British equivalent. The comparison is also of interest as the results have differed substantially. Other states' company types are not investigated and the examples are not meant to give a complete picture of how not-for-profit companies function around the world. They are chosen because of their recognition in the literature and the relevance of a comparison.

1.6 Disposition

In this paper I first discuss the not-for-profit rationale in chapter 2. The chapter starts by explaining how the welfare industry has developed from an entirely public sector to a partial private sector with for-profit purposes (section 2.1). I then discuss the problems with for-profit in welfare with a focus on public opinion (section 2.2), and present the research supporting not-for-profit from the perspective of efficiency (section 2.3). I introduce the concept of social innovation as an alternative to the for-profit rationale (section 2.4), and the chapter ends with a conclusion that there is a place for social enterprises today (section 2.5).

Chapter 3 discusses the social enterprise as a concept. In order to find a suitable legal body for the social enterprise, I describe the defining characteristics (section 3.1), based on the commonly accepted meaning of the term (section 3.2). Looking at the defining characteristics, I analyze what requirements there are on the embodiment of the social enterprise (section 3.3).

In chapter 4, I examine the limited liability company to see if it serves as a good fit for the social enterprise. I present perspectives on the for-profit purpose of the company to show how the notion of a limited liability company with other interests than merely profit are neither new nor

opposing the structure of the legislation today (section 4.1). Following, I analyze the not-for-profit purpose of the company to show how the limited liability company has weaknesses when it comes to actually serving other objectives than the shareholders' (section 4.2). The chapter ends with the conclusion that even though the limited liability company is supposed to work for for-profit as well as other purposes, this is not necessarily the case (section 4.3).

I apply the same logic to the (svb) company in chapter 5. I start by describing the purpose of the (svb) company from the viewpoint of the legislator (section 5.1). A brief description of the company's special regulations follows to update the reader who is not familiar with the company type (section 5.2). I continue by analyzing the consequences of the special regulations in order to give the reader a perspective of the implementation of the (svb) company (section 5.3). The chapter ends with an analysis of the appropriateness of the (svb) company for a social enterprise (section 5.4).

Chapter 6 discusses why the (svb) company has not been able to succeed in Sweden in spite of its suitability for not-for-profit enterprises. The most important factors are concluded to be the lack of incentives (section 6.1), the missing political opinion-making and facilitating supporting measures (section 6.2), the difficulty for the (svb) entrepreneur to be competitive due to regulations favoring big companies (section 6.3) and the lack of credibility the legal body has attained during the nine years it has existed (6.4).

The paper ends with chapter 7, consisting of a summary of conclusions drawn in the previous chapters. The chapter further provides some suggestions to how the (svb) company could be improved to become successful.

1.7 Reading directions

For the entrepreneur reading this paper, the focus should be on chapters 2, 3 and 5, which will serve as a good foundation for making a choice whether to choose the (svb) company as an alternative for her business. Chapter 2 and 3 explain why the social enterprise can add value to the business, and chapter 5 describes the essentials of the (svb) company. The objective is to give the person considering using the (svb) company form insight into what the advantages as well as the risks are in order to make an informed decision.

For the academic readers, such as students, researchers and teachers within the field of study, the entire paper should be of interest, but chapter 4 and 6 has a main focus on the legal aspects of the subject. The critique against the not-for-profit purpose of the limited liability company in chapter 4 is

intended to give a different perspective on 3:3 in the Companies Act, while chapter 6 can help put the Swedish legislation in context. Readers of this type who are not familiar with the (svb) company are also strongly advised to read chapter 5 to get a brief insight to this company type.

2 For-profit or not-for-profit?

The concept of welfare is strongly associated with the public sector, where the choice between for-profit or not-for-profit is given. With welfare services being performed by private actors, it is however highly relevant to consider the different aspects of the alternatives. Discussions regarding whether private actors within welfare should be allowed to have profit motives are today of interest economically as well as politically. Still, questions can be raised concerning the market space for not-for-profit actors in the welfare system. With private for-profit companies acting as alternatives to the public sector the public can choose how and by whom it wants welfare delivered. If not-for-profit is to be recognized as an alternative to the established institutions, a clear demand must be formulated.

This chapter starts with a background on how Sweden created a unique private sphere for for-profit actors within welfare (section 2.1). I then lay out the critique from the public against this setup as the foundation for the not-for-profit motives (section 2.2). Following, relevant research is presented comparing for-profit and not-for-profit to further increase the understanding of the how not-for-profit enterprises has a role to play (section 2.3). Political and popular opinions on social entrepreneurship continue to support the not-for-profit notion (section 2.4), and the chapter ends with the conclusion that there is a place for social enterprising in Sweden (section 2.5).

2.1 A development towards for-profit enterprises

Especially during the 1960s and '70s Sweden built up an extensive welfare state to handle the new challenges that had grown during the 1900s. Women performing paid work, changed forms of coexistence, fewer births of children and a larger population of elderly created a demand for the state to take on new responsibilities. In the end of the 1980s the way welfare was delivered changed, moving from the public sector towards a private sector. Right-wing trends from the Anglo-American states and the fall of communism affected the political views in Europe and Sweden. A new aim was to have a limited public sector only contributing with certain necessary societal functions.⁹

Since then, the development has gone towards a decrease in the size of the welfare state. Social democratic governments have decentralized and deregulated while liberal governments have decreased the public sector and

⁹ Nilsson. "Välfärdspolitik och välfärdsopinion 1986-2012", 71.

privatized.¹⁰ A report from Statistiska centralbyrån shows that the size of the public sector has steadily decreased during the last decades, partly because private companies perform more of the tax financed welfare services.¹¹ Privatization of large parts of what was once only handled by the state is today reality.

Distinctive for the new development is the orientation towards for-profit enterprises. The third sector of economic and non-profit associations, foundations and religious bodies, as well as other not-for-profit organizations, continue to amount to only a small part of the non-public activities.¹² This development in Sweden differs from the other Nordic countries. The substantial responsibility for provision of welfare services cannot be seen in the private sectors of our neighbors.¹³ In Europe, it is common to have both private companies and non-profit associations delivering healthcare, and legislation promotes these kinds of activities in many cases.¹⁴ The Swedish situation is in this way unique.

2.2 The resistance towards for-profit in welfare

Profit within welfare has been a debated topic the last years. Vänsterpartiet (the left party) has demanded prohibitions against profit, Socialdemokraterna (the social democrats), Miljöpartiet (the green party) and LO (the union of labor's organizations), has adopted the viewpoint of limiting the possibilities of distributing dividends, and Sverigedemokraterna (the far-right nationalists) suggests stricter regulations against dividends. At the other end of the political sphere the liberal parties Moderaterna, Folkpartiet, Kristdemokraterna and Centerpartiet (the right-wing parties) emphasize that freedom of choice demands private for-profit alternatives, and that efficiency is stimulated by private enterprises.¹⁵

The public's opinion does not mirror the equilibrium in opinion that can be seen in the political layer. A public opinion poll performed by SOM-institutet in 2013 shows that almost 70 % of the respondents were positive towards not allowing dividends in healthcare, education and nursing care companies financed by taxes. In addition, around 50 % of the respondents considered it a very good suggestion, something that according to SOM-institutet is very

¹⁰ Nilsson. "Starkt stöd för välfärdsstaten", 290-291.

¹¹ Bendz. "Att ge feedback på välfärdspolitiken", 295.

¹² Nilsson. "Nej till vinstutdelning – Ja till valfrihet i välfärden", 309.

¹³ Nilsson. "Starkt stöd för välfärdsstaten", 291.

¹⁴ Nilsson. "Nej till vinstutdelning – Ja till valfrihet i välfärden", 309.

¹⁵ Nilsson. "Välfärdspolitik och välfärdsopinion 1986-2012, 86-87.

uncommon for these types of political questions, and says something about the intensity of the subject. Less than 15 % considered it a bad suggestion. All parties had a majority of their sympathizers not wanting to allow dividends. Even among the ones who had chosen private alternatives, two thirds were for prohibiting dividends.¹⁶ The same kind of poll made in 2012 showed that 62 % considered prohibition a good suggestion. Around 40 % considered it a very good suggestion. Only 16 % of respondents considered it a bad suggestion.¹⁷ In another public opinion poll from Novus in 2012 as few as 12 % answered that dividends should be allowed in private welfare companies, while 53 % believed that profits should be reinvested in the business. An additional 31 % opposed profit-driven companies in welfare completely.¹⁸ All three polls show strong resistance towards for-profit in welfare.

SOM-institutet has only performed polls concerning dividends in welfare since 2012,¹⁹ but trends can be seen in the opinions concerning the size of the public sector and privatization over a longer period of time. The biggest support for privatization occurred after the fall of the Berlin Wall, the dismantling of the planned economies in Eastern Europe, and the right-wing wave in the Anglo-Saxon countries. During the crisis years in the beginning of the 1990's the support for the public sector started increasing again, as well as the resistance against privatization.²⁰ The latest poll from SOM-institutet shows that the support for the welfare state has not been as big as it is today any other year since the polls started in 1986.²¹ The long-term perspective that can be seen from these polls indicate that the resistance against for-profit has increased at the same rate as the support for the welfare state has increased.

2.3 Comparison of efficiency between for-profit and not-for-profit

Representatives from private welfare providers and right-wing politicians have argued that the private sector has better efficiency and lower costs, or better service and innovativeness, but there is little evidence supporting these statements.²² In the article *Konkurrensens konsekvenser. Vad händer med svensk välfärd?*, leading Swedish welfare researchers state that research

¹⁶ Nilsson. "Nej till vinstutdelning – Ja till valfrihet i välfärden", 310-316.

¹⁷ Nilsson. "Välfärdspolitik och välfärdsopinion 1986-2012", 89.

¹⁸ Cederholm. "Klar majoritet vill styra vinster i privat välfärd".

¹⁹ Nilsson. "Välfärdspolitik och välfärdsopinion 1986-2012", 88.

²⁰ *ibid.*, 91.

²¹ Nilsson. "Starkt stöd för välfärdsstaten", 291.

²² Anell. "Hälso- och sjukvårdstjänster i privat regi", 181.

concerning the effects of the political welfare reform in Sweden to a large extent is missing.²³

However, a large number of articles have been published comparing the quality of activities performed by different types of organizations worldwide. In one substantial article published in the highly respected British Medical Journal, researchers show that not-for-profit nursing home organizations are better staffed, and have higher educated staff than profit-driven organizations. These circumstances are considered factors affecting the quality of the care.²⁴ In an American overview from 2005 performed by Schlesinger and Gray comprising 150 studies, not-for-profit hospitals were superior both concerning economic factors and quality. A British study shows that other factors are more important to the quality of hospital care than type of management method; one important factor is whether welfare is delivered in price competition, which showed to result in lowered quality.²⁵

Welfare service delivery is a complex industry to evaluate. The services differ from each other to a large extent, the quality is not necessarily best measured by customer satisfaction, and regulations that come with the welfare state make competition differ from other industries. However, the research available does not support the notion that price competition and for-profit enhances quality or lowers prices.

2.4 The support for not-for-profit and social innovation

The SOM poll from 2013 showed that only 7 % believed that a tax-financed welfare company should be able to decide by itself where the profit goes, whereas 80 % thought that most part (30 %) or all (50 %) of the profit must be reinvested in the company. The figures indicate distrust against private for-profit actors in tax-financed industries. However, if private actors have other motives than profit, the public supports their existence alongside the public sector actors. In the 2013 poll around 20 % wanted to see private for-profit enterprises as alternatives to the public organizations while a majority wanted not-for-profit organizations as options to the traditional state-controlled bodies.²⁶

At the same time, the concept of *social innovation* is in the mouths of many. Economic crises, the ageing of the population in Europe and the climate

²³ *ibid.*, 200.

²⁴ Comondore et al.. "Quality of care in for-profit and not-for-profit nursing homes".

²⁵ Anell. "Hälso- och sjukvårdstjänster i privat regi", 202-204.

²⁶ Nilsson. "Nej till vinstutdelning – Ja till valfrihet i välfärden", 314-321.

threat have brought social issues back on the agenda. In the past, the traditional non-profit associations were the vehicles for tackling these kinds of societal issues. However, these bodies are dependent on external funding from governments or private actors, making it difficult to perform activities in a long-term, sustainable way. A way of solving these challenges could be found in social innovation, which serves as an umbrella concept for inventing and incubating solutions to social issues with innovative methods and not-for-profit purposes.²⁷

2.5 Conclusion

In the same way as the demographic situation in the first half of the 1900's led to the creation of the Swedish welfare state, and the political waves in Europe in the end of the 1980's influenced the decrease of the same welfare state, the economic, demographic and environmental issues of today signal that the interest for the welfare state has been brought back. Politically, the issue is polarized, but it is clear that the majority of the parliament politicians are not in favor of prohibiting for-profit in welfare.

The for-profit rationale is the notion that an opportunity to earn profit creates competition that increases quality and decreases costs. Still, studies show no or very little evidence of these correlations in the welfare sector. Welfare services are both too complex and too non-optional for them to function in the same way as the rest of the private market. The consumer of welfare products does not use these services in the same way she uses other services. The complexity makes them difficult to evaluate, and depending on the urgency of the need it may be impossible to make an informed choice, or choose to not use the service. Perhaps that is why market competition through for-profit has not yet been able to make a convincing model in the welfare sector.

It must not be forgotten that privatization and for-profit are separate things, and it is the for-profit part of the decrease in the welfare state that the public is resisting. Generally, freedom-of-choice is perceived positively in Sweden, and not-for-profit actors are requested as alternatives. Trends supporting the concept of social innovation enhance the opportunities in the welfare service market. Through social innovation, societal issues are viewed as opportunities for innovation, business model experimentation and entrepreneurial solutions, with societal purposes and sustainable business models.

²⁷ DG Regional and Urban Policy. *Guide to Social Innovation*, 5-9.

It seems as if there is a giant market space for private actors wanting to deliver welfare services in a not-for-profit context. It is possible that private not-for-profit could deliver both low-cost and high-quality services. Still, the presence of social enterprises in the welfare system is missing.²⁸ The reason why could be that the structure of the limited liability company is not suitable for social purposes. There is a place for a different kind of company.

²⁸ Palmås. *Den misslyckade välfärdsreformen*, 15.

3 The social enterprise

The previous chapter suggests that the social enterprise could play a relevant part in the company landscape. The concept of the social enterprise is however not clear-cut. Different actors make different interpretations of what is included in the concept, but in this context I will present an interpretation to what a social enterprise could mean.

This chapter explains the defining characteristics that separate the social enterprise from other companies (section 3.1). For the sake of clarification, I explain the terminology of some important concepts (section 3.2). The chapter ends with the foundation of this paper, which is an analysis of what a social enterprise requires from the legal body representing it (section 3.3).

3.1 Characteristics of the social enterprise

The concept of the social enterprise builds on the entrepreneurial value that societal change can be made from economically sustainable business. The goal is to create a third sector acting as a hybrid between the public and private sector. A social enterprise is in this context a company with a social purpose, but which runs and finances its activities by using businesslike methods, as opposed to traditional charity organizations.²⁹

The social purpose can vary and extend to cover a lot, but essential is that it primarily should be something else than generating profit for the owners.³⁰ Often, the enterprise target the social needs or demands of the society or a group of people and try to improve the wellbeing of people. The social purpose is simply *good for society*.³¹ This could mean that society benefits e.g. by reducing social exclusion, increasing welfare, establishing justice, etc.³²

Using businesslike methods means that the company aims to be financially independent through its own activities.³³ The purpose of the company is achieved not through donations or public funding, but by the business that the company is doing. The social enterprise can through the businesslike methods become a sustainable actor independent of the goodwill of external actors.

²⁹ Palmås. *Den misslyckade välfärdsreformen*, 17-18.

³⁰ *ibid.*, 17.

³¹ DG Regional and Urban Policy. *Guide to Social Innovation*, 6.

³² Palmås. *Den misslyckade välfärdsreformen*, 17.

³³ *ibid.*, 17.

3.2 Terminology

In Swedish, the term *social enterprise* (“socialt företag”) is not ideal, since *social(t)* in Swedish has a slightly different meaning in Swedish than it does in English. In Swedish *social(t)* most accurately translates to the English “sociable”. “Socialt företag” is still the commonly used translation for these types of enterprises in Swedish, just like “social” also is used to describe social innovation and social entrepreneurship. The term is however to be interpreted as in its Anglo-American meaning, and the purpose of *social* in these contexts should in English as well as in Swedish mean *concerning society*, in Swedish “samhällelig”.

Since the purpose of the enterprise is one part of the definition of the social enterprise, and the method in which it pursues its business is another, it is important to separate the variations of organizational setups. In this context, the terms *for-profit* and *not-for-profit* should be interpreted as having a *purpose* to generate profit for the owners, respectively having another purpose, which can be, but does not have to be, of a social nature.

Included in the concept of not-for-profit are not only enterprises, but also what is commonly referred to as charities, non-profits, non-governmental organizations, private voluntary organizations, civil society organizations etc. The concept *non-profit* refers to the traditional not-for-profit actors, such as associations and foundations that do not utilize businesslike methods. Non-profits are often charity organizations of different kinds. Not-for-profit bodies include non-profit associations and foundations, as well as not-for-profit enterprises.³⁴

3.3 Requirements on the embodiment of the social enterprise

Social enterprises have a challenge in finding a suitable legal body to represent their activities. Profit as a purpose is without exaggeration heavily dominating legal bodies with businesslike methods. Partnerships and limited liability companies have legal possibilities to conduct activities with non-profit purposes, but it is very uncommon.³⁵ Not-for-profit is mainly represented by non-profit associations and foundations. Custom should not, however, prevent an analysis of how not-for-profit could be represented. The characteristics of the required body should therefore be established, in order to compare the demand with the existing bodies at hand.

³⁴ International Center for Not-for-Profit Law. *Frequently Asked Questions*.

³⁵ Skog. *Rodbes Aktiefbolagsrätt*, 105-106.

3.3.1 A not-for-profit purpose

The possibility of a social purpose is crucial for the social enterprise. The first issue for the social enterprise is to find a legal body where a social purpose is theoretically possible. Secondly, it must be able to keep the purpose consistent over time, and must be protected from other conflicting interests.

3.3.2 Businesslike methods

The social enterprise must be able to make business transactions to make sure the body can survive without public or charitable funding in order for sustainability. A not-for-profit actor may also to a higher extent than a for-profit actor need a body with heavy regulations, public accounting and a tradition of how to make transactions in order to be viewed as a trustworthy business partner. This is especially true when it comes to finding good investors and trusting suppliers. For the social enterprise in the third sector conducting social activities with businesslike methods, it is also crucial to embody the activities in a form that radiates credibility to the customers.

3.3.3 Limited liability

Another aspect of the social enterprise is that it often conducts activities with high risk. Not only is social innovation often the core of the business' ideas – providing new and untested business models or products and services – but it is also often active in the welfare sector where the Act on Freedom of Choice and the Act on Public Procurement applies, making income uncertain due to the risk of rapid change in circumstances. More or less limited liability is therefore essential to create an environment where these kinds of entrepreneurs dare to test their concepts.

3.3.4 Controlled and consistent membership

Qualified membership, meaning that owners/members consist of a controlled masse of persons, is important for any business. If the purpose of the company additionally is to serve society, it is desirable to have mechanisms ensuring that the enterprise can continue even after change in owner- or membership, or the decease of a founder or idea provider. It also means that the enterprise needs to be less dependent on the influencing people than a for-profit business is. For-profit owners can choose to liquidate the company when suitable, change the main activities of the company, or in other ways control the course of the company as fits the for-profit purpose best. A social enterprise that has another purpose needs to be independent enough that the owners or members cannot control it in self-interest.

3.4 Conclusion

The social enterprise should have a social purpose combined with businesslike methods. This means that the not-for-profit purpose must both be legally possible and disconnected from the people behind in a sustainable way. It must also be a renowned actor that expresses trustworthiness and at the same time have the ability to conduct transactions in an easy way that can be scrutinized by other actors. The risky business of welfare and social innovation is supported if the body additionally has limited liability. It finally needs to be able to survive through changes of ownership and the purpose must be protected in one way or another to support the credibility of the company.

Among the variations of legal persons and associations to represent a business is the limited liability company, especially suited for innovative development projects with high risk. The key is the possibility to limit the responsibility of the shareholders to no more than invested capital. The limited liability company also provides ownership as a requisite for influence, in contrast to an association that anyone (with some limitations) can join. This creates consistency and ensures that the business is run in a foreseeable way. The company can also stay intact even if a shareholder deceases or sells her shares, giving it development potential. The limited liability company is also very common, and viewed as a trustworthy business partner, having public accounting and detailed regulations. Many actors are used to conducting business with a limited liability company.

The personal unlimited liability connected with partnerships, and the difficulty to control membership in associations, are only two of the reasons why the limited liability company is a standout association form with no comparison in Swedish law. Partnerships are additionally to a large extent dependent on the people behind them. Associations and foundations have high credibility when it comes to purpose, but lack the businesslike methods. Additionally, Swedish procurement legislation makes it difficult for non-profit associations to compete, and tax legislation benefit international venture capital enterprises.³⁶

³⁶ Nilsson. "Nej till vinstutdelning – ja till valfrihet i välfärden", 322.

4 The limited liability company as a social enterprise

The limited liability company is at first glance the only organizational setup matching the requirements of a social enterprise. However, even if the setup of a limited liability company is an optimal match when it comes to businesslike methods, providing possibilities for self-financing and sustainable business without donations, the social purpose is not so easily incorporated in the limited liability company, as I will show in this chapter.

The chapter commences with an analysis of the for-profit purpose that is predominant for the limited liability company (section 4.1). I challenge the notion that a for-profit purpose is the only relevant option for the company and present to the reader the alternative of not-for-profit enterprises. Afterwards, I analyze the suitability for a not-for-profit purpose of the limited liability company to see if a limited liability company can be a social enterprise (section 4.2). The chapter ends with the conclusion that the limited liability company lacks when it comes to enabling not-for-profit purposes (section 4.3).

4.1 For-profit purpose

All activities a company performs are meant to lead to a certain purpose. According to the Companies Act 3:3 the purpose of the limited liability company, when nothing else is stated, is to distribute profits to the shareholders. This purpose has been constant in Sweden since the Companies Act of 1848.³⁷ The meaning of 3:3 is that a limited liability company can be one of two kinds: for-profit or not-for-profit.

Starting by looking at the for-profit purpose, the Companies Act lacks a further explanation or definition of what is meant by the purpose *to distribute profits to shareholders*. There are mainly two matters that require clarification. The first unclear matter regards at what time profit should be distributed, and the other the subject to which profit is distributed or the possibility to make exemptions from the for-profit purpose.

4.1.1 Time

Profit can as stated before either be distributed to shareholders or reinvested in the company. Continued reinvestments can keep strengthening the company in a way that benefits the shareholders in a longer perspective. The company grows stronger while the shareholders' benefit will have to wait

³⁷ Dotevall. *Skadeståndsansvar för styrelseledamot och verkställande direktör*, 376.

until a sale of the shares or liquidation of the company, or future higher dividends. Since there is no time limit for how long dividends can be postponed, it could be claimed that the company itself is the primary beneficiary, not the shareholders.

The company itself as the beneficiary is not a new notion. A debate between the two American professors Adolf Berle and E. Merrick Dodd in the 1930's was the starting point of the discussion of what is the purpose of a corporation.³⁸ The discussions began with an article published in Harvard Law Review by Berle and Means, stating that the purpose of a corporation is "the ratable benefit of all the shareholders".³⁹ The article was retorted by Dodd, also in Harvard Law Review, stating that the corporation "has a social service as well as a profit-making function".⁴⁰ Eventually Berle joined Dodd's view, which he presented in a book published in 1954,⁴¹ and the view of Dodd has affected American law so that the purpose of a corporation eventually was perceived to be *its long-term development*.⁴² The long-term development of the company is very close to corresponding to the benefit of the company itself.

John Kenneth Galbraith differentiated between profit maximization and *growth* of the corporation in his book *The New Industrial State* from 1967. He was of the opinion that profit maximization requires the firm's managers and employees to align with the will of an unknown shareholder, whereas growth as the goal for the company is something that all stakeholders can relate to.⁴³ Hetherington similarly stated in an article in 1969 that growth of the company is in the interest of both the shareholders and the managers of a company, and that even shareholders aim for growth, not profit maximization.⁴⁴

In Germany, the expression "das Unternehmen an sich" meant that the company could have an interest of its own, which was separate from the interest of the shareholders. "The company itself" is no longer the leading theory in German corporate governance, but the purpose of the company is still considered to be its long-term profitability, the survival of the company,

³⁸ Dotevall. *Skadeståndsansvar för styrelseledamot och verkställande direktör*, 375-377.

³⁹ Berle & Means. *The Modern Corporation & Private Property*, 220.

⁴⁰ Dodd. "For Whom Are Corporate Managers Trustees?", 1148.

⁴¹ Berle. *The 20th Century Capitalist Revolution*, 172-180.

⁴² Dotevall. *Skadeståndsansvar för styrelseledamot och verkställande direktör*, 379.

⁴³ Galbraith. *The New Industrial State*, 214.

⁴⁴ Hetherington. "Fact and Legal Theory", 260.

or the different variations of interests in the company, before short-term maximized dividends.⁴⁵

The Companies Act gives no indications to how the time issue should be solved. The interest of the company itself is not recognized in the Companies Act, but it is still difficult to separate the interest of the shareholders from the interest of the company itself as long as the growth and long-term survival of the company is so intimately connected to profitability. This difficulty is underlined by how little impact 3:3 in the Companies Act has when it comes to directors' and CEO's responsibility for actions that seem to conflict with the purpose of the company.^{46 47}

4.1.2 *Subject*

The purpose of the company is, again, to give profit for distribution to the shareholders. The shareholders are supposed to include all the present shareholders.⁴⁸ However, in the previous section I have shown that dividends can be postponed to infinity, which means that the interests of future shareholders to some extent are considered. The same can therefore be stated when it comes to the subject of profit distribution as for the time of the same: the interest of the company itself and that of the shareholders are difficult to separate. The law only recognizes the interest of the shareholders, but the interpretation of the law can lead to the conclusion that the interest of the company is actually what is considered.

Another consideration is in regard to whether the company has a responsibility towards its employees. The consensus is that the company may not pursue activities violating the for-profit purpose even to meet the demands from the Union or government.⁴⁹ Still, the company has obligations towards its employees, something that can be seen in the different forms of worker participation. Employees have at least a limited influence over the company. This is also something that has been recognized widely. Rostow published an article in 1959 in which he stated that there are other interests in a company that are considered except for profit maximization, one of which is the welfare of the employees.⁵⁰ In the Companies Act of the United

⁴⁵ Dotevall. *Skadeståndsansvar för styrelseledamot och verkställande direktör*, 388-399.

⁴⁶ Dotevall. *Skadeståndsansvar för styrelseledamot och verkställande direktör*, 417.

⁴⁷ Sandström. *Svensk aktiebolagsrätt*, 204.

⁴⁸ Dotevall. *Skadeståndsansvar för styrelseledamot och verkställande direktör*, 376.

⁴⁹ Skog. *Rodhes Aktiebolagsrätt*, 106-107.

⁵⁰ Dotevall. *Skadeståndsansvar för styrelseledamot och verkställande direktör*, 380.

Kingdom, the directors of a company are obliged to consider the interests of the employees as a part of the success of the company.⁵¹

Similarly, the company could be claimed to have a social purpose as well as a profit-making one. Dodd claimed that since public opinion makes law, and the opinion of the public is that corporations have a social service, that must be the purpose of the company, besides its profit-making function.⁵² The possibility for a company to give gifts is an exemption from the profit purpose that shows how a company may not only give out gifts in order to attract goodwill, but for any purpose as long as the size of the donation is reasonable in consideration to the situation at hand.⁵³ This does not align with the otherwise supposed strict for-profit purpose of the limited liability company.

4.1.3 Conclusion

This is not a thesis concerning the for-profit purpose of a corporation. What the discussion contributes to is showing that profit to owners is not the only given purpose for a company, but that other purposes are not considered to a high extent today. Many times the company has been viewed as a means for creating an efficient societal economy. The subjects for whom the company exists are supposed to be the present shareholders, since the purpose is to distribute them profit. However, if profit distribution is postponed, future shareholders or the company itself become the beneficiaries. Employee influence over corporate strategy and expectations on the company to perform social services also limit the exclusive rights of the shareholders. Conclusively, a for-profit purpose is difficult both to interpret and to enforce against violations, and the interests of the shareholders risk being neglected for the interest of the company itself. As I will show in the next section, the not-for-profit purpose is even more problematic.

4.2 Not-for-profit purpose

The profit purpose of a limited liability company is as stated earlier just one out of two possible purposes the company can have. The other purpose is however not constructed in a way that can fill the gap of all the interests that have been neglected. What I will show in this section is that a not-for-profit purpose is problematic to exercise. Therefore, that other purpose is actually not a practical alternative.

⁵¹ Companies Act 2006, Section 172.

⁵² Dodd. "For Whom Are Corporate Managers Trustees?", 1147-1148.

⁵³ SFS 2005:551. *Aktiebolagslag*, 17:5.

4.2.1 Shareholders' right of decision

The Companies Act 3:3 states that if the activities of the company should have another purpose than to distribute profit to the shareholders, it must be stated in the articles of association. The articles of association can be changed by the shareholders' meeting. A change concerning the non-profit purpose must be supported by at least two thirds of the votes and nine tenths of the shares represented at the meeting.⁵⁴ Changes in the articles of association are made with qualified majority, since they are the backbone of the company and should not easily be revised. Shareholders who engage in a company by purchasing shares or investing share capital at the founding of a company should not be forced to support activities of a completely different character than they could predict when the investments were made. Changes must be possible in order to adjust to the economic situation, but the Companies Act recognizes that it should not be easily done. The more intervening the changes are, the stricter is the qualified majority.⁵⁵

The view on what is considered to be strict can be seen in 7:43, where the strictest majority is demanded. The first sentence acknowledge that a restriction in shareholders' right to profit distribution demands unanimity in the votes from the shareholder's meeting, and at least nine tenths of the shares represented at the meeting. Changing the profit purpose is consequently considered to be the most intervening change that can be made in the articles of association.

Changing from another purpose, e.g. a social purpose, to a profit purpose is consequently not considered as intervening as the other way around. Again, the qualified majority is required in order to protect the shareholders. It is natural that shareholders that expect profit should not easily be denied that right. In an enterprise with another purpose, however, the will of the shareholder is still prioritized, and it is even easier to change from a not-for-profit purpose than to one. The purpose lacks the same protection that the profit purpose has. This raises the question to whether the company actually can have another purpose, if it is still the will, or benefit, of the shareholders that prevail.

Even if we disregard the different levels of difficulty for changing the articles of association, the possibility to change the purpose by qualified majority is not supporting the not-for-profit industry. Even if the shareholders do not revise the articles of association in order to change the not-for-profit purpose,

⁵⁴ 7:44.

⁵⁵ Skog. *Rodbes Aktiebolagsrätt*, 234-235.

as long as they are unanimous they can make decisions that directly oppose the purpose. This is especially relevant for companies with only one shareholder. Consequently, it becomes difficult for a social limited liability company to earn any social credibility. Even for a company that would actually serve its purpose all the way, it is difficult for the customers to completely trust it as the shareholders have the power to control the course of the company.

In conclusion, a purpose other than for-profit can be set aside by the shareholders either by changing the articles of association by decision of two thirds of the votes, or by unanimous support without a formal change. This means that the purpose of the company is always in the hand of the shareholders, and it is impossible for a third party to fault a decision of the shareholders that oppose the purpose of the company. The social credibility so important for the social enterprise is very difficult for the limited liability company to uphold, since a not-for-profit purpose can be changed, and the shareholders have incitements for making that change.

4.2.2 *Other stakeholders*

It can be argued that shareholder supremacy is the only, and the reasonable, way to control a company. The shareholders are the ones investing capital, and therein taking the risk, and it is reasonable that they should have the power of control in the company. However, based on the stakeholder analysis, I will show how it is quite reasonable to consider also other actors. Stakeholders are in one way or another dependent on the company, which means that they have expectations on how the company will act. In some cases other stakeholders are considered legally, and in some cases not.

It is known in the world of limited liability companies that power is divided between three bodies: the shareholders, the board of directors and the CEO. *The board and the CEO* are liable to run the company in accordance with the purpose, whatever it may be. As stated earlier, so are not the shareholders however. In a conflict of interest, this could mean that the board and the shareholders have different views on how the company should act, but the will of the shareholders will prevail. It must be considered that a board member of a company with a not-for-profit purpose is likely to engage in the company for reasons other than the gain of the shareholders. The board member may well support the specific purpose and because of that purpose choose to direct the company. In a company with a not-for-profit purpose there are obviously other interests at stake than the money at risk, but it is still the shareholders risk that prevails when it comes to the power to change the purpose for own gain.

Along the same line is the *employee* interest. Employees are considered in the sense that they are given some influential power over the company through different types of employee participation regulations. The company's responsibility over its employees has been discussed earlier, but in this context can be added the perspective of why the worker chooses to be involved in a specific company. A not-for-profit purpose may well be a good reason for an employee to choose a specific employer.

Another problem is that *customers* to a not-for-profit company may choose to purchase goods or services from the company particularly because it has a not-for-profit purpose. As I have shown earlier, for-profit is especially antagonized within welfare, but in other industries as well may certain customers support a not-for-profit purpose due to social awareness. If the company can act against its stated purpose, customers may perceive that they have not received what they paid for. The changeability of the purpose make not-for-profit very unreliable in the limited liability company.

Same arguments can be held for providers as well as for other *investors* than shareholders, such as banks and other types of financing. According to an analysis performed by KPMG, not-for-profit objects can be chosen specifically because of their not-for-profit purpose. In these cases other values are considered than return on investment.⁵⁶ These values can however not be protected from the supremacy of the shareholders.

The company as a *societal* actor is no new notion. Perhaps that is why the Companies Act has made it possible for a limited liability company to have another purpose than distribution of profit to shareholders. Companies with a not-for-profit purpose are referred to as companies *beneficial to the community*. In a company where the beneficial purpose can be changed for the benefit of the shareholders, the rationale of the beneficial company is lost.

Shareholders are not the only decision makers in a company. The board of directors and CEO have large extents of strategic and managerial influence. Employees have the right to participate in important strategic decisions. Customers, providers and investors can influence the company's strategy by choosing to conduct business with actors they find suitable. The problem with the not-for-profit purpose in the limited liability company is however that only the shareholders have power over the purpose of the company. In many cases it could be argued that this is the only reasonable outcome since the shareholders are taking a financial risk in order to possibly get returns on the

⁵⁶ KPMG. *Almega; Översyn av möjliga konsekvenser av en ombildning av aktiebolag inom skola, vård och omsorg till aktiebolag med särskild vinstutdelningsbegränsning*, 16.

risk. In a company without a for-profit purpose, it seems reasonable that other stakeholders' interests should have higher importance to the strategy of the company.

4.2.3 Conclusion

It is indicated that the for-profit purpose is supposed to gain the shareholders, and that the Companies Act is built for this purpose. Financial risk is the core of the logic of the regulations, and the possibility of profit is the rationale why shareholders invest in a company. When another purpose is given the company, there are no differences in the structure of the regulations. Shareholders are still considered to be most suitable to make decisions regarding the purpose of the company. The Companies Act shows no support for other stakeholders' interests.

Can we then speak about a limited liability company with a not-for-profit purpose? Definitely. Even though these actors are few, they do exist. However, it is not possible for a limited liability company to guarantee a not-for-profit purpose since the purpose can both be changed and overruled. The Companies Act gives no possibilities to enforce the not-for-profit purpose against the will of the shareholders. Perhaps the not-for-profit purpose can best be described as a norm that, similarly to the for-profit purpose, does not have any legal enforceability.

4.3 Conclusion

Returning to the definition of a social enterprise, it requires a social purpose and businesslike methods. The limited liability company is the only legal body that has a space for both of these conditions. At the same time, as I have shown, the social purpose of a not-for-profit company is problematic in the limited liability company setup.

It must not be underestimated how important a strong and firm social purpose is to the social enterprise. The credibility of the company depends on the company not straying too far from the purpose. There are examples of companies that claim to work for public good and then are exposed as villains. The Body Shop is one company with a claimed social agenda. "The business of business should not just be about money, it should be about responsibility. It should be about public good, not private greed" said the founder Anita Roddick.⁵⁷ The Body Shop was exposed in 1994 as a fraud not conducting

⁵⁷ The Body Shop. *Företaget*.

social business, and the expression “green-washing” was established.⁵⁸ Not-for-profit enterprises build their entire reputation on the social purpose.

The social purpose requires protection against the supremacy of the shareholders. Limited liability companies can, as I have shown, have another purpose than generating profit for the shareholders. This has been possible for a long time according to Swedish legislation. These rules have not been able to stop shareholders from still profiting from the company.⁵⁹ Another type of company is better suited for the social enterprise.

⁵⁸ Entine. “Body Flop.”

⁵⁹ Prop 2004/05:178, 20.

5 The (svb) company as a social enterprise

The limited liability company with specific limitation of dividends, also known as the (svb) company, is a particular type of limited liability company. Essential for the (svb) company is that the activities are conducted for another purpose than distributing profits to the shareholders. Regulations protecting the purpose make the (svb) company differ from other limited liability companies. The special regulations are designed to be in cohesion with the purpose and not with the will of the shareholders. The important ingredient is a limitation on how much of the yearly profit that can be transferred out of the company. This means that the main part of the profits remain in the company for new investments.

In this chapter I present the (svb) company as an alternative for the social enterprise. The chapter starts by explaining why the (svb) company was introduced into company law (section 5.1), and is followed by a brief description of how the company is regulated (section 5.2). I discuss possible important consequences in order to give the reader a broader perception of what choosing the company structure can result in (section 5.3). The theoretical introduction to the company type leads up to an evaluation of the (svb) company as an alternative body for social enterprises (section 5.4).

5.1 (svb) rationale

The intention with the (svb) company is to serve as an alternative for businesses with another purpose than distributing profits to the shareholders. The (svb) company was meant for businesses previously run publically, e.g. private companies within healthcare,⁶⁰ but the regulations controlling the (svb) company are not discriminating between companies' activities, and are not fitted especially for one type of business. Still, the form was created when the legislator saw a request for a new type of company structure in traditionally public activities performed by private actors. The (svb) company is suggested to suit private entrepreneurs within community care, but is as appropriate for not-for-profit companies with individual pricing as for private businesses funded by public financing. These motives correspond with the rationale for the social enterprise.

5.2 (svb) essentials

(svb) companies are regulated in the same way as other private limited liability companies. Additionally, there are a few regulations to be found in

⁶⁰ Bolagsverket. ”Aktiebolag med vinstutdelningsbegränsning”.

chapter 32 of the Companies Act, following a certain logic concerning dividends and control mechanisms. There are no rules that provide administrative or economic advantages, or give more freedom to operate. The (svb) company is simply a stricter type of limited liability company, with regulations making sure that no value can be transferred out of the company above allowed rates, and structures for control of all the transfers. These regulations are what give the (svb) company its credibility.

In order to evaluate the (svb) company, it is important to get an overview of the regulations controlling the company. In this section, I will briefly present the special regulations in chapter 32 of the Companies Act. The most important regulation is the specific limitation on dividends that is the foundation of the company type (5.2.1). Relating to the logic around dividends is the control mechanisms that ensure the limitation is adhered (5.2.2), and closely connected is the restraint on certain types of loans (5.2.3). There are finally some regulations that are specific for the (svb) company that limit the way the company is created (5.2.4) and terminated (5.2.5).

5.2.1 Profit distribution

The limit for yearly dividends in an (svb) is the government borrowing rate + 1 % of what shareholders have contributed for shares, together with eventual outstanding dividends from the previous five years.⁶¹ The limit is supposed to correspond to capital interest. The size of the allowed dividends is based on contributed share capital, not on the size of the profit, and will therefore be the same size every year (if the share capital remains the same and the company has declared profit). Distribution of dividends is not allowed if the company is making loss and at the same time does not have retained earnings, since dividends then interferes with the bound shareholder's equity.

Not only open distribution of profits decided by the shareholder's meeting is limited in an (svb) company. All types of transfer of value must follow the same logic, and cannot accumulate to more than the allowed limitation. A transfer of value can, apart from dividends, consist of group contributions,⁶² loans to shareholders or related persons that are not payment able, an object sold to a shareholder to a price at benefit value, an agreement with a gift streak, or any other type of retribution free transaction (open or covert distribution of profits). This means that a transfer of value that is included in an otherwise bilateral agreement of some sort is not allowed if the part of the

⁶¹ SFS 2005:551. *Aktiebolagslag*, 32:5.

⁶² 32:8.

agreement that is unilateral exceeds the limitation. The benefit value amounts to the part of the performance above the market value.

If a transfer of value is made that exceeds the limitation, the receiver must return the value plus interest, in the same way as in another limited liability company. Additionally, the company will be liquidized if the value has not been returned during the processing time at the district court. Bolagsverket, the board, CEO, accountant or shareholders can report any breach of the regulations.⁶³

5.2.2 Governance

An (svb) company must have at least one accountant.⁶⁴ The accountant shall examine that the rules for transfer of value are not violated and make sure that the company specifically lists loans and securities within the same concern. In that way the accountant makes sure that the rules are not violated. Otherwise, the company is run in the same way as other limited liability companies. It is subject to penalty to deliberately or by serious negligence breach the regulations concerning listing of intra-group loans.⁶⁵

5.2.3 Some loans

An (svb) company may not take capital or profit debenture loans,⁶⁶ since these types of loans have terms dependent on the economic development of the company. Reimbursement of a capital debenture loan is dependent on the company's retained capital. The interest on a profit debenture loan depends on the profit of the company. These kinds of loans, in which the size of reimbursement is dependent on the result of the company, are not allowed.

5.2.4 Creation

An (svb) can either be started as an (svb), or be transformed to one from a limited liability company by a decision of the shareholder's meeting.⁶⁷ The firm must be followed by the label (svb).⁶⁸ It is also stated in the articles of association of a limited liability company if it is of (svb) kind.⁶⁹ In that way stakeholders can immediately see that the company is run without profit

⁶³ SFS 2005:551. *Aktiebolagslag*, 32:13.

⁶⁴ 32:3.

⁶⁵ 32:10.

⁶⁶ 32:7.

⁶⁷ 32:1, 32:16.

⁶⁸ 32:17.

⁶⁹ 32:2.

motive, and can easily differentiate between an ordinary limited liability company and an (svb) company.

5.2.5 Termination

An (svb) company cannot be transformed into a public company or a private for-profit company.⁷⁰ This *asset lock* is a way to make sure that the regulations concerning the (svb) company are followed. An (svb) company can only be part of a fusion or fission as the transferring company if the overtaking company also is an (svb) company.⁷¹

An (svb) may be liquidized, but the shareholders will only get liquidating distribution equivalent to endowment capital and eventual outstanding dividends. The shareholders can therefore never get out more from the company than they put in. The rest of the eventual surplus after liquidation goes to other (svb) companies stated in the articles of association. The surplus can only go to other (svb) companies, never to a regular limited liability company. If no (svb) company has been stated in the articles of association, eventual surplus goes to Allmänna Arvsfonden.⁷²

5.3 (svb) consequences

When the structure of the (svb) company now has been laid out, the (svb) company can be evaluated from the aspect of its utility as a body for activities. The regulations around the company are quite simple, but there are implications to the legal structure that should be recognized. It must be considered that very few (svb) companies exist, which means that the consequences of being (svb) only can be anticipated and theorized around. Still, I have included some experiences based on one (svb) company situated in Gothenburg, in order to get perspective on what are only theoretical possibilities or risks and what may actually be significant advantages or problems revolving around the company form. It is important to keep in mind, however, that this is the experience of only one (svb) entrepreneur and not representative for the entire (svb) community.

In this section I will present some of the aspects that affect the business and relations of an (svb) company. The topics are meant to address the possible concerns an entrepreneur considering the (svb) form may have, and are based on the concerns of the steering group in the pilot project that was the foundation of this paper. The first issue is the close-at-hand problem of

⁷⁰ 32:15.

⁷¹ SFS 2005:551. *Aktiebolagslag*, 32:11-12.

⁷² 32:14.

finding investment capital in a not-for-profit business (5.3.1). The paper then discusses how the (svb) form affects group relationships (5.3.2), and the considerations that should be taken in other type of transactions than intra-group that are interesting to the (svb) entrepreneur (5.3.3).

5.3.1 Financials

In the government's proposition on (svb) companies, the idea was that the (svb) stamp would serve as a goodwill-binding guarantee. It is also thought to attract investors that, in order to venture capital, want guarantees that input and profits will stay in the company.⁷³ According to KPMG's analysis, there may actually be a certain category of investors that specifically choose non-profit objects for investments. These actors make other deliberations than investors only looking for as high return on investment (ROI) as possible.⁷⁴ This is also in line with what the founder and owner of the company Mitt Liv AB (svb) has experienced.⁷⁵ The logic can further be explained by a comparison with non-profit associations and foundations, which are good examples of how ROI is not the only reason for investment. The possibilities to attract investors in an (svb) should be at least equal to non-profit associations and foundations, and can be better if investors see the advantages with the body. It must be remembered that the not-for-profit incitement is a different one from maximized ROI. It is the type of investors that look for social purposes that are attracted by the (svb) company. Without saying that these actors are many or even close to comparing in number to the for-profit investors, they do exist. This is something important to keep in mind when discussing the (svb) company further.

Another difficulty in attracting investment capital or bank loans is that an (svb) company sometimes needs to be valued in an untraditional way. If the custom is to value a company by discounting estimated profits, the value of the company will be low even if it has a strong cash flow. This can affect how investors and loan providers calculate the risk of the investment. Still, in a not-for-profit company, investors and loan providers would be wise to utilize methods that are appropriate for a not-for-profit purpose. The problems occur when the organization performing the valuation have strict working models that are hard to set aside for one certain situation. This is something that the (svb) entrepreneur may have to consider.

⁷³ Prop 2004/05:178, 21.

⁷⁴ KPMG. *Almega; Översyn av möjliga konsekvenser av en ombildning av aktiebolag inom skola, vård och omsorg till aktiebolag med särskild vinstutdelningsbegränsning*, 16.

⁷⁵ Appelgren.

Finally, the (svb) company, and more generally any company in the welfare industry, acts on a risky market. The market for welfare is controlled by the Act on Freedom of Choice (LOV) and the Act on Public Procurement (LOU), and income levels can change quickly. There are no guarantees that the (svb) company would stand better against these kinds of difficulties than any other actor.

However, the importance of investments should not be overestimated. One of the advantages with the (svb) company is that it applies businesslike methods. As a social enterprise, the goal is to be financially independent by its own activities. The requirement for continuous funding that non-profits experience is therefore not applicable to the (svb) company. When it comes to importance of investments in comparison with the for-profit company, the pilot project GPCC Implement serves as a good example. The business model of what is to become the pilot (svb) company is based on activities that are self-financed. The steering group wanted to avoid forcing the controlling company to invest, since no profits compensate for the risk, but since the project was self-sustained, the issue was not of importance.⁷⁶ It is particularly for these kinds of projects, which have proven the concept of their business model, that the (svb) company is especially advantageous.

5.3.2 *Group relationships*

Within a group, transfer of value is often made without it benefiting the shareholders directly. However, such transfers enable circumvention of the (svb) regulations that require all value to stay in the company. For this reason, there are also limitations to the size of group contributions from an (svb) company. The limitations follow the same logic as the dividends limitations: The total amount of value transfers may not exceed the allowed percentage, no matter who the receiver is.

However, the limitation does not apply to group contributions if the contribution has *businesslike character*. Businesslike character means that the transaction is compatible with the activities the company normally performs. If the transaction is a normal step in the business it is considered to be businesslike. Determining what are businesslike transactions can be difficult, and the threat of liquidation can discourage group transactions altogether. Since group contributions are normal within groups, it can be an obstacle for a group to include an (svb) company that cannot be treated in the same way as the other non-(svb) companies in the group. The controlling company will

⁷⁶ Ström.

need to consider the benefits and the obstacles of the (svb) company in order to evaluate its suitability for the group.

If a controlling company performs services for the (svb) company, these services may be invoiced in a normal way. The pricing of the services are however of importance. Delivering payment without full compensation, e.g. by paying a generous price for a service, is considered a covert distribution of profit. Whatever is above the market value for the service is not allowed if it, together with other transactions, exceeds the limitation for value transfers. This can also be an obstacle for a group including an (svb) company. The difficulty to in beforehand decide what the market value for a service is can discourage the group to make intra-group transactions, since the threat of liquidation is so severe.

5.3.3 Transactions

Shares in an (svb) can be sold on the market as usual. What is relevant is that the value of the company is not decreased by a transaction from the company. Since a liquidation or sale of the company never will give the shareholder more than invested capital it is not very likely that a share will be sold to a value higher than the quota value.

In a sale of assets and liabilities, the material and immaterial assets of the company are sold. In that kind of transaction, the company itself is the seller, and therefore the purchase price ends up in the company. Since the shareholders cannot extract the profit of the sale from the company it gets locked into the company. If the assets and liabilities are sold to prepare for a future liquidation the shareholders might want to sell them inexpensively, e.g. to a sister company, in order not to lock the profit into the company. The (svb) company, in contrast to another limited liability company, has no requirement to make profit, so a deliberately "bad deal" is not contrary to the articles of association. However, underselling assets is considered covert distribution of profits. Since all dividends, including covert distribution of profits, are considered transfer of value, the same limitation applies for the size of such a loss transaction as for open distribution of profits.

5.4 Conclusion

The (svb) company can utilize the same businesslike methods as any other limited liability company, but with a social purpose that is protected by regulations and cannot be overruled by the shareholders. The not-for-profit stamp can give the company the same kind of credibility as a non-profit association or foundation and at the same time be run as businesslike as a limited liability company. Additionally, it can stand out in a prominent way as

a social enterprise. The (svb) company can be appealing to the public in a unique way.

An example of this can be seen in the company Mitt Liv AB (svb), situated in Gothenburg. The founder of Mitt Liv AB (svb) says that she has only experienced advantages with the (svb) company in comparison to other types of associations. According to her, the (svb) company is an efficient type of company with possibilities for development and expansion is the same way as a limited liability company. Another advantage is the full insight and transparency that comes with the limited company and its heavy regulations and public accounting. These advantages that come with the limited company are combined in the (svb) company with the credibility that otherwise only can be attained by a non-profit association or foundation. Customers respond well to the type of company that the (svb) is, and it attracts questions about its function and purpose.⁷⁷

Investors expecting high ROI will choose other objects than the (svb) company where dividends is bigger if everything works well, or will keep the money in the bank, where the interest might not be higher but is guaranteed. This means that it can be harder to attract venture capital to the company. Another risk is that it can be more difficult to receive bank loans.⁷⁸ With a risk of difficulties in the possibility to get a hold of venture capital from other actors, banks may see risks in providing loans. For companies with the need for continuous capital investments, the (svb) form may be risky. At the same time, Mitt Liv is a good example of an (svb) company where it has been unproblematic to attract investors, and the GPCC Implement case shows how the (svb) form especially suits business without constant need for capital. The problems with finding investment capital should not be overestimated.

The threat of liquidation for the (svb) company can discourage what is otherwise considered normal transactions. This could mean that there is an administrative and structural obstacle connected to the (svb) company. Another risk is that authorities and other crucial actors for the company's future may be skeptical to the (svb) company because of it being relatively unknown. Many times the (svb) form demands an explanation of its function before the business is treated seriously.⁷⁹ The (svb) form can disadvantage from being fairly unknown. On the other hand, it could also benefit from the not-for-profit stamp.

⁷⁷ Appelgren.

⁷⁸ Palmås. *Den misslyckade välfärdsreformen*, 11.

⁷⁹ Appelgren.

6 The failure of the (svb) company

The possibility to start a company of (svb) type has existed since 2006, when chapter 32 was introduced to the Companies Act. Still, today, there are only 89 (svb) companies registered at Bolagsverket, and several are liquidated, in the process of liquidation, or bankrupted.⁸⁰ The introduction of the (svb) company into Swedish company law has not lead to the results that were anticipated.

In the previous chapter I have laid out how the (svb) company functions, and what implications the regulations have on the success of the company. As I have shown, the (svb) company is well suited for the social enterprise. The difficulties associated with receiving outside funding and handling group relationships, as well as the care that need to be applied concerning transactions, are not obvious obstacles for a company that is deliberately social in its nature and aims to be financially independent. These difficulties are not the defining reasons as to why the (svb) company has failed to break through in the Swedish enterprise environment.

The failure of the (svb) company is not the result of a lack of demand for a legal body for a social enterprise either. In chapter 0-4 I have shown how for-profit is antagonized in the welfare sector, how actors conducting activities battling the new emerging social issues demand a suitable legal structure, and how the existing legal bodies fail to meet the demands of a social enterprise. The (svb) company is a response to these demands, and the failure is not in the lack of demand or impossible rationale of not-for-profit, but in the political implementation of the (svb) company.

The introduction of the (svb) company into Swedish company law was highly influenced by the British Community Interest Company (CIC) that was introduced in 2005, only one year before the (svb) company.⁸¹ CIC has been a success in the United Kingdom, where almost 10,000 companies existed in August 2014.⁸² A similar version can be found in the American Low-profit Limited Liability Company (L3C). This type of company has been a modest success; there were a little more than 1,000 L3Cs in nine states in 2014. The most important alternative to L3C is the Benefit Corporation, which was

⁸⁰ Bolagsverket. *Sökesresultat - företag*.

⁸¹ SOU 2003:98, 91-92.

⁸² CIC Association. *What is a CIC?*

introduced in 2010. The benefit corporation is allowed in over 20 states and almost 1,000 companies were registered in 2014.⁸³

In this chapter I show, by doing a comparison with the mentioned company structures, the key factors for the failure of the (svb) company. The main problem is a lack of incentives (6.1), but much can also be explained by the missing political opinion making and the regulatory inconveniences (6.2). Other issues with the (svb) company as it is today include the difficulty in competing with existing larger private actors (6.3), and the low credibility of private not-for-profit generally in Sweden (6.4).

6.1 Incentives

One of the important success factors for the UK Community Interest Company was the fact that it is structured in a way that benefits small startups. The entrepreneur who chooses to run a CIC gets a range of benefits that are not given for-profit enterprises, and support from authorities and private financial institutions that battle the otherwise little more complicated structure and financial difficulties.⁸⁴

The American version of the not-for-profit enterprise is the Low-profit Limited Liability Company (L3C). The incentive for these entrepreneurs is mainly associated with the possibility to receive program-related investments. This type of venture capital is deductible for the donator, in a way that otherwise only has been possible in relation to charities.⁸⁵ Discussions have been made in the US if special tax incentives could increase the number of L3Cs, but so far this has not led to any legislative changes.⁸⁶

In Sweden, there are few incentives for social entrepreneurs to choose the (svb) company as a body for their activities.⁸⁷ The company form was introduced as an alternative due to the Act called *stopplagen* that prohibited private hospitals to make profits. The stopplag came into force in 2006, but was abolished already in 2007, which meant that there was no longer an obvious reason for private healthcare providers to choose the (svb) company as an alternative.⁸⁸ The regulations controlling the (svb) company give no

⁸³ Cooney et al. *Benefit Corporation and L3C Adoption: A Survey*.

⁸⁴ Palmås. *Den misslyckade välfärdsreformen*, 10-13.

⁸⁵ *ibid.*, 37.

⁸⁶ Cooney et al. *Benefit Corporation and L3C Adoption: A Survey*.

⁸⁷ Palmås. *Den misslyckade välfärdsreformen*, 11.

⁸⁸ *ibid.*, 33.

advantages at all, and the consequence is that the (svb) company is perceived as nothing more than an unnecessarily complicated limited liability company.

6.2 Political efforts

When stopplagen was abolished in Sweden, there was no threat to the many already existing private companies in the welfare industry.⁸⁹ Changing company form seemed like an unnecessary obstacle to the already existing welfare deliverers, especially since the Companies Act allows not-for-profit purposes within ordinary limited liability companies. The failure of the not-for-profit limited liability company, and the limited liability company in general, as an alternative for social enterprises, was not discussed further in the high levels of politics.

The importance of political measures for the success of the third sector enterprises can be seen even clearer in the United States. Legislation passing adoption of L3C in new states has regressed in the last years, making it difficult for new companies to establish. Benefit Corporations are however being allowed in an increasing number of states, and is anticipated to be allowed in almost all states shortly. The impact of the political measures cannot be underestimated. State legislation also differs when it comes to the administrative burden associated with starting a Benefit Corporation. In Nevada, for example, the administrative process is very simplified, which is one reason why there is high Benefit Corporation activity.⁹⁰

In Sweden, the (svb) company is still a very unknown form of enterprise, with very little coverage in the scientific literature. The political opinion making required for the form to lift off as a serious alternative to the traditional legal bodies is missing, except at the very left of the political sphere. The British Labour government that introduced the CIC structure was in comparison to the Swedish government a much better opinion maker in favor of the new generation of social entrepreneurs.⁹¹ There is no doubt that social innovation, social entrepreneurship and social enterprises are widely appraised in the political sphere also in Sweden, but the politicians have taken no measures when it comes to supporting these concepts in a concrete manner. Chapter 32 of the Swedish Companies Act only allows a company to be run with limited dividends, but does not take into consideration the unique situation of the social enterprise. If social enterprises are to stand a chance in the welfare

⁸⁹ *ibid.*, 33.

⁹⁰ Cooney et al. *Benefit Corporation and L3C Adoption: A Survey*.

⁹¹ Palmås. *Den misslyckade välfärdsreformen*, 34.

landscape they need support when it comes to their incorporation to sustainable and reliable legal structures.

6.3 Competitiveness

(svb) companies are often acting in the welfare industry, which is controlled by the Act on Public Procurement. The public procurement system in healthcare is very complex for a small actor to get into.⁹² Only a company with resources to finance extensive legal efforts will have possibilities to get involved with the complex regulations, and that will favor larger and established actors.⁹³ In order for the social entrepreneur to compete in the welfare market, there need to be supporting structures that help the company develop.

The CIC was initially supported by a development fund, which gave out loans to social entrepreneurs that need financial support. The loan was then paid back to the fund by companies that were successful in order to grant other social entrepreneurs new possibilities for growth and competitiveness. The funds were controlled by an independent consortium, consisting of four actors in the shape of social banks and civil society organizations. The Labour government acknowledged that governmental officers are not knowledgeable enough about social entrepreneurship and handed over the responsibility to public procured loaning institutions with good insights to the reality of the social entrepreneurs.⁹⁴ The development fund was abolished by Cameron's government⁹⁵, but it gave the CIC the start that was needed for the concept to be recognized among the entrepreneurs.

Acknowledging the problems of small entrepreneurs is essential in order to encourage (svb) companies, who very much struggle with these typical issues. Adding on the fact that (svb) companies often act in the welfare industry makes this issue even more pressing. The development fund in the UK is a good example of how legislation and political measures can encourage certain types of entrepreneurship with good result, and is perhaps something the Swedish system can learn from.

6.4 Credibility

In the United Kingdom, the private social enterprise has been able to retain a high level of credibility. In contrast, the (svb) company is often met with

⁹² SOU 2007:37, 142-143.

⁹³ Palmås. *Den mislyckade välfärdsreformen*, 34.

⁹⁴ *ibid.*, 12-13, 31.

⁹⁵ *ibid.*, 37.

skepticism. Loan providers, municipality officials and other actors important to the future of the company are hesitant towards the unfamiliar form; just the opposite of what was intended.⁹⁶ This matter is an obvious sign of how information, political measures, and supporting structures can help or fail in these kinds of matters. The CIC is built upon the very same logics as the (svb) company is, but the results differ substantially. The problem does not seem to lie in the logic of the company, but in the way it has been sold to the public, industry and financing actors.

⁹⁶ *ibid.*, 10-11.

7 Conclusion

It is important to stress the fact that social enterprises are not direct competitors to for-profit companies. It is obvious that for-profit plays an indescribably large part in welfare as well as other parts of society. For-profit is neither immoral nor ineffective, and it is undoubtedly a crucial incentive for most entrepreneurs to start a business. It is not my intention to in any way portray the for-profit company as an outdated actor.

With that being said, it is also clear that there is a place for other types of enterprises. The social issues of society, the tradition of the welfare state, and the resistance towards tax-financed for-profit have created a predominant majority demanding not-for-profit alternatives, which may in fact be as effective (or more) than the for-profit alternatives. This does not necessarily mean that for-profit should be banned from the welfare industry, or that not-for-profit should be premiered. What it implies is only that there is a great space for a legal possibility to run a not-for-profit company as well.

In order for the social enterprise to be able to become a serious actor in the industry, the body must allow the unique circumstances of the social enterprise to fit. The social purpose in combination with the businesslike methods must be supported by the company structure if entrepreneurs are to engage in the social industry. The limited liability company is the only company that by its exceptional structure supports high-risk projects, is sustainable due to its changeability in ownership, and is credible enough to inhabit a social cause. It has been suggested before that a strict for-profit purpose should not be the only alternative for a business. This may be the reason why the Companies Act allows another purpose. However, the legislator still protects the for-profit purpose to a higher extent than the not-for-profit one, and still leaves the destiny of the company in the hands of the owners who can change the purpose in self-interest. The setup gives little trust to a company claiming social purposes, since the structure is, if not fragile, at least changeable.

The solution could well be the (svb) company, which by the asset lock protects the purpose of the company in a way that the limited liability company does not. The setup fulfills all the theoretical demands of a social enterprise. And still, the company has not been successful. Lack of incentives for the entrepreneurs has made the leap to the new company type less attractive, and missing support structures and a lack of propaganda for the type show how little political effort there is to practically reinforce the company. The difficulties for small entrepreneurs to compete are not helped

by the utilization of an unknown company setup, and in the end, the (svb) company has very low credibility instead of the other way around.

The problem of there being so few (svb) enterprises creates a kind of chicken-and-the-egg dilemma. The legislator sees no purpose in focusing on providing incentivizing regulations for a company form that is so limited in application. At the same time, it is difficult for entrepreneurs to choose the (svb) form when no obvious incentives exist. There needs to be a regulatory infrastructure for social enterprises. The other issue is that politicians do not see the request for a businesslike not-for-profit body but at the same time encourage social entrepreneurship. The public on the other hand turns against for-profit but do not know of the existence of social enterprises.

The examples from the UK and US show how important it is for the regulatory body to first of all clarify what an (svb) company is. The (svb) company needs to be explained and brought forward if it is to be an alternative for social entrepreneurs. This is also confirmed by the real life example of Mitt Liv AB (svb), where the founder pressed the importance of communicating the purpose of the company clearly. All things new are difficult to sell, and as much as it is very much up to the entrepreneur to brand herself in a good way in order to get a business going, it must also be up to the political layer to make sure the public feels confident with the legal body.

Secondly, the (svb) company must be legitimized, by convincing loan providers, investors, business partners, foundations, customers, and any other actor on which the company's future exist, that the (svb) company is a legitimate actor that can be trusted. Supportive structures such as development funds, financial advice, regulatory helpdesks and so on will increase the success factor of these types of companies, help them stand competition in a harsh environment, and in time become good examples of sustainable enterprises that will increase the faith in other similar companies.

Thirdly, there needs to be some incentives for the social entrepreneur to choose the (svb) company before the foundation conducting business, the non-profit association, the not-for-profit limited liability company, or even the for-profit company of any sort. Tax relief of the same sort that is granted non-profit associations and foundations, tax deductions for donations or investments, or simply structure support for founding, running or accounting could be measures that could help the (svb) company be a preferable option to other bodies.

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